

PRAMOD

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v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 14735 of 2015)

DECEMBER 29, 2015

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[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981: r.3 – Promotion – Post of Principal – Appellant-writ petitioner senior most lecturer – Post of Principal fell vacant – Another person appointed – Writ petition – Pending that advertisement issued inviting applications for direct recruitment to the post of Principal – Plea of appellant that post of Principal in a private polytechnic has to be filled up necessarily by promotion by virtue of r.3 – High Court disposed of writ petition by holding that appellant was entitled to all benefit as officiating Principal but did not enter into the controversy as to who should be selected and appointed as regular Principal – Appellant filed another writ petition claiming promotion to the post of Principal u/r.3(3) – High Court disposed of writ petition allowing the Education Society running the polytechnic to approach the Director of Technical Education for permission to issue fresh advertisement – Director rejected the appellant's prayer holding that post is to be filled up by direct recruitment – Writ petition by appellant for quashing Director's order and directions to the concerned authorities to promote him – High Court decided against the appellant – On appeal, held: Sub-rule (5) of r.3 permits direct recruitment only after obtaining prior permission of the competent Government Officer in a situation where no suitable teacher possessing the prescribed qualifications is available for promotion as Head – Mode of appointment prescribed under the statutory r.3(3) could not have been ignored and since the appellant was admittedly the senior most member of the teaching staff

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A *and in the earlier judgment was also held entitled to all the*
benefits of In-charge Principal of the polytechnic, he could
not have been denied appointment by promotion to the vacant
post of Principal – As regard the age of superannuation,
 B *even as a teacher the appellant's age of superannuation*
could have been considered for extension upto 62 years if
steps were taken for the same in due course – Appellant was
not promoted due to erroneous order of Director otherwise
he would not have superannuated before 65 years or in any
 C *case 62 years – Therefore, in the interest of justice, authorities*
are directed to immediately reinstate the appellant and also
appoint him by promotion to the post of Principal –
Maharashtra Employees of Private Schools (Condition of
Service) Regulation Act, 1977 – All India Council for Technical
Education Act, 1987 – s.23 r/w s.10(i) and (v) – Education.

D **Allowing the appeal, the Court**

HELD: 1. The Principal, Head of Department, Lecturer and Workshop Superintendent in Government Polytechnic and Equivalent Institutes (Recruitment) Rules, 2012 will not apply to private aided polytechnic such as the respondent's polytechnic. As a result, there is no other Statutory Act or Rule to take away the force of Rule 3(3) of the MEPS Rules which requires the management of the polytechnic, which is covered by the definition of the 'School' under the MEPS Act, to fill up the post of the Head of Institution, i.e., the Principal by appointing the senior most member of the teaching staff in accordance with the guidelines laid down in Schedule 'F' from amongst the teachers employed in the school. The respondent-polytechnic is the only polytechnic run by the Management. Schedule 'F' to the Rules prescribes only the guidelines for fixation of seniority in different schools. The appellant is senior most teacher in the polytechnic. Sub-rule (5) of Rule 3 permits direct recruitment only after obtaining prior

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permission of the competent Government Officer in a situation where no suitable teacher possessing the prescribed qualifications is available for promotion as Head. [Para 12] [142-B-E]

2. The High Court has erred in law in holding that the mode of appointment by promotion under Rule 3(3) of the MEPS Rules cannot be applied to a polytechnic although it is a school because there is no separate qualification prescribed for a polytechnic in sub-rule(1) of Rule 3. The said sub-rule contains the qualifications and appointment of Head not only for primary schools but also for secondary school including night school or a junior college of education. Appellant fulfills those qualifications. Further it is nobody's case that the appellant does not fulfill the educational qualification for the post of Principal of a polytechnic even as prescribed by the AICTE. In such a situation the mode of appointment prescribed under the statutory Rule 3(3) could not have been ignored and since the appellant was admittedly the senior most member of the teaching staff in the polytechnic at the relevant time, as also held in the earlier judgment of the High Court when he was declared entitled to all the benefits of In-charge Principal of the polytechnic since 9.7.2007, the appellant could not have been denied appointment by promotion to the vacant post of Principal. [Para 13] [142-F-H; 143-A-D]

