

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: August 03, 2017

Judgment delivered on: August 31, 2017

+ W.P.(C) 6203/2013

SUSHIL KUMAR KHANNA

..... Petitioner

Through: Mr.Vimal Wadhawan, Adv.

versus

BSES YAMUNA POWER LTD.

..... Respondent

Through: Mr. Sandeep Prabhakar, Mr. Amit Kumar,
Mr. Vikas Mehta and Mr. Pratap Bhera,
Advs.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

“ It is therefore, most humbly prayed to this Hon’ble Court:-

(i) To issue a writ of Mandamus directing the respondent to allow the Time Bound Promotion Scale of Executive Engineer to the petitioner w.e.f 26.9.2000 and the Scale of Superintending Engineer w.e.f. 26.9.2008 and other consequential benefits and interest as per law.

(ii) To allow the cost of this Writ Petition to the Petitioner and against the respondent.

(iii) To pass any other order(s) as deemed fit by this Hon’ble Court in the facts of the case.”

2. Some of the relevant facts are, the petitioner was appointed as Inspector in the erstwhile Delhi Electric Supply Undertaking (DESU) on September 26, 1981. DESU

later became Delhi Vidyut Board (DVB), which ultimately was restructured into number of separate entities. On July 23, 1997, Time Bound Promotion Scheme (TBPS) was introduced by the then DVB. According to the petitioner the Scheme contemplated, all employees shall be entitled to the first TBPS on completion of ten years of regular service and second TBPS on completion of further eight years of service. It is averred, on August 30, 1999 the posts of Inspector (Electrical) and Superintendent (Tech) were merged in one cadre and redesignated as Junior Engineer (JE) in the lower scale of pay. It is the case of the petitioner that on December 20, 1999 it was clarified that the third TBPS would be granted on the completion of further eight years of service after second TBPS i.e on completion of 26 years of service. It is averred, the petitioner was entitled to first TBPS on September 26, 1992; second TBPS on September 26, 2000 and third TBPS on September 26, 2008. It is also stated, he was granted the first TBPS w.e.f September 26, 1999; the second TBPS w.e.f August 24, 2007 and the third TBPS w.e.f November 01, 2010.

3. The petitioner retired on June 30, 2012. The petitioner has referred to the representations made by him and Association for grant of TBPS on the dates stated above.

4. It is the submission of Mr. Vimal Wadhawan learned counsel for the petitioner that the grant of TBPS as sought by the petitioner is no more a res-integra having been decided by this Court in the case of ***M.K. Saini v. Indraprastha Power Generation Company Ltd. W.P.(C) No. 2237/2002 decided on July 28, 2008***, which judgment has been upheld by the Division Bench of this Court in LPA No. 798/2008 on August 30,

2010. That apart, he states that the respondent is precluded from rearguing the issue, in view of the judgment/order referred above. That apart, it is his submission that one of the unbundled unit of DVB presently run by the Delhi Government has allowed second TBPS to its officers on completion of 18 years w.e.f August 24, 1999 and the employment/service conditions of the petitioner being similar to the employees, who have been transferred to DTL, the benefit as sought by the petitioner in this petition cannot be denied. That apart, he states, the respondent herein has on its own also granted the benefit of third TBPS of the level of Superintending Engineer to its officers on completion of 26 years. He also states, that even TPDDL on their own has granted third TBPS of the level of SE to its officers on the completion of 26 years.

5. According to him, the plea of the respondent on the issue of delay and laches is unsustainable, in view of the judgment of the Division Bench of this Court in the case of ***Rajendra Kumar Sharma v. NDPL and Another LPA No. 311/2013 and other connected LPAs decided on May 06, 2014***. That apart, it is his submission that this Court while issuing notice on the petition on September 30, 2013 has considered this aspect and has issued a limited notice to the claim of pensionary benefits from three years prior to the date of filing of the writ petition. Mr. Wadhawan states, that in fact the petitioner shall be entitled to the first TBPS on 26.9.1991, second TBPS on 26.9.1999 and the third TBPS on September 26, 2007. He would rely on the judgment of the Supreme Court in the case reported as ***AIR 1999 SC 598 Dwijen Chandra Sarkar and Anr. v. Union of India and Anr*** in support of his submissions.

