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

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

+ **W.P.(C) 852/2012 & CM APPL. 1898/2012 (stay)**

BSES YAMUNA POWER LIMITED Petitioner

Through: Mr. Sandeep Prabhakar,
Mr. Anupam Varma, Mr. Nikhil Sharma,
Mr. Aditya Gupta and Ms. Manu Tiwari,
Advocates

versus

VIRENDER NATH DIWEDI & ORS Respondents

Through: Mr. V.K. Goel, Advocate 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. This writ petition has been filed by the Petitioner laying a challenge to order dated 03.09.2011 passed by Labour Court in LCA No.02/09.

2. Respondent No.1 herein was an employee of erstwhile DESU/DVB and was working as Assistant Lineman. DVB was unbundled w.e.f. 01.07.2002 and five different companies were formed. Respondent No.1 became an employee of the Petitioner herein i.e. BSES YPL. DVB Employee Terminal Benefit Fund, 2002 (Pension Trust) was formed for the purpose of disbursement of pension to erstwhile employees of DVB as also for employees who joined the newly formed companies and retired thereafter on attaining the age of superannuation or otherwise.

3. Respondent No.1 sought voluntary retirement from services of the Petitioner w.e.f. 31.08.2003, which was accepted and he was informed that he would stand retired from the said date. A relevant fact needs a mention at this stage that Respondent No.1's wife Smt. Shyama Diwedi filed a writ petition being W.P.(C) 555/2003 in this Court wherein an interim order was passed on 22.01.2003, restraining the Petitioner herein from releasing the retiral benefits of Respondent No.1. On this count, Petitioner informed Respondent No.1 that his retiral benefits shall be released only after adjudication of the writ petition. Wife of Respondent No.1 filed a maintenance petition under Section 125 Cr.P.C. before the learned Metropolitan Magistrate and thereafter, the writ petition was dismissed as withdrawn on 09.11.2004 with a further direction by the Court that the interim order will continue to inure to the benefit of the wife for a period of four weeks to move an appropriate application for maintenance.

4. On 02.12.2004, learned MM in MP. 582/03 awarded interim maintenance of Rs.1,000/- per month to the wife and son of Respondent No.1 and also restrained the Petitioner from releasing further payment to Respondent No.1 till disposal of the petition. In the execution proceedings, Petitioner was directed not to release the pension, gratuity and leave encashment to Respondent No.1 till the next date of hearing i.e. 09.12.2005 and on the said date, a further direction was passed not to release the GPF. Petitioner intimated to Respondent No.1 that his benefits cannot be released on account of the interim orders as also that the liability to pay the terminal benefits was on Respondent No.2/Pension Trust.

5. Respondent No.1 thereafter filed an application on 30.01.2009 under Section 33(c)(2) of the Industrial Disputes Act, 1947 before the Labour Court seeking release of his gratuity and monthly pension @ Rs.4,500/- per month for the Petitioners period 01.09.2003 to

31.12.2008 along with interest. On 03.09.2011, the Labour Court passed the impugned order directing payment of retiral benefits to Respondent No.1, subject to compliance of order of the learned MM dated 09.12.2005 to the effect that whatever outstanding maintenance had not been paid by Respondent No.1 to his wife and child, the same shall be deposited in the Court of learned MM and after apprising the Court, arrangements shall be made for future payment of the maintenance amount. In case of default, Petitioner was held liable to pay interest @ 9% per annum on unpaid amount till the date of payment.

6. Petitioner filed the present writ petition assailing the order of the Labour Court essentially on the ground that liability to pay retiral and terminal benefits to Respondent No.1 rested on Respondent No.2 and not the Petitioner, amongst various other grounds. When the writ petition was listed on 13.02.2012, Court stayed the operation of the order of the Labour Court, subject to the Petitioner depositing with the Registrar General of this Court, within a period of four weeks by means of a pay order/demand draft, the amount directed to be paid to Respondent No.1 by the Labour Court and the money was to be invested in a Fixed Deposit, initially for a period of six months, renewable every six months. Thereafter, Respondent No.1 filed an application being CM No.5650/2012 seeking release of the amount deposited. With the consent of the parties, the application was allowed by the Court vide order dated 04.05.2012 and Registry was directed to release the amount of Rs.4,25,020/- in favour of Respondent No.1, making it clear that if any arrears were due towards the wife of Respondent No.1 the same shall be disbursed in her favour. Release of the amount was made subject to the undertaking of Respondent No.1 that whatever direction will be passed by the Court for maintenance or other purposes of his wife, he shall continue to pay the same to her.

