



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-8149-2023

Reserved on : 22.10.2024

Pronounced on : 29.10.2024

Rupinderpreet Singh

.....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. B.S. Patwalia, Advocate with
Mr. Abhishek Masih, Advocate for the petitioner.

Mr. Ranjit Singh Kalra, Advocate with
Ms. Mona Yadav, Advocate for the respondents.

NAMIT KUMAR, J.

1. The petitioner has filed the instant petition under Articles 226/227 of the Constitution of India, seeking the following reliefs :-

“(i) To issue an appropriate writ order or direction including a writ in the nature of certiorari quashing the order dated 06.04.2023 (Annexure P-10) vide which the claim of the petitioner to fix notional pay and seniority along with his batchmates recruited in pursuance to advertisement No.291 of 2017 dated 20.12.2017 (Annexure P-1) has been in a completely illegal and arbitrary manner rejected without taking into consideration that the delay in appointment of the petitioner was due to the interim direction granted by this Hon'ble Court in CWP No.27775 of 2018 which petition already stands dismissed vide judgment dated 14.12.2021 (Annexure P-6) and therefore, as per settled principles of law the petitioner is entitled to all consequential/notional benefits from the date of his



appointment along with other persons recruited vide the same selection process.

(ii) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of Mandamus directing the respondents to treat the petitioner at par with his batchmates appointed on the post of Sub Station Attendant (SSA) in pursuance to advertisement No.291 of 2017 dated 20.12.2017 (Annexure P-1) for fixation of salary, increments, seniority and all notional and consequential benefits as admissible and granted to all other persons appointed on the same very post and keeping in view the fact that this Hon'ble Court has already dismissed CWP No.27775 of 2018 due to which the appointment of the petitioner had been delayed.

(iii) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction including a writ in the nature of certiorari quashing Clause 2 of the appointment letter dated 25.03.2022 (Annexure P-7) relating to fixation of salary of the petitioner as the same would not be applicable to the present facts as keeping in view decision of this Hon'ble Court upholding the appointment of the petitioner and for the purpose of fixation of salary and grant of all notional benefits the same would relate back to and has to be fixed at par with other Sub Station Attendants appointed in pursuance to the advertisement dated 20.12.2017 (Annexure P-1) being batchmates of the petitioner.

(iv) It is further prayed that this Hon'ble Court may be pleased to issue an appropriate writ order or direction including a writ in the nature of mandamus directing the respondents to grant the petitioner full salary along with increments during the period of probation and to fix the



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salary of the petitioner according to 6th Punjab Pay Commission as has been done for all other Sub Station Attendants appointed in pursuance to the same advertisement and keeping in view the decision of this Hon'ble Court and settled principles of law as for the no fault of the petitioner his appointment was delayed due to pendency of CWP No.27775 of 2018 and the decision of this Hon'ble Court in Ajay Kumar Singh Vs. State of Punjab being CWP No.17064 of 2017 decided on 16.2.2023.

(v) It is further prayed that during the pendency of the present writ petition and subject to the final outcome of the same the respondents be directed to grant full salary of the petitioner at par with other Sub Station Attendants and the order dated 06.04.2023 (Annexure P-10) may kindly be stayed.”

2. Brief facts, as have been pleaded in the present petition, are that the respondent-Punjab State Power Corporation Limited (hereinafter referred to as 'PSPCL') issued an advertisement CRA No.291 of 2017 dated 20.12.2017, whereby apart from the post of Junior Engineer (Electrical), 253 posts of Sub Station Attendants (hereinafter referred to as 'SSA') were advertised. Out of the said 253 posts, 25 posts were meant for SC category and 02 posts were meant for Sports category. The petitioner being fully eligible, applied for the post of SSA under SC (others) category. For the said posts, the written examination was conducted on 27.02.2018 and the petitioner appeared in the said examination. Thereafter, the respondent-PSPCL issued combined merit-list whereby the name of the petitioner figured in merit at Sr.No.496 securing 55 marks and he was called for document