6. On the other hand, Mr. Sandeep Prabhakar, learned counsel for the respondent

would submit that the present petition is barred by delay and laches. He states, the petitioner is praying for a direction to allow the first TBPS of Assistant Engineer w.e.f September 26, 1992 which was in fact granted to him w.e.f September 26, 1999. Therefore, as per the petition the cause of action arose for the first time to the petitioner on September 26, 1992. He would state, the petitioner has filed the present writ petition after a delay of 21 years from the date of grant of first TBPS i.e September 26, 1992. Similarly, he is praying for the grant of second TBPS w.e.f September 26, 2000 which was granted to him w.e.f August 24, 2007. Hence, there is a delay of 13 years from the claim of second TBPS from September 26, 2000. He states, the petitioner by not challenging the grant of first and second TBPS has waived his right to claim the third TBPS. He would state, without prejudice to the fact that the petitioner has no case on merits, in any event due to the lapse of 21 and 13 years, certain rights have accrued in favour of the respondent and therefore the present petition is not maintainable and is liable to be dismissed on grounds of delay and laches, waiver and estoppel. It is further his submission, though a limited notice confined to the entitlement of pensionary benefits prior to three years from the date of filing of the writ petition has been issued in the present petition, the petitioner is not entitled to any such relief. He states, the present case where the TBPS has been granted strictly as per the provisions in the TBPS Scheme does not come under the category of a continuing wrong or that it has caused any continuing source of injury. In fact, there is no wrong at all and the petitioner is trying to derive undue and alleged profit after decades by misinterpreting the clear provisions of the TBPS Scheme, which is not permissible under law. This would also

have the effect of reopening the issue and affecting the settled right of third parties and in any case the petitioner is not entitled to any relief.

7. Mr. Prabhakar also pleads mis-joinder of the necessary party. It is the submission of Mr. Prabhakar that a pension trust in the name of DVB, ETBF-2002 has been created by the Government of NCT of Delhi under which it is the responsibility of the pension trust to make the payment of pension, retiral benefits including superannuation pension for the employees who have already retired or who were going to retire from the services of the various DISCOMs on the roll of which their services were placed on their disposal on or after June 30, 2002 i.e the date of unbundling of the erstwhile DVB. As in the present case the petitioner retired from services of BYPL on June 30, 2012. Therefore, without admitting even assuming there is any alleged liability for the benefit for the past services the same would have to be paid by the pension trust created for the purpose by the GNCTD. Hence, the DVB, ETBF-2002 is a necessary party which is required to be impleaded. He would state, vide Office Order dated July 16, 1992, a Scheme for taking care of the higher scale in case the employee is not able to achieve the promotion was already existing prior to the TBPS Scheme dated July 23, 1997. As per this Scheme, the higher scale of pay after completion of 11 years of service in the grade to an employee based on overall performance was in existence. Thus, the employees who had completed 11 years of service in the cadre were given remuneration in the higher scale of pay of the next promotional post either on the first of April or on the first of October. He states, under this Scheme Inspectors with the pay scale of Rs. 1640-3275 were granted higher pay scale of Rs.1800-3500 attached with the post of

Superintendent (Technical) and the employees working as Superintendent (Technical) in the pay scale of Rs.1800-3500 were granted higher pay scale of Rs.2200-3900 attached with the post of AE. It is his submission, TBPS was issued vide Office Order dated July 23, 1997 w.e.f April 01, 1994. Under the first TBPS, Subordinate/Ministerial Staff Member or group A Officer became eligible under the Clause (i) of the Scheme for the benefit of next promotional scale provided they had put in the requisite service of 10 years on a regular basis as on April 01, 1994. Second TBPS- Subordinate/Ministerial Staff Member were required to complete further 8 years of service before they could avail the benefit of second TBPS i.e total 18 years of service from the induction of an officer at the base level was mandatorily required. However, for Class-I officers second TBPS scale was to be given to such of the officers who have been appointed on regular basis as per recruitment rules in their own right to the first promotional grade. Thus, the Class-I officer was eligible only once he was promoted to next promotional post as per the Recruitment Rules and had completed 18 years of service. A Class-I officer i.e AE and above was not entitled to second TBPS unless he had satisfied both these conditions. He state, clause- 6 of the Scheme, dealt with the employees who were initially below Class-I service i.e below the post of Assistant Engineer. It provided that once an employee enters into Class I service either on promotion or due to the benefit of first TBPS, he would be treated at par with the direct recruits in that grade for the purpose of benefit of next promotional scale. He would state, under the Office Order dated December 21, 1999, all the Ministerial/Subordinate Employees below the rank of Assistant Engineer were entitled to the third TBPS on