7. As aforementioned, when the writ petition was filed, the order of the Labour Court was assailed on several grounds including the liability of paying the retiral benefits being of the Pension Trust and not the Petitioner. However, today, at the outset, Mr. Sandeep Prabhakar, learned counsel for the Petitioner fairly submits that the Petitioner does not press other grounds raised in the writ petition and rests his case on the legal issue that the liability to pay the retiral/terminal benefits to Respondent No.1 is of the Pension Trust and not the Petitioner and this issue is covered on all four corners in favour of the Petitioner by the judgment of the Division Bench in ***Tata Power Delhi Distribution Power Limited v. Smt. Rosy Jain and Ors., 2016 SCC OnLine Del 1650***, in which reliance is placed on the observations of this Court in ***North Delhi Power Ltd. v. Govt. of NCT of Delhi, 2007 SCC OnLine Del 919***, ('SVRS judgment'). Mr. Prabhakar further submits that a sum of Rs.4,25,020/- was deposited in this Court, pursuant to the order of the Labour Court and has been withdrawn by Respondent No.1 and therefore, liberty be granted to the Petitioner to claim and recover the amounts from the Pension Trust in terms of the judgment in ***Rosy Jain (supra)***.

8. It is undisputed that Respondent No.1 had sought voluntary retirement while in service of the Petitioner, being an erstwhile employee of DVB. It is equally undisputed that after the judgment of the Division Bench of this Court in ***Rosy Jain (supra)***, it is no longer open to the Pension Trust to disown its liability to pay the retiral/terminal benefits to Respondent No.1, as in the said judgment the conflict as to whether the employer i.e. the DISCOMS or the Pension Trust is liable, stands adjudicated and resolved.

9. The Division Bench has referred to observations of this Court in SVRS judgment that the Pension Trust cannot deny its liability towards employees retiring on voluntary retirement under Rule 48-A

of the Pension Rules. Significantly, no appeal was filed by the Pension Trust against the SVRS judgment, which has thus attained finality. The Division Bench has, after an in-depth analysis of and deliberation on the issue, also observed that the Circular dated 03.11.2009 issued by the GNCTD, shows that the Delhi Government was completely alive to the fact that those opting for voluntary retirement were to be equated with those superannuating in the normal course and the Pension Trust was to entertain the claims for fixation of pension. It was thus directed that the Pension Trust shall process or disburse the payments, if not already made and in case the payments have been made by the Appellants/the DISCOMS, the latter shall be able to claim and recover the amounts paid. Relevant passages from the judgment in ***Rosy Jain (supra)*** 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.

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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18. The Court had, in the SVRS judgment, in para 93 issued elaborate directions for the constitution of a Tribunal and disbursement of amounts since the issue was pending for considerable period of time. These directions were sought to be modified/clarified by separate applications which were disposed of on 20.04.2011. That order was challenged in LPA 677/2011, 680/2011, 738/2011 and 739/2011. The Division Bench, in its common judgment (GNCT v. NDPL, LPA 677/2011, decided on 31.08.2015) rejected those appeals and held as follows:

“15. Notwithstanding the prolix pleadings in the appeals filed by the Government of Delhi and the Pension Trust, the only argument advanced at the hearing of the four appeals which laid a challenge to the order dated April 20, 2011 was that since most of the VRS optees had even otherwise attained the age of superannuation there was no necessity to constitute the Tribunal as directed by the main judgment dated July 02, 2007.

16. The said contention of the Government of NCT of Delhi and the Pension Trust has simply to be noted and rejected for the reason neither challenged the main judgment dated July 02, 2007 and thus the mandate of the said judgment had to be complied with. We have already noted hereinabove the reasons given by the learned Single Judge for constitution of the Tribunal if the DISCOMS exercised the option as per para 93II(i) of the decision dated July 02, 2007. The reasons given by the learned Single Judge are even otherwise sound. Besides, since the decision dated July 02, 2007 has not been challenged by either party it has attained finality. We see no logic in the argument, and therefore concur with the view taken by the learned Single Judge in the decision dated April 20, 2011 culled out in paragraphs 14 and 15 of the said order, contents whereof have been noted by us in paragraph 14 above.”

19. Thus, the question as to whether voluntary retirement under Rule 48A was a normal condition of service amounting to superannuation and as to the location of liability for making payouts stood settled. In NDPL (supra), the Supreme Court had to decide two appeals. An appeal, which arose from the judgment and order, dated 30.03.2006

of a Division Bench of this Court in *K.R. Jain (supra)*. The facts in *K.R. Jain (supra)*, which led to the discussion and conclusions of the Supreme Court, are noticed as follows:

“23. The Letters Patent Appeal filed by the appellant before the High Court was dismissed. It so happened, that respondent No. 3 herein Shri K.R. Jain, who was an erstwhile employee of the Delhi Electric Supply Undertaking (DESU), superannuated from service on 31.07.1996. Eventually, Delhi Vidyut Board (DVB) became successor of Delhi Electricity Supply Undertaking (DESU). NDPL was incorporated on 04.07.2001 and inherited the distribution undertaking on 01.07.2002 along with the assets, liabilities, personnel and proceedings in pursuance of statutory transfer scheme notified by the Government pursuant to Sections 14-16 and 60 of the Delhi Electricity Reforms Act, 2000.

