

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

% *Judgment Reserved on: August 24, 2015*  
*Judgment Delivered on : August 31, 2015*

+ **LPA 677/2011**

GOVT OF DELHI & ORS ..... Appellant  
Represented by: Mr.Satyakam, Advocate

versus

NORTH DELHI POWER LTD & ORS ..... Respondents  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates for R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager, for Pension  
Trust/R-2

+ **LPA 680/2011**

GOVT OF NCT OF DELHI ..... Appellant  
Represented by: Mr.Satyakam, Advocate

versus

BSES RAJDHANI POWER LTD & ANR ..... Respondent  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates for R-1 & 2  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with

Mr.P.Narayan, Manager, for Pension  
Trust/R-2

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**LPA 738/2011**

DELHI VIDYUT BOARD ETBF-2002 ..... Appellant

Represented by: Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager, Pension  
Trust

versus

NORTH DELHI POWER COMPANY LTD & ORS ..... Respondents

Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates for R-1  
Mr.Satyakam, Adv. for R-2/GNCTD

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**LPA 739/2011**

DELHI VIDYUT BOARD- ETBF 2002  
PENSION TRUST

..... Appellant

Represented by: Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager, Pension  
Trust

versus

BSES RAJDHANI & YAMUNA POWER LTD ..... Respondent

Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,

Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates for R-1.  
Mr.Satyakam, Adv. for R-2/GNCTD

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**LPA 722/2013**

TATA POWER DELHI DISTRIBUTION LTD. .... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

TRILOK CHAND & ORS. .... Respondents  
Represented by: Mr.Tenzing Tsering, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager, for Pension  
Trust/R-2  
Mr.Raman Duggal, Advocate  
with Mr.Mr.Arun Panwar, Advocate,  
Ms.Aayushi Gupta, Advocates for  
GNCTD/R-3

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**LPA 723/2013**

BSES RAJDHANI POWER LIMITED .... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

PAWAN VOHRA & ORS. .... Respondents  
Represented by: Mr.Vinay Sabharwal, Advocate with

Ms.Neha Sabharwal, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

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**LPA 45/2014**

BSES RAJDHANI POWER LTD ..... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

SH NARESH KUMAR & ANR ..... Respondents  
Represented by: Ms.Kittu Bajaj, Advocate for R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager, for Pension  
Trust

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**LPA 46/2014**

BSES YAMUNA POWER LIMITED ..... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

SMT JAWAITRI & ORS ..... Respondents

Represented by: Ms.Kittu Bajaj, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

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**LPA 48/2014**

BSES RAJDHANI POWER LTD ..... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

UMA RAWAT & ORS ..... Respondents  
Represented by: Ms.Kittu Bajaj, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

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**LPA 50/2014**

BSES RAJDHANI POWER LTD ..... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

SATYA PRAKASH VASHISHT & ORS ..... Respondents  
Represented by: Ms.Kittu Bajaj, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

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**LPA 54/2014**

BSES RAJDHANI POWER LTD ..... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates  
  
versus

VIJAY KUMAR & ORS ..... Respondent  
Represented by: Ms.Kittu Bajaj, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

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**LPA 178/2014**

BSES RAJDHANI POWER LIMITED ..... Appellant  
Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

SH N K SHARMA & ORS

..... Respondents

Represented by: Ms.Kittu Bajaj, Adv for R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

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**LPA 179/2014**

BSES RAJDHANI POWER LIMITED

..... Appellant

Represented by: Mr.Sandeep Sethi, Sr.Advocate  
instructed by Mr.Anupam Varma,  
Mr.Nikhil Sharma, Mr.Rahul Kinra,  
Advocates

versus

SANDEEP KUMAR MITTAL & ORS

..... Respondents

Represented by: Ms.Kittu Bajaj, Advocate for  
R-1  
Mr.Parag Tripathi &  
Mr.Bijender Chehar, Sr.Advocates  
instructed by Mr.Sumit Pushkarna,  
Mr.Anish Chawla, Mr.Siddhartha  
Nagpal, Advocates with  
Mr.P.Narayan, Manager for Pension  
Trust

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**PRADEEP NANDRAJOG, J.**

1. Challenge by the Government of NCT of Delhi and its Principal Secretary in LPA No.677/2011 and LPA No.680/2011 and the challenge by

the Delhi Vidyut Board Employees Terminal Benefit Fund, 2002 (a Trust) in LPA No.738/2011 and LPA No.739/2011 is to an order dated April 20, 2011 passed by the learned Single Judge disposing of Civil Miscellaneous Application filed by the North Delhi Power Ltd. and BSES Rajdhani Power Ltd. seeking clarification of the judgment dated July 02, 2007 passed in a batch of writ petitions filed by North Delhi Power Ltd., BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. which was followed by an order dated October 08, 2007 and finally the order dated January 25, 2008. Challenge in the remaining captioned appeals is by BSES Rajdhani Power Ltd. BSES Yamuna Power Ltd. and TATA Power Delhi Distribution Ltd. (the successor-in-interest of North Delhi Power Ltd.) to the judgment and order dated May 17, 2013 passed in W.P.(C) No.1680/2012 by the learned Single Judge and to the subsequent orders dated May 20, 2013, July 10, 2013, July 10, 2013, July 10, 2013, July 10, 2013, July 10, 2013, September 27, 2013 and September 27, 2013 passed by the learned Single Judge in the writ petitions filed by the respondent No.1 in LPAs No.722/2013, 45/2014, 46/2014, 48/2014, 50/2014, 54/2014, 178/2014 and 179/2014, in which orders the learned Single Judge has simply held that in view of the decision dated May 17, 2013 passed in W.P.(C) No.1680/2012 the writ petitions filed by said respondent No.1 in each appeal is allowed.

