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

CWP-5305-2022

Raghbir Singh …..Petitioner

Versus

Punjab State Power Corporation Limited and others ....Respondents

1.	The date when the judgment is reserved	14.07.2026
2.	The date when the judgment is pronounced	24.07.2026
3.	The date when the judgment is uploaded on	24.07.2026
4.	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by : Mr. V.K. Shukla, Advocate for the petitioner.

Mr. Kunal Garg, Advocate for the respondents.

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NAMIT KUMAR, J. (ORAL)

1. The petitioner has approached this Court by way of filing the present writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari for quashing the impugned order dated 11.02.2022 (Annexure P-3), declining the claim of the petitioner for counting his work-charge/adhoc service w.e.f. 01.02.1975 to 09.12.1981 followed by regular service towards pensionary benefits and for quashing the Memo dated 23.01.2001 (Annexure P-4). Further, seeking issuance of a writ of mandamus directing the respondents to count the work-charge/adhoc service rendered by the petitioner w.e.f. 01.02.1975 to 09.12.1981 followed by regular service towards pensionary benefits and to grant him consequential arrears along with interest @ 12% per annum.

2. The brief facts of the case, as have been pleaded in the petition, are that the petitioner was initially appointed as a Work-Charge T-Mate in PSPCL on 01.02.1975 and remained as such till 13.03.1978, while working in the office of respondent No.3. Subsequently, vide order dated 14.02.1978 (Annexure P-1), he was transferred to the office of respondent No.2 as Assistant Lineman on ad hoc basis and posted in Sub-Divisional Office at Charick, District Moga. Thereafter, his services were regularized as Assistant Lineman, vide order dated 02.12.1981 (Annexure P-2) and accordingly, he joined as regular Assistant Lineman on 10.12.1981. He was further promoted as Lineman in the year 2003 and retired as such, on attaining the age of superannuation, on 31.12.2007. After the retirement of the petitioner, his pensionary benefits were released but the same were computed taking into account only his regular service w.e.f. 10.12.1981 and his work-charge/ad hoc service from 01.02.1975 to 09.12.1981 rendered prior to his regularization was not counted towards his pensionary benefits. The petitioner has served a legal notice dated 15.10.2021 upon the respondents for counting work-charge/ad hoc service rendered by him before his regularization towards pensionary benefits but no action was taken on the same. Facing with such a situation, the petitioner had approached this Court by filing *CWP No.26271 of 2021 (Raghbir Singh Vs. Punjab State Power Corporation Limited and others),* seeking directions to the respondents to count his work-charge/ad hoc service w.e.f. 01.02.1975 to 09.12.1981 followed by regular service towards pensionary benefits. The said writ petition was disposed of by this Court, vide order dated 22.12.2021, with a direction to the official

respondents to consider the legal notice dated 15.10.2021 as representation of the petitioner and decide the same in accordance with law by passing a speaking order within a period of one month. It was further observed by the Court that if the petitioner found entitled and if there is no impediment for the release of payment, the same be granted to the petitioner without any delay, as per law. In pursuance to the said order, respondent No.2 has passed the impugned order dated 11.02.2022 (Annexure P-3), rejecting the petitioner's claim on the ground that he did not fulfill condition No.1 of Memo dated 23.01.2001 (Annexure P-4) as at the time of his appointment, the petitioner was non-matric, which was below the prescribed minimum educational qualification of matriculation and he also did not possess the requisite minimum experience of five years as a work-charge employee for the post to which he was appointed. Hence, the instant petition.

3. A written statement by way of an affidavit of Sh. Balveer Singh Harei, Additional Superintending Engineer, City Division, Moga, on behalf of the respondents, has been filed, wherein the respondents have reiterated the same stand as was taken while rejecting the petitioner's claim in the impugned order dated 11.02.2022.

4. Learned counsel for the petitioner submits that the work-charge/ad hoc service rendered by the petitioner from 01.02.1975 to 09.12.1981 is liable to be counted for pensionary benefits in terms of Rule 3.17-A of the Punjab Civil Services Rules, Vol. II, Part II. In support of his contention, he has placed reliance upon a Full Bench judgment of this Court in ***Kesar Chand Vs. State of Punjab Through The Secretary, P.W.D.B. & R. Chandigarh and others :1988(5) SLR***

27 and ***Dharvinder Paul Sehgal and others Vs. State of Punjab and others : 2025 NCPHHC 163455***.

