WA No. 1252 of 2023
C/W WA No. 1240 of 2023
WA No. 1254 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT APPEAL NO. 1252 OF 2023 (S-RES)
C/W
WRIT APPEAL NO. 1240 OF 2023 (S-RES)
WRIT APPEAL NO. 1254 OF 2023 (S-RES)

IN WA No. 1252/2023

BETWEEN:

1. THE MANAGING DIRECTOR
KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
CAUVERY BHAVAN
K.G.ROAD, BENGALURU-560 009

2. THE DIRECTOR (A AND HR)
KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
1ST FLOOR, CAUVERY BHAVAN
K.G.ROAD, BENGALURU-560 009

3. THE DIRECTOR (FINANCE)
KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
CAUVERY BHAVAN
K.G.ROAD, BENGALURU-560 009

...APPELLANTS

(BY SRI: S S NAGANAND, SENIOR COUNSEL FOR
SMT: SUMANA NAGANAND, ADVOCATE)

Digitally signed by
PREMCHANDRA M R
Location: HIGH COURT
OF KARNATAKA

AND:

1. FAIROZA BEGUM BELGAUM
   AGED ABOUT 36 YEARS
   ASSISTANT EXECUTIVE ENGINEER (ELE)
   KPTCL, TL AND SS DIVISION
   HOODY, BENGALURU-560 048

2. CHANDRIKA
   AGED ABOUT 39 YEARS
   ASSISTANT EXECUTIVE ENGINEER (ELE)
   KPTCL, SLDC, A.R.CIRCLE
   BENGALURU-560 009

3. SUMANA BHAT
   AGED ABOUT 38 YEARS
   ASSISTANT EXECUTIVE ENGINEER(ELE)
   KPTCL, SCADA, A.R.CIRCLE
   BENGALURU-560 009

4. AMBIKA
   AGED ABOUT 39 YEARS
   ASSISTANT EXECUTIVE ENGINEER (ELE)
   TR(M), BRAZ, KPTCL
   G.K.V.K COMPOUND
   BENGALURU-560 024

5. SHAILASREE SRINIVAS
   AGED ABOUT 36 YEARS
   ASSISTANT EXECUTIVE ENGINEER (ELE)
   KPTCL, SCADA, SLDC
   A.R.CIRCLE, BENGALURU-560 009

6. BHANU PRAKASH
   AGED ABOUT 38 YEARS
   ASSISTANT EXECUTIVE ENGINEER(ELE)
   3RD FLOOR, BESCOM, 302
   K.R.CIRCLE, BENGALURU-560 001

7. G. NEELIMA
   AGED ABOUT 38 YEARS
   ASSISTANT EXECUTIVE ENGINEER(ELE)

SCADA, EMS KPTCL
A.R.CIRCLE, BENGALURU-560 009

8. B.S. BASAVARAJAIAH
AGED ABOUT 48 YEARS
ASSISTANT EXECUTIVE ENGINEER(ELE)
BESCOM VIGILANCE
RAJAJINAGAR, CRESCENT ROAD
BENGALURU-560 001

9. B.G. VIJAYA KUMAR
AGED ABOUT 37 YEARS
ASSISTANT EXECUTIVE ENGINEER(ELE)
KPTCL RT ADDITIONAL SUB-DIVISION
W.C.ROAD, RAJAJINAGAR
BENGALURU-560 010

…RESPONDENTS

(BY SRI: ANIL KUMAR R, ADVOCATE FOR R1, R6, R8 & R9;
SRI: PUTTEGOWDA, ADVOCATE/CR FOR R2, R5 & R7;
SRI: YASHODHAR HEGDE AND
SRI: MANU K, ADVOCATES FOR R3 & R4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 28.08.2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.No.32866/2017 (S-RES) AND CONSEQUENTLY DISMISS THE WRIT PETITION, IN THE INTEREST OF JUSTICE.

IN WA NO. 1240/2023

BETWEEN:

1. KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF THE COMPANIES
ACT, 1956 HAVING ITS
CORPORATE OFFICE AT
CAUVERY BHAVAN, K.G.ROAD
BENGALURU-560 009

REPRESENTED BY ITS
DIRECTOR. (ADMN AND HR)
VIJAY B.P

2. THE DIRECTOR (A AND HR)
KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
CORPORATE OFFICE
CAUVERY BHAVAN
K.G.ROAD, BENGALURU -560 009

3. KPTCL AND ESCOMs PENSION AND
GRATUITY TRUST
CAUVERY BHAVAN
K.G. ROAD, BENGALURU-560 009
REPRESENTED BY THE CHAIRMAN
AND DIRECTOR OF FINANCE, KPTCL