2. Since two distinct issues were decided, we propose to note the facts at the first instance concerning LPA No.677/2011, LPA No.680/2011, LPA No.738/2011 and LPA No.739/2011, followed by the decision thereon and thereafter note the facts concerning the remaining LPAs followed by the decision thereon.

3. To appreciate the controversy and the ramifications thereof concerning LPA No.677/2011, LPA No.680/2011, LPA No.738/2011 and

LPA No.739/2011, one would have to go back by a decade and a half. On November 23, 2000 the Delhi Electricity Reforms Act, 2000 was passed by the Legislative Assembly of the National Capital Territory of Delhi which was brought into force on March 08, 2001. One object of the Act was participation by the private sector in the distribution of electricity in Delhi which function hitherto fore was being carried out by the Delhi Vidyut Board (DVB). The Act envisaged taking over the functions of the Delhi Vidyut Board by various companies, three of which were to be distributing companies i.e. to distribute electricity in Delhi, which were given the nomenclature DISCOM-1, DISCOM-2 and DISCOM-3. Three other companies for generation and transmission of power and a holding company were also to be formed. DISCOM-1, DISCOM-2 and DISCOM-3 became BSES Yamuna Power Ltd., BSES Rajdhani Power Ltd. and North Delhi Power Ltd. (now TATA Power Delhi Distribution Ltd.). The unbundling of DVB took place on July 01, 2002, but before that the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 were promulgated and simultaneously DVB and the employees union as also the Government of NCT of Delhi had discussions regarding the rights and status of the employees of DVB who would be transferred to the six successor companies, and in particular the discussion centred on the pensionary benefits of the employees because the employees of DVB were entitled to pensionary benefits as per the CCS (Pension) Rules, 1972. Under Rule 6(1) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 benefit of existing service conditions were guaranteed to the transferred employees and thus on October 28, 2000 a tripartite agreement was entered into which guaranteed the existing service benefits to the transferred employees and it was agreed under the tripartite agreement that a pension fund in the form of

a trust would be created with a corpus so that pension could be paid to the transferred employees from out of the said fund, and thus was born the Delhi Vidyut Board Employees Terminal Benefit Fund.

4. The three DISCOMS notified Special Voluntary Separate Schemes containing almost identical terms on November 29, 2003 and December 18, 2003. Those who sought voluntary retirement were offered a package as per the scheme, and relevant would it be to highlight that the scheme categorically held out that pension would be payable as per Rules payable by the DVB Pension Trust. Parties were not at dispute that the pensionary benefits would be as per the CCS (Pension) Rules, 1972.

5. Many employees of the three DISCOMS applied under the scheme and the offers seeking voluntary retirement were accepted. Issue arose as to who would disburse the pensionary benefits. The three DISCOMS took the stand that the Delhi Vidyut Board Employees Terminal Benefit Fund would disburse the pension and the fund denied the liability on the ground that its liability to pay pension was limited only to such employees who superannuated on attaining the age of superannuation and not those employees who voluntarily retired under the Special Voluntary Retirement Schemes notified by the three DISCOMS. It was the case of the Trust that the superannuation fund which was created was premised on the assumption that the contributed funds with annual growing contributions would be locked up and would continue to generate interest till the employees retired on attaining the age of superannuation, therefore if the invested securities were encashed ahead of the schedule to fulfil the Special Voluntary Retirement Scheme Demands, a huge loss of income from interest would ensue apart from unwarranted erosion of the corpus and loss of future contribution.

6. Indraprastha Power Generation Company Ltd. (IPGCL) one of the successor entities of DVB had also promulgated a VRS Scheme which envisaged that the pension fund was not to discharge the additional liabilities arising out of the voluntary retirement schemes notified by the new entities. A decision was taken by the Government of NCT of Delhi, IPGCL and the fund that onetime payment on account of commutation of pension gratuity and leave encashment will be made by IPGCL and the recurring payment on account of residual pension to the employees of IPGCL who sever relationship under the Voluntary Retirement Scheme would be paid by IPGCL till these employees would have superannuated from service or their death, whichever was earlier. Meaning thereby these employees of IPGCL would receive pension from the trust with effect from the date they would have superannuated from service on attaining the age of superannuation.

7. The issues which arose before the learned Single Judge in the writ petitions filed by the three DISCOMS were as under:-

a. The nature of Special Voluntary Retirement Schemes (SVRS) formulated by electricity Distribution Companies (DISCOMS) and whether these were in the nature of voluntary recognised schemes under Rule 48 and Rule 48-A of the CCS Rules?

b. Whether the payment of claims and liabilities towards employees of such DISCOMS were payable by the DISCOMS themselves or whether they were to the account of the Government of NCT/the Pension Trust set up pursuant to a tri-partite agreement dated 28<sup>th</sup> Oct 2009 between the Delhi Vidyut Board (DVB) the predecessor of the DISCOMS, the employees and the Govt. of NCT?

c. Whether such Tripartite Agreement and the resultant Pension Trust formed was restricted only to payment to employees who superannuated and not those who voluntarily retired?

