47

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

16 to 47

\+ **LPA 200/2017 & CM 15845/2017**

NARENDRA KUMAR AGGARWAL ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR. ..... Respondents

Through: Mr Ashim Vaccher, Advocate for NTPC.

\+ **LPA 223/2017**

MAHENDRA PRASAD ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR. ..... Respondents

Through: Mr Puneet Taneja, Ms Laxmi Kumar, Advocates.

\+ **LPA 224/2017**

KAMAL SHER SINGH AJJAN ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS. ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocate for NTPC.

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48

Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 226/2017**

M K SAMUEL KUTTY ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS. ... Respondents

Through: Ms Megha Katari and Mr K. Srivastava, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 227/2017**

RAMPAL ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS. ..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 229/2017**

SPS CHAUHAN ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist,

45

Advocates.

versus

NATIONAL THERMAL POWER CORPORATION
LTD & ORS ..... Respondents

Through: Mr Ashim Vaccher, Advocate for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

+ **LPA 230/2017**

RAM NARAYAN CHOUDHARY ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION
LTD & ANR. ..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.

+ **LPA 231/2017**

ASHOK KUMAR GUPTA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION
LTD & ORS. ..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.

50

Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 232/2017**

RAKESH KUMAR GARG ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS. ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocate for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 233/2017**

BALDEV RAJ MADAN ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates.

\+ **LPA 234/2017**

DHARAM PAL GUPTA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta,

51

Advocates for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 235/2017**

SUJIT KUMAR DATTA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS ..... Respondents

Through: Ms Megha Katari and Mr K. Srivastava, Advocates for R-1.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 236/2017**

SAROJ KUMAR DE ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS ..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 237/2017**

SHREE NARAIN SINGH ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

58

NATIONAL THERMAL POWER CORPORATION LTD & ANR
..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates.

\+ **LPA 238/2017**

DEV PRAKASH SINGH CHAUHAN ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS
..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 239/2017**

HARISH CHANDER GOEL ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS
..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates.

\+ **LPA 240/2017**

KULDIP KUMAR DADA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS
..... Respondents

53

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 241/2017**

JALESHWAR NATH SINHA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ANR ..... Respondents

Through: Mr Ashim Vaccher, Advocate for NTPC.

\+ **LPA 242/2017**

DEEPAK KUMAR GOEL ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates.

\+ **LPA 243/2017**

SHEO NARAYAN RAM ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates.

57

\+ **LPA 244/2017**

SG SHARMA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR ..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.

\+ **LPA 251/2017**

K K VARSHNEY ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 252/2017**

MAN MOHAN SINGH ARORA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for NTPC.

55

\+ **LPA 253/2017**

ADITYA N SHUKLA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS ..... Respondents

Through: Mr Ashim Vaccher, Advocate for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 254/2017**

VINOD PURI ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ANR ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 255/2017**

HARI DUTT SHARMA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS ..... Respondents

Through: Mr Ashim Vaccher, Advocate for NTPC.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 256/2017**

MARKANDEY ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS ..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 257/2017**

SATYENDRA NATH PANDEY ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS ..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for R-1
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 258/2017**

PREM KRISHNA ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS
..... Respondents

Through: Mr Adarsh Tripathi and Mr Gaurav Wadhwa, Advocates for R-1.
Mr I.S. Alag, Senior Advocate with Mr R.S. Bisht, Advocates for R-2.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 259/2017**

IQBAL SINGH PARSWAL ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS
..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates for NTPC.

\+ **LPA 260/2017**

SHIVA PUJAN LAL ..... Appellant

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION LTD & ORS
..... Respondents

Through: Mr Bharat Sarpal and Ms Isha Gupta, Advocates.
Mr Ruchir Bhatia, Senior Standing Counsel for Income Tax Department.