3. On the issue of age of superannuation, there was no occasion for the High Court to consider the relevant Rules or Notifications and before this Court, there is a serious controversy as to whether the age of superannuation on the post of a teacher other than Principal ought to be 60, 62 or 65 years. According to respondent, the State Government had issued a Notification through the Higher and Technical Education Department dated 5th March, 2010 whereby the age of

A superannuation for non-government polytechnic institutions has been increased from 58 years to 60 years and it can be extended upto 62 years only after obtaining prior approval of the State Government. Similarly, for the post of Principal the age of superannuation has been

B increased to 65 years but with the rider that State Government should grant approval for any further extension beyond 62 years. On the other hand, the stand of the appellant is that he has been arbitrarily ignored and not considered for extension because of

C pending litigation against the Management of the respondent-society since several years. From the materials, it is evident that even as a teacher the appellant's age of superannuation could have been considered for extension upto 62 years if steps had been

D taken for the same in due course. Moreover, the Regulations of AICTE being statutory, unless these have been superseded or annulled by a competent authority, the appellant's age of superannuation stood extended upto 65 years. Lastly and in any event, this

E Court had directed for maintenance of status-quo in respect of appellant's service and such order has been ignored by the concerned respondents by proceeding to superannuate the appellant at the age of 60 years. Yet another dimension requires special consideration

F in the interest of justice. As per the statutory MEPS Rules, the appellant should have been promoted as the Head of the School or in other words Principal of the polytechnic long back and in any case by the end of the year 2012, provided the respondent-Director had not

G passed an illegal and erroneous order when he wrongly proceeded to apply the Government Rules 2012 to the private respondent polytechnic. If a correct view had been taken by the respondent-Director then by the end of 2012, the appellant would have been occupying the

H post of Principal in the respondent polytechnic and then

he would not have superannuated before 65 years or in any case before 62 years of age. In the interest of justice, it is deemed proper to direct for immediate reinstatement of the appellant within two weeks. The Management of the Respondent Society cannot be presumed to be just and fair to the appellant and expected to act in accordance with law. Hence, instead of relegating the appellant to the mercy of the Management, the concerned respondents are directed to issue order of reinstatement and also appointment of the appellant by promotion to the post of Principal of the respondent polytechnic within four weeks. The appellant shall be treated to have been appointed by such promotion to the post of Principal w.e.f. 1st December, 2012 as this in normal course should have been the time taken for such promotion if the respondent-Director had not passed a wrong order. The appellant shall also be entitled to all consequential benefits on the basis of such promotion. Since the appellant's service was disturbed by superannuating him w.e.f. 31.3.2015 contrary to interim order, he shall be deemed to have continued in service without interruption even after 31.3.2015 with entitlement to full salary and other permissible emoluments for the entire period till reinstatement. [Paras 15 to 18] [143-F-H; 144-A, E-H; 145-A-H; 146-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14735 of 2015.

From the Judgment and Order dated 10.10.2014 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 652 of 2013.

Chander Uday Singh, Sr. Adv., Manish Pitale, S. J. Kadu, C. S. Ashri, Satyajit A. Desai, Ms. Anagha S. Desai, Advs. for the Appellant.

A Tushar Mehta, ASG, Mahaling Pandarge, Addl. Govt. Adv.,
Nishant Ramakantrao Katneshwarkar, Adv. for the
Respondents.

The Judgment of the Court was delivered by

B **SHIVA KIRTI SINGH, J.** 1. Leave granted.

