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

Date of decision: 09.11.2022

\+ W.P.(C) 2020/2020
PRADEEP KUMAR ROHATGI

..... Petitioner

Through: Mr. Om Prakash Gupta, Adv.

versus

NTPC. LTD. AND ORS.

..... Respondents

Through: Mr. Puneet Taneja with Ms. Laxmi Kumari and Mr. Manmohan Singh Narula, Advs. for R-1/NTPC.
Mr. Vinay Sabharwal, Adv. for R-3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

<u>REKHA PALLI, J (ORAL)</u>

1. The petitioner, who was an employee of the National Thermal Power Corporation (NTPC)/respondent no. 1 and was at the specific request of Indraprastha Power Generation Co. Ltd./respondent no. 3 sent on deputation for the period between 02.04.2009 to 30.05.2012 to the respondent no. 3, has approached this Court seeking the following reliefs:

> *"A. Issue a writ or appropriate order to the respondents to remit the employer's contribution jointly and severally for the period April 2009 to the May 2012 spent on deputation with the R3 towards the pension fund along with interest and direct the Respondent No.1 to fix the full pension accordingly along with interest thereon from due date.*
> *B. Directions against the Respondents to pay exemplary cost as deemed fit and proper, for the violation of rights of*

> *the Petitioner for causing adverse disability and distress thereby jeopardizing life & liberty of the Petitioner and for passing directions against Respondent to take action against the Officers who are responsible for causing arbitrary, illegal and unjust injuries to the Petitioner."*

2. Learned counsel for the petitioner submits that after the petitioner superannuated on 30.09.2015, though he has been paid all his other terminal benefits by his employer/respondent no. 1, since employer's contribution towards his pension fund have not been made either by respondent no. 1 or by respondent no. 3 for the period between 02.04.2009 and 30.05.2012, when he was serving as a deputationist with respondent no. 3, he is receiving less pension for want of employer's contribution to the pension fund for the said period. Consequently, the petitioner is receiving lesser pension than his actual entitlement and is suffering recurring loss every month.

3. The petition is vehemently opposed by both respondent no. 1 as well as respondent no. 3 who seek to hold each other responsible for the employer's share of contribution towards the petitioner's pension fund for the said period. Mr. Taneja, learned counsel for respondent no. 1 would contend that the respondent no. 3 having specifically requested for sending the petitioner on deputation to respondent no. 3, it is the responsibility of respondent no. 3 to make all contributions towards employer's share of the petitioner's pension fund for the said period, and that too when it was a specific term and condition of deputation that the borrowing department will be responsible for making all contributions towards all funds relating to the petitioner including his pension fund. On the other hand, Mr. Sabharwal, learned counsel for respondent no. 3 submits that the pension scheme having been introduced only in the year 2013, i.e., after the petitioner stood

repatriated to respondent no. 1, the respondent no. 3 cannot be held liable to make contributions to the pension scheme which was admittedly introduced only after the period of deputation was over. He submits that the respondent no. 3 was obliged to comply only with the conditions of the deputation as existed on the date of the petitioner joining respondent no. 3 on deputation, with which terms the said respondent has fully complied. He therefore, prays that respondent no. 1 be directed to make the contributions to the pension fund of the petitioner for the period between 02.04.2009 to 30.05.2012.

4. Having considered the rival submissions of learned counsel for the parties, this Court is constrained to observe that the respondent no. 1 and respondent no. 3, the two Public Sector Undertakings, one under the Ministry of Power, Union of India and the other under the Department of Power, Government of NCT of Delhi, are seeking to blame each-other for not making the contribution of employer's share towards the petitioner's pension fund for the period during which he diligently served with respondent no. 3 upon being sent by his employer/respondent no. 1 on deputation. The petitioner superannuated in 2015 and the present petition wherein he has sought a direction to the respondents to make contributions towards the employer's share for a period during which he admittedly rendered services with respondent no. 3 as per the directions of respondent no. 1, was filed in February, 2020 and has remained pending for almost three years. An employee like the petitioner cannot be expected to continue to litigate before this Court for resolution of the inter se disputes on this aspect between respondent no. 1 and respondent no. 3, both public sector undertakings, one under the Central Government and one under the State Government.

5. Learned counsel for the petitioner is therefore justified in urging that the petitioner cannot be made to wait endlessly till the respondent no. 1 and respondent no. 3 get their inter se disputes on this aspect resolved either on their own or by approaching a competent Court of law. Even though, learned counsel for both respondent no. 1 and respondent no. 3 have urged that this Court should determine the question as to which of the two respondents should make the said contribution, I am of the view that once it is an admitted position that petitioner served as a deputationist with respondent no. 3 between 02.04.2009 to 30.05.2012 only as per the directions of his employer-respondent no. 1, the two respondents should make an endeavour to amicably resolve this issue amongst themselves. In case they are unable to amicably resolve the said issue, the aggrieved respondent ought to approach the competent Court for appropriate orders. The petitioner, however, cannot be asked to wait for the due contribution to be made to his pension fund.

6. In these circumstances, since the petitioner was an employee of respondent no. 1 where he has served for the major period during his service career, it would be appropriate that the respondent no. 1, forthwith makes the necessary employer's contribution towards the petitioner's pension fund with interest, if any, applicable for the period between 02.04.2009 to 30.05.2012. The respondent no. 1 is accordingly directed to forthwith make the due contribution towards the employer's share to the petitioner's pension fund for the period from 02.04.2009 to 30.05.2012 with applicable interest, if any. However, in case the respondent no. 1 and respondent no. 3 are not able to amicably resolve their inter se dispute on this aspect, this order will not preclude the respondent no. 1 from taking any action for recovery of the

said amount from the respondent no. 3 in accordance with law. It is, therefore, made clear that this Court has not expressed any opinion as to which of the two respondents i.e., respondent no. 1 or respondent no. 3, would be finally liable to make the aforesaid contributions.

7. Taking into account that respondent no. 1 and respondent no. 3 are functioning under the aegis of Ministry of Power, Union of India and the Department of Power, Govt. of NCT of Delhi, respectively, a copy of this order be forwarded to the Secretary, Ministry of Power, Union of India as also to the Secretary, Department of Power, Govt. of NCT of Delhi for appropriate instructions so that in future, employees like the petitioner are not compelled to knock the doors of the Court on account of the failure of their employers like respondents no. 1 & 3 functioning under the supervision of Central/State Government to make appropriate contributions towards their pension funds.

8. The writ petition is, accordingly, allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

NOVEMBER 9, 2022
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