\+ **LPA 261/2017 & CM APPLs. 42207-42208/2018**

RAJVEER SHARMA ..... Appellant

58

Through: Mr S. Janani and Ms Shruti Bist, Advocates.

versus

NATIONAL THERMAL POWER CORPORATION & ORS

..... Respondents

Through: Mr Puneet Taneja, Ms Laxmi Kumari and Ms Shaheen, Advocates for R-1/NTPC.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER

% **01.11.2018**

Dr. S. Muralidhar, J.:

1. These appeals are directed against the judgment of the learned Single Judge dated 28th February, 2017 holding the writ petitions not to be maintainable against the Respondent No.1 – National Thermal Power Corporation Limited ('NTPC') as well as the Respondent No.2, the NTPC Pension Trust ('the Trust'). The prayer in the petitions was that the reduction in the pension paid to the Petitioners, were all former employees of the NTPC with effect from 2nd March, 2003 was not justified and that they all shall be restored to pension payable as on date.

2. As part of the record before the learned Single Judge, was an order passed by the Division Bench of the Allahabad High Court on 17th December, 2009 in W. P (Service Bench) No.740 of 2004, which considered the case of one Shri Mohd. Yunis, who had recently retired. He too was aggrieved by the revised rules/guidelines notified on 11th February, 2003 whereby the amount

59

of pension payable was reduced. In that writ petition, the preliminary objection raised by both the NTPC and NTPC Trust, which was noted in paragraph 2 as under:

> "A preliminary objection has been raised by the respondent's counsel with regard to maintainability of writ petition. The NTPC Pension Trust has been constituted by the employees of the NTPC to regulate pensionary benefit. The employees of NTPC are the contributors of the Trust."

3. The Division Bench of the Allahabad High Court in the aforementioned judgment in paragraph 8 dealt with the above preliminary objection as under:

> "Needless to say that petitioner is entitled for payment of pension on account of ex-employee of the NTPC, which is admittedly a State under Article 12 of the Constitution of India. Accordingly, we are of the view that writ petition is. maintainable for the purpose to issue a writ in the nature of mandamus.

4. The Division Bench of the Allahabad High Court then dealt with the merits and held as under:

> "9. It appears that petitioner shall be entitled for payment of regular pension or other post retiral dues in accordance to provision existing on the date of retirement. Any change made in the Rules or Regulations shall not affect the petitioner's right with regard to post retiral dues which was payable at the time of retirement.
>
> 10.....
>
> 11. We, therefore, mould the relief and allow the writ petition. A Writ in the nature of mandamus is issued directing the opposite parties to ensure the payment of pension/post retiral dues in terms of Rules/guidelines existing on the petitioner's

60

date of superannuation.

Let appropriate decision be taken by the respondents in accordance to rules expeditiously and preferably within a period of four months from the date of receipt of a certified copy of this order."

5. Aggrieved by the above order, the NTPC went in appeal before the Supreme Court. In fact, there were two civil appeals. The Civil Appeal No. 8064 of 2011 was filed by the Secretary, NTPC Pension Trust and Civil Appeal No.8052 of 2011 was by NTPC. Both appeals were finally heard by the Supreme Court on 9th December, 2015 and the order passed there reads as under:

> "Even before this Court, learned counsel for the appellant - NTPC , Pension Trust continues to press its claim to determine the pension of the private respondent on the basis of rules/guidelines notified on 03.02.2003. This submission has been advanced in spite of the acknowledgment, that the respondent attained the age of superannuation, and was accordingly retired from the services of the NTPC with effect from 31.07.2002.
>
> We are satisfied, that the retiral benefits of the private respondent stood crystallized on the date of his retirement, namely, 31.07.2002. Any rules/guidelines notified thereafter including the guidelines dated 03.02.2003 could not have been made applicable to the private respondent."Rest of the Order shall remain unchanged."

6. In effect therefore, the judgement of the Allahabad High Court was affirmed by the Supreme Court and it was clarified any rules / guidelines notified after the date of retirement of an employee could not be made applicable to such employees. In the case of Shri Mohd. Yunis, it meant that

the guidelines dated 3rd February, 2003 would not apply to him and he would continue to draw pension in terms of the Rules as they stood at the time of his retirement.

7. With the order passed by the Supreme Court not being a single line order of dismissal, but an order on merits after granting leave in the SLPs filed both by the NTPC and NTPC Trust, the aforementioned order of the Supreme Court was binding on both the NTPC and the NTPC Pension Trust.

