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

\+ W.P.(C) 4437/2014

MAMTA ..... Petitioner

Through : Mr. Chittranjan Hatti, Advocate.

versus

DELHI TRANSCO LTD. & ANR. ..... Respondents

Through : Ms. Kanika Sinha, Mr.Gaurav Gupta, Manager (L) DTC with Mr.Ashok Kumar, AM (HR).

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **26.10.2018**

1. Vide the present writ petition, the petitioner seeks direction to the respondent to grant family pension to the divorcee daughter of the deceased employee of Delhi Transco Limited/Respondent No. 1.

2. The petitioner has relied upon Office Memorandum dated 25.08.2014 issued by Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners of Welfare, whereby, the age bar of 25 years in respect of divorced/widowed daughter of an employee for grant of family pension was removed.

3. Learned counsel appearing on behalf of respondent No. 1 submits that in case of ***Rajeev Kumar Garg v. BSES Rajdhani Power Limited*** in ***W.P.(C) 1828/2013*** in an order dated 20.03.2013, this court has held that the circulars of the Government would be applicable to the employer as well as

to the employee to the extent of unbundling of DVB so that the subsequent changes in policy do not adversely affect the workmen. It is also held that any subsequent notifications issued by the Government of India would not automatically apply to the employee of the private organization unless, the same have been duly adopted by the private organization.

4. Learned counsel for the respondents submits that the Office Memorandum dated 25.08.2014 relied upon by the petitioner giving the benefit to the divorced/widowed daughter of the deceased employee is not applicable on the date of unbundling of the DVB, therefore, till such time, this benefit is accepted by the current employer, the successor being the petitioner would not have the right to seek implementation of the same.

5. Whether the rules and regulations of the Family Pension and other benefits are applicable on the private companies, this issue came up before this court for adjudication in ***O.P. Gupta v. Delhi Vidyut Board & Anr.*** in ***C.W.P 4230/1990***, wherein, this court on 03.03.2000has held as under :

> ***"7. Before appreciating rival contentions of the parties it may be appropriate to reproduce relevant portions of Rule 9 of the Pension Rules :***
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> ***9. Right of President to withhold or withdraw pension :***
>
> ***[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity***

of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

There is a reference to President of India who has right to withhold or withdraw pension or part thereof. Proviso to this Rule further states that UPSC shall be consulted before any final order is passed. However, the question is as to whether President of India has to pass the order in the case of an employee of DVB also and UPSC has to be consulted. For this purpose one may peruse provisions of Rule 2 dealing with application of Pension Rules to find that these rules shall apply to Government servant including civilian Government servants in defence services appointed to civil services, etc. and exclude certain categories of employees. In the case of Government employees

who are holders of civil posts, President of India as the Executive Head is the final authority. The service conditions of such employees are governed by Articles 309 to 311 of the Constitution of India. It is for this reason that the President of India is the authority who has to pass the final order under Rule 9, as prescribed, in respect of Government employees and holders of civil posts. These Pension Rules are not automatically applicable to employees of DVB and they are adopted mutandi mutandis. The President of India is not the employer of the employees of DVB nor these employees are holder of civil posts. They are admittedly not governed by Articles 309 of the Constitution of India. DVB is a body constituted and being an autonomous body it has to act according to its own rules, etc. As the Board is the supreme authority, it is the Board which can pass necessary orders under Rule 9 of the Pension Rules in the case of employees of DVB. The reference 'President' is to be substituted by 'Board' and 'Government' is to be substituted by DVB to give proper meaning of such Rules insofar as they become applicable for DVB employees. For same reason it is not necessary that there has to be any consultation with UPSC before final orders are passed by the Board. Therefore, I

find no merit in the contentions of the petitioner that there was violation of Rule 9 in not forwarding the case to President of India or not consulting UPSC."

6. Moreover, in case of ***Rajeev Kumar Garg v. BSES Rajdhani Power Limited*** in ***W.P.(C) 1828/2013*** in the order dated 20.03.2013, this court held that the Government of India may keep on modifying its rules subsequent to unbundling of DVB, however, it will not mean that automatically the amendments to the rules or issuing of circulars by the Union of India subsequent to the unbundling will also automatically apply to employees of a private organization such as the respondent.

7. In the present case, it is not in dispute that the unbundling of the respondent No. 1 took place in the year 2002 and the amendment came into being on 25.08.2004 and the same has not been adopted by the respondent.

8. In view of the settled law that since the amendment has not been accepted or adopted by the respondents, therefore, I am of the considered view that the petitioner cannot have the benefit of the same.

9. Finding no merit in the writ petition, the same is, accordingly, dismissed.

SURESH KUMAR KAIT, J

OCTOBER 26, 2018
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