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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P(C) No. 13834/2009 & conn.

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31st January, 2013

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W.P.(C) 13834/2009

IQBAL CHAND

..... Petitioner

Through: Mr. Bhim Sain, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS

..... Respondents

Through: Ms. Sangeeta Sondhi, Adv. for R-1.

Mr. Sandeep Sethi, Sr. Adv. with Mr. Anupam Varma and Mr. Nikhil Sharma, Advocates for NDPL (TPDDL)

Mr. Sumeet Pushkarna, Adv. with Mr. Piyush Royal, Adv. and Mr. Narayman, Manager Pension Trust.

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W.P.(C) 157/2010

J P SHARMA

..... Petitioner

Through: Mr. L.D.Adlakha and Ms. Ripu Adlakha, Advocates.

versus

DELHI POWER CO LTD AND OTHERS

..... Respondents

Through: Mr. Sumeet Pushkarna, Adv. with Mr. Piyush Royal, Adv. and Mr. Narayman, Manager Pension Trust.

Mr. Sandeep Sethi, Sr. Adv. with Mr. Anupam Varma and Mr. Nikhil Sharma, Advocates for NDPL (TPDDL)

+ W.P.(C) 241/2010

VED PRAKASH BANSAL

..... Petitioner

Through: Mr. L.D.Adlakha and Ms. Ripu Adlakha, Advocates.

versus

DELHI POWER CO LTD AND OTHERS

..... Respondents

Through: Mr. S.C.Gupta, Adv. for DTL.

Mr. Sumeet Pushkarna, Adv. with Mr. Piyush Royal, Adv. and Mr. Narayman, Manager Pension Trust.

Mr. Sandeep Sethi, Sr. Adv. with Mr. Anupam Varma and Mr. Nikhil Sharma, Advocates for NDPL (TPDDL)

+ W.P.(C) 259/2010

HARNAM SINGH

..... Petitioner

Through: Mr. L.D.Adlakha and Ms. Ripu Adlakha, Advocates.

versus

DELHI POWER CO LTD AND ORS

..... Respondents

Through: Mr. Sumeet Pushkarna, Adv.
with Mr. Piyush Royal, Adv. and Mr.
Narayman, Manager Pension Trust.

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Anupam Varma and Mr. Nikhil Sharma,
Advocates for NDPL (TPDDL)

+ W.P.(C) 260/2010

N.L. KUBETKAR

..... Petitioner

Through: Mr. L.D.Adlakha and Ms. Ripu Adlakha,
Advocates.

versus

DELHI POWER CO LTD AND OTHERS

..... Respondents

Through: Mr. S.C.Gupta, Adv. for DTL.

Mr. Sumeet Pushkarna, Adv. with Mr.
Piyush Royal, Adv. and Mr. Narayman,
Manager Pension Trust.

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Anupam Varma and Mr. Nikhil Sharma,
Advocates for NDPL (TPDDL)

+ W.P.(C) 294/2010

J N AGARWAL

..... Petitioner

Through: Mr. L.D.Adlakha and Ms. Ripu Adlakha,
Advocates.

versus

DELHI POWER CO LTD AND OTHERS

..... Respondent

Through: Mr. Sumeet Pushkarna, Adv.
with Mr. Piyush Royal, Adv. and Mr.
Narayman, Manager Pension Trust.

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Anupam Varma and Mr. Nikhil Sharma,
Advocates for NDPL (TPDDL)

+ W.P.(C) 322/2010

J S DADWAL(DECEASED) THOROUGH LEGAL HEIRS

..... Petitioners

Through: Mr. L.D.Adlakha and Ms. Ripu Adlakha,
Advocates.

versus

DELHI POWER CO LTD AND ORS

..... Respondents

Through: Mr. Sumeet Pushkarna, Adv. with Mr.
Piyush Royal, Adv. and Mr. Narayman,
Manager Pension Trust.

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Anupam Varma and Mr. Nikhil Sharma,
Advocates for NDPL (TPDDL)

+ W.P.(C) 2594/2010

MURLI DHAR MISHRA

..... Petitioner

Through: Mr. Bhim Sain, Advocate.

versus

GNCT OF DELHI AND ORS

..... Respondents

Through: Mr. S.C.Gupta, Adv. for DTL.