2. This appeal raises a question of law as to whether as
a senior most lecturer in a private Polytechnic Institution
administered by Shri Shiva Ji Education Society-Respondent
No.4, the appellant is entitled to be considered for appointment
C to the post of Principal because it is required to be made only
by promotion by virtue of Rule 3 of the Maharashtra Employees
of Private Schools (Conditions of Service) Rules, 1981 (for
D brevity the 'MEPS Rules') framed under the Maharashtra
Employees of Private Schools (Conditions of Service)
Regulation Act, 1977 (for brevity the 'MEPS Act').

3. Although the seniority, qualification and eligibility of
the appellant for appointment to the post of Principal was not
under question before the Division Bench of the High Court,
before us an attempt was made not only to oppose the
E appellant's claim on the basis of impugned judgment under
appeal which holds that under the law appointment is not
necessarily by promotion alone, it can be also by nomination,
i.e., direct recruitment, but also to contest the claim of the
F appellant on the ground of qualification as well as his age. The
issue of age has arisen due to subsequent development. On
account of passage of time, when this matter was already
pending before this Court, the appellant completed 60 years
and was made to superannuate on 31.3.2015. Since there
was an order of status quo in appellant's favour, contempt
G petition was also filed but instead of pressing the same,
Mr. C.U. Singh, learned senior counsel for the appellant has
preferred to argue the main matter itself. Before answering
the question of law, noticed earlier, the relevant facts may be
noted in brief.

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4. The appellant was appointed to the post of Assistant Lecturer in Civil Engineering Department of Dr. Punjabrao Deshmukh Polytechnic, Amravati administered by the Respondent- Shivaji Education Society on 30th July, 1977. His service was approved w.e.f. 1.7.1979. The appellant holds qualifications of Bachelor of Engineering (Civil) in first class and Master of Engineering (Structure) also in first class. On 1.4.1993 the appellant was appointed as lecturer (Selection Grade). His seniority is duly shown in the seniority list issued on 1.7.1997 by the office of the Principal of Polytechnic. The appellant worked as Project Officer between 4.2.2000 and 30.7.2007. This post is said to be equivalent to the post of Head of Department. The appellant also worked as In-charge Head of Department of Civil Engineering from 8.8.2005 to 13.2.2008 to which he was selected and appointed on regular basis also. In the meantime on 5.7.2007 the post of Principal fell vacant due to voluntary retirement of the then Principal. The appellant claimed that he should be given the charge of that post on the basis of his seniority but another person was appointed as officiating Principal on 9.7.2007. The appellant challenged such action by preferring a writ petition No.3230 of 2007 in 2007. That writ petition was dismissed on the ground that the appellant had alternative remedy of appeal under Section 9 of the MEPS Act before the School Tribunal. The appellant thereafter, preferred appeal No. 39 of 2007 before the Tribunal which dismissed the appeal as pre-mature on 11.10.2007. Against the said order of School Tribunal, the appellant preferred another writ petition bearing No. 5748 of 2007.

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5. During the pendency of the said writ petition, the society issued an advertisement inviting applications for direct appointment to the post of Principal. The appellant challenged that advertisement dated 21.11.2007 and prayed for a direction to the society to appoint him as Principal by granting promotion. The High Court restrained issuance of final appointment order and ultimately disposed of the writ petition

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A on 15.9.2009 by holding in favour of the appellant that he was entitled to all the benefits as officiating Principal from 9.7.2007 but did not enter into the controversy as to who should be selected and appointed as regular Principal. Since that issue was left open, the appellant preferred another writ petition No. B 4235 of 2009 claiming that he was entitled to be promoted to the post of Principal under Rule 3(3) of the MEPS Rules on account of being the senior most lecturer of the polytechnic.

