

**REVISED**

**ITEM NO.104**

**COURT NO.12**

**SECTION IV**

**S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S**

**Civil Appeal No(s). 2144/2016**

**HARYANA VIDYUT PRASARAN NIGAM LTD & ORS.**

**Appellant(s)**

**VERSUS**

**KELO DEVI & ANR.**

**Respondent(s)**

**WITH C.A. No. 4191/2009, 2362/2016, 2380/2016 and 5318/2019**

**SLP(C) Nos.6034/2010, 27939/2018 and 9776/2019**

**SLP(C) No. 4654/2018**

**(IA No. 150330/2018 - STAY APPLICATION)**

**SLP(C) No. 16890/2018**

**(IA No. 152669/2018 - EXEMPTION FROM FILING O.T.)**

**SLP(C) No. 22415/2018**

**(IA No. 108787/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)**

**Date : 13-02-2020 These matters were called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**

**HON'BLE MR. JUSTICE K.M. JOSEPH**

**For Appellant(s)**

**Mr. Devender Kumar Saini,AAG  
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Mr. Ashish Pandey,Adv.  
Mr. Vishwa Pal Singh, AOR**

Mr. Devinder Saini, AAG  
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Mr. Deepal Thukral, Adv.  
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in CA 2144/2016

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Mr. Shanthanu Singh, Adv.  
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Mr. Shish Pal Laler, Adv.  
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Mr. R.K. Chopra, Sr. Adv.  
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Mr. Abhishek Puri, Adv.  
Mr. J.S. Marahatta, Adv.

in SLP 27939/2018 Dr. Ajay Kumar, Adv.  
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Ms. Akancha Rai, Adv.  
Ms. Ankita Rai, Adv.

in SLP 9776/2019 Mr. Devender Kumar Saini, AAG  
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Mr. Birender Kumar Choudhary, Adv.

Mr. Yadav Narender Singh, AOR

Mr. Ashutosh Thakur, Adv.  
Mr. Abhimanyu Lall, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Civil Appeal Nos.2144/2016, 4191/2009, 2380/2016 &  
5318/2019

The appeals are dismissed in terms of the signed order.

Pending application, if any, shall also stand disposed of.

SLP(Civil)No.6034/2010

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, shall also stand disposed of.

Civil Appeal No.2362/2016

The appeal is allowed in terms of the signed order.

Pending application, if any, shall also stand disposed of.

SLP(Civil)Nos.4654/2018, 16890/2018, 27939/2018 and 9776/2019

Leave granted.

The appeals are dismissed in terms of the signed order.

Pending applications shall also stand disposed of.

SLP(Civil)No.22415/2018

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application shall also stand disposed of.

(ANITA MALHOTRA)  
COURT MASTER

(ANITA RANI AHUJA)  
COURT MASTER

(Corrected signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2144 OF 2016

HARYANA VIDYUT PRASARAN NIGAM LTD. & ORS. ...Appellants

Vs.

KELO DEVI & ANR. ...Respondents

WITH

CIVIL APPEAL NOS.4191/2009, 2362/2016, 2380/2016 & 5318/2019  
SLP(CIVIL)NOS.6034/2010, 4654/2018, 16890/2018, 22415/2018  
27939/2018 & 9776/2019

O R D E R

Civil Appeal No.2144/2016

1. We have heard learned counsel for the parties in the present appeal as well as in the connected appeals/petitions. We consider it appropriate to first lay down the principles as they emerge in view of the impugned judgment being pronounced in the present case and on those principles, the remaining cases can then be tested.

2. In order to ameliorate the conditions of the family of a deceased employee and provide succour to them, schemes have been framed for compassionate appointment/ex-gratia payment from time to time by the State of Haryana, which were adopted by (appellant-Haryana Vidyut Prasaran Nigam Ltd.

3. The first scheme is of 28th February, 2003 which gives an option in Clause (4) to either grant compassionate appointment or ex-gratia financial assistance. The Scheme also provided that the application should be filed within three years from the date of death of the government employee. Clause 19 of the said scheme also provided that the existing instructions issued by the Haryana Government from time to time regarding the subject matter stood repealed. We may note that the scheme was made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India.

