



2023:DHC:9064



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

% **Pronounced on: 12th December, 2023**

+ **W.P.(C) 4595/2023**

RAJENDER KUMAR SHARMA Petitioner

Through: Mr. Vimal Wadhawan and Ms. Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD. & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Abhay Kumar and Mr. Shagun Ruhil, Advocates for TPDDL
Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

+ **W.P.(C) 8924/2023**

KUMUD CHANDRA DEKA Petitioner

Through: Mr. Vimal Wadhawan and Ms. Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit Kumar and Mr. Vikas Mehta, Advocates for R-1
Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

+ **W.P.(C) 8931/2023**

JAI KISHAN SHARMA Petitioner



2023:DHC:9064



Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 8950/2023 & CM APPL. 33934/2023

GULSHAN KUMAR GAMBHIR Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit
Kumar and Mr. Vikas Mehta,
Advocates for R-1
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 9217/2023 & CM APPL. 35100/2023

RATTAN KUMAR Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

W.P.(C) 4595/2023 & 25 other connected matters

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TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Abhay Kumar and Mr. Shagun Ruhil, Advocates for TPDDL

Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 9219/2023 & CM APPL. 35103/2023

RAVINDER SETH Petitioner

Through: Mr. Vimal Wadhawan and Ms. Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

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

Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 9220/2023 & CM APPL. 35104/2023

SUNIL JOHRY Petitioner

Through: Mr. Vimal Wadhawan and Ms. Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

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

W.P.(C) 4595/2023 & 25 other connected matters

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Advocates for R-1
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 9272/2023 & CM APPL. 35314/2023

OM PRAKASH

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 9941/2023 & CM APPL. 38290/2023

INDER KUMAR GUPTA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

BSES YAMUNA POWER LTD & ANR. Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit
Kumar and Mr. Vikas Mehta,
Advocates for R-1
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF



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+ W.P.(C) 9960/2023 & CM APPL. 38363/2023
PRAMODH SINGH THROUGH KUSUM DADWAL

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR.

..... Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit
Kumar and Mr. Vikas Mehta,
Advocates for R-1
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 5402/2023
MAHESH CHANDRA GURANI

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD.

..... Respondent

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 4748/2023

W.P.(C) 4595/2023 & 25 other connected matters

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HARMINDER SINGH

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD. & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 4752/2023

RAVINDER KUMAR MAGGON

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DISTRIBUTION LTD. & ANR.

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 5451/2023

RAJENDER PRAKASH NARULA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates





2023:DHC:9064



versus

TATA POWER DELHI DIST. LTD. AND ANR..... Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 5478/2023

MAHENDER GUPTA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD. AND ANR..... Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 6203/2023

VIJENDER SINGH

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD. & ANR..... Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar





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and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 6963/2023

DES RAJ MADAN

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR..... Respondents

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

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 6983/2023

BHAGWAN SINGH RAWAT

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

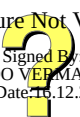
+ W.P.(C) 7001/2023

W.P.(C) 4595/2023 & 25 other connected matters

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BHAGAT RAM JOSHI

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 7208/2023

NARENDER KUMAR MARWAH

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

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

Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 7222/2023

VIJAY SACHDEVA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus



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TATA POWER DELHI DIST. LTD. (TPDDL) & ANR.

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Abhay Kumar and Mr. Shagun Ruhil, Advocates for TPDDL

Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 7306/2023

RAJENDER KUMAR VERMA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms. Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD. & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Abhay Kumar and Mr. Shagun Ruhil, Advocates for TPDDL

Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 7455/2023

ABDUL RASHID ANSARI

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms. Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

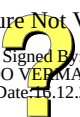
Through: Mr. Sandeep Prabhakar, Mr. Amit Kumar and Mr. Vikas Mehta, Advocates for R-1

W.P.(C) 4595/2023 & 25 other connected matters

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18:41:10





2023:DHC:9064



Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 8091/2023

HARI PRAKASH CHHIKARA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

BSES RAJDHANI POWER LIMITED & ANR. Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit
Kumar and Mr. Vikas Mehta,
Advocates for R-1
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 8127/2023

ASHOK KUMAR ABBI

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.
Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay Kumar
and Mr. Shagun Ruhil, Advocates
for TPDDL
Ms. Pepakayala Geetanjali,
Advocate with Mr. Gaurav Gupta,
Sr. Manager for R-2/DVB-ETBF

+ W.P.(C) 9969/2023

SURESH KUMAR KAMRA

..... Petitioner

Through: Mr. Vimal Wadhawan and Ms.



Megha Mehta, Advocates

versus

TATA POWER DELHI DIST. LTD & ANR. Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Abhay Kumar and Mr. Shagun Ruhil, Advocates for TPDDL

Ms. Pepakayala Geetanjali, Advocate with Mr. Gaurav Gupta, Sr. Manager for R-2/DVB-ETBF

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition has been filed by the petitioners seeking following reliefs:

“(i) To issue a writ of Mandamus setting aside the Order dated 25.01.2023, passed by the respondent no. 1, being illegal and unconstitutional,

(ii) To issue a writ of Mandamus directing the Respondent no. 1 to allow the Time Bound Promotional Scale of Executive Engineer and of S.E w.e.f. 24.08.1999 notionally i.e. date of merger and other consequential benefits and interest as per law.

(iii) To allow the cost of this Writ Petition to the petitioner and against the Respondent no. 1.

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



FACTUAL MATRIX

2. The petitioners herein are aggrieved by the non-grant of the Time Bound Promotional Scheme (hereinafter “TBPS”), systematically after 10 years from induction into service, 8 years from date of 1st TBPS, and 8 years from date of 2nd TBPS.

3. Since the present petitions arise out of the orders dated 22nd February 2023, 25th / 27th January, 2023, and the common relief has been claimed by the petitioners, therefore these petitions are disposed of by this common judgment.