C 6. On 5.3.2010, the All India Council for Technical Education (for brevity 'AICTE') issued a notification framing the All India Council for Technical Education [Pay-scales, Service Conditions, and Qualifications of the Teachers and other Academic Staffs in Technical Institutions (Diploma)] Regulations 2010. The writ petition was disposed of on D 29.7.2010. The High Court allowed the Society to approach the Director of Technical Education for permission to issue fresh advertisement and left it open to the appellant to make a representation to the Director for staking his claim of promotion to the post of Principal and to raise the issue that no advertisement was required in view of the MEPS Rules and E the particular facts. The Director was given six weeks time to consider the application of the Society and also the representation of the appellant and in the meanwhile the appellant was to continue as In-charge Principal. For one F reason or the other the matter remained with the respondent-Director and in the meantime on 10.9.2012 the State of Maharashtra through the Department of Higher and Technical Education notified Rules entitled- The Principal, Head of Department, Lecturer and Workshop Superintendent in G (Recruitment) Rules 2012 (hereinafter referred to as 'the Government Rules 2012').

H 7. The Director-Respondent No.2 by his order dated 17.10.2012 placed reliance on the Government Rules 2012 and rejected the appellant's prayer by holding that the post of

Principal had to be filled up by nomination, i.e., direct recruitment. The appellant preferred writ petition No. 652 of 2013 for quashing of Director's order and for directions to the concerned authorities to promote the appellant to the post of Principal with all benefits. The writ petition was dismissed on 10.10.2014 giving rise to the Special Leave Petition and the present appeal. While issuing notice on 21.11.2014 in the special leave petition, this Court directed for maintenance of status quo as regards the service of the petitioner-appellant.

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8. The Division Bench of the High Court has held in favour of the appellant that as per an earlier Full Bench judgment, the provisions of MEPS Act and MEPS Rules are applicable to employees working in polytechnic colleges which being institutions imparting technical education stand covered by the term 'School' as defined under Section 2(24) of the MEPS Act. In fact, in that view of the matter, in the earlier round the appellant was relegated to avail statutory remedy of appeal before the School Tribunal. The Division Bench noticed the qualifications prescribed for the post of Principal by the AICTE which the appellant fulfils. However, the Division Bench accepted the stand of the respondent-State that in view of recommendations of AICTE made through letter dated 20.12.1999, the State Government had passed a resolution for accepting those recommendations on 27.2.2003 and therefore, the provisions of MEPS Rules providing for promotion of the senior most teacher to the post of Principal will not hold the field and that as per recommendations of AICTE, recruitment of 50% cadre posts is required to be by open selection through advertisement at national level and only 50% by promotion on the basis of seniority-cum-merit. On this plea the High Court decided against the appellant and held that it was unable to hold that post of Principal in a private polytechnic has to be filled up necessarily by promotion though so provided in Rule 3(3) of the MEPS Rules. This relevant Rule is extracted in the judgment of the High Court and reads as follows :-

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“3. Qualifications and appointment of Head.

(1) A person to be appointed as the Head (a) (i) of a primary school having an enrollment of students above 200 or having Standards I to VII shall be the senior most trained teacher who has put in not less than five years’ service: and

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(ii) Of any other primary school shall be the Senior-most trained teacher in the School;

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(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor’s degree in teaching or education of a statutory University or any other qualification recognized by Government as equivalent thereto and possessing not less than five years’ total fulltime teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years’ experience shall be after acquiring Bachelor’s degree in teaching or education:

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Provided that, in the case of a person to be appointed as the Head of a night secondary school –

(i) he shall not be the one who is holding the post of Head or Assistant Head of a day school, and

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(ii) the experience laid down in clause (b) of sub-rule(1) may be as a part time teacher.

(2) x x x x x

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(3) The Management of a school including a night school shall fill up the post of the Head by appointing the senior-most member of the teaching staff (in accordance with the guidelines laid down in Schedule “F” from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfills

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the conditions laid down in sub-rule(1) and who has a satisfactory record of service.” A

9. On behalf of the appellant, it was pointed out that the judgment under appeal has correctly held that the Government Rules 2012 apply only to Government polytechnic or equivalent institute, i.e., the institute having same status as that of Government polytechnic and not a private polytechnic, as in the case at hand. It was further submitted that this view of the High Court knocks out the basis of the Director’s order against the appellant which was impugned before the High Court and there was no necessity for the High Court to examine any other issue. B C