4. A Notification was issued on 10th February, 2004 modifying 2003 Scheme to the extent that a provision was made by addition of a clause for ex gratia compassionate financial assistance @ Rs.2.5 lakhs in case the government employee died in harness at the age of 55 years or thereafter.

5. The next scheme is vide Notification dated 18th November, 2005 repealing the earlier Scheme of 2003. The relevant clause in this behalf is Clause 19 which reads as under:

"Repeal and saving:- (1) The Haryana Compassionate Assistance to the dependents of deceased Government Employees Rules, 2003 which are in force immediately before the commencement of these rules are hereby repealed:

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

(2) Pending cases of all those deceased Government employees whose family members are eligible under the rules so repealed, shall be disposed of in accordance with the old rules at the commencement of new rules."

6. In terms of the Scheme, Clause 4 gave an option on preferring an application within six months from the date of demise of a government employee for ex gratia appointment on compassionate grounds or ex-gratia compassionate financial assistance. The amount was increased to Rs.5,00,000/-. We reproduce the relevant Clause 4 as under:

"4. Option;\_ (1) An eligible family member of the deceased/missing Government employee shall give in writing his/her preference of option, within 6 months from the date of the Government employee, for one of the following:-

(a) ex-gratia appointment on compassionate grounds to a member of the family who was "completely dependent" on the deceased employee and is in extreme financial distress due to the loss of the deceased, namely, the Government employee who dies in "service":

or

(b) ex-gratia compassionate financial assistance to the family of the deceased, over and above, all other service benefits like ex-gratia grant due to his/her family, to be paid @ Rs.5 (five) lacs in case of the family of the deceased not

opting for ex-gratia employment (Rs.5.00 lacs if the deceased Government employee was of the age of 55 years or above, on the date of death); if the Government employee dies at the age of 55 years or thereafter, his family shall not be eligible for ex-gratia appointment.

(2) Exercise of option shall be permitted only once and shall not be changed, once exercised."

7. We may note that depending on the option, the application had to be made in Form A or Form B as per Clause 5. The other aspect which we may note is by reference to clause 19(2) reproduced aforesaid which required all pending cases of the deceased employees whose family members were eligible under the Rules so repealed, to be disposed of in accordance with the old Rules at the commencement of the new Rules.

8. We now come to the Scheme in question which is of 1st August, 2006. The said Scheme has "Repeal and Savings" clause which is as under:

"Repeal and savings

The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005, which are in force immediately before the commencement of these rules are hereby repealed:

Provided that families will have the option to opt for the lump sum ex-gratia grant provided in the rules 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under these rules:-

Provided further that in all pending cases where the family exercises the option to receive the financial

assistance under these rules, the calculation of the period and payment shall be made from the date of notification of these rules."

9. In terms of this Scheme, the objects are set out to assist the family of a deceased/missing government employee of Group C and Group D category in tiding over the emergent situation, resulting from the loss of the bread-earner by giving financial assistance. The application has to be submitted as per Clause 4 in Form A for compassionate financial assistance. The criteria for financial assistance has been laid as under:

"Criteria for financial assistance

5(1) On the death of any Government employee, that family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased in the normal course without raising a specific claim, -

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;

(b) for a period of twelve years or till the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation,

whichever is less, if the employee had attained the age of forty eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family of a deceased Government employee who was in occupation of a Government would continue to retain the residence on payment of normal rent/licence fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate loss of the bread earner.

(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."

10. The aforesaid thus shows that the provision is only for financial assistance and not for any employment and the eligibility under Clause 3 provides that the Rules are as per the provision in the Pension Scheme, 1964.

11. As to the manner in which pending applications are to be dealt with is provided in Clause 6 which reads as under:

"Pending Case

6. All pending cases of ex-gratia assistance shall be covered under the new rules. The calculation of the period and payment shall be made to such cases from the date of notification of these rules. However, the families will have the option to opt for

the lump sum ex-gratia grant provided in the Rules, 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee Rules 2006."

12. The aforesaid clause thus gives an option to be governed by the earlier Rules or the latter Rules for the purposes of ex-gratia payment alone. Thus, if a case is covered by Rules of 2003, the beneficiaries may claim under those Rules for ex gratia payment or under 2006 Rules for ex-gratia payment and the same position would prevail qua 2005 Rules. Needless to add here that if the benefit has already been claimed and granted under the earlier Rules, then that aspect cannot be revisited if the new Rules have come into force.