4. The petitioners were appointed at the post of “inspector” with the Delhi Electricity Supply Undertaking (hereinafter “DESU”). The dates of joining of the petitioners has been bifurcated herein:

Petitioner’s Name	Date of Joining
Narender Kumar Marwah	10th January, 1969
Gulshan Kumar Gambhir	27th June 1970
Kumud Chandra Deka	8th December 1980
Ravinder Seth	31st August 1973
Sunil Johry	1st August 1979
Pramodh Singh	16th October 1981
Des Raj Madan	14th November, 1979
Rajendra Praksash Narula	4th January, 1969
Mahender Gupta	11th February, 1982
Vijender Singh	1st September, 1982



Bhagwan Singh Rawat	14th November, 1979
Bhagat Ram Joshi	22nd February, 2023
Vijay Sachdeva	17th November, 1972
Rajendra Kumar Verma	1st August, 1979
Abdul Rashid Ansari	26th September, 1981
Hari Prakash Chhikara	6th May, 1981
Ashok Kumar Abbi	19th October, 1976
Suresh Kumar Kamra	12th March, 1982
Jai Krishan Sharma	3rd July, 1979
Rattan Kumar	3rd March, 1981
Ravinder Seth	31st August, 1973
Om Prakash	16th March, 1982
Inder Kumar Gupta	20th October, 1976
Rajendrer Kumar Sharma	18th November, 1982
Mahesh Chandra Gurani	7th July, 1979
Harinder Singh	4th February, 1970
Ravinder Krm Maggon	24th February, 1981

5. Thereafter, DESU was converted to Delhi Vidyut Board (hereinafter “DVB”), by the Government of NTC Delhi. Consequently, DVB was unbundled into 6 legal entities w.e.f., 1st July 2002, whereby Indraprastha Power Generation Company Limited (IPGCL) was



established for generation of electricity, BSES Rajdhani and Yamuna Power Limited were established for distribution alongwith NDPL (renamed as TPDDL), Delhi Transco Limited was established for transmission of electricity and Delhi Power Limited was established as the holding company.

6. Further, vide Office Order No. F.5(11)/A & G/PRC/217 dated 23rd July 1997, the DVB introduced the scheme for TBPS, the operative portion of the Office Order has been reproduced herein:

“(i) All the employees/officers of Delhi Vidyut Board shall be entitled for the first time bound promotional scale on completion of ten years of regular service, be he a subordinate/ministerial staff member, or a group 'A' office.

(ii) The second time bound promotional scale shall be given oncompletion of further eight years of service i.e. 18 years of service in all from the date of induction of an official/officer at the base level on regular basis subject to the condition that in the case of class I officers, second time bound promotional scale shall 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”

7. Thereafter, vide Office Order No. E/B:Cell/99-2000/Distribution 488/76, dated 30th August 1999, the posts of inspectors (electrical) and Superintendent (Technical) were merged and converted into one post falling under one junior cadre with a revised pay scale, thereby the individuals appointed to the post of Inspector or superintendent were re-designated as Junior Engineers (hereinafter “JE”).



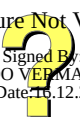
8. In pursuance to the Office Order dated 23rd July 1997, an Office Order No. F.5(11)/A & G/PRC/97/Part-III/63 dated 21st December 1997, was issued approving the grant of the Third TBPS of the level of Superintending Engineer (T) on the completion of another 8 years of service i.e., 26 years in total from the date of commencement of their service.

9. Before the commencement of the unbundling process, a tripartite agreement dated 28th October 2000, was executed among the Government of NCT Delhi, DVB and the Joint Action Committee of Workers. The same was done to ease the apprehension of the employees of the DVB that their service conditions would not be adversely affected. The relevant portion of the said agreement has been reproduced herein:

“(3) the terms and conditions of service upon transfer to the corporate entities, such as promotions, transfers, leave and other allowances, etc. regulated by existing regulation/service e.g. FR/SR will be guaranteed to continue the same and any modifications shall be by mutual negotiations and settlement with recognized unions/associations without detriment to the existing benefits.”

10. Subsequently, the petitioners were shifted under the employment of respondent No.1 and the terms and conditions of employment were as per the above said tripartite agreement.

11. The petitioner was not granted the TBPS as per the multiple Office Orders issued as a result of which the petitioners made several representations to the respondent no.1, thereby, requesting to avail the benefit of the TBPS in a time bound manner.





12. Aggrieved by the non-response at the hands of the respondent, the petitioners filed individual writ petitions before this Court, praying for the grant of TBPS as applicable by the Office Orders.

13. Since a large number of cases were filed, this Court took up W.P(C) 6203/2013 as the lead matter to the batch matters. Subsequently a Coordinate Bench of this Court, vide judgment dated 31st August 2017, vindicated the stand of the petitioner and the respondent i.e., an undertaking of DVB was directed to grant the first TBPS of the level of Junior Engineer w.e.f., 26th September 1991, second level of TBPS of the level of Executive Engineer w.e.f. 26th September 1999, and third level of TBPS of the level of Superintendent Engineer w.e.f. 26th September 2007.

14. Thereafter, the respondent i.e., an undertaking of DVB preferred an appeal against the judgment dated 31st August 2017. Consequently, the LPA 735/2017 was disposed off vide order dated 30th November 2018, the order of the single judge was only modified to the extent of the date of the first TBPS, thereby, making it effective from 24th August 1999.

15. Subsequent to the disposal of the above said, the similarly placed batch matters were decided vide order dated 3rd November 2022, in terms of the judgment dated 31st August 2017, as modified by vide order dated 30th November 2018.

16. Thereafter, the petitioners made another representation dated 22nd February 2023 to the respondents herein, claiming TBPS as per the ratio laid down by a Coordinate Bench this Court in *M.K. Saini vs IPGCL W.P(C) 2237/2022* dated **28th July 2008**. The said representation was rejected by the respondents.



17. Aggrieved by the denial of TBPS as per the requisite length of service, the petitioners have preferred the present petition.

SUBMISSIONS

(Qua the petitioners)

18. Learned counsel appearing on behalf of the petitioners submitted that the impugned letter dated 22nd February, 2023 is against the principles of natural justice and contrary to the settled principles of law.

19. It is submitted that the respondent no.1 has wrongly and illegally rejected the claim of the petitioner vide letter dated 22nd February, 2023 and the same is unconstitutional in nature.

20. It is submitted that the rejection of the petitioners' claim has resulted in a domino effect, thereby causing a delay in their annual increment and grant of pension.

21. It is submitted that in terms of the Office Orders dated 23rd July 1997, 30th August 1999, 21st December 1999, 19th October 2000 and 1st November 2000, the TBPS should have been applicable to the petitioners in a timely manner and in consonance with the respective dates of joining of the petitioners.

22. It is submitted that as per the ratio laid down by this Court in **M.K Saini (Supra)**, a similarly placed individual was allowed to avail the benefit of the TBPS as he had completed 8 years of service from his date of joining.