5. *Per contra*, learned counsel for the respondents, while referring to the averments made in the written statement, filed on behalf of the respondents, submits that since the petitioner was not having the qualification of matriculation at the time of his initial appointment, therefore, the work charge/ad hoc service rendered by the petitioner is not liable to be counted for the purpose of pensionary benefits and his claim for grant of aforementioned benefit had rightly been rejected. He further submits that in terms of condition No.1 of Memo dated 23.01.2001 (Annexure P-4), work-charge/ad hoc service rendered by the petitioner is not countable towards pensionary benefits. He further submits that the petitioner had retired from service on 31.12.2007, however, for claiming the benefit of counting the work-charge/ad hoc service rendered by him from 01.02.1975 to 09.12.1981 towards pensionary benefits, the petitioner approached the respondents for the first time by serving a legal notice dated 15.10.2021, i.e., after a delay of more than 13 years from the date of his retirement. Therefore, the instant petition deserves to be dismissed on the ground of delay and laches.

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, the petitioner was initially appointed as a Work-Charge T-Mate in PSPCL on 01.02.1975 and till 13.03.1978, he was working in the office of respondent No.3. Subsequently, vide order dated 14.02.1978 (Annexure P-1), he was transferred to the office of

respondent No.2 as Assistant Lineman on ad hoc basis and posted in Sub-Divisional Office at Charick, District Moga. Thereafter, his services were regularized as Assistant Lineman, vide order dated 02.12.1981 (Annexure P-2). He was further promoted to the post of Lineman in the year 2003 and retired as such, on attaining the age of superannuation, on 31.12.2007.

8. The only question which arises for consideration in the present petition is as to whether the past service rendered by the petitioner on work charge/ad hoc basis is countable towards pensionary benefits or not?

9. A Full Bench of this Court in ***Kesar Chand's case (supra)*** has held that the work-charged service rendered by an employee followed by regularization is countable towards pensionary benefits. Para 19 of the said judgment reads thus :-

> *"19. In the light of the above, let us examine the validity of rule 3.17 (ii) of the Punjab Civil Services Rules Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the Workmen and the Chief Engineer, P.W.D. (B.& R.), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise, the matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973 (Annexure P7) where it was stated that all those work-charged employees who had put in ten years of service or more as on 15th August, 1972, their service would be deemed to have been regularised. Once the service of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the Pensionary benefits as are available*

to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strike at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government had to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for lesion and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work – charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

10. The similar issue has been considered by this Court in ***Dharvinder Paul Sehgal and others Vs. State of Punjab and others : 2025 NCPHHC 163455***, wherein after considering the provisions of Rule 3.17-A and various other judgments on the similar issue, it has been held as under:-

"11. Rule 3.17-A of the Punjab Civil Services Rules (Volume II) deals with the counting of service rendered in an establishment and provides that service rendered in an establishment would be counted as qualifying service, if the employee has submitted resignation for taking up another appointment and said resignation has been accepted.

12. Rule 3.17-A of the Punjab Civil Services Rules reads as under: -

> *"**Rule 3.17-A.** (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count*

as Qualifying service:–

(i) Omitted.

(ii) Omitted.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

Note.– In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.

(vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.

(vii) If any unauthorised leave of absence occurs in continuation of authorized leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school.

(A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

> *(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.*
>
> *(2) An interruption in the service of a Government employee caused by wilful absence from duty or unathorised absence without leave, shall entail forfeiture of the past service.*
>
> *(3) Wilful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.*
>
> ***Note**.– In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.*
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> *Clarification (1).–Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:–*
>
> *(a) authorised leave of absence;*
>
> *(b) abolition of post or loss of appointment owing to reduction in establishment. ("Post" or "appointment" means a post or appointment service in which qualifies for pension).*
>
> *(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted."*

[Emphasis Supplied]

Sub-Rule (2) of Rule 7.5 of PCS Rules provides that resignation submitted for taking up another appointment with Government, shall not entail forfeiture of past service, if there is permission by Competent Authority. Sub-Rule (2) of Rule 7.5 of PCS Rules is reproduced as below: -

> *"A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension."*

*13. The said provisions have been interpreted by this Court in **Jasdeep Singh Aulakh's case (supra)**. In the said case, petitioner had rendered service as Assistant Engineer from 1996 to 2004 in Punjab State Electricity Board (hereinafter referred to as 'PSEB') and thereafter he participated in the direct recruitment process of PCS (Executive Branch) and was selected in 2004 and joined PCS (Executive Branch) after submitting resignation to his parent department i.e. PSEB, which was accepted and his pay was protected. The relevant paras from the said judgment read as under: -*