Mr. Sumeet Pushkarna, Adv. with Mr.
Piyush Royal, Adv. and Mr. Narayman,
Manager Pension Trust.

+ W.P.(C) 6131/2010

JANAK SINGH RANA

..... Petitioner

Through: Mr. Anil Verma, Adv.

versus

DELHI TRANSCO LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The limited issue which is urged for seeking the reliefs prayed by the petitioners in these writ petitions is of the entitlement of employees of erstwhile

Delhi Vidhyut Board (DVB) who retired before the circulars dated 23.7.1997 and 21.12.1999 for grant of benefit as per these circulars. By these circulars the Delhi Vidhyut Board had granted enhancement in scale of pay to its employees with effect from a retrospective date i.e 1.4.1994. The issue is whether the employees who have retired in the period from 1.4.1994 to 1997/1999 when the circulars were issued are or are not entitled to the monetary benefits given by these circulars.

2. This issue is no longer *res integra* and decided in terms of the judgment of a Division Bench of this Court in the case of ***Govt. of NCT of Delhi & Ors Vs. K.R.Jain & Ors (2006 IV AD (Delhi) 529)***. By this judgment, the Division Bench set aside the judgment of a learned Single Judge of this Court dated 23.11.2004 passed in CMs 8463-64/2004 in W.P(C) No. 2337/2004 whereby the learned Single Judge had fixed the liability with respect to the employees of DVB whose services were transferred to the DISCOMS not on the DISCOMS but upon M/s Delhi Power Company Limited. The judgment of the learned Single Judge dated 23.11.2004 was passed on the applications seeking clarification as to on whom would the liability fall in terms of the judgment which was passed on 23.3.2004 allowing the writ petition W.P.(C) 2337/2004 holding that the employees of DVB who ceased to be in service between 1.4.1994 and 23.7.1997 would be entitled to the benefits of time bound promotion policy contained in the

circulars dated 23.7.1997 and 21.12.1999. In fact, the original order dated 23.3.2004 passed in W.P(C) No. 2337/2004 simply reiterates the earlier decision in W.P.(C) No. 4316/2001 titled as *D.S.Chauhan Vs. Delhi Vidyut Board* dated 11.2.2004.

3. The judgment of the Division Bench in the case of *Govt. of NCT of Delhi & Ors Vs. K.R.Jain & Ors (supra)* was taken in challenge before the Supreme Court and the judgment of the Supreme Court is reported as *North Delhi Power Limited Vs. Govt. of National Capital Territory of Delhi & Ors. (2010) 6 SCC 278*. The Supreme Court has upheld the judgment of the Division Bench of this Court and held that all service related benefits, including terminal benefits of the employees, are the liability of the DISCOMS. Paras 52, 60 and 61 of the said judgment are relevant and which read as under:-

“52. A glance at these sub-rules is sufficient to come to the conclusion that the liabilities have undoubtedly been transferred to the DISCOMs which include both NDPL as well as BSES. A feeble argument was raised that sub-rule (8) does not contemplate pension or any liability on account of the revised pay scale or interpretation of respective scheme of promotion so far as existing pensioners or the erstwhile DVB are concerned to the DISCOMS. Considering the board language of the Rule, we do not think that such contention is possible.”

60. The transfer of personnel and all the principles, therefore, are governed by Rule 6 alone. As provided in Rule 6(2), there are lists wherein the personnel have been

classified into five groups based on the principle of “as is where is”, where a specific reference is to be found to GENCO, TRANSCO and the three DISCOMS. Very significantly, there is no reference to DPCL. Thus, no employee was transferred to DPCL. This is in case of the existing employees. Sub-rule (8), however, takes into sweep not only the existing employees, who find the reference in the lists prepared under Rule 6(2), but also makes a reference to the employment related matters including provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of personnel and the existing pensioners. There was no question of existing pensioners being covered under the lists prepared under Rule 6(2).