23. It is submitted that the petitioners have completed 18 years of services since their respective dates of joining and much before the similarly placed individual as per the *M.K. Saini (Supra)* judgment, hence the petitioners should be allowed to avail the same.

24. It is submitted that the respondent no.1 is granting TBPS to all officers and employees as per the ratio laid down by *M.K Saini (Supra)* case i.e., 1st TBPS after 10 years of service from date of induction, 2nd TBPS after 18 years service from date of induction and 3rd TBPS after 26 years of service from date of induction.

25. It is submitted that a Coordinate Bench of this Court in case titled *Sushil Kumar Khanna vs BSES YPL, W.P(C) no. 6203/2013 dated 31st August 2017*, granted 1st TBPS on completion of 10 years of service from the date of induction, 2nd TBPS on completion of 18 years of service from the date of induction and 3rd TBPS on completion of 26 years of service from the date of induction.

26. It is further submitted that the respondent No.1 has wrongly and illegally rejected the claim made by the petitioner *vide* letter dated 22nd February 2023.

27. It is submitted that the respondent no.1 has been granting TBPS to all employees as per the ratio laid down by the *M.K Saini (Supra)* i.e., after 10 years of service from date of induction 2nd year after 18 years of service and 3rd TBPS after 26 years of service from date of induction.



28. It is submitted that another unit of DVB i.e., DTL has allowed the second TBPS to its returned officers w.e.f. 24th August 1999 and in light of the same the respondent ought to grant the TBPS as prayed by the petitioners.

29. It is submitted that Section 16(2)(a) of the Delhi Electricity Reforms Act, 2000 the employees of the a transferee company cannot be placed in a less favorable position as compared to their position in DVB.

30. It is submitted that the issue of delay and laches was finally settled in LPA No. 311/2013 which was allowed by the Division Bench of this Court vide order dated 6th May, 2014, thereby, setting aside the objection of delay and laches in these cases.

31. In view of the foregoing submissions, it is prayed that the instant petitions may be allowed and the order dated 22nd February, 2023 may be set aside.

(Qua the respondent)

32. *Per contra*, learned counsel appearing on behalf of the respondent no.1 vehemently opposed the present writ petition, thereby, submitting that the present petition is barred by the principle of *res judicata*.

33. It is submitted that the present batch of writ petitions are not maintainable since the respondents, i.e., BSES and TPDIL do not fall within the ambit of Article 12 of the Constitution of India.



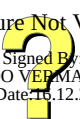
34. It is submitted that the petitioners had earlier filed individual writ petitions, and the reliefs claimed therein are identical to the ones claimed by the present petitions. All the issues claimed by the petitioners have been duly considered and settled by the Division Bench of this Court, in LPA 735/2017 dated 31 August 2017.

35. It is submitted that a consent order dated 3rd November 2022 was passed, whereby similarly placed writ petitions were disposed of in terms of the judgment dated 31st August 2017, and subsequently modified by order dated 20th November 2018.

36. It is submitted that the respondent issued a compliance letter dated 22nd February 2023, in compliance with the orders dated 3rd November 2022, and judgments dated 31st August 2017 and 20th November 2018 and hence there is no issue or aspect that requires re-agitation when the parties were *ad idem* that the compliance order was in terms of the judgments' dated 1st August 2017 and 20th November 2018.

37. It is further submitted that by way of the present petition the petitioner is seeking review of judgment dated 20th November 2018, which is not permissible as the same issues have already been decided by this Court in LPA 735/2017 dated 31 August, 2017 and the petitioner cannot claim the same clarifications before this Court.

38. It is submitted that the petitioner is essentially seeking a review of the order/judgment dated 20th November 2018 in the abovementioned LPA, which is impermissible as per law.





39. It is submitted that the Division Bench of this Court has modified judgment dated 31st July 2017 vide judgment dated 20th November 2018, after taking into due consideration the ratio determined in the case of *M.K.Saini (Supra)*.

40. It is submitted that the petitioners have already been granted the aforesaid benefits of TBPS in compliance with the judgments dated 31st August 2017 and 20th November 2018.

41. It is consequently submitted that the order dated 3rd November 2022 is a consent order and the same has not been challenged by any party to the *lis*, making the present petition a mere review of the principle which has been settled by the said order.

42. In view of the foregoing submissions, it is submitted that the order dated 22nd February 2023, suffers from no illegality, therefore, warrants no interference from this Court, thereby, is liable to be dismissed.

ANALYSIS AND FINDINGS

43. Heard the parties and perused the material on record.

44. The petitioners were appointed at the post of “Inspector” in the erstwhile DESU. DESU later became DVB and further, underwent restructuring into various entities. Subsequently, a committee by the name of Justice J.D. Jain Committee was formed with the aim to address the pay revision of DVB employees. Following the recommendations of this committee, DVB implemented the TBPS through an order dated 23rd July 1997. Under the said scheme, DVB employees became eligible



for the first TBPS on completion of 10 years of service and the second TBPS on completion of 8 years of subsequent service i.e., 18 years in all from the date of induction.

45. Further, bearing in mind the recommendations of the abovesaid committee, vide Office Order dated 30th August 1999, the DVB merged the post of inspector and superintendent (technical) with that of Junior Engineer. Consequent to the same, all individuals working at the post of inspector were re-designated as Junior Engineer.

46. As a result of the unbundling process, the petitioners were shifted to the respondent no.1 and the terms of their employment were decided to be as per the tripartite agreement dated 28th October 2000.

47. Summarily, it can be stated that the petitioners have been aggrieved by the untimely grant of the TBPS in the systematic manner of 10, 8, 8 years and therefore have opted for third round of litigation.

48. In their preliminary objections, learned counsel appearing on behalf of the respondents submitted that the present petition is not maintainable in light of the fact that respondent no.1 is now a private entity and the employees seeking TBPS are no longer Government employees.

49. Further, in rival contentions, the learned counsel appearing on behalf of the respondents submitted that the present batch of petitions is impermissible as the same is violating the principle of *res judicata*. It has been contended that the office order dated 22nd February, 2023, is a

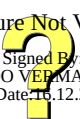


consent order and the same has been passed by the respondent no.1 in compliance with the order dated 3rd November 2022, and judgments dated 31st August 2017 and 20th November 2018. All contentions raised by the petitioners herein, have been dealt with extensively by this Court in the many rounds of litigation preferred by similarly placed individuals, which squarely cover the case of the petitioners herein.