> *"10. From the perusal of above quoted Rules 3.17-A and 7.5 (2) of PCS Rules, it is quite evident that service rendered with an establishment is counted for qualifying service if an employee resigns with the permission of Competent Authority and for the purpose of taking up employment with Government. The respondent has failed to controvert applicability of aforesaid Rule to petitioner except pleading that instructions do not provide for counting previous service.*
>
> *11. It is settled proposition of law that instructions can supplement statutory provisions but cannot supplant the statutory provisions. The instructions cannot be contrary to mandate of Rules. The said instructions are not under challenge, however, being contrary to statutory provisions as well as intent of beneficial scheme cannot detain this Court.*
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> *12. The Supreme Court in **Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and another, (2016) 3 SCC 643**, has observed that Rules or Regulations which are ultra vires though not challenged may be ignored. The relevant extracts of the judgment read as:*
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> > *"28. Shri Aggarwal in order to buttress his submission that he ought to be allowed to raise a pure question of law going to the very jurisdiction to levy interest, cited before us the judgment in **Bharathidasan University v. All-India Council for Technical Education [Bharathidasan University v. All-India Council for Technical Education, (2001) 8 SCC 676 : 1 SCC 924]** and in particular para*

14 thereof which reads as follow: (SCC pp. 688- 89)

> *"14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that the Regulations made under Section 23 of the Act have 'constitutional' and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."*

29. It would be seen that Shri Aggarwal is

> *on firm ground because this Court has specifically stated that rules or regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission."*

13. A three Judge Bench of Supreme Court in ***State of Haryana Vs. Shamsher Jang Bahadur, 1972(2) SCC 188****, while relying upon Constitution Bench judgment in* ***Sant Ram Sharma Vs. State of Rajasthan and another, AIR 1967 SC 1910*** *has held that Government is not Competent to alter the Rules framed under Article 309 by means of administrative instructions. The relevant extracts of the judgment reads as:*

> *"7. It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under the Rules framed under Article 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to do so. This Court has ruled in* ***Sant Ram Shama v. State of Rajasthan [(1968) 1 SCR 111]*** *that while the Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are concerned,*

so far as relate to the clerks in the Secretariat amend or they alter the conditions of service prescribed by the rules framed under Article 309. Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affects the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Article 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the instructions in question, the Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules."

14. A rule cannot operate contrary to a statutory provision whereunder said rule has been made. Rules cannot be contrary to statutory provisions. Similarly, neither instructions can be contrary to statutory provisions nor rules. The instructions cannot override or flow beyond the banks of river of rules. The instructions, which are contrary to Rules, need to be ignored.

15. In the case in hand, the case of petitioner is squarely covered by afore-stated Rules, however, his claim has been rejected on account of instructions which are contrary to Rules framed under proviso to Article 309 of the Constitution. In view of afore-stated legal position, the instructions need to be ignored. It is apt to notice here that respondent has granted similar benefit to identically placed other employees.

16. In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 31.01.2023 (Annexure P-17) is hereby quashed."

The said judgment has become final as the same has not been challenged by the respondents and has been *implemented after filing of* ***COCP-3243 of 2024 (Jasdeep Singh Aulakh v. Anurag Verma, IAS and others)****.*

14. To the same effect is the judgment of a Co-ordinate Bench in ***Yash Pal Singh Rana (supra)****. In the said case, the petitioner had joined the Punjab Land Development and Reclamation Corporation Limited as Clerk on 01.11.1975 and thereafter he was promoted as Senior Assistant. While he was working in the said Corporation, due to weak financial status of the said Corporation, the same was wound up and during the said period, the posts of Superintendent in the District Consumer Disputes Redressal Forum were advertised by the respondents therein and petitioner therein applied through proper channel and was selected vide appointment order dated 20.12.2000 and he joined on 05.01.2001 after he was relieved from the services of the said Corporation. He joined the State Consumer Disputes Redressal Commission on 05.01.2001 and superannuated on 30.11.2011, however, his earlier service rendered from 01.11.1975 till 04.01.2001 was not counted as qualifying service for computing the pensionary benefits. The said claim was accepted by this Court vide judgment dated 05.02.2019 while relying upon various earlier orders passed by this Court in various other writ petitions. The said judgment has been followed in* ***Sham Lal (supra)*** *and the same reads as under: -*

> *"1. In the present petition, the challenge is to the orders dated 25.04.2017 (Annexure P-5) and 03.02.2020 (Annexure P-7) respectively by which the respondents have declined to grant the benefit of service rendered by the petitioner with the Punjab Scheduled Castes Land Development and Finance Corporation, after the petitioner retired from service working on a pensionable post with the Government of Punjab.*
>
> *2. Learned counsel for the petitioner submits that the relief which is being claimed by the petitioner has already been granted by this Court to another similarly situated employee, who had filed* ***CWP No. 2722 of 2013 titled as Yash Pal Singh Rana Vs. The State of Punjab and others, decided on 05.02.2019****, which judgment has already attained finality and relief has already been given to Yash Pal Singh Rana.*

3. Learned counsel for the respondents has not been able to dispute the fact that in Yash Pal Singh Rana's case (supra) also, the service rendered in the Corporation wherein the petitioner of that case was working, was directed to be taken into account for computing the pensionary benefits. No differentiating factor in the case of the petitioner and that of Yash Pal Singh Rana's case (supra) has been proved and so as not to appeal the said decision in the case of petitioner herein. Hence, the present petition is also allowed in the same terms as Yash Pal Singh Rana's case (supra) except that the rate of interest will be 6% per annum and not 9% as claimed."