completion of 26 years of service at base level provided that the Ministerial/Subordinate Employee have been promoted as per Recruitment Rules in their own right to the second promotional post. Therefore, again both the conditions of firstly completing 26 years and secondly being promoted to the second promotional post had to be cumulatively satisfied to be entitled to the third TBPS. He would state, posts of Inspector and Superintendent (Technical) which were two separate cadres were merged as Junior Engineer (Group C) w.e.f August 24, 1999 with the pay scale of Rs.5500-9875. Prior to the date of merger, the Inspectors who were in the pay scale of Rs.5500-9875 were being given first TBPS of Rs.6000-10800 of the post of Superintendent (Technical) on completion of 10 years of regular service from the date of induction. However, Superintendent (Technical) pay scale of Rs.6000-10800 was subsequently revised to Rs.6500-10900. Second TBPS of the post of Assistant Engineer was given to them on completion of further 8 years of service from the date of grant of first TBPS. He states, as Inspectors belong to the staff category below the rank of Assistant Engineer were entitled for the third TBPS as per Office Order dated December 21, 1999 provided the employee has been promoted in his own right to the post of Assistant Engineer. As the post of Assistant Engineer is Class-I Post, the provisions of Clause 6 of the Office Order dated July 23, 1997 were applicable in this case. Thus, the Class I officer was eligible only once he was promoted to the next promotional post as per the Recruitment Rules and had completed 18 years of service. Otherwise, Class I officer was not entitled to the second TBPS.

8. He would state, vide Office Order dated October 19, 2000 on the date of merger

of the cadre, the Junior Engineers were granted time bound promotional scale of Asst. Engineers of Rs. 8000-13775 w.e.f August 24, 1999. Prior to the date of merger, the Inspectors who were in the pay scale of Superintendent (Technical) of Rs.6000-10800 were granted time bound promotional scale of Rs.8000-13775 of Assistant Engineer from the date of merger, w.e.f August 24, 1999. In Clause 4, it was clearly specified that third time bound promotional scale of Superintending Engineer would be given only to such of the Junior Engineers who had been appointed on regular basis as per the Recruitment Rules in their own right to the second promotional grade of Executive Engineer. He would draw my attention to para 5 of the said office order to contend that the recruitment rules, the channel of promotion of Inspector as Superintendent (Technical) to that of Assistant Engineer required modification and grant of scale of pay of Rs.8000-13775 will be given to the Junior Engineer as first time bound promotional scale which means Group C to Group A post in relaxation of the orders on time bound promotional scale subject to approval of Government of NCT of Delhi. He states, no approval in this regard has been obtained from the GNCTD. He would state, as per Office Order dated November 01, 2000 eligibility of second TBPS after date of merger i.e August 24, 1999 to scale of X-EN will be considered for Jr. Engineers (Degree/Diploma Holders) on completion of 18 years of qualified service or more as on August 24, 1999 and further satisfaction of the following two conditions:-

- (i) Only those Jr. Engineers who were already in the pay scale of AE prior to the date of merger;
- (ii) They fulfilled eligibility conditions for promotion to the next time scale of

Executive Engineers which is 8 years of service for Degree Holders and 11 years service for Diploma Holders.

9. He would state, the MoU dated June 01, 2010 was entered into between BSES Yamuna Power Ltd. (BYPL) and DESU Technical Staff Association (DTSA) which provides that all officers who have rendered 32 years of service from the date of their entry as Junior Engineer and were in possession of degree/diploma were to be considered for the grant of third TBPS of Rs.15800-21100. The employees who have completed 26 years of service from the date of their entry as Junior Engineer and are due to superannuate/retire in the calendar year shall also be considered for grant of third TBPS only up to three months before the date of their retirement or the date of completion of 26 years of service in the calendar year whichever is later. The employees who are senior to such employees, who are in the zone of consideration for grant of third TBPS and state above shall also be considered for the grant of third TBPS but in case if a junior got third TBPS on completion of 32 years of service is retiring his senior will not be eligible for third TBPS even if they have completed 26 years of service.