50. Bearing in mind the aforesaid discussions, this Court deems it appropriate to revisit the structure of the respondent no.1. In the year 2003, Reliance Infrastructure Limited acquired a part of the respondent no.1, thereby acquiring 58% stake, making it the majority stakeholder. As on date, Reliance Infrastructure Limited holds 51% of the respondent no.1 and the remaining 49% is held by the Government of India, therefore the same has been termed as a joint venture. Similarly, Tata Power Delhi Distribution Limited [Tata Power-DDL] is a joint venture between Tata Power and the Government of NCT of Delhi with the majority stake being held by Tata Power Company i.e., 51%.

51. In view of the above, this Court has adjudicated the present writ petition for the limited purpose to decide the following questions:

- i. Whether the present writ is maintainable in view of the disinvestment of BSES/TPDL.**
- ii. Whether the orders dated 22nd February 2023, 25th January and 27th January, 2023 were issued in compliance with the directions given by this Court, suffers from any illegality.**





iii. Whether the present batch of writ petitions is hit by the principle of *res judicata* in view of LPA735/2017.

Issue no. 1

52. In order to decide issue no.(i), it is apposite for this Court to discuss the scope of Article 226 as well as Article 12 of the Constitution of India.

53. Article 226 of the Constitution of India allows the issuance of writs "to any person or authority" for enforcing rights granted in Part-III and other purposes. While the scope of Article 226 is broad, it comes with certain limitations, such as not allowing writs against private entities or for settling private disputes. Article 226 can be invoked against a private entity only if it performs public duties or functions similar to those of the State, as defined in Article 12 of the Constitution of India. Private bodies engaged in commercial activities are generally not subject to writ jurisdiction, except for Habeas Corpus writs.

54. At this juncture it becomes imperative to analyse the settled legal principles governing the scope of Article 12 of the Constitution of India. The said Article has been reproduced and reads as follows:

"In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

55. Article 12 defines what constitutes 'State', which usually encompasses Public authorities, the Parliament of India and the Law making body of every of all the States. The activity of any of these offices can be tested under the steady gaze of the Courts in the event that





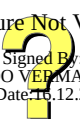
the major privileges are abused.

56. The definition of "Other Authorities" under the said Article 12 has been interpreted by various Courts which have resulted in a change of judicial opinions from time to time.

57. Therefore, a writ may only be amenable in the event that the authority against which such writ is preferred falls under that ambit of Article 12.

58. It also becomes pertinent to analyse the term "public function", in order to determine the nature of such functions and the different entities which are entitled to discharge such functions. The Hon'ble Supreme Court in case titled ***Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657***, held as follows:

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public





functions and private functions when they are being discharged by a purely private authority. A body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:

“A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides ‘public goods’ or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir





John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."

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"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p. 682,

"1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries





out its transactions for the benefit of the public and not for private profit.”

There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

59. The same principle has been dealt with in case titled ***St. Mary's Education Society v. Rajendra Prasad Bhargava***, (2023) 4 SCC 498, whereby the Hon'ble Supreme Court analysed the applicability of Article 226 with regard to bodies discharging public functions:

“75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have





intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation



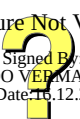


to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

60. Further, in case titled ***K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670***, the Hon’ble Supreme Court has observed the following:

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is “State” within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is “State” under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court



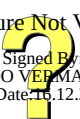


has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

44. Within a couple of years of the framing of the Constitution, this Court remarked in Election Commission of India v. Saka Venkata Rao [Election Commission of India v. Saka Venkata Rao, AIR 1953 SC 210] that administrative law in India has been shaped in the English mould. Power to issue writ or any order of direction for “any other purpose” has been held to be included in Article 226 of the Constitution with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of the King's Bench in England. It is for this reason ordinary “private law remedies” are not enforceable through extraordinary writ jurisdiction, even though brought against public authorities (see Administrative Law, 8th Edn., H.W.R. Wade and C.F. Forsyth, p. 656). In a number of decisions, this Court has held that contractual and commercial obligations are enforceable only by ordinary action and not by judicial review.

45. On the other hand, even if a person or authority does not come within the sweep of Article 12 of the Constitution, but is performing public duty, writ petition can lie and writ of mandamus or appropriate writ can be issued. However, as noted in Federal Bank Ltd. [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] , such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

61. Bearing in mind the aforesaid judgments, the term “public function” can be refer to any entity/body aiming to achieve a collective benefit for the public or a specific segment of the public and is





acknowledged by them as having the authority to do so. Such bodies execute public functions when they participate in or influence social and economic affairs in the interest of the public. This involvement can take various forms. For example, a body performs a public function when it offers 'public goods' or collective services like healthcare, education, and social services, funded by taxation.

62. Public functions can also be carried out through adjudicatory services, such as the criminal and civil Courts and Tribunals. Regulating commercial and professional activities to ensure compliance with established standards is another way these bodies perform public functions. These functions can involve legal and administrative tools like rule-making, adjudication, inspections, and licensing. It is essential to recognize that public functions are not exclusive to the government. Charities, self-regulatory organizations, and nominally private institutions, such as universities, the Stock Exchange, etc. may also carry out certain types of public functions.

63. Similarly, issues have been brought before this Court on multiple occasions, whereby a previously Government owned entity was subsequently subjected to disinvestment which has been dealt with by different Courts at length, thereby, analysing whether the same would be amenable to the writ jurisdiction of the High Courts. A Division Bench of the Bombay High Court in case titled ***IDBI Officers Association v. Union of India, 2022 SCC OnLine Bom 2693***, held as follows:

“89. Here, we are concerned with a dispute arising out of a



service matter. It would now be our endeavor to decide the contentious issue of maintainability based on the dicta of the Supreme Court in respect of matters where service disputes raised by officers/employees in proceedings before the Courts required, in view of the status of the employers, as of necessity, determination of the primary question as to whether such employers were amenable to the writ jurisdiction under Article 226 of the Constitution. We would have been inclined, in the process, to attempt at leaving aside decisions where the employer is other than a company or a Government company but the demands of the case may require us to navigate through other decisions as well, not dealing with service disputes, but which deal with the aspect of maintainability.