61. By using the words “existing pensioners” and by providing that the relevant transferee would stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters, the legislative intention is very clearly displayed to the effect that the existing pensioners on the day of transfer were also covered and stood transferred to the DISCOMS and not to DPCL and it is only the transferee DISCOM who would substitute for the Board. Once these Rules are read in proper perspective, there is hardly any doubt about the liability of DISCOMs in respect of existing pensioners on the day of transfer. There can be no dispute that those who retired and those who were serving with the Board would stand transferred in respect of their liabilities, etc. to the successor company i.e DISCOM 3. The High Court has correctly appreciated this position.”

(underlining is added)

4. In view of the above, there can really be no dispute that the liability with respect to monetary benefits which are claimed in these writ petitions by those employees who retired prior to issuance of the circulars in the year 1997 and 1999

have to necessarily fall upon DISCOMS or the relevant transferee company including M/s Delhi Transco Ltd., M/s BSES Rajdhani Power Limited, BSES Yamuna Power Company Limited (BYPL) and NDPL Limited are the DISCOMS and reference in this judgment to DISCOMS will include reference to the DISCOMS and the transferee companies.

5. On behalf of the DISCOMS and the transferee companies, two main arguments were urged for dismissal of the writ petitions as under:-

(i) The petitioners have approached this Court with considerable delay and laches inasmuch as the benefits of the circulars dated 23.7.1997 and 21.12.1999 are being claimed in the year 2009 onwards.

(ii) The second argument is that the liability for all monetary benefits payable to the employees of erstwhile DVB in the nature of gratuity and terminable benefits is not the liability of the DISCOMS or the transferee companies but of the concerned Pension Fund of 2002.

6. So far as the second argument that the liability is not of the DISCOMS or the transferee companies, and in fact of the relevant Pension Fund of 2002, I need not adjudicate upon this issue in the present petitions, inasmuch as, the Supreme Court in the judgment of *North Delhi Power Limited (supra)* has

specifically in paras 60 and 61 held that the liability will be of the DISCOMS, and therefore, the liability in the present writ petitions have to be fastened on the DISCOMS or the transferee companies. However, I may add that if the DISCOMS feel that by virtue of the transfer scheme they are entitled to seek reimbursement of its claim from the relevant Pension Fund of 2002, then, if permissible in law, the DISCOMS and the relevant transferee company can take appropriate action for recovery of those amounts from the concerned Pension Fund towards seeking that such trust fund may directly make payment to the petitioners. This will however strictly be between the DISCOMS and the transferee companies on the one hand and the concerned Pension Fund of 2002 on the other, however, for that reason, there cannot be delay in clearing of any liability to the petitioners in this case. Accordingly, I reject the argument raised by the DISCOMS and the transferee companies with the aforesaid observations that against the DISCOMs and the transferee companies the petitioners are not entitled to the reliefs claimed in these writ petitions of terminal benefits pursuant to the circulars dated 23.7.1997 and 21.12.1999. For the sake of completion of narration I must refer to the fact that the counsel for the Pension Fund has referred before me a judgment of a learned Single Judge of this court in the case titled as ***Babu Ram Jain Vs. BSES Yamuna Power Ltd*** in W.P.(C) 1597/1998 decided on 4.8.2011 and first para of this

judgment directs deletion of Delhi Vidyut Board Employees Provident Terminal Fund 2002 and substitutes in its place BSES Yamuna Power Ltd. (BYPL) ie holding the liabilities for the terminal benefits etc to be of the DISCOMS/transferee companies and not of the Pension Fund. While disposing of the W.P.(C) 1597/1998, the learned Single Judge also in para 11 specifically directs the DISCOMS ie M/sBYPL to pay to the petitioners all consequential benefits by way of arrears of salary and other retiral benefits.

7. So far as the issue of delay and laches is concerned, learned senior counsel appearing on behalf of DISCOMS relies upon the judgment of the Supreme Court in the case of *U.P.Jal Nigam and Anr. Vs. Jaswant Singh and Anr. (2006) 11 SCC 464*, paras 6,13 and 16 which read as under:-

6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30-6-2005 and 31-7-2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order.

Thereafter a spate of writ petitions followed in which employees who retired in the year 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as other did in the matter. Therefore, whenever it appears that the claimants lost time of whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence of waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?