10. An emphatic stand was taken on behalf of the appellant that except in the Government Rules, 2012, there is no provision made by the State Government or by the AICTE in respect of mode of filling up of the post of Principal and none at all for a private polytechnic. Hence, according to the learned senior counsel for the appellant, Rule 3(3) of the MEPS Rules being statutory, cannot be ignored by the respondent authorities and those alone apply to the claim of the appellant which deserves to be allowed but was wrongly disallowed by the Director and the High Court. D E

11. On the other hand, learned counsel for the Society took the stand that the High Court had erred in holding that the Government Rules 2012 cannot apply to the polytechnic at hand on the ground that it is a private aided institute. According to him, since, the society ultimately succeeded before the High Court, it was not obliged to come in appeal against the adverse finding noticed above and is entitled to challenge that finding to further support the final conclusions of the High Court. In such a situation we granted further time to the State Government of Maharashtra to file an affidavit on the issue as to whether the Government Rules 2012 apply to the respondent polytechnic which is a private aided institute. Such affidavit dated 8.12.2015 is now on record and it is the firm stand of H

A the State Government that the Government Rules 2012 are not applicable to the respondent polytechnic as it is only a private aided institute.

12. We have ourselves also examined the said rules, 2012 and we find ourselves in agreement with the views expressed by the High Court that these Rules will not apply to private aided polytechnic such as the respondent's polytechnic. As a result there is no other Statutory Act or Rule to take away the force of Rule 3(3) of the MEPS Rules which requires the management of the polytechnic, which is covered by the definition of the 'School' under the MEPS Act, to fill up the post of the Head of Institution, i.e., the Principal by appointing the senior most member of the teaching staff in accordance with the guidelines laid down in Schedule 'F' from amongst the teachers employed in the school. It is not in dispute that respondent-polytechnic is the only polytechnic run by the Management. Schedule 'F' to the Rules prescribes only the guidelines for fixation of seniority in different schools. In the present case, there is no dispute that the appellant is senior most teacher in the polytechnic. Sub-rule (5) of Rule 3 permits direct recruitment only after obtaining prior permission of the competent Government Officer in a situation where no suitable teacher possessing the prescribed qualifications is available for promotion as Head.

13. In our considered view the High Court has erred in law in holding that the mode of appointment by promotion under Rule 3(3) of the MEPS Rules cannot be applied to a polytechnic although it is a school because there is no separate qualification prescribed for a polytechnic in sub-rule(1) of Rule 3. The said sub-rule contains the qualifications and appointment of Head not only for primary schools but also for secondary school including night school or a junior college of education. Appellant fulfils those qualifications. Further it is nobody's case that the appellant does not fulfill the educational qualification for the post of Principal of a polytechnic even as

prescribed by the AICTE. In such a situation the mode of A
appointment prescribed under the statutory Rule 3(3) could
not have been ignored and since the appellant was admittedly
the senior most member of the teaching staff in the polytechnic
at the relevant time, as also held in the earlier judgment of the B
High Court when he was declared entitled to all the benefits of
In-charge Principal of the polytechnic since 9.7.2007, the
appellant could not have been denied appointment by
promotion to the vacant post of Principal. The respondent-
Director erred in rejecting the appellant's claim and in not C
issuing directions for his appointment by promotion while
passing order on the representation of the appellant and
rejecting the same on 17.10.2012. The writ petition preferred
by the appellant against that order has also been wrongly
dismissed by the High Court by the order under appeal dated
10.10.2014. D

14. In view of aforesaid findings, it is to be worked out
as to what relief the appellant deserves to be granted now
when the respondent-society has proceeded to superannuate
him w.e.f. 31.3.2015 without seeking permission of this Court
and acting contrary to the status-quo order passed on E
21.11.2014.