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92. There are 5 (five) other decisions which, though not cited by the parties, are either referred to in the decisions in Balmer Lawrie & Co. Limited (supra) and in Jatya Pal Singh (supra). While the former decision has been referred to by both the parties, the latter has been cited by Mr. Talsania.

93. Close on the heels of Pradeep Kumar Biswas (supra) followed the decision in G. Bassi Reddy v. International Crops Research Institute⁹⁷, authored by Justice Ruma Pal (as Her Ladyship then was). Incidentally, the majority opinion in Pradeep Kumar Biswas (supra) too was authored by Her Ladyship. The appellants in G. Bassi Reddy (supra) were terminated employees of the respondent institute (referred to in the relevant judgment as ICRISAT). The Court traced the origin of ICRISAT and found that ICRISAT was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by nor is it accountable to the Government. The Indian Government's financial contribution to ICRISAT was minimal. Its participation in ICRISAT's administration was limited to 3 (three) out of 15 (fifteen) members. Since ICRISAT did not fulfil any of the tests laid down in Pradeep Kumar Biswas (supra), ICRISAT was held not to be a State or



other authority as defined in Article 12 of the Constitution.

94. We may, at this stage, take notice of certain important observations made by the Court after considering the decisions in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.98, Praga Tools Corpn. v. C.A.

Imanual99, Andi MuktaSadguru S.M.V.S.S.J.M.S.

Trust v. V.R. Rudani100, VST Industries Ltd. v. Workers' Union101 and Sohan Lal v. Union of India102. The observations read thus:

*“25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed [Calcutta Gas Co. (Proprietary) Ltd.]. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a ‘State’ or authority within the meaning of Article 12. ****

*26. ****

27. It is true that a writ under Article 226 also lies against a ‘person’ for ‘any other purpose’. The power of the High Court to issue such a writ to ‘any person’ can only mean the power to issue such a writ to any person to whom, according to the well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words ‘and for any other purpose’ must mean ‘for any other purpose for which any of the writs mentioned would, according to well-established principles issue’.

28. A writ under Article 226 can lie against a ‘person’ if it is a statutory body or performs a public function or discharges a public or statutory duty. ... ICRISAT has not been set up by a statute nor are its activities

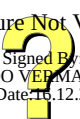


statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the Institute, it certainly cannot be said that ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corpn. This Court construed Article 226 to hold that the High Court could issue a writ of mandamus 'to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest'. The Court also held that:

“[A]n application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See Sohan Lal).

29. We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT.”

95. Having noted G. Bassi Reddy (supra), we move on to consider Federal Bank v. Sagar Thomas¹⁰³ which followed within a few months of the former decision. In Federal Bank (supra), the question arising for decision was whether the appellant bank was a private body or falls within the definition of “State” or local or other authorities under the



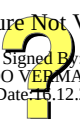


control of the Government within the meaning of Article 12. Incidentally, the civil appeal before the Supreme Court arose out of a writ petition instituted by a dismissed employee of the appellant bank. The relevant High Court held the writ petition to be maintainable. Considering various precedents, the Court proceeded to hold that:

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v.) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

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99. The third in the series is the decision in VirendraKumar Srivastava v. U.P. Rajya Karmachari KalyanNigam¹⁰⁵. The Supreme Court reiterated that in order to examine whether or not an authority is a “State” within the meaning of Article 12 of the Constitution, the court must carry out an in-depth examination of who has administrative, financial and functional control of such a company/corporation, and then assess whether the State in such a case is only a regulatory authority, or if it has deep and pervasive control over such a company/corporation, whether such company is receiving full financial support from the Government, and whether administrative control over it has been retained by the State and its authorities, and further, whether it is supervised, controlled and watched over by various departmental authorities of the State, even with respect to its day-to-day functioning. If it is so, then such company/corporation can be held to be an instrumentality of





the State under Article 12 of the Constitution and, therefore, will be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution.

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104. Next in the series is the decision in Jatya Pal Singh (supra). As noted above, it arose out of an order dated 8th September 2009 of a Division Bench of this Court dismissing a writ petition filed by the appellant. No separate reason was assigned by the Division Bench except observing that the reasons assigned by it while dismissing an earlier writ petition involving common questions of fact and law by its order dated 7th September 2009 would apply to the writ petition of the appellant (Jatya Pal Singh) before the Supreme Court. From the report, we have found that the other petitioner too was before the Supreme Court with an independent appeal, titled M.P. Singh v. Union of India. The decision also appears to have dealt with civil appeals arising from orders of dismissal of writ petitions passed by the Delhi High Court.

105. The appellants were employees of VSNL. Their services were terminated by VSNL. The writ petitions were dismissed on the ground that VSNL was not amenable to the writ jurisdiction. For the reasons assigned in the common judgment, the appeals stood dismissed.

106. It was contended on behalf of the appellants that VSNL cannot be said to be not amenable to the writ jurisdiction in view of the shareholding pattern which revealed that Union of India, holding 26.97% shares, was the single largest shareholder in VSNL and other Government companies held 17.35% shares. Furthermore, VSNL was under the complete control of the Telecom Regulatory Authority of India (TRAI) Act, 1997 and the Telegraph Act, 1948. Therefore, writ petitions would lie in cases where the services of the employees were terminated in breach of the rules governing the service conditions of the employees. It was further the case



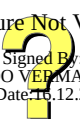
of the appellants that Panatone Finvest Ltd. having stepped into the shoes of the erstwhile shareholder is bound by the commitments and obligations, rights and liabilities arising from the sale/purchase of shares.

107. The Court noted that after disinvestment of VSNL in 2002, the name of VSNL being a TATA group company was changed to Tata Communications Ltd. (TCL). However, the orders of termination impugned in the writ petitions were issued before such change took place. After noting Pradeep Kumar Biswas (supra), the Court examined whether TCL was performing public functions and answered the question in the negative. Having considered Binny Ltd. (supra), the Court held that:

“52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so.

53. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or data through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 19(1)(a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information.

54. The function performed by VSNL/TCL cannot be put on the same pedestal as the function performed by



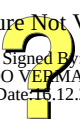


private institution in imparting education to children. It has been repeatedly held by this Court that private education service is in the nature of sovereign function which is required to be performed by the Union of India. Right to education is a fundamental right for children up to the age of 14 as provided in Article 21-A. Therefore, reliance placed by the learned counsel for the appellants on the judgment of this Court in Andi Mukta would be of no avail. In any event, in the aforesaid case, this Court was concerned with the non-payment of salary to the teachers by Andi Mukta Trust. In those circumstances, it was held that the Trust is duty-bound to make the payment and, therefore, a writ in the nature of mandamus was issued.”