10. He would state, the judgment in the case of *M.K. Saini (supra)*, was passed against IPGCL which is separate organization and the present respondent was not a party. Further, it was a judgment in-personam where even the true and correct facts were not brought to the notice of the Court. Therefore, the said judgment cannot be automatically applied especially when it is totally contrary to the provisions of the TBPS Scheme. The Scheme for granting higher scale vide Office Order dated July 16,

1992 w.e.f October 01, 1992 was not brought to the notice of the Court. It was not considered that the Inspectors and Superintendent (Technical) were getting the benefit of their seniority as per the Seniority List and they were considered for promotion only as per their rank in the Seniority List as per the R & P Regulations. The policy of TBPS had come into force w.e.f April 01, 1994 only in terms of Office Order dated July 23, 1997, however if the interpretation of automatic applicability after completion of 10, 8 and 8 years is accepted it would result in it being effective prior to April 01, 1994 i.e against the express provision of the Scheme. Also Clause 6 of the Scheme dated July 23, 1997 was not considered. Further, it is totally incorrect that an Inspector with two years service would be equated with a Superintendent (T) who had completed 15 years of service. In fact only those Inspectors who were in the pay scale of Superintendent (Technical) were granted TBPS of AE as on the date of merger. Hence, they had to complete at least 10 years of service as Inspectors. Further, Para B of the Office Order dated November 01, 2000 was not considered. The judgment in *M.K. Saini (supra)* was against IPGCL and the respondents were neither parties nor were ever given any opportunity to present true and correct facts. Hence, the said judgment which is a judgment in personam cannot be binding on the respondents.

11. He would state, the petitioner is basing his claim on the Office Orders dated July 23, 1997 and December 21, 1999. However, the Office Order dated July 23, 1997 provides that second TBPS with respect to Class I officer would be subject to the condition that the said officer has been appointed on regular basis as per Recruitment Rules as per his own right to the first promotional grade. The petitioner was appointed

to the post of Inspector on September 26, 1981 and promoted to Superintendent (Technical) on October 22, 1992. He was granted the TBPS to the post of Assistant Engineer, which is Class I service w.e.f September 26, 1999. Accordingly, as per clause 6 of the Office Order dated July 23, 1999 he was to be treated at par with direct recruits and was entitled to the next TBPS of XEN after completion of 10 years of service from the date of grant of TBPS of the post of AE. However, by virtue of the Office Order dated October 12, 2007 it was decided that such Assistant Engineer, who have been granted first TBPS of Rs.8000-13775 after completion of first 10 years of service be allowed the second TBPS of Rs.12500-19100 on completion of 8 years of service from the date of grant of first TBPS. He states, this Office Order dated March 28, 2007 came into force on January 01, 2007.

12. He states, thereafter, another MoU dated June 01, 2010 was entered into between BYPL and DTSA. By virtue of this MoU all such officers who have rendered 32 years of service from the date of their entry as Jr. Engineer and are in possession of degree/diploma were to be considered for the grant of third TBPS of Rs.15800-21100. The employees who have completed 26 years of service from the date of their entry as Jr. Engineer and are due to superannuate/retire in the calendar year they shall also be considered for the grant of third TBPS only up to three months from the date of their retirement or the date of completing 26 years of service in the calendar year whichever is later. The employees who are senior to such employees who are in the zone of consideration shall also be considered for the grant of third TBPS. He states, based on this MoU, the petitioner was also granted the third TBPS of Rs.15800-21100 of the post

of SE re-designated as Assistant Vice President w.e.f November 01, 2010 vide Office Order dated November 16, 2010. In the last, it is his submission that the petitioner has already been getting the benefits of the first, second and third TBPS as and when the same fell due. Hence, the writ petition is totally misconceived and is liable to be dismissed.