16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment of these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim

order for their retirement, those persons should be allowed to stand to benefit and not others. We have been given a chart of those nine persons, who filed writ petitions and obtained stay and are continuing in service. They are as follows:

1. Shri Bhawani Sewak Shukla
2. Shri Vijay Bahadur Rai
3. Shri Girija Shanker
4. Shri Yogendra Prakash Kulshresht
5. Shri Vinod Kumar Bansal
6. Shri Pradumn Prashad Mishra
7. Shri Banke Bihari Pandey
8. Shri Yashwant Singh
9. Shri Chandra Shekhar

And the following persons filed writ petitions before retirement but n o stay order was granted:

1. Shri Gopal Singh Dangwal (WP No. 35384 of 2005 vide order dated 5-5-2005)
2. Shri R.R. Gautam (WP No. 45495 of 2005 vide order dated 15-6-2005)”

8. In my opinion, in the facts of the present case, I am not inclined to dismiss the writ petitions on account of delay and laches and it will be sufficient if I order that while the writ petitions are allowed, the petitioners will not be entitled to any interest on the monetary benefits which they have to get till the writ petitions were filed. After the filing of these petitions in terms of my subsequent observations, since the writ petitions have been contested, interest will be payable to these petitioners.

9. The judgment relied upon by the DISCOMS of *U.P.Jal Nigam & Anr. (supra)* dealt with a case where benefit of increase of service age up to the age of 60 years was sought by the persons/employees who had already retired. Such employees had come to the Court well after the retirement. Such persons therefore had not worked for the period for which the service would have been extended for them up to the age of 60 years. There would have been therefore huge liability with respect to persons who never worked up to the period of 60 years who were claiming the benefit of extension of service up to 60 years. It is in those circumstances that the Supreme Court applied the doctrine of delay and laches to deny the service benefits to such employees who already stood retired. However, in the present case, it is not as if the petitioners in the present case have to do any positive act whether towards serving the erstwhile employer or in any manner bring about a positive act before any monetary benefits can be claimed. The monetary benefits which are claimed are actually only consequential benefits to the implementation of the circulars dated 23.7.1997 and 21.12.1999 and nothing further is required to be done. I may note that the Supreme Court has held in a catena of judgments that grant of pensionary benefits and terminal benefits to retired employees is not a bounty but is a legal right of such retired employees. Therefore, the consequential benefits of the circulars dated 23.7.1997 and

21.12.1999 which will translate to terminal benefits to be given to the retired employees falls within the realm of the duties to be performed by the DISCOMS and the transferee companies, and therefore, the writ petitions cannot be dismissed on the ground of delay and laches although as already stated above, no interest will be payable to the petitioners from the dates on which the circulars came into force till the time the respective writ petitions were filed.

10. Another reason for me not to accept the argument of delay and laches is that it is only in 2010 that the Supreme Court decided as to who was liable ie the liability was held to be of the DISCOMs/transferee companies and thus there was no certainty before 2010 as to the entity which will be liable. Thus it cannot be said that there is such delay and laches for denying the service/terminal benefits to the employees.

11. In view of the aforesaid discussion, the writ petitions are allowed. Petitioners are directed to be paid the entire consequential monetary benefits on they being given the benefits of the circulars dated 23.7.1997 and 21.12.1999. The petitioners will also be entitled to interest at the rate of 6% per annum simple till the payment of the monetary benefits payable to them from the dates of filing of these petitions provided that such monetary benefits are paid on or before a period of three months from today. In case, there is delay in payment of the monetary

benefits to the petitioners beyond three months, then the petitioners will be entitled to interest at the rate of 9% per annum simple for the period after three months.

It will be open to the DISCOMS and the transferee companies to approach the relevant Pension Fund so that the DISCOMS and the transferee companies know the dues which would be payable to the petitioners, however at the same time making it clear that this would not affect the directions with respect to the time of payment and the interest as stated above.

12. The writ petitions are allowed and disposed of with the aforesaid observations, leaving the parties to bear their own costs.

JANUARY 31, 2013
ib

VALMIKI J. MEHTA, J.