13. We may also find it useful to reproduce Clause 7 which is for removal of doubts as it requires that, in case any doubt arises, the same should be referred to the Department of General Administration whose decision shall be final, that Clause reads as under:

"Removal of doubts

If any doubt arises relating to the application, interpretation and scope of these rules, it shall be referred to the Government in the department of General Administration (In General Service-II Branch) whose decision thereon shall be final."

14. In our view the aforesaid Scheme is quite clear i.e. insofar as pending cases are concerned where benefit has not been taken under the earlier Schemes, those applications can be

dealt with qua ex gratia payment under Rules of 2003 or 2005 or the current Rules of 2006 at the option of claimants.

15. Insofar as the facts of the present case are concerned, the application for appointment on compassionate grounds was made in the year 2005 but the request was rejected on 10th August, 2006, after the new policy had come into force on 3<sup>rd</sup> August, 2006. The operative portion of the impugned judgment dated 7<sup>th</sup> November, 2012, referring to the plain language of Rule 6 of 2006 granted the benefit under those Rules. On a special leave petition being preferred before this Court, the operation of the impugned judgment was stayed on 18<sup>th</sup> March, 2013 but an interim order was passed that the case of the son of the deceased be considered under Rule 4 of the Scheme of 2003 without taking into account the rejection of his mother's application for compassionate appointment on 10<sup>th</sup> August, 2006. We are informed that no such compassionate appointment has been made.

16. In view of the aforesaid, we are in agreement with the view taken in the impugned judgment that the case of the respondent would be covered by 2006 Rules for ex-gratia payment.

17. The appeal is dismissed in terms aforesaid.

18. The amount be remitted in terms of the aforesaid within a period of two months from today.

**Civil Appeal No.4191/2009**

19. In this case the benefit of 2006 Rules was granted vide

order dated 13<sup>th</sup> March, 2007 to the respondent but was sought to be withdrawn by letter dated 21<sup>st</sup> September, 2007 and the reminder dated 14<sup>th</sup> January, 2008. The latter has been set aside by the impugned order dated 29<sup>th</sup> August, 2008.

20. In view of the principles enunciated in Kelo Devi's case, the appeal has to be dismissed and is accordingly dismissed.

21. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal No.1550/2020 @ SLP(Civil)No.6034 of 2010

22. Leave granted.

23. The father of the respondent was an employee of the appellant and passed away in 1991. The wife of the deceased employee submitted application Dated 9th March, 1992 for compassionate appointment on behalf of her son aged 1-1/2 years while she was unwilling to do service, it is the say of the respondent that thus the said application should be treated as still pending when the Rules of 2006 came into force and benefit under the said Rules be granted.

24. On the other hand learned counsel for the appellants has drawn our attention to a clarification dated 9<sup>th</sup> January, 1992 (Annexure R-1) which stipulates that in case of such minor children, they could be considered even within one year of attaining majority provided the application is received within three years of the death. On the application submitted, clarification was issued (Annexure P-2) stating that such an application cannot be endlessly kept pending and the privilege

would be available for a period of three years after death, if the minor becomes major within that window of time. We may notice here that all other benefits were granted to the deceased employee as per order dated 21<sup>st</sup> October, 1991.

25. The very objective of providing such appointments or ex-gratia payment is to provide succour at that time when the incident occurs and there cannot be any open ended Scheme in this behalf. Thus, in a case like the present one where wife could have availed of the option, but declined to do so, and wanted that her son be considered who was only 1-1/2 years of age, it cannot be stated that for 16-1/2 years that application would be kept alive and then would be considered on the respondent attaining the age of 18 years. It is for the above reason, apart from the claim being a stale one, the case of the respondent would not fall within the 2006 Scheme.

26. We have examined this case keeping in mind the principles enunciated in Kelo Devi's case.

27. The result of the aforesaid is that the impugned order has to be set aside and the appeal is accordingly allowed leaving the parties to bear their own cost.

Civil Appeal No.2362 of 2016

28. The father of the respondent died in harness on 27th April, 2002 when the respondent was a minor. On attaining majority, he made an application for compassionate appointment and his name was put in the waiting list of 5% posts reserved for making such compassionate appointment. However, the turn

of the respondent did not reach within the period of three years so required, and thus the respondent was offered lumpsum amount of Rs.2,50,000/- as monetary compensation in terms of the 2003 Rules vide offer dated 16th August, 2005. He however declined to accept the same. This aspect was reiterated calling upon the respondent to complete the necessary documents but to no avail.

