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

% *Date of Decision: 11th May, 2023*

+ W.P.(C) 7223/2019

BABLI

..... Petitioner

Through: Mr. Pranav Jain, Ms. Shrishti Govil and Ms. Tanisha Manuja, Advocates

versus

BSES RAJDHANI POWER LTD. AND ANR.

..... Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit Kumar and Mr. Vikas Mehta, Advocates for R-1.

Mrs. Avnish Ahlawat, Standing Counsel, Pension Trust with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner, the second wife and now surviving widow of late Shri Madan Lal, who was employed as Assistant Line-Man with Delhi Vidyut Board ('DVB') and expired on 01.08.2001 while in service.

2. The factual matrix, shorn of unnecessary details is that Petitioner's husband died in harness on 01.08.2001 as an employee of DVB, which was unbundled on 01.07.2002 after Notification of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 on 20.11.2001. Petitioner is the second wife of late Madan Lal and after his death, she filed a petition on 12.08.2004 before the Trial Court for

grant of Succession Certificate on her behalf and all sons and

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daughters of Madan Lal including the children from the first wife being Petition No.553/2004. The Trial Court granted the Succession Certificate in favour of the Petitioner and 11 other legal heirs of Madan Lal vide judgment dated 20.12.2012, subject to payment of court fee and furnishing of indemnity bond with one surety.

3. The issue raised in the present petition is essentially for grant of family pension, death gratuity and arrears of pension with interest w.e.f. 22.11.2004 to the legal heirs of late Madan Lal. From a reading of the counter affidavit filed on behalf of Respondent No.1, the position that emerges is that there is no dispute with regard to the succession of late Madan Lal and the only conflict is as to who would bear the liability of the retiral benefits between Respondent No.1/BSES Rajdhani Power Ltd., the DISCOM or Delhi Vidyut Board Employees' Terminal Benefit Fund, the Pension Trust.

4. Learned counsel for the Petitioner submits that despite passage of nearly two decades from the death of Madan Lal, retiral benefits have not been released to his legal heirs. The outstanding dues are on account of Family Pension @ Rs.2,238/- per month enhanced upto 01.08.2008, Ordinary Pension w.e.f. 02.08.2008 @ Rs.13,430/- per month, Pension Arrears upto 31.10.2004 amounting to Rs.1,36,012/-, Death Gratuity amounting to Rs.77,868/- and GPF amounting to Rs.37,574/-.

5. Mrs. Avnish Ahlawat, learned counsel appearing on behalf of the Pension Trust submits that it is the liability of the DISCOM/Respondent No.1 to clear the outstanding payments due to the Petitioner as her husband had expired prior to the unbundling of DVB, while Mr. Sandeep Prabhakar, learned counsel appearing on behalf of BSES Rajdhani Power Ltd., strenuously contends that the liability rests entirely on the Pension Trust and this dispute now stands resolved by the judgment of the Division Bench of this Court in

Tata Power Delhi Distribution Power Limited v. Smt. Rosy Jain and Ors., 2016 SCC OnLine Del 1650, read with North Delhi Power Ltd. v. Govt. of NCT of Delhi, 2007 SCC OnLine Del 919.

6. Having heard learned counsels for the parties, this Court is of the view that the case of the Petitioner is squarely covered by the judgment of the Division Bench in ***Smt. Rosy Jain (supra)***, and it is no longer open to Respondent No.2/Pension Trust to disown the liability to release the retiral benefits of the Petitioner as this conflict as to whether the employer i.e. the DISCOMS or the Pension Trust is liable, has been resolved and decided.

7. In my view, counsel for the Petitioner is correct in his submission that the controversy of release of retiral/terminal benefits of the Petitioner and other family members as detailed in the Succession Certificate would be covered by the observations of the Division Bench in ***Smt. Rosy Jain (supra)***. Relevant passages of the judgment are as follows:-

“15. Learned counsel for the GNCTD and the Pension Trust urged that the only three contingencies visualized by the rules governing the Pension Trust where terminal benefits and pay outs were to be made are : superannuation of the employee; death of the employee and permanent incapacitation of the employee. In the second case, upon death, the terminal benefits would be paid to the family members. Other than these, Pension Trust being constrained by the payments made into it through contribution of its subscribers, i.e. the existing employees of the DISCOMS, would not be able to cater to unforeseen eventualities, such as those contemplated by voluntary cessation of employment as in the case of an option under Rule 48A.