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*15. The **judgment dated 28.08.2024 in Sham Lal's case (supra)** has been upheld by a Division Bench of this Court in **LPA-3328 of 2024 – State of Punjab and another v. Sham Lal and another decided on 20.12.2024**. The relevant portion from the said judgment reads as under: -*

*"4. Learned Single Bench noted that relief claimed by respondent/writ-petitioner had been granted to another similarly situated employee i.e., the petitioner in **CWP No. 2722 of 2013, titled 'Yashpal Singh Rana Vs. State of Punjab and others', decided on 05.02.2019'**. It was concluded that respondents were not able to distinguish the cause of writ petitioner from that of Yash Pal Singh Rana. Writ petition was accordingly allowed in the same terms with the difference that interest at the rate of 6% per annum instead of 9% was ordered.*

5. Aggrieved therefrom, present appeal has been filed.

6. Learned counsel for appellants submits that Instructions dated 25.04.2017 are categoric, therefore directions by learned Single Bench are unjustified. Appointment of writ-petitioner on the post of Section Officer had to be treated as fresh appointment and he was not entitled to counting of his service for the purpose of pension with the respondent-Corporation as qualifying service for the purpose of pension. It is thus prayed that present appeal be allowed.

7. We have heard learned counsel for appellants

> *and have perused the file carefully with his able assistance, however, we do not find any ground to cause interference in this matter.*
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> *8. It is to be noted that the import and effect of Instructions dated 25.04.2017 have already been considered by this Court in* ***LPA No. 2445 of 2024, titled State of Punjab and others Vs. Om Parkash and others*** *with the appeal filed by State of Punjab being dismissed. In the present case also, writ-petitioner had been appointed through proper channel while in service. His representation for counting his service with the respondent-Corporation as qualifying service for the purpose of pension was duly submitted.*
>
> *9. It is to be noted, at this stage that in a number of writ petitions involving similar controversy, respondent has already granted relief to the employees therein and counted the service rendered by them with the Corporations which had not been wound up, for the purpose of pension. This fact is not denied by learned counsel for appellants.*
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> *10. Learned counsel for appellants is unable to point out any illegality, infirmity or perversity in the impugned order dated 28.08.2024, passed by learned Single Bench, which calls for interference by this Court."*
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> *xx xx xx xx"*

11. Once the services of the petitioner have been regularised on the basis of the qualification acquired by him, the respondents cannot turn around and reject the claim of the petitioner for counting of his work-charge/ad hoc service rendered by him from 01.02.1975 to 09.12.1981. Once the Rule mandates for counting of all services rendered by an employee, the action of the respondents in not counting the work-charge/adhoc service rendered by the petitioner, is totally illegal, arbitrary and in violation of the said Rules.

12. So far as the contention raised by learned counsel for the respondents that in terms of condition No.1 of Memo dated 23.01.2001

(Annexure P-4), work-charge/ad hoc service rendered by the petitioner is not countable for pensionary benefits, is liable to be rejected as Rule 3.17-A of the said Rules would override any instructions which have been issued contrary to the said Rule and, therefore, the same is not applicable.

13. In view of the above, the work-charge/ad hoc service rendered by the petitioner from 01.02.1975 to 09.12.1981 is liable to be counted towards pensionary benefits of the petitioner. However, there is no doubt that the petitioner had retired from service on 31.12.2007 and for claiming the abovesaid benefit, he approached the respondents for the first time by serving a legal notice dated 15.10.2021, i.e., after a delay of more than 13 years from the date of his retirement and, therefore, he is entitled for the arrears for the intervening period restricted to 38 months from the date of approaching this Court.

14. Consequently, the impugned order dated 11.02.2022 (Annexure P-3) is set aside and the respondent-Corporation is directed to count the work charge/ad hoc service rendered by the petitioner from 01.02.1975 to 09.12.1981 for the grant of pensionary benefits. The necessary calculations shall be made and the revised pension shall be released to the petitioner within a period of four months along with arrears for 38 months

15. Disposed of in the above terms.

24.07.2026 **(NAMIT KUMAR)**
kothiyal **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No