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verification on 18.01.2019 along with 09 other candidates and the petitioner was at Sr. No.10 in the said list. In the meanwhile, one Pawanpreet Singh, who had originally applied under the Sports category and was held ineligible due to some defect in his Sports Certificates laid claim for appointment under the SC (others) category although he had not applied under the said category. The respondent-PSPCL rejected his claim under the SC (others) category and restricted his claim under the Sports category. Aggrieved against the said action of the respondent-PSPCL, he approached this Court by filing *CWP No.27775 of 2018 titled as 'Pawanpreet Singh Vs. Punjab State Power Corporation Limited and others'*. The said writ petition was initially came up for hearing before this Court on 30.11.2018 and while issuing notice of motion, 01 post of SSA in the SC category was ordered to be kept in abeyance. The order dated 30.11.2018 passed in the said case reads as under :-

“The petitioner belongs to SC (R&O) Category as also possesses a D-Grade Sports Gradation Certificate in Athletics at the District Level. He competed for appointment against the 253 Posts in total of Sub Station Attendant (SSA), advertised on 20.12.2017 vide Annexure P1. The petitioner applied under the SC (R&O) Category and Sports Category.

In the selection process, the petitioner has secured 60.75 marks whereby he is 4th in merit against 11 posts advertised in the SC (R&O) Category and 1st in merit against the 2 posts in the SC (R&O) Sportsman Category.

In view of D-Grade Sportsman Certificate, the petitioner has been found to be ineligible against the



posts of Sportsman Category of SC (R&O).

It is urged that the petitioner is entitled to be considered in his base category of SC (R&O).

Notice of motion to respondent No.1 and 2 only, at this stage, for 17.12.2018.

On asking of the Court, notice has been accepted by Mrs. Anu Chatrath Kapoor, Addl. A.G. Punjab, present in the Court. She prays for time to seek instructions.

In the meanwhile, if a post of SSA in SC (R&O) Category is available as on today, the same shall be kept in abeyance.

A copy of the order be given dasti to the State Counsel, under the signatures of Bench Secretary.

Be shown in urgent list.”

Consequently, 01 post of SSA in SC category was kept vacant and the appointment of the present petitioner being the last selected candidate in SC (others) category was withheld due to pendency of the abovesaid writ petition. Since the petitioner was not party in the said writ petition, he filed application bearing CM No.3666 of 2019 in CWP No.27775 of 2018 under Order 1 Rule 10(2) CPC for becoming a party in the said writ petition and for vacating the interim order dated 30.11.2018. In the said application, notice was issued on 11.03.2019 and thereafter, the said application was allowed on 07.02.2020. Finally the said writ petition was dismissed by this Court vide judgment dated 14.12.2021. Thereafter, the petitioner approached the respondent-PSPCL for issuance of appointment letter and finally he was given appointment letter on 25.03.2022. Accordingly, the petitioner joined the respondent-PSPCL and submitted representation dated 23.06.2022 followed by

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30.11.2022 claiming full salary and other notional benefits including fixation of pay and seniority along with his batchmates. Since no action was taken by the respondent-PSPCL on the said representations, the petitioner approached this Court by filing *CWP No.3971 of 2023 tilted as 'Rupinderpreet Singh Vs. Punjab State Power Corporation Limited and another'* for redressal of his grievances and for grant of full salary along with notional fixation of pay as well as seniority. The said writ petition came up for hearing before this Court on 27.02.2023 on which date a direction was issued to the respondent-PSPCL to decide the representations filed by the petitioner within a period of 06 weeks and the matter was adjourned for 12.04.2023. During the pendency of the said writ petition, the claim of the petitioner has been rejected vide order dated 06.04.2023 and the said writ petition was disposed of as having been rendered infructuous vide order dated 12.04.2023. Now, the order dated 06.04.2023 (Annexure P-10) has been impugned in the present petition.

3. The respondents have filed detailed written statement contesting the claim of the petitioner by stating that the validity of the selection panel for the post of SSA, against advertisement CRA No.291 of 2017, has already been lapsed on 30.06.2019 and no directions were issued by this Court in the judgment dated 14.12.2021 passed in CWP No.27775 of 2018 for considering the claim of respondent No.4 (the present petitioner) and on the representation received from the petitioner, he was considered on selection panel against 01 vacant post in SC (others) category. Since the process was lengthy, therefore, some

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time took place in the whole process and the petitioner was issued appointment on 25.03.2022. Therefore, the petitioner cannot claim notional benefits from the earlier date.