29. In the meantime, the 2006 Scheme came into being and the respondent sought the benefit of the Scheme which gave an option to the claimants in respect of pending applications to be governed by either ex-gratia payment under 2003 Scheme or 2005 Scheme as the case may be or governed by the 2006 Scheme.

30. On perusal of the record, we find that the application of the respondent cannot be said to be pending as it had already been dealt with by offering a lumpsum amount to the respondent which he refused to accept or complete formalities. Thus, he would be governed by 2003 Scheme and in view thereof, the impugned order is not sustainable.

31. We have analysed the case on the principles enunciated in Kelo Devi's case.

32. The amount has not been paid and thus we call upon the respondent to complete the formalities within a period of one month from today. However, in view of the deprivation over a long period of time over this amount, we exercise our powers under Article 142 of the Constitution of India to do complete justice to the parties and direct the appellant to pay interest @ 8% p.a. simple interest on the said amount from the date the

offer was made till the date of payment but the interest will cease to operate after one month from today in case the formalities are not completed by the respondent.

33. The appeal is accordingly allowed in the aforesaid terms leaving the parties to bear their own cost.

34. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal No.2380 of 2016

35. In view of the principles enunciated in Kelo Devi's case, the case of the respondent will be covered by 2006 Rules, the deceased employee having passed away on 3rd January, 2006 and the claim for compassionate appointment having been withdrawn and thereafter for ex-gratia financial assistance having been rejected on 25th September, 2007 while the Scheme came into force on 1st August, 2006.

36. The appeal is accordingly, dismissed.

37. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal No.1555/2020 @ SLP(Civil)No.4654/2018

38. Leave granted.

39. The case of the respondent was covered under 2006 Rules vide order dated 13th November, 2006 but was subsequently sought to be withdrawn vide letter dated 27th February, 2008. It is the latter communication which has been set aside in terms of the impugned judgment.

40. On hearing learned counsel for the parties, we find no reason to interfere with the impugned order. The appeal is dismissed in terms aforesaid.

41. We clarify, at the request of the learned counsel for the appellant, that the amount due to the respondent may be adjusted to the extent it is permissible against the family pension in terms of Clause 5(2) of the scheme.

42. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal No.1556/2020 @ SLP(Civil)No.16890/2018

43. Leave granted.

44. The case of the respondent was covered under 2006 Rules vide order dated 14th March, 2007 but was subsequently sought to be withdrawn vide letter dated 27th February, 2008. It is the latter communication which has been set aside in terms of the impugned judgment.

45. On hearing learned counsel for the parties, we find no reason to interfere with the impugned order. The appeal is dismissed in terms aforesaid.

46. We clarify, at the request of the learned counsel for the appellant, that the amount due to the respondent may be adjusted to the extent it is permissible against the family pension in terms of Clause 5(2) of the Scheme.

47. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal No.1557/2020 @ SLP(Civil)No.22415 of 2018

48. We have heard learned counsel for the parties.

49. Leave granted.

50. In the given facts of the case, we are of view that order dated 17th November, 2016 is liable to be sustained and to the extent it is modified by the Division Bench, the directions are set aside.

51. The appeal is accordingly disposed of.

52. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal No.1558/2020 @ SLP(Civil)No.27939 of 2018

53. Leave granted.

54. The impugned order is predicated both on bar of limitation and on merits. A perusal of the grounds shows that there is not even a challenge to the dismissal on the ground of limitation.

55. In view of the aforesaid, in the given facts of the case, we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed.

56. We, however, waive the interest granted as per the impugned order provided payment is made within two months from today.

Civil Appeal No.1559/2020 @ SLP(Civil)No.9776 of 2019

57. Leave granted.

58. The case of the respondent was covered under 2006 Rules vide order dated 21st September, 2006 but was subsequently sought to be withdrawn vide letter dated 10th March, 2008. It is the latter communication which has been set aside in terms of the impugned judgment.

59. On hearing learned counsel for the parties, we find no reason to interfere with the impugned order. The appeal is dismissed in terms aforesaid.