16. It is contended that in the present case, the employees were induced to apply for voluntary retirement and consequently, the liability to make pay outs cannot be considered as normal. In other words, it is submitted that the Pension Trust has specifically declined its liability, contending that voluntary retirement under Rule 48-A of the Central Civil Services (Pension) Rules (hereafter “Pension Rules”), which was a pre-existing condition protected by terms of the Act, was not “normal” retirement and consequently, the liability to make pay outs towards terminal benefits and other benefits was that of the concerned DISCOM/employer in this case. It is submitted that more importantly, the Supreme Court ruling in NDPL (supra)

governs the field inasmuch as all liabilities arising out of the past service of the employee as well as the duration of service with the DISCOM are to be reckoned and taken care of by the employer rather than the Pension Trust. Such being the clear mandate of the law declared in NDPL (supra) it cannot be said that the learned Single Judge fell into error in holding that the DISCOMS were liable to make payments.

Analysis and conclusions:

17. This Court has already extracted the relevant provisions of the Act and the Scheme. As to who is to bear the liability for terminal benefits in the case of voluntary retirement, the appellants have placed reliance on the SVRS judgment. In the said SVRS judgment, the argument of the Pension Trust was noticed and the first question framed for decision was, “whether the liability of the respondents to pay or ensure payments of terminal dues is confined to cases of superannuation, death or incapacitation of the employees of the discoms or it extends to cases of voluntary retirement.” The SVRS judgment noticed a previous ruling in Ashwani Kumar v. Oriental Bank of Commerce, 103 (2003) DLT 738. The SVRS judgment thereafter held as follows:

“68. As discussed in the preceding paragraph, the right to apply for a voluntary retirement and the entitlement to pension in the eventuality of such severance is not an implied condition of service unlike resignation but has to be expressly provided for. It would, therefore, be necessary to examine firstly whether the Pension Rules were applicable and further whether the right to apply for voluntary retirement under Rule 48-A existed as a condition of service for the employees of DVB.

69. The Division Bench of This Court in Ashok Kumar v. GNCT of Delhi (in CWP 1864/2002, decided on 16th September, 2002) had to decide whether Rule 37 of the CCS Pension Rules applied to the employees of the erstwhile DVB. That petition too was filed in the wake of the unbundling process of DVB. The court noticed, in para 11 of the judgment that the predecessor of the DVB i.e. DESU was a department of the Municipal Corporation of Delhi. The Corporation (MCD) had framed Regulations in 1973 granting benefits to employees of DESU. Subsequently, in 1977 the DESU (DMC) Service Regulations were approved. They stipulated that service rules applicable to Government Servants would also apply to DESU employees. Regulation 4 indicated that unless provided in the Act or the Regulation, the rules applicable to Government Servants in the service of the Central Government, were to, so far as may be, regulate the service of Municipal employees except in regard to the matters relating to provident fund. The Division Bench noticed that upon incorporation of the DVB the assets and liabilities of the DESU and its undertaking devolved on it. The DVB later issued a circular protecting existing service conditions and expressly mandating ‘there must be no retrenchment or change in service conditions to the detriment of the staff. Pension and all terminal

benefits must be safeguarded by the Delhi Government.

70. *The Division Bench after considering the assurances held out by the DVB and analysing the provisions of Section 16, rules and the tripartite agreement, held that Rule 37 of the Pension Rules could not be applied as there was no question of deemed retirement. The Court held that Rule 37 could apply where by legal fiction a person superannuated but not otherwise. Accordingly where there was no retirement in terms of legal fiction, the question of payment of pro-rata pension did not arise. As far as the decision of the court in O.P Gupta's case is concerned, the contention raised was that in terms of Rule 9 of the CCS Pension Rules, the authority and jurisdiction to effect a cut in pension was with the President of India and not DVB. This was negated; the court held that Pension Rules are not automatically applicable to employees of DVB and they were adopted mutates mutans. The President of India is not the employer of the employees of DVB nor were the employees holders of civil posts. They were not governed by Articles 309 of the Constitution of India. DVB was held to be a body constituted and being an autonomous body, required to act according to its own rules etc. As the Board of the DVB was the supreme authority, it was entitled to pass necessary orders under Rule 9 of CCS Pension Rules in the case of employees of DVB. The court did not rule out applicability of the CCS Pension Rules, but held them to be applicable, in so far as exercise of powers under Rule 9 were concerned.*