4. Learned counsel for the petitioner submitted that the petitioner was selected candidate in SC (others) category at Sr. No.10 against 25 advertised posts and he was not issued appointment only due to the interim order dated 30.11.2018 passed by this Court in CWP No.27775 of 2018 and the said writ petition having been dismissed on 14.12.2021, the petitioner has been given appointment on 25.03.2022, however, he has not been granted the notional benefits such as full salary, fixation of pay and seniority along with his batchmates. He further submitted that the petitioner cannot be made to suffer if his appointment has been delayed due to Court orders. Therefore, he is entitled to be treated at par with his other batchmates, who have been selected and appointed against the same very advertisement. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgments of this Court in ***Satya Vir Singh Vs. Punjab and Haryana High Court : 2011(4) SCT 707*** and ***CWP No.11963 of 2021 titled as 'Kawalpreet Kaur and another Vs. Punjab State Power Corporation Limited and others' decided on 11.11.2021.***

5. Per contra, learned counsel for the respondents submitted that since there was no vacancy on account of stay granted by this Court in CWP No.27775 of 2018, therefore, the petitioner was not offered appointment at that point of time and after the said writ petition having been dismissed, the petitioner has been offered appointment and the said

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appointment has been accepted by the petitioner and now, he cannot claim the other benefits at par with his batchmates. He further submitted that the validity of the selection panel has already lapsed on 30.06.2019 and since the petitioner has been offered appointment thereafter i.e. 25.03.2022, therefore, he cannot claim other benefits from the back date.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. The facts are not in dispute that in pursuance to the advertisement dated 20.12.2017, the petitioner applied against 01 of the 25 posts of SSA belonging to SC (others) category and in the selection panel he was at Sr. No.10 and was called for documents verification on 18.01.2019. However, in the meanwhile, in CWP No.27775 of 2018 preferred by one Pawanpreet Singh, interim order dated 30.11.2018 was passed by this Court, whereby 01 post in SC category was ordered to be kept in abeyance. Since the interim order has effected the rights of the petitioner, he became party in the said writ petition and finally the said writ petition was dismissed by this Court vide detailed judgment dated 14.12.2021. Thereafter, on the basis of representation submitted by the petitioner, he was offered appointment on 25.03.2022. After his joining, the petitioner submitted representations dated 23.06.2022 and 30.11.2022 claiming full salary and other notional benefits including fixation of pay and seniority along with his batchmates. The said claim has been rejected by the respondents vide order dated 06.04.2023.

8. The only question which requires determination by this



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Court is as to whether the petitioner is entitled to be treated at par with his batchmates, who were appointed earlier to the petitioner and he could be offered appointment due to interim order passed by this Court.

9. Admittedly, the petitioner was at Sr. No.10 in the SC category and 09 other candidates were offered appointments and the petitioner was denied appointment at that point of time due to interim order dated 30.11.2018, passed by this Court in CWP No.27775 of 2018. The said writ petition was finally dismissed on 14.12.2021 and the interim order dated 30.11.2018 stands vacated and thereafter, the petitioner was offered appointment on 25.03.2022. It is a well settled proposition of law that a party cannot be made to suffer on account of any order passed by the Court. The petitioner was not at fault when he was denied appointment and others were offered appointment. Therefore, the petitioner cannot be made to suffer on that account and his appointment is to relate back and he is entitled for all the benefits which have been granted to his batchmates including fixation of pay, seniority etc., though on notional basis.

10. The above view is supported by a judgment of this Court passed in **Satya Vir Singh's case (supra)**, wherein while considering the similar issue it has been observed as under :-

“xx xx xx xx xx
24. *The facts of the case in hand depict a picture of an employee, who has been made to suffer because of no fault of his nor there being any reason why he should have not been appointed at the first place. The facts reveal a story where a helpless employee had been knocking at the doors of temple of justice for claiming his right on the*



administrative side. May be due to overcautious approach of the High Court or to avoid complications, despite there being no hitch or impediment in giving the appointment to the petitioner, merely because of the pendency of the writ petition, the petitioner was deprived of his right of appointment despite being selected in accordance with law. An employee, who is ready and willing to work, is deprived of his right to work none other than by the High Court itself and above all, when he is not a party to the litigation. Despite representations, his claim is kept pending and thereafter when that right of appointment has been acknowledged and accepted from the date the vacancy arose, he is being deprived of his consequential benefits.