24. It was much before that, that respondent No. 3 was superannuated. His pension was paid from the Terminal Benefit Fund, 2002 of DVB. The DVB had floated Time Bound Terminal Scale Scheme by its Office Order dated 23.07.1997 and Resolution No. 216 dated 16.07.1997. Claiming that though he had superannuated on 31.07.96, still he was covered by the scheme, respondent No. 3 filed a Writ Petition No. 2337 of 2004 seeking appropriate direction against Delhi Government, Delhi Power Co. Ltd. and Delhi Power Supply Company and claimed benefits arising out of the Scheme. Significantly enough, NDPL was not made a party nor was there any claim against it.

25. This Writ Petition was allowed by the Learned Single Judge, holding that respondent No. 3 was entitled to avail the benefits under Time Bound Promotional Scale Scheme (TBPS) and that DVB had unjustly denied him his dues. Holding the present appellant as a successor, Mandamus was issued against the appellant who was not a party and was not given an opportunity of hearing. This was based on the statement of an advocate appearing for respondent Nos. 1 and 2 herein to the effect that it was the appellant-petitioner who was the successor and was as such responsible to implement the judgment dated 23.03.2004.”

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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,⁴ 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

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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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26. The appellant DISCOMS also rely on the GNCTD's order/letter/circular dated 03.11.2009. The said letter reads as follows:

***"GOVERNMENT OF NCT OF DELHI
(DEPARTMENT OF POWER)
DELHI SECRETARIAT, 8th LEVEL, B-WING
NEW DELHI-110 002***

No. F.11(01)/2009/Power/2909

Dated : the 03.11.2009

*To,
The Secretary
Pension Trust,
Rajghat Power House,
Delhi-110002
Fax No. 23245619*

Sub : Applicability of voluntary retirement under Rule 48(A), CCS Pension Rules, 1972

Sir, I am directed to advise you to entertain all cases of Rule 48(A), CCS Pension Rules, 1972 w.e.f. 01.07.2002 treating them at par with regular retirement by paying the terminal benefits and pension as per CCS (Pension) Rules and consequently raise demand on the successor entitles for subsequent funding of the trust on this account

Signature Not Verified

Digitally Signed By: KAUSHAL W.P.(C) 852/2012
KUMAR SACHDEV
Signing Date: 16.05.2023
16:51:31

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for meeting the future liabilities accordingly. This issues with the approval of competent authority.

*Yours faithfully,
Sd/-
(S.M. Ali)
Dy. Secretary (Power)”*

27. The above circular also shows that the GNCTD was alive to the fact that those opting for voluntary retirement were to be equated with those superannuating in the normal course and the Pension Trust was to entertain the claim for fixation of pension.

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.”

10. In view of the aforementioned judgment in ***Rosy Jain (supra)***, which entirely covers the present case, this Court finds no impediment in the way of Respondent No.1 from getting the relief of his retiral benefits and the liability to pay rests on the Pension Trust. The impugned order of the Labour Court would therefore require examination in light of the judgments in ***Rosy Jain (supra)*** and ***North Delhi Power Ltd. (supra)***.

11. Perusal of the impugned order shows that Labour Court has fixed the responsibility for payment of the benefits to Respondent No.1 on the Petitioner herein, which finding cannot be sustained for the aforementioned reasons. Accordingly, to this extent, the impugned order requires modification.

12. It is also evident from the order of the Labour Court that Respondent No.1 has already received certain benefits towards GPF, NGIS as well as an amount of Rs.4,25,020/- deposited in this Court towards gratuity and monthly pension @ Rs.4,500/- per month for the period 01.09.2003 to 31.12.2008. Therefore, the balance amounts, if

any, due to Respondent No.1 shall be released by Respondent No.2/Pension Trust in terms of the observations and directions of the Division Bench in ***Rosy Jain (supra)*** and Pension Trust shall continue to pay the monthly pension. The balance amounts, if any, will be released within three months from today. Needless to state that payments will be received by Respondent No.1, subject to his liabilities towards his wife and child, which he shall continue to discharge in terms of the order of the Labour Court read with his undertaking given to this Court on 04.05.2012.

13. Writ petition is disposed of, modifying the impugned order of the Labour Court to the above extent that the liability to pay the retiral/terminal benefits rests on the Pension Trust and permitting the Petitioner to seek reimbursement from the Pension Trust towards the amounts paid to Respondent No.1, in terms of the directions of the Division Bench in ***Rosy Jain (supra)***.

14. Pending application stands disposed of accordingly.

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JYOTI SINGH, J

APRIL 11, 2023/kks