71. *There is, in my opinion, another detail which lends support to the view that the right to apply under Rule 48-A was considered an integral part of the service conditions of the erstwhile DVB employees. In its letter of 29-12-2003, the Trust clarified that the benefit of five years' weightage could be given to those retiring, in terms of Rule 48-B of the CCS Pension Rules. That rule applies to employees who seek and are permitted to retire under Rule 48-A.*

72. *The above analysis would show that at material times when the functions of the erstwhile DVB were carried out by its predecessor in interest, i.e DESU, Regulations had been framed which extended the terms and conditions of service applicable to the Government Servants. Those conditions were protected and they became part of the conditions of service of employees of DESU upon its creation. No material has been brought to the notice of the court by way of a conditional circular or resolution, restricting applicability of the CCS Pension Rules to exclude the right to apply for voluntary retirement under Rule 48-A. In these circumstances, the logical inference is that such a right to apply for voluntary retirement under Rule 48-A (of the CCS Pension Rules) existed and was a protected condition of service in terms of the tripartite agreements, Section 16(2) and Rule 6. Though the terms of the Trust Deed undoubtedly support the plea that superannuation is the incident on which pension is*

payable, yet Rule 6(9) in my opinion was framed to cater to the eventuality of the Trust not being liable to pay, but the GNCT being obliged to make arrangements to the extent the Trust is unfunded, if there is a shortfall in the event of exercise of option by an employee under Rule 48-A CCS Pension Rules. In this context, it has to be held that the tripartite agreements cannot be read as a charter to restrict existing rights their tenor and purpose was to grant continuity. Such being the case the defect if any of the GNCT in constituting the Trust and the restrictive definition in the Trust rules entitling only superannuated employees to pension cannot rob or divest those applying, and becoming eligible to pension, in terms of rule 48-A of Pension Rules to the terminal and pension benefits. In such an eventuality, the GNCT has to the extent of Trust being unfunded bear the liability wherever recourse is made by the transferred employees to Rule 48-A of the Pension Rules.”

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20. *The Supreme Court thereafter analyzed the provisions of the 2000 Act and rules under the Transfer Scheme and held as follows:*

“49. Rule 6(8) which we have already quoted but would repeat again for the ready reference is as under:

“6(8) Subject to sub-rule(9) below, in respect of all statutory and other schemes and employment related matters, including the provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners, the relevant transferee shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the board in relation to any and all such matters shall become those of such transferee and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub-rule.”

50. *The language is extremely clear. It not only specifies the employment related matters but also clarifies what those matters would be which include pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners. The words ‘existing pensioners’ are extremely important. A plain reading of this Rule would leave no manner of doubt in respect of the liability having been transferred to transferee company and the NDPL is certainly the one. The language is broad enough to include all dismissed, dead, retired and compulsorily retired employees. As if that was not sufficient, sub-Rule (9) requires the Government to make appropriate arrangements in terms of the Tripartite Agreements in regard to the fund of terminal benefits to the extent it is unfunded on the date of transfer from the Board. Rule 9(a) and (b) are also very significant and are as under:*

“6.9(a). The Government shall make appropriate

arrangements as provided in the tri-partite agreements in regard to the funding of the terminal benefits to the extent it is unfunded on the date of transfer from the Board. Till such arrangements are made, the payment falling due to the existing pensioners shall be made by the TRANSCO, subject to appropriate adjustments with other transferees.

“For the purpose of this sub-rule, the term-

(a) “existing pensioners” mean all the persons eligible for the pension as on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme; and

(b) “terminal benefits” mean the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners.”