8. On November 01, 2004, i.e. before the writ petitions were filed by the three DISCOMS a Memorandum of Understanding was drawn up and pursuant thereto a Special Voluntary Retirement Scheme (SVRS) Terminal Benefit Fund was created by the DISCOMS for disbursement of terminal dues to such employees who were voluntarily retired in which money was transferred by the respective DISCOM. Vide decision dated July 02, 2007 the learned Single Judge has noted the relevant provisions of the tripartite agreement dated October 28, 2009, the Delhi Electricity Reforms Act, 2000 and the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 and has also noted the terms of the SVRS in paragraphs 3 to 10 of the decision followed by the exhaustive arguments advanced by the DISCOMS, the Pension Trust and GNCTC, which are to be found in paragraphs 11 to 52 of the said decision. Thereafter the learned Single Judge has noted the applicable CCS (Pension) Rules, 1972 in paragraphs 52 to 56 and has then set out the three issues which arose for determination in paragraph 55 followed by an analysis of the distinction between concepts of resignation, voluntary retirement and superannuation, in paragraphs 58 to 59 of the decision.

9. In the ultimate analysis, the learned Single Judge has held as under:-

a. The purport, intent and therefore scope of the Pension Trust set up pursuant to the Tripartite Agreement dated 28<sup>th</sup> Oct 2009 was to allay fears of existing employees given the corporatisation and transfer of the electricity utility- DVB to corporate entities. It was not intended as a measure to achieve future manpower reduction but was to ensure retention of the

existing force. It was implemented by Section 16(2) of the Act and thus all existing conditions of service would stand included and protected when read with Rule 6(9). Such condition of service would include the right to voluntary retirement under Rule 48-A of the CCS( Pension) Rules. The next issue would be whether the SVRS as formulated by the DISCOMS was of the nature envisaged by Rule 48/48-A of the CCS (Pension) Rules, 1972 and hence within the ambit of the Pension Trust?

b. On this, the learned Single Judge held that the schemes as formulated by the DISCOMS were in the nature of special schemes, they were in the nature of an offer and proposal and hence were not subject to statute but rather in the realm of contract law. Their objective was to change the employee profile and more than 1/3<sup>rd</sup> of the employees opted for it. There was a fundamental distinction between the DISCOMS' schemes and those contemplated by Rule 48/48-A of the CCS Pension Rules, in that, they drastically reduced the qualifying years of service and they were premised on a huge financial inducement. They were thus not of the nature contained in Rule 48/48-A of the CCS (Pension) Rules, 1972. Further GNCT had made the DISCOMS aware in communication as well as by caveats in Board Resolutions (in which Nominee Directors of GNCT attended) that such costs of this SVRS would be to the account of the DISCOMS and not GNCT. Hence there was no estoppel against the GNCT rather the DISCOMS had been forewarned. Lastly, allowing the Pension Trust to be applied to the SVRS would not only finically prejudice and deplete the Trust as it was never intended to cater to such a large exodus of employees but would also cause grave prejudice to the persons legitimately covered by such fund under VRS Schemes formulated in terms of Rule 48/48-A of the CCS Pension Rules. Hence in conclusion, the learned Single Judge held that the

SVRS formulated by the DISCOMS could not be equated to schemes under Rule 48/48-A and hence would not be payable from the Pension Trust.

c. However given the position of parties, in that, a vast number of employees had accepted such SVRS and the DISCOMS had changed their position on this basis, the learned Single Judge noted a via media solution in the form of the IPGCL model whereby the DISCOM would make the payment in the first instance to be refunded by the Pension Trust, without interest, at the time when the employee would otherwise have superannuated.

10. In light of the above, enumerated directions passed in para 93 were as under:-

*“I(i) The Pension Trust and GNCT are not liable to make payment towards terminal benefits and residual pension arising to those who opted VRS/VSS, formulated by the petitioners DISCOMS namely, BSES Rajdhani Power Ltd., BYPL and the NDPL employees of the above (referred to as ‘DISCOMS’). The employees of the DISCOMS who opted by VRS/VSS or the Scheme by whatever name called and were relieved from employment are entitled to payment of terminal dues (which expression would include all accrued benefits such as gratuity, provident fund, leave travel concession, leave encashment, payment towards medical facilities, commutation of pension and residual pension and such other payments as they are entitled to in terms of the protected terms and conditions of service under the Act and Rules) from the date of their respective severance from employment. Such date of severance shall be hereafter referred to be called ‘entitlement date’.*

*(ii) It is open to the DISCOMS to adopt the IPGCL Model of paying pension, gratuity, leave encashment and other liabilities to the optees, in terms of the letter of the Government of NCT of Delhi dated 11.11.2004. This has been described in para 87 above.*

(iii) *The DISCOMS shall indicate to the pension trust, in writing within two weeks from the date of this judgment whether they are willing to accept IPGCL Model or not.*

(iv) *In the event of acceptance of the IPGCL Model, the liabilities of the DISCOMS to make payments from the entitlement date of each VRS/VSS optee till the date of payment shall be discharged within three months from today. In other words, the payments for the period commencing from entitlement date till 1<sup>st</sup> of July, 2007 shall be made within three months. The payment for the period ending three months from today shall also be after 1.7.2007 and included in this regard while discharging this liability. In the event of this option being exercised and any default in payment, the VRS optees concerned shall be entitled to interest @ 8% per annum for the entire amount till the date of payment.*