25. *It is a settled preposition of law based on the maxim actus curiae neminem gravabit, which means that the act of the Court shall prejudice no one. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of justice. A person cannot be penalized for no fault of his. In a case where merely because of pendency of the writ petition, a person is deprived of his right despite there being no legal impediment, the Court is under an obligation to undo the wrong done. It may not be a direct act of the Court but a consequence thereof, for which the sufferer can, in no manner, be held responsible. Similarly, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. Concept of restitution becomes applicable in such cases otherwise the party would continue to get benefit by merely instituting the litigation despite losing the case in the Court. In such a situation, the Court cannot sit as a mute spectator but should pass order, which would expressly*



neutralize the effect of such unmerited litigation. As far as possible, Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose. Another basic principle of jurisprudence is "ubi jus ibi remedium", which means where there is a right, there is a remedy. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice and, therefore, needs to be adopted, followed and enforced by the Courts of law.

26. *In **Kalabharati Advertising vs. Hemant Vimalnath Narichania**, 2011(1) RCR (Civil) 216, the Hon'ble Supreme Court while considering the effect of the ultimate dismissal or withdrawal of a case and the consequence of the effect of the interim relief in para-15 held as follows:-*

"15. No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. xxx xxx xxx xxx xxx"

In paras 18 and 21, it was held as follows:-



*"18. In **South Eastern Coalfields Ltd. vs. State of M.P. & Ors.**, AIR 2003 Supreme Court 4482, this Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. xxx xxx xxx"*

xxx xxx xxx xxx xxx

*"21. In **Badrinath vs. State of Tamil Nadu & Ors.**, 2000 (4) S.C.T. 832: AIR 2000 Supreme Court 3243, this Court observed that once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders."*

27. Although in the present case, there was no interim order passed by this Court in the writ petition i.e. CWP No.16345 of 2005 preferred by Baljinder Singh Teja restraining further appointment, but mere pendency of the writ petition was the basis for deprivation of the appointment to the petitioner which resulted in hardship and the



prejudice due to no fault of his and he has been penalized merely because of the pendency of the case in the Court and the petitioner had suffered due to delay of the Court in deciding the case. It may be noted here that Baljinder Singh Teja, who”” was selected in 2006, was appointed as Reader on 10.05.2006, promoted as Court Secretary on 08.08.2008 along with his batch mates and Special Secretary vide order dated 27.11.2010 and some of his batch mates prior thereto by invoking the provisions of Rule 38 of the 1973 Rules.”

11. ***LPA No.1691 of 2011 titled as ‘Punjab and Haryana High Court Vs. Satya Vir Singh’*** preferred against the above said judgment has been dismissed by a Division Bench of this Court vide order dated 11.01.2012.

12. To the same effect is the judgment passed in ***Kawalpreet Kaur’s case (supra)***, wherein the selected candidates were not given appointment on the ground of validity of selection panel having been lapsed and the said plea was rejected by this Court by observing as under :-

“xx xx xx xx xx

When the decision in CWP No.21748 of 2016 was carried in appeal by the respondent-Corporation by filing LPA No.1659 of 2017 (Punjab State Power Corporation Limited & Anr. Vs. Jatinder Singh Kapur & Ors.), the Division Bench dismissed the same vide judgement dated 19.09.2017 holding inter-alia that :

“We find no reason to dis-agree with the aforesaid contentions particularly, when the appellants themselves were at fault in not offering consideration to the respondents when some of the selected candidates did not avail the assignment offered to them, leaving the post vacant. It was



incumbent upon the appellants to extend the offer of employment to those who were next in the queue rather than defeat their claims on account of their inaction.”

It fails to reason as to why after it has conclusively been held that the Department should have acted promptly once candidates offered appointment did not join and that it is inaction of the appointing authority which suffers from the vice of arbitrariness, the Committee of Whole Time Directors has again declined to extend the validity of the selection panel. The reason given in the impugned decision (Annexure P-14) for not extending the validity of the selection panel is “that extending the selection panel will lead to vitiate its sanctity and other candidates may also come forward and claim posts on the basis of this...”. It is thus clear that to cover-up its own inefficiency and slackness the validity of the selection panel has not been extended. The petitioners cannot be made scapegoats for inaction by the respondent-Corporation. The petitioners, who were on the waiting list, were asked to supply certain clarifications. This was done. However, the respondents did not offer appointment though there were still some time for the validity of the wait list to come to an end. For failing to take prompt action by the respondents the petitioners cannot be made to suffer.