108. The Court, therefore, held that a writ petition would not be maintainable against VSNL, a fortiori, TCL.”

64. By way of the above stated judgment, the Bombay High Court held that a Government Entity, which does not come under Article 12, is not amenable to the writ jurisdiction since the functions performed by the said entity do not fall under the definition of “public function”. Further, any entity which had previously been a State owned entity, must be analysed to the extent of the degree of financial control exerted by the State. While looking over the financial structure of BSES, it is evident that the financial control of the State is in minority since it holds only 49% of the entity.

65. In view of the foregoing discussions, it can be said that in order for a writ petition to be maintainable, two essential ingredients must be present i.e., falling under the ambit of Article 12 and existence of a public function being discharged in order to be covered under the ambit of the





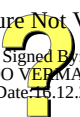
said Article.

66. At this juncture it becomes pertinent to analyse, whether BSES is discharging a public function and therefore is covered under Article 12 of the Constitution of India.

67. The aforesaid has been discussed by the Hon'ble Supreme Court, in case titled ***Andhra Pradesh Southern Power Distribution Power Co. Ltd. v. Hinduja National Power Corpn. Ltd., (2022) 5 SCC 484***, whereby, it was propounded that Discoms are instrumentalities of the State.

“116. Undisputedly, the appellant Discoms are instrumentalities of the State and as such, a State within the meaning of Article 12 of the Constitution of India. Every action of a State is required to be guided by the touchstone of non-arbitrariness, reasonableness and rationality. Every action of a State is equally required to be guided by public interest. Every holder of a public office is a trustee, whose highest duty is to the people of the country. The public authority is therefore required to exercise the powers only for the public good.”

68. In the abovementioned case, it was held that the Discoms are performing a public function and therefore fall well within the ambit of Article 12 of the Constitution of India. The aforesaid case also states that that the functions so performed by Discoms are in larger public interest since it is related to the supply of electricity directly to the consumer. Furthermore, the State is required to regulate the price at which such electricity is distributed and the same is done in order to maintain





satisfaction of the public. Therefore, the functions performed by a Discom fall under the definition of “public function” which in turn falls under the ambit of Article 12 of the Constitution of India.

69. Since electricity is a necessity, entities supplying the same, would fall under the domain of public function. Moreover, the State may from time to time subsidize the prices of such electricity distribution, and therefore may exert some control over the same. Therefore, there is an aspect of public function being carried out by entities that are involved in supplying of electricity.

70. Issue No.1 is decided, accordingly.

Issue no. 2

71. Adverting to the second issue at hand, i.e., whether the order dated 22nd February 2023, issued in compliance with the directions given by this Court, suffers from any illegality.

72. In order to address the issue flagged above, this Court deems it fit to analyze one of the consent orders passed by the respondent no.1. The relevant portion of order dated 22nd February, 2023 has been reproduced herein:

“This is in reference to the Hon'ble High Court's order dated 03.11.2022 passed in W.P. (C) No. 943/2013 titled as "Rajender Kumar Sharma Vs Tata Power DDL &Anr.", whereby the Hon'ble Court disposed of the said writ petition in terms of the judgment dated 31.08.2017 in W.P. (C) 6203/2017 as modified by the judgment dated 20.11.2018 passed by the Hon'ble Division Bench in LPA No. 735/2017.



The relevant extracts of the judgment dated 20.11.2018 passed by the Hon'ble Division Bench in LPA No. 735/2017 titled as BSES Yamuna Power Ltd. v/s Sushil Kumar Khanna are reproduced as under: "Therefore, the only modification that the Court proposes to the impugned order of the learned Single Judge is to direct the present Appellant to fix the pay of the Respondent as a result of the first TBPS in the scale of AE with effect from 24" August 1999 and not with effect from 26" September 1991. The Appellant will fix the pay scale of the Respondents in the scales of EE and above as a result of the second and third TBPS notionally subject to the Respondent fulfilling the other conditions as per Office Order dated 19th October 2000 as further modified by the Office Order dated 1st November 2000. This exercise be completed not later than twelve weeks from today." You were appointed as Inspector w.e.f. 18.11.1982 and promoted to the post of Supdt. (Technical) w.e.f. 01.11.1993. The post of Inspector (Elect.) and Supdt. (T) were merged and re-designated as Junior Engineer (Electrical) w.e.f. 24.08.1999 as per Office Order dated 30.08.1999, that is why the 1TBPS changed into the scale of AE instead of Supdt. (T). You were allowed the TBPS of Assistant Engineer w.e.f. 24.08.1999 i.e. date of merger of post of Inspector and Supdt. (T) as per Clause (2) of Office Order dated 19.10.2000 which is class I post. You were promoted to the post of Assistant Engineer w.e.f. 01.07.2005.

As per point no. 6 of Office Order dated 23.07.1997, "Once an employee/officer enters into class I service, in his own right or in the time bound promotional scales, he shall be dealt at par with the direct recruits in their grade for the purpose of benefit of next promotional scale", accordingly you were treated at par after getting the scale of AE with the direct recruits in that grade for the purpose of benefit of next promotional scales. Accordingly, you were entitled to the next TBPS of XEN after 10 years. However, the Management of TPDDL has reduced the said period to 8 years as per Office Order dated 10.05.2007 effective from 01.01.2007.



So, you were granted the Second TBPS of XEN w.e.f. 01.08.2007 after completion of 08 years of service. Further, you were promoted to the post of XEN w.e.f. 01.01.2012. As per point no. 4 of the Office Order dated 19.10.2000, the 3rd TBPS of SE was admissible after completing 8 years of service from grant of Second TBPS and subject to fulfilling of the conditions that 3rd TBPS shall be given to such of the Junior Engineers who have been appointed on the regular basis as per the Recruitment Rules in their own right to the second promotional grade of XEN. However, the Management of TPDDL has given the relaxation vide Office Order dated 25.10.2010 effective from 01.07.2010 and you were allowed the 3' TBPS w.e.f. 01.11.2010. In view of the above, on examining the records in your case it is found that all due TBPS have already been granted to you in consonance with the applicable TBPS Scheme including Office Orders dated 19.10.2000 and 01.11.2000. The same is also in compliance of the orders dated 03.11.2022 and the judgment dated 31.08.2017 in W.P. (C) 6203/2013 as modified by the judgement dated 20.11.2018 in LPA 735/2017..."