(v) *In the event of option being exercised by DISCOMS, they shall also be liable to make payments towards family pension and terminal benefits of all optees who died during the interregnum ie from the date of entitlement till today.*

*II (i) In the event of the concerned DISCOMS not accepting the IPGCL Model and opting out of direction No. I (ii) above, they shall be liable to pay additional contributions to the pension trust, in the manner to be determined hereinafter.*

*(ii) For the purpose of deciding the additional contributions to be made by DISCOMS to the Trust's Pension Fund, on account of payment of commuted value pension and all terminal benefits and liabilities, due to such optees, the matter shall be referred to two Arbitral Tribunals within four weeks of receipt of communication by the pension trust from the concerned DISCOMS.*

*(iii) The first Arbitral Tribunal shall be comprised a nominee of the Institute of Actuaries, 302, Indian Globe Chambers, 142, Fort Street, Off D.N. Road, Fort, Mumbai, incorporated under Section 3 of the Actuaries Act (which was enacted and received assent of the President on 27.8.2006 and was brought into force on 8.11.2006). The nominee of the Institute shall be indicated*

*by the President, Governing Council of the Institute. The second member of the Tribunal shall be a common nominee of the GNCT and the Pension Trust and the third nominee shall be nominated by the NDPL. The provision of composition of the Tribunal shall be completed within six weeks from the date of exercise of option by the NDPL.*

*(iv) The second Tribunal shall comprise a nominee of the Institute of Actuaries, to be indicated in the manner as directed in clause II(iii) above the second member shall be; a common nominee of the GNCT Pension Trust and the third member shall be a common nominee of BSES and BYPL.*

*(v) All members of the two arbitral tribunals should be actuaries, having knowledge and experience in the field of pension funds;*

*(vi) The proceedings before the Tribunals shall be regulated by the provisions of the Arbitration and Conciliation Act, 1996 and its Award would be an Award within the terms of that Act;*

*(vii) The terms of reference of the Arbitral Tribunal concerned would be the determination of additional contributions payable by the concerned DISCOMS on account of premature pay-outs by the pension trust due to the exercise of option by the VRS optees. The Tribunal shall decide on an application of actuarial principles, the cost of such pay-outs, which shall include loss of interest and also such other incidental matters including but not confined to premature payment of commuted value of pension, provident fund, gratuity and all other terminal benefits to the concerned optees from the date of their entitlement. The Arbitral Tribunal shall complete its proceedings and publish its award within six months from the date of its Constitution. All parties shall cooperate in this regard.*

*(viii) The arbitration proceedings shall be conducted by the Tribunal in accordance with law.*

*III (i) The liability to pay residual pension i.e. monthly pension from the date of this judgment in the event the DISCOMS*

*exercise the second option i.e. of going in for actuarial calculation; shall be borne by the concerned DISCOMS for the period till the award is published by the Tribunal and payment made to the trust on the basis of such award, by the concerned DISCOMS.*

*(ii) The payments made by DISCOMS to the optees shall also be subject to suitable adjustment/reckoning for the actuarial exercise adjudication by the Tribunal.*

*(iii) The liability of the Trust to make payments to the VRS/VSS optees shall arise after the DISCOMS deposit the amounts determined as additional contributions with the pension trust.*

*(iv) The VRS optees are entitled to interest on the terminal benefits, i.e. gratuity, provident fund, commuted value of pension, arrears of pension, etc. @ 8% p.a. from the date of entitlement, to payment. This shall be paid by the DISCOMS."*

11. It is apparent that the learned Single Judge was alive to the circumstance that mere adjudication of the respective rights and liabilities of the DISCOMS on the one hand and the Government of NCT of Delhi and the Pension Trust on the other would result in a declaration and may lead to further uncertainties, therefore in para 91 of the decision, after considering a human aspect the learned Single Judge considered the options available before the Court and in para 93 the operative directions were outlined.

12. The DISCOMS did not opt for direction No.I(ii) issued in paragraph 93 and opted to charter the course envisaged by direction II i.e. make additional contributions to the Trusts Pension Fund. Thereafter two DISCOMS filed applications seeking clarification of the decision dated July 02, 2007 which were disposed of on October 08, 2007 permitting one instead of two Tribunals to decide the matter in terms of direction II(ii), (iii) and (iv) of para 93 of the decision dated July 02, 2007. The relevant part of

the said order reads as follows:-

“xxxxx        xxxxx        xxxxx

*(iv) The VRS optees are entitled to interest on the terminal benefits, i.e. gratuity, provident fund, commuted value of pension, arrears of pension, etc. @ 8% p.a. from the date of entitlement, to payment. This shall be paid by the DISCOMS.*

xxxxx        xxxxx        xxxxx

*3. The third clarification sought is essentially by the Pension Trust. Its position is that the pay-outs in terms of this Court's judgment, subject to other directions should be made from the new Fund created specifically, catering to the SVRS of the electricity companies. This request is innocuous since the respective rights and liabilities of the parties having been discussed and dealt with in detail in the main judgment. It is, therefore, clarified that the liabilities determined in terms of the judgment shall be paid into and shall be discharged by the SVRS, RTBF-2004, created as a specially purpose fund, by the Pension Trust, has not been created in this regard vis-a-vis all the three companies. It is not in dispute that the residual pension is being paid through these new funds even today.”*