52. A glance at these sub-rules is sufficient to come to the conclusion that the liabilities have undoubtedly been transferred to the DISCOMS which include both NDPL as well as the BSES. A feeble argument was raised that sub-rule (8) does not contemplate pension or any liability on account of the revised pay-scale or interpretation of respective scheme of promotion so far as existing pensioners or the erstwhile DVB are concerned to the DISCOMS. Considering the broad language of the Rule, we do not think that such contention is possible.

53. Again relying on Rule 2(r) it was feebly tried to be suggested that the DISCOMS were not the only transferees but it was also the holding company, namely, the Delhi Power Company Ltd. (DPCL). The argument is obviously incorrect as no employees were ever transferred to the DPCL. All transferees came only to the DISCOMS like the NDPL under the transfer scheme. The High Court has correctly interpreted these Rules and has correctly come to the conclusions that the liabilities would rest with the DISCOMS including NDPL and BSES.”

21. It is thus clear that the question that arose for decision and was considered by the Supreme Court was not in relation to pension liability; it was whether the DISCOM was liable to make payouts towards service conditions, which had been denied, to the employee, by the DVB when it was in existence. In NDPL itself, the issue was denial of pay benefits on an interpretation of circulars issued in 1997, when DVB was in existence. The employee had retired. The question of bearing liability by any entity other than the DISCOM did not arise.

22. In the present case, what is apparent is that all the employee-respondents sought and were readily granted voluntary retirement. The Pension Trust had earlier denied its liability on account of voluntary retirement provisions under Rule 48-A; that issue was decided against it in the SVRS judgment. The Pension Trust never appealed that decision; rather the appeals preferred by it and the GNCTD related to the correctness of a later clarification- which had no connection with, or was unrelated to the issue of its liability to

make payouts in respect of retirements under Rule 48A. Those appeals were disposed of; the Pension Trust succeeded only in respect of its contention vis-à-vis inapplicability of Rule 48-B. The tenor of that provision itself indicates that it applies when Rule 48A applies, thus showing that pension liability upon voluntary retirement was payable by the Pension Trust. The SVRS judgment clearly discussed this issue as is evident from the following extracts:

“53. Before proceeding to consider the rival submissions, it would be necessary to extract the relevant provisions of the Trust Deed and the pension rules. As noticed earlier, the Trust Deed was executed on 26.03.02. Part (b) of the preamble indicates that the Government of NCT decided to establish a superannuation fund for the benefit of those entitled to pension in accordance with the pension scheme of DVB, as detailed in the rules of the fund (annexed to the Trust Deed which are referred to hereafter as the ‘Trust Rules’). Clause(3) of the Deed enjoins the Trustees to pay pension and other terminal benefits in accordance with the Trust Rules. The Trust Rules, inter alia, define actual service by referring to Rule 30 of the CCS (Pension) Rules; the duration of pension payable, by Clause 2(x) is provided by Rule 54(6) of the CCS (Pension) Rules; ‘eligible members’ under Clause 2(xi) is defined as those covered by the CCS (Pension) Rules. The term ‘qualifying service’ has been defined as what is contained in Rule 3(q) of the CCS (Pension) Rules. The expression ‘retirement’ and ‘normal retirement date’ have been defined as follows:

(xxvi) ‘RETIREMENT’ as defined under Rule 35 Central Civil Services (Pension) Rules, 1972, as amended from time to time.

(xxvii) ‘NORMAL RETIREMENT DATE’ shall mean the date of retirement as defined in Fundamental Rules, 1956.

54. Rule 4 deals with contributions to the fund by the corporation and the members. It refers to the fund being a superannuation fund. Rule 4(b)(c) empowers the Trustees with the authority to fix additional contribution amounts to be paid by the ‘new entity’ i.e. DISCOM S and other successors, from time to time in consultation with the Government. Part V of the Trust Rules outlines the benefits. Rule 6.1 provides that a member, on superannuation would be entitled to pension and other terminal benefits as available to the existing employees on the retirement commencing from the month following superannuation, as per the Fundamental Rules. Rule 6.2 states that to qualify for benefit on superannuation, employees should have completed a minimum reckonable service as defined by Rule 14 of the CCS (Pension) Rules. The relevant parts of Rule 6 are extracted below:

6.1. A member on superannuation will be entitled to pension

and other terminal benefits as available to the existing employees on the retirement commencing from the month following superannuation as per Fundamental Rules, 1956 as amended from time to time. A member would be entitled to pension life time.