15. On the issue of age of superannuation, there was no
occasion for the High Court to consider the relevant Rules or
Notifications and before us there is a serious controversy as
to whether the age of superannuation on the post of a teacher F
other than Principal ought to be 60, 62 or 65 years. According
to respondent, the State Government had issued a Notification
through the Higher and Technical Education Department dated
5th March, 2010 whereby the age of superannuation for non- G
government polytechnic institutions has been increased from
58 years to 60 years and it can be extended upto 62 years
only after obtaining prior approval of the State Government.
Similarly, for the post of Principal the age of superannuation
has been increased to 65 years but with the rider that State H

- A Government should grant approval for any further extension beyond 62 years. On the other hand, the stand of the appellant is that he has been arbitrarily ignored and not considered for extension because of pending litigation against the Management of the respondent-society since several years.
- B It is further case of the appellant that: State Government has never differed with the recommendation of the AICTE on the issue of age of superannuation; in exercise of its statutory powers under sub-section (1) of Section 23 read with Section 10(i) and (v), of the All India Council for Technical Education Act, 1987, the AICTE has issued the Regulations dated 5th March, 2010; and the Regulations, inter alia, provide for age of superannuation and since they apply to technical institutions conducting technical education and such other courses/programmes and areas as notified by the Council from time to time, the age of superannuation for teachers of the Polytechnic stand enhanced to 65 years with sole exception of Librarian whose age of superannuation continues to be 62 years.

16. From the materials and rival contentions noted above,
- E it is evident that even as a teacher the appellant's age of superannuation could have been considered for extension upto 62 years if steps had been taken for the same in due course. Moreover, the Regulations of AICTE being statutory, unless these have been superseded or annulled by a competent
 - F authority, the appellant's age of superannuation stood extended upto 65 years. Lastly and in any event, this Court had directed for maintenance of status-quo in respect of appellant's service and such order has been ignored by the concerned respondents by proceeding to superannuate the appellant at the age of 60
 - G years. Yet another dimension requires special consideration in the interest of justice. As per the statutory MEPS Rules, the appellant should have been promoted as the Head of the School or in other words Principal of the polytechnic long back and in any case by the end of the year 2012, provided the
 - H respondent-Director had not passed an illegal and erroneous

order on 17.10.2012, when he wrongly proceeded to apply the Government Rules 2012 to the private respondent polytechnic. If a correct view had been taken by the respondent-Director then by the end of 2012, the appellant would have been occupying the post of Principal in the respondent polytechnic and then he would not have superannuated before 65 years or in any case before 62 years of age.

17. In the facts noticed above and since there is some confusion and lack of assistance on the issue of age of superannuation from the side of respondents and also because there is no discussion on this issue in the judgment under appeal, we refrain to lay down the law in this regard. But in the interest of justice, we deem it proper to direct for immediate reinstatement of the appellant within two weeks from today. Ordinarily we would have directed Management of the respondent society to consider the appellant's case for promotion and pass appropriate orders in accordance with law but from the materials on record as well as from the submissions in the course of hearing, we have gathered an impression that the Management of the Respondent Society cannot be presumed to be just and fair to the appellant and expected to act in accordance with law. Hence, instead of relegating the appellant to the mercy of the Management, we direct the concerned respondents to issue order of reinstatement and also appointment of the appellant by promotion to the post of Principal of the respondent polytechnic within four weeks from today.

18. The appellant shall be treated to have been appointed by such promotion to the post of Principal w.e.f. 1st December, 2012 as this in normal course should have been the time taken for such promotion if the respondent-Director had not passed a wrong order on 17.10.2012. The appellant shall also be entitled to all consequential benefits on the basis of such promotion. Since the appellant's service was disturbed by superannuating him w.e.f. 31.3.2015 contrary to our interim

A order, he shall be deemed to have continued in service without interruption even after 31.3.2015 with entitlement to full salary and other permissible emoluments for the entire period till reinstatement.

B 19. Appeal is allowed in the aforesaid terms with cost of Rs.50,000/-. The cost shall be payable by the Respondent No.4-Society to the appellant alongwith other arrears within two months.

Devika Gujral

Appeal allowed.