13. Having heard the learned counsel for the parties and considered the aforesaid submissions including the synopsis of the respondent, insofar as the plea of Mr. Prabhakar that the petition is hit by delay and laches is concerned, the same is not appealing in view of the limited notice issued by this Court on September 30, 2013, which has attained finality in the absence of any challenge and also in view of the order of the Division Bench in ***Rajendra Kumar Sharma (surpa)***, wherein the Division Bench has set aside the orders under appeal whereby the petitions were dismissed on the ground of delay and laches. I may state here, that there are other batch of appeals being ***LPA Nos. 308-10 of 2013 and connected appeals Deepak Mohan Sethi v. BSES Rajdhani Power Ltd. and Another decided on May 06, 2014***, which appeals were dismissed and the judgment of the learned Single Judge was upheld as those writ petitions/appeals were filed by persons who had taken voluntary retirement from the DISCOMs between 2003-2006. In this petition, the petitioner had not taken voluntary retirement but has superannuated in normal course and as such, shall be covered by the judgment of the Division Bench in the case of ***Rajendra Kumar Sharma (supra)***. In view of the above, the plea of Mr. Prabhakar for dismissal of the writ petition on the ground of delay and laches is rejected.

14. Now the issue, which arises is, whether the petitioner is entitled to the benefit of the first, second and third TBPS as submitted by Mr. Wadhawan after completion of ten years of service, further eight years of service (after 18 years), and further eight years of service (after 26 years). Mr. Wadhawan states, the petitioner being similarly placed like Mr. M.K. Saini whose writ petition was allowed by this Court on July 28, 2008 and upheld by the Division Bench, the benefit as given to him need to be given to the petitioner.

15. On the other hand, it was the endeavor of Mr. Prabhakar to submit that the circulars issued by the erstwhile DVB, does not entitle the petitioner the TBPS on completion of 10 years of service from the date of his appointment. In other words, it has been his endeavor to reargue the matter, inasmuch as in terms of the circulars issued by the erstwhile DVB, the petitioner has been rightly granted the first, second and third TBPS on September 26, 1999, September 26, 2007 and November 01, 2010. The submission of Mr. Prabhakar is not appealing. Mr. Wadhawan is right in contending that the issue is no more res-integra in view of the judgment of this Court in **M.K. Saini** (*supra*), wherein this Court was considering the case of a writ petitioner, who was appointed on November 16, 1991 as Inspector (Electrical) in the erstwhile DESU. He was promoted as Superintendent (Technical) w.e.f November 13, 1992. The Court referred to various orders issued by the respondents including Resolution dated August 24, 1999. The Court finally came to a conclusion in paras 9, 10, 11, 12 and 13, which I reproduce as under:-

“9. The narration of the facts shows that the Office Order dated 30th August 1999 brought about a substantial change inasmuch as the

promotional post of JE was merged with two posts subordinate to it i.e. Superintendent (T) and Inspector (E). In other words those, like the petitioner, who were promoted as Superintendent (T) after serving 11 years in the post of Inspector (E) had to share the same designation of JE with those who were at least 10 years junior to them. It was little consolation that in the combined seniority lists of all JEs the petitioner may have figured higher than that some of those Inspectors who were designated as JEs very shortly after being appointed as Inspectors (E) or Superintendent (Tech.) If one strictly went by the Office Order dated 1st November 2000 all of them would become eligible for the second TBPS to the scale of EE after completing eight years of service as AE. The long years of service put in by a person at the intermediate level [like Superintendent (Tech)] prior to the date of the merger would get wiped out. In other words a person who had served for more than 15 years as on the date of the merger would suddenly be equated with the person who had not even completed two years of service as on that date.

10. The Office Order dated 1st November 2000 was no doubt intended to deal with the problem of stagnation and grant of time bound promotional scale at the next levels. The Office Order dated 30th August 1999 nevertheless made it clear that the present incumbents against the posts of Superintendent be allowed to retain their existing scale as personal to them till they vacate the posts and further that the benefits/allowance wherever attached with the posts of Superintendent/Inspector be attached with the post of Junior Engineer too. Thus the intention was not to wipe out the long years of service put in by, say, the Superintendent (Tech) and particularly the benefits attaching to that post prior to the date of merger of the promotion.