60. If any deduction has been made as per letter of cancellation, that naturally stands set aside.

61. We clarify, at the request of the learned counsel for the appellant, that the amount due to the respondent may be adjusted to the extent it is permissible against the family pension in terms of Clause 5(2) of the scheme.

62. The amount be remitted in terms of the aforesaid within a period of two months from today.

Civil Appeal 5318 of 2019

63. We notice that the impugned order is predicated both on delay in preferring the appeal and on merits. A perusal of the grounds shows that the aspect of delay is not even taken in the grounds of appeal.

64. In view of the aforesaid, in the given facts of the case, we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed.

65. The amount be remitted in terms of the aforesaid within a period of two months from today.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[K.M. JOSEPH]

New Delhi;  
February 13, 2020.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2144/2016

HARYANA VIDYUT PRASARAN NIGAM LTD &amp; ORS.

Appellant(s)

VERSUS

KELO DEVI &amp; ANR.

Respondent(s)

WITH C.A. No. 4191/2009, 2362/2016, 2380/2016 and 5318/2019

SLP(C) Nos.6034/2010, 27939/2018 and 9776/2019

SLP(C) No. 4654/2018

(IA No. 150330/2018 - STAY APPLICATION)

SLP(C) No. 16890/2018

(IA No. 152669/2018 - EXEMPTION FROM FILING O.T.)

SLP(C) No. 22415/2018

(IA No. 108787/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 13-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. Devender Kumar Saini, AAG  
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Mr. Gaurav Yadava, Adv.  
Mr. Dheeraj Gupta, Adv.Mr. Devender Kumar Saini, AAG  
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Mr. Ashish Pandey, Adv.  
Mr. Vishwa Pal Singh, AORMr. Devinder Saini, AAG  
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	Mr. Alok Sangwan, AAG Mr. Sunny Kadiyan, Adv. Dr. Monika Gusain, AOR
	Mr. Himanshu Sharma, Adv. Ms. Aditi Sharma, Adv. Mr. Seeta Ram Sharma, Adv. Mr. Ram Niwas Sharma, Adv. Mr. Vinay Kumar, Adv. Mr. Sandeep Singh, Adv. Ms. Archana Pathak Dave, AOR
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in CA 4191/2009	Mr. Ajay Kumar Singh, AOR Mr. Sanjeev Kr. Pabbi, Adv. Mr. Yatharth Singh, Adv.
in SLP 6034/2010	Mr. S. N. Bhat, AOR Mr. N.P.S. Panwar, Adv. Mr. Ravi Panwar, Adv.
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in CA 2380/2016	Mr. Shanthanu Singh, Adv. Ms. Pragya Singh, Adv. Mr. Tushar Sharma, Adv. Mr. Ashok Kumar Singh, AOR
in SLPs 4654/2018 and 16890/2018	Mr. Shish Pal Laler, Adv. Mr. Sonit Sinhmar, Adv. Mr. Ravi Panwar, AOR
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in SLP 27939/2018 Dr. Ajay Kumar, Adv.  
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Mr. Nand Lal K. Mishra, Adv.  
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Ms. Ankita Rai, Adv.

in SLP 9776/2019 Mr. Devender Kumar Saini, AAG  
Mr. Vishwa Pal Singh, AOR  
Mr. Birender Kumar Choudhary, Adv.  
  
Mr. Yadav Narender Singh, AOR  
  
Mr. Ashutosh Thakur, Adv.  
Mr. Abhimanyu Lall, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Civil Appeal Nos.2144/2016, 4191/2009, 2380/2016 &  
5318/2019

The appeals are dismissed in terms of the signed order.

Pending application, if any, shall also stand disposed of.

SLP(Civil)No.6034/2010

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, shall also stand disposed of.

Civil Appeal No.2362/2016

The appeal is allowed in terms of the signed order.

Pending application, if any, shall also stand disposed of.

SLP(Civil)Nos.4654/2018, 16890/2018, 27939/2018 and 9776/2019

Leave granted.

The appeals are dismissed in terms of the signed order.

Pending applications shall also stand disposed of.

SLP(Civil)No.22415/2018

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application shall also stand disposed of.

(ANITA MALHOTRA)  
COURT MASTER

(ANITA RANI AHUJA)  
COURT MASTER

(Signed order is placed on the file.)