73. A bare perusal of the aforesaid letter brings to light the fact that the respondents had issued the said letter in compliance with the judgment dated 20th November, 2018, in LPA 735/2017, whereby this Court had amended the date of grant of TBPS from 26th September, 1991 to 24th August, 1999. The chains of the previous round of litigations were duly complied with in the letter dated 22nd February, 2023.

74. The aforesaid letter, had been issued pursuant to the order dated 20th November 2018, passed by the Division Bench of this Court in the said LPA. The terms of the letter, as discussed above, clearly pointed out that the petitioners herein have been granted the TBPS in accordance with



the dated mentioned above. It is categorically mentioned that TBPS was ordered to be allowed from the date of the merger of post of Inspector and Superintendent i.e., 24th August, 1999 and not 26th September 1991. The respondents issued individual letters to the petitioners, thereby, granting relief to those eligible for the said benefit.

75. Moreover, it is evident that the fixation of Assistant Engineer (AE) scale i.e. 1st TBPS is to be done w.e.f. 24th August, 1999 i.e. from the date of the merger of post of Inspector and Superintendent i.e. 24th August, 1999 and thereafter subsequent grant of 2nd TBPS is to be done after completion of further 8 years of service and the entitlement of 3rd TBPS is to be done upon completion of yet another 8 years of service each from 24th August, 1999, and not from 26th September 1991.

76. Furthermore, as per Office Order dated 19th October 2000, eligibility for further TBPS is counted from the date of their entry into Class - I service hence they are not eligible for the grant of same from their date of initial induction. Accordingly, they were eligible for the 2nd & 3rd TBPS after completing 26 years of service from Inspector (AE to XEN 8 years, then XEN to SE another 8 years). Office Order No. 217 dated 23rd July 1997, clearly states the following:

"once an employee enters into class-I service in his own right or in the time bound promotional scales, he shall be dealt with at par with the direct recruits in that grade for the purpose of benefit of next promotional scales."

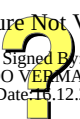
77. The Office Order dated 19th October, 2000 was further modified by the Office Order dated 1st November 2000, wherein grant of second Time



Bound Promotional Scale of Executive Engineer is allowed on completion of further 8 years of service from the date of TBPS of Assistant Engineer and also clarified that scale of Superintending Engineer shall be given to such of the Junior Engineers who have been appointed on regular basis as per Recruitment Rules in their own right to the second promotional grade of Executive Engineer.

78. A joint reading of the Office Orders dated 19th October 2000 and 1st November 2000, along with paragraph 19 of order/judgment dated 20th November, 2018, passed by the Division Bench of this Court wherein the 1st TBPS of Assistant Engineer is to be extended w.e.f. 24th August, 1999 and not for 26th September, 1991 followed by fulfilment of other conditions as mentioned in the said two Office Orders. It is nowhere mentioned in the order dated 20th November, 2018 that entitlement of 2nd & 3rd TBPS will be counted after completion of 18 years and 26 years from the date of induction into the base level rather it is to be allowed as per para 19 of Order dated 20th November, 2018 which states that 1st TBPS to be allowed from 24th August, 1999 and 2nd and 3rd TBPS notionally as per orders dated 19th October 2000 and 1st November 2000.

79. In view of the aforesaid, the speaking order dated 22nd March, 2023 *qua* the petitioner and similar separate speaking orders *qua* other Writ Petition are passed respectively by the Respondent No.1 herein dealing with facts of each case on its own merit. These speaking orders are issued perfectly in accordance with law including orders passed by this Court and relevant Office Orders.





80. In the instant case, it is stated that the petitioner was appointed as Inspector w.e.f. 3rd July 1979 and promoted to the post of Supdt. (Technical) w.e.f. 10th July 1991. The post of Inspector (Elect.) and Supdt. (T) were merged and re-designated as Junior Engineer (Electrical) w.e.f. 24th August 1999 as per Office Order dated 30th August 1999 as a result of which the 1st TBPS changed into the scale of AE instead of Supdt.

81. In view of the above discussions, it is evident that the respondents have issued the letter in contention in compliance with legal principles as well as the orders passed by this Court.

82. Issue no. (ii) is decided, accordingly.

Issue no.3

83. Now advertent to the third issue, i.e., whether the present batch of writ petitions is hit by the principle of *res judicata* in view of LPA 735/2017.

84. In order to address the above flagged issue, it is pertinent for this Court to holistically analyse principle of *res judicata*.

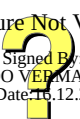
85. *Res judicata*, a fundamental legal principle rooted in the Latin phrase meaning "a matter judged," embodies the concept that once a court has issued a final judgment on a specific matter, the same parties are precluded from re-litigating the same dispute. This principle consists of two essential components: claim preclusion and issue preclusion. Claim preclusion prohibits the parties from initiating a new lawsuit based on the



same cause of action that has already been adjudicated, promoting a sense of finality. Issue preclusion, also known as collateral estoppels, bars the re-examination of specific issues that were decisively addressed in a prior case, fostering judicial efficiency and consistency. *Res judicata* is a cornerstone of legal systems worldwide, aiming to ensure the conclusive resolution of disputes and prevent the endless rehashing of identical matters in the interest of a fair and effective administration of justice.

86. In India, the principle of *res judicata* is a well-established legal concept that finds expression in Section 11 of the Civil Procedure Code, 1909 (hereinafter “CPC”). Section 11 embodies the doctrine and emphasizes that a final judgment or decree passed by a competent court on a matter conclusively determines the rights of the parties and prevents the same issue from being re-agitated. The application of *res judicata* in India involves both the aspects of claim preclusion and issue preclusion. If a matter has been finally decided by a court of competent jurisdiction, parties are generally barred from bringing the same claim in a subsequent proceeding. Additionally, if a specific issue was directly and substantially in question and has been decided by a court, it cannot be re-litigated between the same parties in a subsequent case.

87. The Indian legal system recognizes the importance of *res judicata* in promoting the principles of finality, consistency, and judicial economy. This doctrine serves as a crucial tool to prevent multiplicity of litigation and ensures that legal disputes are conclusively resolved through a fair and efficient legal process.