11. It appears that the re-designation had to be effective from the date when the person so appointed as Inspector (E) and the number of years of service that he had to complete for being granted the second TBPS scale,

counted from that date. That is the only way in which the benefits attaching to the post, either of Inspector (E) or Superintendent (T), prior to the date of the merger would be able to be preserved. To this Court it appears that this is the way in which the Office Orders dated 30th August 1999 and 1st November 2000 can be reconciled so that their combined working is not rendered arbitrary or unreasonable. If so rationalized, the petitioner would have been eligible for the pay scale of AE under the first TBPS on completion of 10 years as JE, which would be 16th November 1991, a date much prior to 24th August 1999, the date of the merger. The petitioner has been granted the pay scale of AE on 24th August 1999 although he was eligible to draw that pay scale earlier to that date i.e. with effect from 16th November 1991. Therefore, for all practical purposes, he should be taken to have satisfied the second condition contained in the Office Order dated 1st November 2000, viz., that he was drawing the scale of AE prior to 24th August 1999. However, this would not entitle the petitioner to claim any arrears of the pay-scale of AE from 16th November 1991 till 24th August 1999.

12. As far as the condition regarding completion of 18 years of service as JE is concerned, if it is counted in the petitioner's case from the effective date of his re-designation as JE i.e. 1st November 1981 then he satisfies this condition on 16th November 1999. Therefore, he should be eligible for grant of pay scale of EE with effect from that date.

13. Accordingly, the writ petition is allowed. The respondent is directed to grant the petitioner the pay scale of EE with effect from 16th November 1999. The consequential benefits will be worked out and the arrears of pay will be paid to the petitioner by the respondent within eight weeks from today."

16. This judgment was taken in Appeal before the Division Bench in LPA No. 798/2008, wherein the Division Bench has stated as under:-

“We have already heard the arguments on the question which arose in this appeal while passing the orders in CM No. 2395/09.

After going through the orders of the learned Single Judge and reason contained therein, we are of the opinion that the learned Single Judge had rightly allowed the benefit of the said Scheme to the respondent herein. The learned counsel for the respondent has also produced copy of the order dated 27.07.2010 passed by Delhi Transco Ltd. As per this order, those employees of Delhi Vidyut Board whose services have been transferred to Delhi erstwhile Delhi Vidyut Board employees have been deployed are accorded the said Time Bound Scheme, we see no reason that why the appellant should not be given benefits thereof. Therefore, we do not find any merit in this appeal and thus the same is dismissed.”

17. Suffice to state, a perusal of the order of the Division Bench in LPA No. 798/2008 would reveal that the counsel for the respondent i.e of M.K. Saini had produced before the Court an order dated July 27, 2010 passed by the Delhi Transco Ltd whereby the employees who have been transferred to Delhi Transco Ltd have been accorded the benefit of the Scheme. In other words, the Court dismissed the appeal noting the fact that the respondent therein was entitled to parity qua the similarly placed employees in DTL. There is no dispute that the said order qua Mr. Saini stands implemented. If that be so, then the petitioner being similarly placed like M.K. Saini is also entitled to the same benefits of TBPS in the manner granted to M.K. Saini in the judgment dated July 28, 2008 in W.P.(C) 2237/2002. This I say so, because the judgment dated July 28, 2008 was rendered on an interpretation of circulars governing TBPS. In that sense, the judgment in the case of **M.K. Saini (supra)** dated July 28, 2008 is a judgment not in-personam but a judgment in-rem as that is an adjudication on a particular subject matter (grant of TBPS), rather than an adjudication between the parties claiming personal benefits/rights and as such, is binding in a subsequent

proceeding, though the parties are not the same. That apart, on parity with employees of DTL, the petitioner shall be entitled to the benefits.

18. That apart, it is a settled law of the Supreme Court that if an issue stood decided, the benefit thereof must be given to similarly placed persons. In this regard, I may refer to the judgment of the Constitution Bench of the Supreme Court reported as **(1997) 6 SCC 721 K.C. Sharma and Ors. v. Union of India and Ors**, wherein the appellants had challenged the judgment of the Principal Bench of the Central Administrative Tribunal dated July 25, 1994 in OA 774/1994 on the ground that the OA was barred by limitation. The appellants were employed as guards in the Northern Railway and they retired between the year 1980-1988. They felt aggrieved by the Notification dated December 05, 1988 whereby Rule 2544 of the Indian Railways Establishment Code was amended and for the purpose of calculation of average emoluments, the maximum limit in respect of running allowances was reduced from 75% to 45% in respect of the period January 01, 1973 to March 31, 1979 and to 55% for the period April 01, 1979 onwards.