13. By another order dated January 25, 2008, the learned Single Judge disposed of CM Nos.17040/2007 and 15652/2007, in terms of the following order:-

“xxxxx        xxxxx        xxxxx

*Learned counsel for the Writ Petitioners (BRPL and BYPL) state that the liability would be paid to the VRS/SVR Scheme 2003 optees through the SVRS/RTPF 2004 Trust within six weeks, for which purpose a sum of Rs.103 crores would be deposited in the said Trust/SVRS/RTPF.*

*All pending applications are disposed of in terms of the above statement. NDPL and BSES Rajdhani shall adhere to the time schedule and ensure that the entitlement of optees are worked out and paid to them within the said period. All pending*

*applications are disposed of.*

xxxxx                      xxxxx                      xxxxx”

14. It is apparent that since the DISCOMS opted to proceed under direction II(i) of para 93 of the decision dated July 02, 2007, consequential steps had to be taken in terms of direction II(ii) to II(iv). The DISCOMS were to make a onetime contribution to the Pension Trust to augment its corpus so that pension could be paid to the VRS optees. This required the constitution of the Arbitral Tribunal. The terms of reference were as per direction II(vii). The DISCOMS having exercised option indicated in para 93II(i) of the judgment dated July 02, 2007 were constrained to file applications seeking further clarification from the learned Single Judge which has been disposed of by the impugned decision dated April 20, 2011 challenged in LPA No.677/2011, LPA No.680/2011, LPA No.738/2011 and LPA No.739/2011. The clarification was necessitated because the Government of Delhi and the Pension Trust took a decision that there was no necessity to constitute any Tribunal since most of SVRS optees had even otherwise attained the age of superannuation. Holding that the view taken by the Government of Delhi and the Pension Trust was untenable, the learned Single Judge directed that the Tribunal as required to be formed in terms of the decision dated July 02, 2007 would be formed, and the reasoning would be in paragraph 14 and 15 of the decision dated April 20, 2011, which read as under:-

*“14. The electricity companies were given the option to apply for the IPGCL model of paying out pension (direction in para 93(i)). In the event of their not opting for it, the mechanism of arbitral tribunal which was to determine the extent of payment to be made by the Pension Trust by the concerned electric companies, to be paid to the optees of SVRS who would have otherwise have to wait for orders to come and get the terminal*

*benefits (not necessarily only residual pension). In other words, the need for such adjudication to ensure that the employees were not put to extreme hardship on account of further litigation and delay, either individually with the Pension Trust or with the concerned electricity companies. The Arbitration Tribunal was to consider all the facts and data and after appraising it, fasten the extent of liability upon individual electricity companies, which was to be paid to the Pension Fund that was to ultimately take-over the responsibility of disbursement of manner of payments to pensioners. The principle or reasoning underlying these directions was that premature severance or termination of the employees on his accepting the SVRS should not have otherwise robbed him of his entitlement that would be ultimately enforceable.*

*15. If the judgment and the operative directions are analyzed, it is apparent that the respective rights and liabilities of the parties were clearly delineated. The provision for the interregnum liability, i.e. payments to be made to individual employees during the pendency of the determination before the Tribunal was also envisioned; the electricity companies were to bear this liability and if necessary, seek adjustment in the final determination by the Tribunal. The subsequent orders of 08.10.2007 and 25.01.2008, therefore, are a mere effectuation and extension of the reasoning embodied in the judgment dated 02.07.2007. The DISCOMS' clarifications enabling the electricity companies/DISCOMS to make payments through a specified Trust, therefore, have to be viewed in the light of the partition directions casting a liability to pay the interregnum amounts to the optees. Therefore, the interpretation placed by the Govt. of NCT of Delhi, and adopted by the Pension Trust is untenable. Their position is also untenable for the simple reason that it amounts to stating that by two unreasoned and clarificatory orders, a hotly contested litigation resulting in accrual of rights and liabilities and necessitating directions, was virtually set-aside. That was in the purport of the said two orders of 08.10.2007 and 25.01.2008."*

15. Notwithstanding the prolix pleadings in the appeals filed by the Government of Delhi and the Pension Trust, the only argument advanced at

the hearing of the four appeals which laid a challenge to the order dated April 20, 2011 was that since most of the VRS optees had even otherwise attained the age of superannuation there was no necessity to constitute the Tribunal as directed by the main judgment dated July 02, 2007.

16. The said contention of the Government of NCT of Delhi and the Pension Trust has simply to be noted and rejected for the reason neither challenged the main judgment dated July 02, 2007 and thus the mandate of the said judgment had to be complied with. We have already noted hereinabove the reasons given by the learned Single Judge for constitution of the Tribunal if the DISCOMS exercised the option as per para 93II(i) of the decision dated July 02, 2007. The reasons given by the learned Single Judge are even otherwise sound. Besides, since the decision dated July 02, 2007 has not been challenged by either party it has attained finality. We see no logic in the argument, and therefore concur with the view taken by the learned Single Judge in the decision dated April 20, 2011 culled out in paragraphs 14 and 15 of the said order, contents whereof have been noted by us in paragraph 14 above.