88. The said principle has been dealt with, by the Hon'ble Supreme Court in a catena of judgments. In case titled ***Alka Gupta v. Narender Kumar Gupta, (2010) 10 SCC 141***, the Hon'ble Supreme Court has held as follows:

“20. Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication of his claim. The plea must be clearly established, more particularly where the bar sought is on the basis of constructive res judicata. The plaintiff who is sought to be prevented by the bar of constructive res judicata should have notice about the plea and have an opportunity to put forth his contentions against the same. In this case, there was no plea of constructive res judicata, nor had the appellant-plaintiff an opportunity to meet the case based on such plea.

21. Res judicata means “a thing adjudicated”, that is, an issue that is finally settled by judicial decision. The Code deals with res judicata in Section 11, relevant portion of which is extracted below (excluding Explanations I to VIII):

“11. Res judicata.—No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

22. Section 11 of the Code, on an analysis requires the following essential requirements to be fulfilled, to apply the bar of res judicata to any suit or issue:

(i) The matter must be directly and substantially in issue in the former suit and in the later suit.



(ii) *The prior suit should be between the same parties or persons claiming under them.*

(iii) *Parties should have litigated under the same title in the earlier suit.*

(iv) *The matter in issue in the subsequent suit must have been heard and finally decided in the first suit.*

(v) *The court trying the former suit must have been competent to try the particular issue in question.*

23. *To define and clarify the principle contained in Section 11 of the Code, eight Explanations have been provided. Explanation I states that the expression “former suit” refers to a suit which had been decided prior to the suit in question whether or not it was instituted prior thereto. Explanation II states that the competence of a court shall be determined irrespective of whether any provisions as to a right of appeal from the decision of such court. Explanation III states that the matter directly and substantially in issue in the former suit, must have been alleged by one party or either denied or admitted expressly or impliedly by the other party. Explanation IV provides that:*

“Explanation IV.—Any matter which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

The principle of constructive res judicata emerges from Explanation IV when read with Explanation III both of which explain the concept of “matter directly and substantially in issue”.

24. *Explanation III clarifies that a matter is directly and substantially in issue, when it is alleged by one party and denied or admitted (expressly or impliedly) by the other. Explanation IV provides that where any matter which might and ought to have been made a ground of defence or attack*



in the former suit, even if it was not actually set up as a ground of attack or defence, shall be deemed and regarded as having been constructively in issue directly and substantially in the earlier suit. Therefore, even though a particular ground of defence or attack was not actually taken in the earlier suit, if it was capable of being taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata. Constructive res judicata deals with grounds of attack and defence which ought to have been raised, but not raised, whereas Order 2 Rule 2 of the Code relates to reliefs which ought to have been claimed on the same cause of action but not claimed.”

25. *The principle underlying Explanation IV to Section 11 becomes clear from Greenhalgh v. Mallard [(1947) 2 All ER 255 (CA)] thus: (All ER p. 257)*

“... it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.”

(emphasis supplied)

26. *In Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] , a Constitution Bench of this Court reiterated the principle of constructive res judicata after referring to Forward Construction Co. v. Prabhat Mandal [(1986) 1 SCC 100] thus: (Direct Recruit Class II case [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] , SCC p. 741, para 35)*



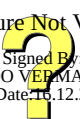


“35. ... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence.”

In the instant case, the High Court has not stated what was the ground of attack that the appellant-plaintiff ought to have raised in the first suit but had failed to raise, which she raised in the second suit, to attract the principle of constructive res judicata. The second suit is not barred by constructive res judicata.”

89. In the aforesaid judgment, the Hon’ble Supreme Court observed that section 11 of the CPC provides 8 explanations in order to clarify the principle of *res judicata*. It is observed that the purpose of the said principle is not solely confined to the issues which the Courts are asked to decide but also cover certain issues that clearly form part of the subject matter of the litigation preferred by the aggrieved parties and deciding the same afresh would amount to an abuse of the process of law.

90. As per the material on record, it is evident that the petitioners had earlier filed individual writ petitions claiming the identical reliefs for grant of TBPS, against the respondent and the matter of **Sushil Kumar Khanna** (*supra*) was taken up as the lead matter in the batch. A detailed judgment dated 31st August, 2018 was passed by a Coordinate Bench of this Court, which was again challenged by the respondent by way of LPA 735/2017. The Division Bench of this Court modified the previous judgment dated 31st August, 2018 vide their order dated 20th November





2018. In view of the judgment passed by the Division Bench of this Court, the respondents issued the letter dated 22nd February 2023, whereby, the first TBPS in the scale of AE, was to be granted w.e.f. 24th August 1999 and not 26th September 1991. The aforesaid TBPS were to be granted notionally as per the office order dated 19th October, 2000.

91. In the present batch, the petitioners are claiming TBPS from 24th August 1999, a claim which is identical to those sought by the petitioners in the previous round of litigation.

92. This Court is of the opinion that the petitioners being unsatisfied with the previous orders of this Court, have approached this Court in appeal for the purpose of review the LPA bearing No. 735/2017. As per the aforesaid discussions and legal principle of *res judicata*, it is evident that the letter dated 22nd February 2023, is a consent order passed in compliance with the order dated 20th November, 2011, however the petitioners remain unconvinced with the TBPS scheme established by the respondents and continue to initiate litigation even though the issue had attained finality in view of the judgment dated 20th November, 2011. The present batch appears to be a mere review of the judgment which has already been passed and complied with and the same is impermissible under law, as per the principle of *res judicata*. Hence the present batch of writ petitions appears to be barred by the principle of *res judicata*.

93. Issue no.(iii) is decided, accordingly.

CONCLUSION



94. This Court is of the considered view that the instant writ petition is maintainable since BSES/TDPL fall under the ambit of Article 12. Moreover, the issues that are being re-agitated by the present batch of writ petitions have been duly adjudicated upon by a Division Bench of this Court in LPA No. 735/2017 dated 31 August, 2017, which makes the present batch of writ petitions barred as per the principle of *res judicata*. Furthermore, the respondents have passed the consent orders dated 22nd February 2023, 25th January and 27th January, 2023, in compliance by the directions laid down by this Court and therefore, suffer from no illegality.

95. In view of the aforesaid facts and discussions, I do not find any merit in the instant petition.

96. Accordingly, the petition is dismissed.

97. Pending applications, if any, also stand dismissed.

98. The judgment to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 12, 2023
gs/ds/db