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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 6758/2002

7th March, 2017

SH. MAHESH KUMAR RUSTOGI AND ORS. Petitioners

Through: Mr. Viresh Chaudhary, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. Jyoti Taneja, Advocate for R-3 &
R-10.

Mr. Vinay Sabharwal, Advocate for
R-4.

Mr. Yuvan Gandhi, Advocate for R-6
and R-7.

Ms. Raavi Birbal, Advocate for R-8.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Learned counsel appearing for respondent nos. 6 and 7 has placed on record the hand written and signed letters of petitioner nos. 1, 3 and 4 stating that they do not want to pursue the present writ petition. Accordingly, the present writ petition is disposed of as not pressed by petitioner nos. 1, 3 and 4 by taking the hand written letters of these

petitioners on record. This writ petition, therefore, will only stand pressed on behalf of petitioner no.2.

2. Counsel for the petitioner no.2 has been awaited from before lunch till now. It is presently 2:45 p.m. The counsel for the petitioner has still not appeared on account of 'personal difficulty', without stating what the personal difficulty is. I have therefore with the assistance of the counsels for the respondents gone through the record and am proceeding to dispose of this petition.

3. By this writ petition under Article 226 of the Constitution of India, it is prayed that the advertisement dated 15.5.2002 issued by respondent no.10/Delhi Subordinate Selection Board be quashed. By the advertisement the posts of Junior Engineers (Civil) were sought to be filled in by the erstwhile Delhi Vidyut Board (DVB), and which entity has since been unbundled into six different companies, including the respondent nos. 4 to 8 in this petition. The business of the erstwhile DVB has been transferred partly to the respondent nos. 4 and 5, as also to private DISCOMs with three of the DISCOMs being respondent nos.6 to 8 in this writ petition. In sum and substance, the petitioners whose services were transferred to the respondent nos. 6 to 8 by virtue of unbundling of DVB, effectively seek the relief that since the posts of Junior Engineer (Civil) with

DVB have to be filled up, therefore petitioners services should not be transferred to the private electricity distribution companies (DISCOMs) being respondent nos. 6 to 8 in this writ petition, because petitioners can fill up the posts of Junior Engineer (Civil) as per the subject advertisement.

4. DVB was unbundled and restructured whereby DVB ceased to exist from 30.6.2002 in terms of Section 15(9) of the Delhi Electricity Reform Act, 2000 (hereinafter referred to as 'the Act'). Restructuring of DVB was done under the subjects of generation, transmission and distribution, and whereby the business and assets of DVB were bifurcated between the entities such as respondent nos. 4 and 5 who are M/s Indarpratha Power Generation Company Limited and M/s Delhi TRANSCO Limited, as also to the private distribution companies (DISCOMs) such as respondent nos.6 to 8 being M/s BSES Yamuna Power Supply Limited, M/s BSES Rajdhani Power Supply Company Limited and M/s North Delhi Power Supply Company Limited. Restructuring of DVB was done and its business was bifurcated in order to cause proper supply of electricity to the residents of Delhi and to restore operational and financial viability of the distribution of electricity in Delhi in terms of the Act.

5. As per the provision of Section 14 of the Act, DVB was subdivided into six different companies, five of them being the respondent nos.

4 to 8 of this writ petition, and these companies were to take care of the generation, transmission and distribution of electricity in the city of Delhi. Section 15 of the Act pertains to the scheme of transfer and modality of transfer and because of which the transfer scheme was prepared. The scheme was notified on 15.11.2001 whereby the staff of erstwhile DVB was divided on the principle of as is where is basis, place of work suitability, experience and other relevant consideration, into five groups. Basically, as per the places of location of the employees of erstwhile DVB as also their suitability or services, the existing employees of DVB were transferred to government companies being the respondent nos.4 and 5 as also the three private DISCOMs including respondent nos. 6 to 8. Service conditions of the employees of the DVB who were transferred to private companies were however protected because of Section 16(2) of the Act whereby the service conditions of such employees were not to be changed to their detriment and the service conditions could not be less favorable than those which were applicable to such employees immediately before their transfer to the unbundled companies including respondent nos.4 to 8.

6. Grant of relief as claimed by the petitioners, including the petitioner no.2 and for whom this writ petition is decided, cannot firstly be granted because to do so will allow the petitioners to challenge the scheme

of unbundling of the DVB, and which has become final. Therefore, on this ground itself the writ petition must fail.

7. Also it is seen that in order to redress the grievances of the employees with respect to whether they should be transferred to government companies being the respondent nos. 4 and 5 herein or to private DISCOMs being the respondent nos. 6 to 8 herein, Rule 6(4) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 provided for a machinery of representations being made by the employees of reconsideration of their transfer to the unbundled companies. A grievance redressal committee was constituted on 14.8.2002 to look into the allocation of personnel under the order dated 15.11.2001 and the subsequent order dated 29.5.2002. Petitioners had filed applications to seek change of their employment from the private companies such as the respondent nos. 6 to 8, to respondent nos. 4 and 5 being the government companies. The representations of the petitioners were however rejected and petitioners' employments were directed to continue with the respondent nos. 6 to 8. Accordingly, it is seen that there was no valid reason found by the grievance redressal committee to change the principle of as is where is basis of the employees of the erstwhile DVB being the petitioners in this writ petition. Such orders of the grievance redressal committee have not been challenged by the petitioners, and thus

the same has become final, and for this second reason therefore, the writ petition would not be maintainable and is accordingly dismissed.

8. It is required to be noted that the entire scheme of as is where is basis of transfer of employees and the unbundling of DVB were based on various principles by taking into account the extant status of DVB at the time of unbundling including the various vacancies which had existed in the sanctioned posts of DVB. The unbundling scheme once implemented and which became final in terms of the orders dated 15.11.2001 and 29.5.2002, cannot now be changed on the ground of vacancies of Junior Engineers (Civil) existing in the unbundled DVB, and which were ordered to be filled up in terms of later advertisement dated 15.5.2002 issued by the respondent no.10. The scheme of unbundling of DVB being extremely complex and having wide and varied ramifications such as different aspects of transfer of business, undertakings, assets, liabilities etc of DVB, this Court cannot allow the present writ petition to succeed and which will have the effect of setting aside of the unbundling scheme of DVB which has achieved finality.

9. In view of the above discussion, petitioner no.2 cannot be granted the relief of the respondent no.10 not being allowed to fill the posts of Junior Engineers (Civil) pursuant to the advertisement dated 15.5.2002, including for the reasons that petitioners' representations have already been

rejected by the grievance redressal committee, the principle of as is where is basis as per the unbundled scheme has to be taken as final qua the petitioners, because the unbundling scheme was a result of complex intertwining of various issues with respect to employees of the unbundled DVB as also the entire scheme of transfer of business, undertakings, assets, liabilities, etc of unbundled DVB into two government companies and three private DISCOMs.

10. Writ petition is accordingly dismissed, leaving the parties to bear their own costs.

MARCH 07, 2017

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VALMIKI J. MEHTA, J