8. It was urged by Mr. Alag, learned senior counsel of NTPC and NTPC Trust before us that in paragraph 8 of the judgement of the Division Bench of the Allahabad High Court, only the issue of the maintainability of the writ petitions against NTPC was considered and not against the NTPC Pension Trust.

9. That plea is no longer available to be urged in view of the subsequent reasoned order of the Supreme Court, with which the order of the Division Bench of the Allahabad High Court has merged. Therefore, the position that emerges is that there was a complete affirmation by the Supreme Court of the decision of the Allahabad High Court which implicitly resulted in negativing the objection of both the NTPC and the NTPC Pension Trust regarding maintainability of the writ petition against them.

10.The above facts, for some reasons, not noticed anywhere in the impugned judgment of the learned Single Judge. They were was relevant to the issue before the learned Single Judge particularly since the above orders

68

concerned the NTPC and the NTPC Pension Trust. The issue also was identical, viz., the maintainability of the petitions and the denial of pension in terms of the guidelines that existed prior to 3rd June, 2003 to those employees of the NTPC who had retired prior thereto. Therefore, the above orders could not but have been noticed while deciding the writ petitions.

11. Consequently, the Court is of the view that in light of the judgment dated 16th December, 2015 of the Supreme Court, it is no longer open to either NTPC or the NTPC Pension Trust to contend that on the issue of grant of pension, a writ petition against either of them is not maintainable.

12. As regards 7 of the Appellants before this Court i.e. the Appellants in LPA Nos. LPA Nos. 200, 229, 230, 233, 241, 242 and 253 of 2017, the Court sees no warrant for a treatment different from that of Mohd. Yunis, who also retired prior to 3rd February, 2003, as of each of the above seven Appellants. Their appeals deserve to be allowed as do their writ petitions before the learned Single Judge.

13. At this stage, a vehement opposition is raised on behalf of the Respondents that these seven Appellants came to the Court very late and, therefore, the writ petitions were anyway liable to be dismissed on account of delay and laches. Admittedly, the writ petitions were filed in the year 2015. It is only on 16th December, 2015, the legal position of the correctness of the decision of the Allahabad High Court in the case of Shri Mohd. Yunis got crystallized with the Supreme Court affirming the said decision by its speaking judgment. If the aforementioned Appellants awaited the outcome

63

of the appeals in the Supreme Court, they cannot be faulted for waiting till 2015 to file the aforementioned writ petitions before this Court. Consequently, the Court negatives the plea of the Respondents that the writ petitions were barred by delay and laches.

14. What should now happen to the other appeals by those who may have retired after 3rd February, 2003 and their petitions were dismissed by the learned Single Judge on the ground of maintainability? As far as the Appellants in LPAs other than LPA Nos. 200, 229, 230, 233, 241, 242 and 253 of 2017, these are by those former employees of the NTPC, who retired after 3rd February ,2003. Their writ petitions, for the aforementioned reasons, could not have been rejected by the learned Single Judge on the ground of maintainability. Their case on merits ought to have been examined. Therefore, the Court restores their writ petitions to the Single Judge for a decision afresh on merits.

15. This Court clarifies that has not expressed any opinion on the merits of the claims of the aforementioned petitioners who have retired after 3rd February 2003. The contentions also of the NTPC and the NTPC Pension Trust in opposition to such claims on merits are also left open to be decided by the learned Single Judge. Therefore, leaving all these questions regarding the merits of those writ petitions open to be urged before the learned Single Judge, the Court sets aside the impugned judgment of the learned Single Judge and places the writ petitions filed by these Appellants (i.e. the Appellants in the LPAs other than LPA Nos. 200, 229, 230, 233, 241, 242, 253/2017) again before the learned Single Judge for a decision on merits.

The said writ petitions of these Appellants will be placed before the learned Single Judge on 4th December 2018.

16. As far as the seven Appellants who have succeeded before this Court on merits as well, viz., the Appellants in LPA Nos. 200, 229, 230, 233, 241, 242, 253 of 2017, their cases will be treated at par with that of Mohd. Yunis and the arrears of pension shall be paid to each of them, together with interest if any as paid to Shri Mohd. Yunis, within a period of eight weeks from today.

17. The appeals and all pending applications are disposed of in the above terms.

S.MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 01, 2018
js