19. The validity of the retrospective amendments introduced vide Notification dated December 05, 1988 was considered by the Full Bench of the Tribunal and the said Notification was held to be invalid. Since the appellants were affected by the retrospective amendments, they sought the benefit of the decision of the Full Bench of the Tribunal. The Tribunal dismissed the OA. The Supreme Court held, it was a fit case for the Tribunal to condone the delay in filing the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The case in hand is identical on facts and the judgment of this Court in **M.K.**

Saini (supra) as upheld by the Division Bench should have been implemented in favour of the petitioner herein.

20. Mr. Prabhakar, during the course of his submissions, had relied upon the judgment of the Supreme Court in the case of *Director of Technical Education and Anr. v. Smt. K. Sita Devi AIR 1991 SC 308* in support of his contention that the judgment in *M.K. Saini (supra)* is not binding on the respondent herein as the respondent was not a party in those proceeding. The judgment as relied upon by Mr. Prabhakar is not applicable to the facts of this case, inasmuch as in the said case, the respondent a lady Engineer in the State of Andhra Pradesh while entering into service indicated her date of birth to be October 19, 1929. She filed an Original Suit No. 309/1979 in the Civil Court for alteration of her Date of Birth from October 19, 1929 to August 21, 1933 impleading the Andhra University as defendant and obtained a decree on October 21, 1980. Pursuant thereto, the Andhra University issued a fresh Matriculation Certificate to her in which here Date of Birth was shown as August 21, 1933. On that basis, she applied to the State for change of her Date of Birth. Such application was rejected. Her petition before the Andhra Pradesh Administrative Tribunal was allowed. The Supreme Court held that a decree without the State being a party is not binding on the employer in the matter of determination of Date of Birth. The judgment so relied upon is relatable to an issue regarding change of Date of Birth for which a decree was obtained by the plaintiff/respondent without making the employer as a party. The decree was binding on the parties to the suit in view of the fact that the claim of the plaintiff/respondent was personal in nature. In the present

case, concedingly the respondent was not a party in the petition filed by M.K. Saini but on an interpretation of the circulars, which have also been relied upon by the petitioner in this case, if a judgment has been rendered, surely the benefit of such an interpretation need to be given to the petitioner in the case in hand. Moreover, M.K. Saini and the petitioner herein have started their service in DESU/DVB and the relief has been granted to M.K. Saini from the date he was in DESU/DVB. The relief as being sought by the petitioner, also from the date when the petitioner was in DESU/DVB with identical service conditions. The submission of Mr. Prabhakar that the benefit of the judgment of *M.K. Saini (supra)* if granted, would have serious consequences is concerned, the same is also not appealing, in view of my conclusion above and one of the DISCOM namely Delhi Transco Ltd has given the benefit(s) to its employees. Moreover, the actual benefits have been limited to three years prior to the date of filing of the writ petition. The plea of misjoinder of parties is concerned, the substantive issue is for grant of benefit of TBPS. The pension/retiral benefits are consequential, which would automatically need to be revised. The Trust's presence in the proceedings to decide the substantive issue is not required. The plea is rejected.

21. The petitioner in this case shall be entitled to the benefits in the same manner granted in favour of M.K. Saini in his case, inasmuch as his first TBPS shall relate back to September 26, 1991; second TBPS w.e.f September 26, 1999; and third TBPS w.e.f. September 26, 2007 respectively. As this Court had issued notice limited to the claim of pensionary benefits from three years preceding the filing of this petition and the petition having been filed on September 13, 2013, the respondents are directed to fix the

pay of the petitioner on September 26, 1991 (first TBPS); September 26, 1999 (second TBPS) and September 26, 2007 (third TBPS) notionally and the actual arrears thereof shall be granted w.e.f September 13, 2010 (three years preceding the date of filing of the writ petition). The pension/retiral benefits shall be refixed and arrears thereof shall be granted to the petitioner. The aforesaid direction be complied with within three months from the date of receipt of copy of this Order. No costs.

V. KAMESWAR RAO, J

AUGUST 31, 2017

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