17. LPA No.677/2011, LPA No.680/2011, LPA No.738/2011 and LPA No.739/2011 are accordingly dismissed.

18. Issue concerning LPA No.722/2013, LPA No.723/2013, LPA No.45/2014, LPA No.46/2014, LPA No.48/2014, LPA No.50/2014, LPA No.54/2014, LPA No.178/2014 and LPA No.179/2014 relates to the interpretation of sub-Rule 3 of Rule 49 of the CCS (Pension) Rules, 1972 as also Rule 48-B of the CCS (Pension) Rules, 1972. For record we need to note that Rule 48-B was on the statute book when the issue arose between the parties concerning its applicability and interpretation and thus the learned counsel for the parties were not at variance that the decision in the

appeals has to be with reference to Rule 48-B of the CCS (Pension) Rules, 1972 as it existed in the statute book when the dispute arose.

19. The respondent No.1 of LPA No.722/2013, LPA No.723/2013, LPA No.45/2014, LPA No.46/2014, LPA No.48/2014, LPA No.50/2014, LPA No.54/2014, LPA No.178/2014 and LPA No.179/2014 had sought and was granted voluntary retirement pursuant to the Voluntary Retirement Scheme notified by the predecessor-in-interest of TATA Power Delhi Distribution Ltd., BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. Service rendered by Trilok Chand, the respondent of LPA No.722/2013 when cession of service took place was 19 years, 7 months and 10 days. Service rendered by Pawan Vohra, the respondent of LPA No.723/2013 when cession of service took place was 19 years, 10 months and 20 days. Service rendered by Naresh Kumar, the respondent of LPA No.45/2014 when cession of service took place was 19 years, 2 months and 14 days. Service rendered by Jawaitri, the respondent of LPA No.45/2014 when cession of service took place was 15 years. Service rendered by Uma Rawat, the respondent of LPA No.48/2014 when cession of service took place was 16 years, as claimed by the appellant and 17 years as claimed by her, an issue which is of no relevance as regards the fact concerning the number of years she rendered service. Service rendered by Satya Prakash, the respondent of LPA No.50/2014 when cession of service took place was 15 years. Service rendered by Vijay Kumar, the respondent of LPA No.54/2014 when cession of service took place was 16 years and 5 months. Service rendered by N.K.Sharma, the respondent of LPA No.178/2014 when cession of service took place was 14 years and 5 months as per the appellant and 15 years as per him, an issue which is irrelevant. Service rendered by S.K.Mittal, the respondent of LPA No.179/2014 when cession of service took place was 13

years.

20. Whereas the respondents of LPA No.722/2013 and LPA No.723/2013 claimed the benefit of sub-Rule 3 of Rule 49 of the CCS (Pension) Rules, 1972 and pleaded that as per the same the fraction of a year equal to three months and above shall have to be treated as a completed one half year and reckoned as qualifying service, the respondents of the other appeals relied not only upon sub-Rule 3 of Rule 49 of the CCS (Pension) Rules, 1972 but even upon Rule 48-B of the CCS (Pension) Rules, 1972 and urged that as per the said Rule, while determining their qualifying service, a period of five years had to be added.

21. The issue arose between the parties because undisputedly in the VRS Scheme introduced by the three DISCOMS there was a stipulation/condition that pensionary benefits as applicable would be paid. Since pensionary benefits as applicable under the CCS (Pension) Rules, 1972 were payable, the stand taken by the DISCOMS was that as per Rule 48-A of the CCS (Pension) Rules, 1972 pension was payable if 20 years' qualifying service was rendered and this meant actual service. The contra-contention of the employees was that as per Rule 48-B of the CCS (Pension) Rules, 1972, while computing qualifying service 5 years had to be added and as per sub-Rule 3 of Rule 49 of the CCS (Pension) Rules, 1972, the fraction of a year equal to three months and above had to be treated as a completed one half year.

22. Before the learned Single Judge arguments were advanced on the assumption that qualifying service to earn a pension had to be 20 years and the issue debated was as to in what manner said period of 20 years has to be determined. Said issue was debated at the bar before us as also an additional issue, not urged before the learned Single Judge, but argued in appeal with

reference to sub-Rule 1 and sub-Rule 2(b) of Rule 49 of the CCS (Pension) Rules, 1972. The argument was that as per said sub-Rules pension was payable on completing qualifying service of ten years. Since the argument concerned interpretation of a Rule we permitted learned counsel for the respondents in LPA No.722/2013, LPA No.723/2013, LPA No.45/2014, LPA No.46/2014, LPA No.48/2014, LPA No.50/2014, LPA No.54/2014, LPA No.178/2014 and LPA No.179/2014 to urge the point because law permits an issue of law, unrelated to facts, to be taken up for the first time even in an appeal.

