* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 05.05.2011*

\+ **R.S.A.No.15/2008 & CM Nos.1011-13/2008**

BSES YAMUNA POWER LTD. .....Appellant
Through: Mr.Sandeep Prabhakar and Mr.Prerna Mehta, Advocates.
Versus

SH. TARUN BHATNAGAR & ANR. .....Respondents
Through: Mr.Nandita Rao, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

CM Nos.1012-13/2008 (for exemption)

Allowed subject to just exceptions.

R.S.A.No.15/2008 & CM No.1011/2008 (for stay)

1. This appeal has impugned the judgment and decree dated 24.10.2007 which had reversed the finding of the trail judge

dated 20.12.2003 whereby the suit filed by the plaintiff Sh. S.K. Choudhary seeking a declaration (to the effect that he should be granted his second time financial upgradation after 13 years of service which had been denied to him be set aside and be declared null and void; further prayer that he should be placed in the pay scale of 15800-21100 with notional pay fixation of basic pay of Rs. 17150/- from 01.01.1996 as also relief of mandatory injunction i.e. payment of arrears in the aforenoted pay scale w.e.f. 01.01.1996) had been dismissed. The impugned judgment had reversed this finding. Suit of the plaintiff stood decreed.

2. Plaintiff was employed with defendant no. 2 since June 1984. He was an Executive Engineer. Vide the resolution of DVB dated 29.04.1998, provisional pay scale for executive engineers and superintendent engineers was worked out; this was a modification of an earlier office order; second financial upgradation was permitted to the plaintiff after having completed 13 years of service which he had completed in the year 1994; he was thus entitled to the second financial upgradation; one Mr.Jagdish Kumar had already got this benefit; plaintiff not having got this benefit, he had filed the present suit.

3. In the written statement, it was stated that the second entitlement of the plaintiff for financial upgradation was 8 years after his first upgradation i.e. after 18 years of service. Plaintiff had not completed 18 years of service; Sh. Jagdish Kumar was working on an adhoc basis as an assistant engineer and he had thereafter been selected by the UPSC and even in his case, he was entitled for a second upgradation only after 18 years of service.

4. In replication, the plaintiff made reference to the case of one Mr. V.K. Sood who was given promotion after completion of 13 years of service.

5. On the pleadings of the parties, following issues were framed:-

> "1. Whether plaintiff is entitled to second time bound promotion after service of 13 years? OPP
> 2. Whether plaintiff is entitled to get the benefits of past service rendered in the Government Organization for the present suit? OPP
> 3. Whether plaintiff is liable to pay court fees on declaration? OPD
> 4. Relief."

6. Documentary evidence was led. The documents adduced are, in fact, not in dispute.

A. The first document is the office order of the DVB dated 23.07.1997. In terms of this office order, the time

bound promotional scale was introduced in the DVB. It states that the employees of the DVB shall be entitled for a first time bound promotional scale after completion of 10 years of regular service. The second time bound promotional scale shall be given on a completion of further 8 years i.e. after 18 years of service from the date of their induction.

B. The second document is the office order dated 30.04.1998. This order modifies the existing pay scales of the following persons. It reads as follows:

"To revise the pay scales of the officers/employee, Delhi Vidyut Board w.e.f. .1.1996 and to pay the allowances alongwith revised scales of pay or pay the Vidyut Board (Revised pay) Rules 1998 (enclosed) as Appendix I) except in the case of Executive Engineer and Superintending Engineer in whose case the scales shall be as under which shall be provisional till further orders.

Sl.No.	Designation	Existing Scale	Revised scale
1.	.....		
2.	Suptd. Engineer	3700-5000	14300-400-18300 on completion of 13 years service in group A i.e. on the 14th years."

Learned counsel for the appellant has pointed out that this was only a provisional pay scale. This document had been heavily relied upon by the learned counsel for the

respondent to advance her submission that after 13 years of service, the superintendent engineer is entitled to a second financial upgradation.

C. The third document is the office order dated 20.11.2001. Vide this office order, the provisional pay scale of the engineers which was being implemented w.e.f 01.01.1996 had been finalized.