*The Supreme Court in the case of **R.S.Mittal Vs. Union of India, 1995(3) SCT 284**, has held as under :*

“12. It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a



justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

*A Division Bench of this Court in the case of **Ritu d/o Sh. Nafe Singh Vs. State of Haryana & Ors., LPA No.1767 of 2012 decided on 04.03.2013**, held as under:-*

“11. Adverting back to the facts of the present case, it was obligatory upon the Appointing Authority to have acted promptly as also within a reasonable time-frame upon a selected candidate in the original select list not having accepted the offer of appointment. Even though, there would be no quarrel as regards the proposition that mere impanelment of the name of the appellant in the waiting/panel list did not vest in her a right to be appointed, but equally it will not give the State Government a license to act arbitrarily. Nothing has been brought on record that would justify the inaction on the part of the Appointing Authority for not having cancelled the offer of appointment made in favour of Smt.Manju Rani within the stipulated time-frame and having made the offer of appointment of the post in question to the candidate next in order of merit. Suffice it to observe that we are not seized of a claim of appointment over and above the number of vacancies advertised but only as regards a claim of a duly selected candidate in relation to the original five advertised vacancies pertaining to the reserved ex-Servicemen (General) Female category. The inescapable conclusion is that had the Appointing Authority acted with a sense of promptitude, the right of the appellant would have crystalized well within the validity period of one year of the waiting/panel list with effect from the date of receipt of the recommendations i.e. 27.1.2010. Action of the Appointing Authority suffers from the vice of arbitrariness and, as such, cannot sustain.

12. Even otherwise, the very objective of preparing a waiting/panel list and for such list to be kept



operative for a specific period is that if a vacancy arises during such period for any reason, then the whole process of selection may not have to be repeated and the process of selection already having been undertaken would hold good for such period. A reference in this regard can usefully be made to the judgments of this Court in Ajmer Singh v. State of Haryana and others, 1997(1) CLJ (Service) 86 and Raghbir Chand Sharma v. State of Punjab, 1992 (1) RSJ 195.”

In the present case there is no justifiable reason forthcoming for the inaction on the part of the respondent-Corporation. The petitioners were called for scrutiny of the documents before the expiry of the validity of the selection panel. Even in the written statement no cogent reason is forthcoming for the inaction on the part of the respondent-Corporation. It is not the stand of the respondent-Corporation in the written statement that the petitioners were not eligible or their documents were wanting in any manner.

In view of the discussion above and the law laid down in the judgements quoted above, the decision of the Committee of Whole Time Directors dated 20.05.2021 (Annexure P-14) is set aside and quashed. In the facts of the present case, this Court is inclined to issue similar directions as were passed by a Co-ordinate Bench in CWP No.21748 of 2016 (Jatinder Singh Kapoor & Ors. Vs. Punjab State Power Corporation Limited & Anr.) vide judgement dated 26.05.2017, which judgement stands affirmed by the Division Bench. As such, the present writ petition is allowed in the following terms :

- (i) the respondents will offer appointment to the petitioners subject to their fulfilling all other eligibility criteria;*
- (ii) the petitioners would be entitled to all notional benefits other than any remuneration for the period not worked;*



- (iii) *the seniority of the petitioners would be counted from the date candidates from the batch joined service;*
- (iv) *the respondents are also directed to complete the exercise and offer appointment within a period of 2 months from the date of receipt of certified copy of this judgement.*

For the unjustifiable stand taken by the respondents despite the issue having being settled more than once by this Court, and forcing litigants to knock on the doors of this Court despite the issue being settled and accepted by the respondents, this Court is constrained to impose costs of Rs.25,000/- on the respondents. Costs to be deposited with the High Court Legal Aid Committee.”

13. In view of the above factual position and settled principles of law, the present petition is allowed and the impugned order dated 06.04.2023 (Annexure P-10) is set aside and quashed. The respondents are directed to treat the petitioner at par with his batchmates, who have been appointed on the post of Sub-Station Attendant (SSA) in pursuance to the same advertisement CRA No.291 of 2017 and grant all consequential benefits of full salary w.e.f. the date of appointment, notional fixation of pay, seniority etc. to the petitioner, within a period of 03 months from the date of receipt of certified copy of this order.

29.10.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No