23. Our analysis must therefore commence by noting the definition of qualifying service as per Rule 3(q) of the CCS (Pension) Rules, 1972, Rule 48-B and Rule 49 of the CCS (Pension) Rules, 1972. The three provisions read as under:-

*“3(q) ‘Qualifying Service’ means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;*

*x        x        x        x*

***48-B Addition to qualifying service on voluntary retirement***

*(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1) (a) or Rule 48-A or clause (k) of Rule 56 of the Fundamental Rules or Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not taken him beyond the date of superannuation.*

*(2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1)(b) or FR 56 (j).*

**49. Amount of Pension**

(1) *In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.*

(2) (a) *In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.*

(b) *In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy five per mensem.*

(c) *notwithstanding anything contained in Clause (a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.*

(3) *In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.*

(4) *The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee."*

24. The learned Single Judge has not noted the definition of qualifying

service as per Rule 3(q) and has, while interpreting sub-Rule 3 of Rule 49 held that in calculating the length of qualifying service the fraction of a year equal to 3 months and above has to be treated as completed one half year and reckoned as qualifying service. Laying a challenge to said view taken, learned senior counsel Sh.Sandeep Sethi who appeared for the DISCOMS urged that the learned Single Judge has overlooked that Rule 49 operated in the field of determining the amount of pension, as proclaimed by the head note of the Rule and thus learned senior counsel urged that no part of the Rule could be pressed into aid to determine the qualifying service. With respect to Rule 48-B the learned Single Judge has held that the Rule in question required 5 years weightage to be given while determining the qualifying service, and the challenge to the view taken by the learned Single Judge was on the argument that determination of qualifying service is distinct from addition to the said period of qualifying service for purposes of computing pension.

25. Before the implementation of the recommendations of the 6<sup>th</sup> Central Pay Commission with effect from January 01, 2006, resulting in consequential amendments to the CCS (Pension) Rules, 1972, a Government servant on superannuation would receive pension which was proportionately reduced in case full pensionable service was not rendered and the impact thereof on those who sought voluntary retirement was a proportionate reduction in the pension receivable with reference to the full pension receivable upon full pensionable service rendered. It was in this backdrop that the CCS (Pension) Rules, 1972, vide Rule 48-B was introduced in the statute book. To put it pithily, those who opted for voluntary retirement were given an inducement that while computing their pension and giving effect to the proportionate reduction in the pension vis-a-vis full pension the

benefit of five years' service in addition to the service rendered would be given.

26. Since qualifying service has been defined as per Rule 3(q), wherever the word qualifying service is to be found in the Rules, subject to context, it must be given the meaning as defined in Rule 3(q). As per the Rule it means *service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under the Rules*.

27. Rule 48-B does not redefine the concept of service otherwise which shall be taken into account (and hence does not relate to the second limb of the definition of qualifying service as per Rule 3(q)). The Rule simply states that in case of voluntary retirement, to the period of qualifying service rendered, a weightage of 5 years would be added.

28. The learned Single Judge has overlooked this fine, but material distinction. Determination of qualifying service is distinct. Addition of five years' period to this period of qualifying service is distinct. The former determines eligibility. The latter concerns the quantification of pension. This distinction has to be kept in mind because the cession of service took place in the year 2003 and the year 2004 when as per the CCS (Pension) Rules, 1972 pro-rata reduction in pension with reference to the maximum pension which was earned on rendering full pensionable service had to be given effect to.

29. We overrule the view taken by the learned Single Judge that while determining the qualifying service, 5 years' additional service benefit had to be granted as per Rule 48-B.

30. As regards the interpretation placed by the learned Single Judge on sub-Rule 3 of Rule 49, the view is sound and legal. The argument of the

DISCOMS that the head note of the Rule requires the Rule to be interpreted in relation to the amount of pension is noted and rejected for the reason the head note of a Rule does not determine the sweep of the span of the Rule, and if the language of the Rule is clear it has to be given effect to. The language of the Rule proclaims that *in calculating the length of qualifying service* the fraction of a year equal to 3 months and above shall be treated as a completed one half year, requires it to be held that the Rule contemplates rounding up of a fraction to the next nearest half and thus relates to the calculation of the length of qualifying service. Such persons who attained 20 years qualifying service as a result of the rounding up of the fraction to the next nearest half would thus be entitled to have their qualifying service reckoned by getting the benefit of the rounding up of the fraction to the next nearest half.

31. That takes us to the issue urged for the first time in the appeal, and the argument was advanced, as noted above with reference to Rule 49 (1) and (2)(b) of the CCS (Pension) Rules, 1972.

32. Learned counsel for the respondents relied upon an unreported decision of this Court passed by a Division Bench on March 16, 2000 in LPA No.33/1998 DTC Vs. Baijnath Bhargava & Ors. The view taken in the said decision was that those who rendered 10 years service and are permitted to voluntarily retire would be entitled to pension, and for which view the Division Bench interpreted the word ‘*retiring*’ in sub-Rule 1 of Rule 49 and clause (b) of sub-Rule 2 of said Rule to embracing ‘*voluntary retiring*’.

33. Notwithstanding Petition seeking Special Leave to Appeal filed against the said decision of the Division Bench being dismissed in limine, we are constrained not to follow the ratio thereof because the view taken by the Division Bench in said decision would require to be treated as overruled

in view of the law declared by the Supreme Court in the decision reported as (2008) 10 SCC 114 C.Jacob Vs. Director of Geology & Mining & Anr.