This office order stated that the existing time bound promotional pay scale will be allowed to continue.

Learned counsel for the appellant has pointed out that the existing time bound promotional pay scale makes the reference to the first scheme i.e. scheme of 21.07.1997 by virtue of which the second financial upgradation will be granted only after 18 years of service and not after 13 years of service.

7. Arguments have been countered by the learned counsel for the respondent. It is pointed out that the provisional pay scale for superintendent engineers (which includes the plaintiff) had come into effect provisionally on 30.04.1998. This was the cut-off date; on this date, the plaintiff was admittedly eligible for the second upgradation as he had completed 13 years of service. This date would in fact be the relevant date for fixing the

financial upgradation of the eligibility criteria for the plaintiff. Moreover, there is also no answer as to how Mr. V.K. Sood had been granted a financial upgradation after 13 years of service. Learned counsel for the respondent has drawn the attention of this court to the affidavit which had been filed before this court wherein this fact had been so stated in para 1. Copy of the noting/order pertaining to this second time bound promotion granted to Mr. V.K. Sood had also been perused. This was vide order dated 13.06.2000. This document states that Mr. V.K. Sood had completed 13 years of group A service; he was liable for the revised pay scale with effect from 01.01.1996.

8. A counter affidavit (to this affidavit) had been filed by the appellant. Para 7 states that Mr. V.K. Sood had only been granted a provisional revised pay scale which was subsequently adjusted once the pay scales were regularized in the year 2001.

At the request of the learned counsel for the respondent, the record has also been produced from the Department. This record shows that the second financial upgradation which had been granted to Mr. V.K. Sood was only a provisional measure; this financial upgradation had been adjusted at the time of finalization of his accounts.

9. The documents on record support the case of the appellant.

An employee was entitled to claim a second time bound promotional scale only after 18 years; the question of a second financial upgradation after a period of 13 years was only encompassed as a provisional measure; i.e. till the time and when the final pay scale was notified on 20.11.2001. It stated that

> "*the existing second time bound promotional scale scheme is already continued".*

10. This existing second time bound promotional scheme admittedly refers to the scheme of 23.07.1991. This is also not disputed before this court. In this view of the matter, it is clear that the second financial upgradation could have been granted to the plaintiff only after 18 years of his service. The impugned judgment holding otherwise is a perverse finding. It is liable to be set aside.

11. The contention of the learned counsel for the appellant that she had completed the 13 years of her service admittedly on or before 30.04.1998 i.e. at the time when the provisional pay scale had been introduced and thus the plaintiff was eligible on that date and had to be considered is an argument to be noted only to be rejected. Admittedly, as per the case of the respondent, the office order of 30.04.1998 was provisional; the word 'provisional' as is evident from its meaning makes reference to a temporary

period i.e. a fill-in-gap arrangement till the time when the matter is finally decided. Admittedly, this provisional pay scale of 30.04.1998 was finally settled on 20.11.2001, on which date the office order clearly states that the existing time bound promotional scale scheme will continue; there is no dispute that the existing second time bound promotional scale scheme makes reference to the scheme of 23.07.1997 which stipulated that a second financial upgradation will be granted to an employee only after 18 years of service.

12. Reliance by the learned counsel for the respondent on the judgment reported in (2010) 2 SCC 422 *Union of India Vs. Kartick Chandra Mondal* is misplaced. In this case the office memorandum was under consideration which was in express language; there being no intention expressed in the notification that it would apply retrospectively; it could not be given a retrospective effect. Ratio is wholly inapplicable. In the instant case what is under consideration and vehemently relied upon by the respondent is the office order dated 30.4.1998; the intent gathered from this document is clear; it clearly specifies that this pay scale is only provisional.

13. The arguments on discrimination has also been answered after the perusal of the record. The provisional upgradation

granted to Mr. V.K. Sood had been adjusted against his final dues.

14. The appeal is accordingly allowed. Substantial question of law is answered in favour of the appellant and against the respondent. Suit of the plaintiff is decreed. Pending application is disposed of.

INDERMEET KAUR, J.

MAY 05, 2011
SS/nandan