6.2. TO QUALIFY FOR BENEFIT ON SUPERANNUATION:
Employees must have completed a minimum reckonable service as per Rule 14 of the Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.

xxxxx xxxx xxx **6.6. MINIMUM PENSION :** *In no case pension shall be less than the amount of pension payable as per Rule 40(3) of Central civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.*

6.7. *On separation from service of a member by his resignation before completion of the qualifying service as specified in Rule 14 of Central Civil Services (Pension) Rules, 1972, shall be dealt with as per Rule 26 of Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.*

6.8. *On separation of a member who is dismissed/removed from the services of the Corporation and/or has otherwise lost his lien on his employment with the Corporation, the member shall be dealt with as per Rule 24 of Central Civil Services (Pension) Rules, 1972 and any other applicable Rule as amended from time to time.*

55. *From the above, it is apparent that the concepts such as the retirement, terminal benefits, qualifying service and superannuation have been borrowed from the CCS (Pension) Rules. Indeed the Trust's rules have incorporated those provisions. The relevant provisions of CCS (Pension) Rules are extracted below:*

"3. DEFINITIONS 3(q) 'Qualifying Service' *means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;*

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CHAPTER V CLASSES OF PENSIONS AND CONDITIONS GOVERNING THEIR GRANT

35. Superannuation pensions *A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.*

36. Retiring pension *pension shall be granted-*

(a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 or 48A of these rules, or Rules

56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and

(b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of Rule 29 of these rules.

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37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking:

(1) On conversion of a department of the Central Government into a Public Sector Undertaking or an Autonomous Body, all Government servants of that Department shall be transferred en masse to that Public Sector Undertaking or Autonomous Body, as the case may be, on terms of foreign service without any deputation allowance till, such time as they get absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in the Public Sector Undertaking or Autonomous Body, as the case may be, with effect from such date as may be notified by the Government.

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(25) In case the Government disinvests its equity in any Public Sector Undertaking or Autonomous Body to the extent of fifty-one per cent or more, it shall specify adequate safeguards for protecting the interests of the absorbed employee of such Public Sector Undertaking or Autonomous Body.

(26) The safeguards specified under Sub-rule(25) shall include option for voluntary retirement or continued service in the undertaking or body, as the case may be, or voluntary retirement benefits on terms applicable to Government employees or employees of the Public Sector Undertaking or Autonomous Body as per option of the employees, assured payment of earned pensionary benefits with relaxation in period of qualifying, as may be decided by the Government.

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48-A. Retirement on completion of 20 years' qualifying service (1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

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(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the Appointing Authority : Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the

period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) Deleted."

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28. For the foregoing reasons, this Court is of opinion that the impugned judgment in Rosy Jain (supra) and the judgments in all other writ petitions that were allowed by the learned Single Judges cannot be sustained; they are set aside. The Pension Trust shall process and disburse the payments - if not already made; if made by the Appellants, they would be able to claim and recover the amounts paid out by them to the Pension Trust. The latter shall reimburse the amounts within 8 weeks. The appeals are allowed in the above terms; there shall be no order on costs."

8. It is rather unfortunate that till date, the retiral/terminal benefits of the Petitioner and other legal heirs of late Madan Lal have not been released and they are being made to run from pillar to post. Respondents have not made any sincere efforts to ensure the release of the payments and have also been passing the blame and liability on one another. In view of the judgment aforementioned, this Court sees no impediment in the way of the Petitioner and other legal heirs from getting the benefits of late Madan Lal's retiral/terminal benefits, particularly, in view of the fact that there is no dispute with regard to the succession.

9. Accordingly, it is directed that the Pension Trust shall release the dues of the Petitioner on account of the various heads, as referred to in the earlier part of the judgment, along with interest @ 6% per annum from the date the amounts became due till the date of actual payments, within a period of eight weeks from today.

10. Writ petition is allowed and disposed of.

JYOTI SINGH, J

MAY 11, 2023/kks