34. Though concerned with the interpretation of sub-Rule 2 of Rule 43 of the Tamil Nadu Pension Rules, 1978, the Supreme Court noted that Rule 49(2)(b) of the CCS (Pension) Rules, 1972 was a pari-materia provision. The Supreme Court thereafter noted that the CCS (Pension) Rules, 1972 envisaged different kinds of pensions and for which Rule 35, Rule 36, Rule 37, Rule 37(A), Rule 38, Rule 39, Rule 40 and Rule 41 of the CCS (Pension) Rules, 1972 were noted. Paragraphs 18 to 24 of the said decision are relevant to be noted, and we do so. They read as under:-

*“18. The appellant relied on Rule 43(2) of the Tamil Nadu Pension Rules, 1978 (‘the TNP Rules’, for short) to contend that on completion of 10 years of service, a government servant is entitled to pension. Relevant portion of the said rule is extracted below:*

*"43.(2) In the case of a government servant, retiring in accordance with the provisions of these Rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below namely:"*

*As similar contention is frequently raised under the corresponding Rule 49(2)(b) of CCS Pension Rules (‘CCSP Rules’, for short), we will for convenience refer to the corresponding provisions of the CCSP Rules also.*

*19. Rule 43(2) relied on by the petitioner falls under Chapter VI of the TNP Rules (corresponding to Rule 49(2)(b) in chapter VII of CCSP Rules) dealing with ‘regulation of amount of pension’. The said rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are :*

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*Classes of Pension**(vide Chapter V of the Pension Rules) CCSP Rules    TNP Rules*

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|                                                                                                                                 |                 |                |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------|
| <i>(i) Superannuation pension</i>                                                                                               | <i>Rule 35</i>  | <i>Rule 32</i> |
| <i>(ii) Retiring pension</i>                                                                                                    | <i>Rule 36</i>  | <i>Rule 33</i> |
| <i>(iii) Pension on absorption<br/>in or under a corporation,<br/>company or body owned/controlled<br/>by State/</i>            | <i>Rule 37</i>  | <i>Rule 34</i> |
| <i>Central Government</i>                                                                                                       | <i>Rule 37A</i> |                |
| <i>(iv) Invalid pension</i>                                                                                                     | <i>Rule 38</i>  | <i>Rule 36</i> |
| <i>(v) Compensation pension payable<br/>on discharge owing to abolition of<br/>the post</i>                                     | <i>Rule 39</i>  | <i>Rule 38</i> |
| <i>(vi) Compulsory retirement pension</i>                                                                                       | <i>Rule 40</i>  | <i>Rule 39</i> |
| <i>(vii) Compassionate allowance to<br/>government servants who<br/>forfeit their pension on being<br/>dismissed or removed</i> | <i>Rule 41</i>  | <i>Rule 40</i> |

20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in chapter V of the Pension Rules, there is no question of having recourse to the rules in the Chapter dealing with regulation of amount of pension (Chapter VI of TNP Rules or chapter VII of CCSP Rules) for determining the quantum of pension.

21. Admittedly the petitioner was not 'superannuated'; nor was he absorbed in any corporation/company/body owned by state/central government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service of an extent which would entitle him to pension but for the dismissal/removal). The only other

*categories of pension are compulsory retirement pension and the retiring pension. A government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement. If a government servant is not otherwise admissible to pension, he cannot obviously be granted pension on compulsory retirement. There is no such grant in this case. That leaves us with retiring pension.*

22. *Rule 33 of the TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of TNP Rules provides that a government servant, who under Fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension (corresponding Rule 36 of CCSP Rules which provides that a retiring pension shall be granted to a government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a Government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years' qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years' service. Therefore, the petitioner is not entitled to retiring pension*

23. *The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated 'qualifying service of not less than 10 years'. He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to 'not less than 10 years' service', any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said Rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of*

*pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the Pension Rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension.*

*24. Under Chapter V, in certain situations, a government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36, and 38 of TNP Rules (Rules 35, 38 and 39 of CCSP Rules) do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, for those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules), as noticed earlier, comes into play only when the government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of TNP Rules (or Rule 49(2)(b) of CCSP Rules) dealing with the quantum of pension refers to a government servant retiring in accordance with the said rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the appellant is not entitled to pension."*

35. It has therefore to be held that in view of the law declared by the Supreme Court in C.Jacob's case neither respondent would be entitled to seek pension on the strength of sub-Rule 1 of Rule 49 and clause (b) of sub-Rule 2 of said Rule of the CCS (Pension) Rules, 1972, applicability whereof

would be only if the retirement is on attaining the age of superannuation and not when the retirement is voluntary.

36. LPA No.722/2013, LPA No.723/2013, LPA No.45/2014, LPA No.46/2014, LPA No.48/2014, LPA No.50/2014, LPA No.54/2014, LPA No.178/2014 and LPA No.179/2014 are disposed of partially maintaining the orders impugned therein, upholding the view taken by the learned Single Judge that while computing 20 years' qualifying service benefit of sub-Rule 49(3) of the CCS (Pension) Rules, 1972 would be available and while reckoning qualifying service the fraction of year equal to three months and above shall be treated as a completed one half year; but overruling the view taken by the learned Single Judge that while computing qualifying service five years' addition would be made. Such respondents who compete 20 years' qualifying service as interpreted hereinabove by rounding up of the fraction alone would be entitled to the pension and to those for whom entitlement of pension has been determined by the learned Single Judge by giving benefit of five years additional service would not be entitled to any pension and the writ petitions filed by such respondents are dismissed.

37. Parties shall bear their own costs in all the appeals.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**AUGUST 31, 2015**

*mamta*