...APPELLANTS

(BY SRI: S S NAGANAND, SENIOR COUNSEL FOR
SMT: SUMANA NAGANAND, ADVOCATE)

AND:

1. KEB ENGINEERS ASSOCIATION
REGISTERED UNDER THE PROVISIONS
OF THE KARNATAKA SOCIETIES
REGISTRATION ACT
S.J.M.BUILDING
NO.28, RACE COURSE CROSS ROAD
ANAND RAO CIRCLE
BENGALURU-560 009
REPRESENTED BY ITS GENERAL SECRETARY
S. PRAKASH KUMAR

2. PRASHANTH PAI M.J
S/O SRI. M. JANARDHAN PAI
AGED ABOUT 42 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
HT RATING SUB-DIVISION
MESCOM, BANTWAL-574 211

3. NAGABHUSHAN N.G
S/O GURUDEV K
AGED ABOUT 45 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
BESCOM, C2 SUB-DIVISION
MALLESHWARAM
BANGALORE-560 003

4. DILEEP K.V.
S/O LATE K.N.V.GUPTA
AGED ABOUT 42 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
RT SUB-DIVISION, KPTCL
HIRIYUR CHELLAKERE ROAD
HIRIYUR-577 599

5. SUDHEER R
S/O LATE RAMU N
AGED ABOUT 42 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
RT SUB-DIVISION, KPTCL
F.T.S COMPOUND
MYSURU-570 007

6. LAKSHMIDHARA PRABHU T
S/O LATE KAMALAKSHA PRABHU T
AGED ABOUT 44 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
RT SUB-DIVISION, KPTCL
RAJAJINAGAR
BENGALURU-560 010

7. R. MANJUNATHA
S/O RAMAIAH T
AGED ABOUT 46 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE)
O AND M DIVISION
BESCOM, PEENYA
BENGALURU-560 058

8. JAYARAMA H
S/O HANUMAIAH
AGED ABOUT 46 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE)
OFFICE TRANSMISSION ZONE
KPTCL, TUMKUR-572 102

9. GOPALA KRISHNA H
S/O HANUMAN KARIYAPPA H
AGED ABOUT 46 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE)
NITTUR 220/110 K V
R/S NITTUR
TUMKUR DISTRICT-572 223

10. GULZAR AHMED A. MULLA
S/O ABDULLA D. MULLA
AGED ABOUT 45 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.,)
AND TECHNICAL ASSISTANT TO
MANAGING DIRECTOR, HESCOM
NAVANAGAR
HUBBALLI-560 025

11. DEEPAK D
S/O DHANPAL
AGED ABOUT 43 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
220 KV STATION
NEAR HINDALCO FACTORY
KPTCL, BELAGAVI-590 010

12. VENKOBA RAO K
S/O BHEEMA RAO K
AGED ABOUT 44 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
LT RATING SUB-DIVISION
GESCOM, DAM ROAD
HOSPET-583 201

13. MANJUNATH B. TINGARIKAR
S/O BASAPPA TINGARIKAR
AGED ABOUT 46 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
O AND M, RURAL SUB-DIVISION
HESCOM
DHARWAD-580 004

14. BHIMAPPA K. HIPPARAGI
S/O KASHEERAY
AGED ABOUT 48 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
O AND M DIVISION, HESCOM
JAMAKHANDI
BAGALKOT DISTRICT-567 301

15. GURURAJ V. SAMPANNAVAR
S/O VEERABHADRAPPA
AGED ABOUT 43 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
O AND M SUB-DIVISION
HESCOM, AIGALI
ATHANI TALUK
BELAGAVI DISTRICT-591 248

16. CHANDRASHEKHA BOLEGAON
S/O HANAMANTH
AGED ABOUT 48 YEARS
ASSISTANT ENGINEER (ELE.)
OFFICE SECTION
HESCOM
DEVAR HIPPARAGI-586 115

17. PURUSHOTHAMA A.S
S/O SHIVAPRASAD A.H
AGED ABOUT 45 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
220 KV SUB-STATION, NITTUR
GUBBI TALUK
TUMKUR DISTRICT-572 223

18. VEERESH U
S/O BASAPPA U
AGED ABOUT 47 YEARS
ASSISTANT EXECUTIVE ENGINEER
400 KV MAJOR WORKS SUB-DIVISION
KPTCL, BALLARI-583 103

19. RAVI ASUTI
S/O LINGA BASAPPA
AGED ABOUT 45 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
220 KV R/S ANCHEPALYA
KUNIGAL TALUK
TUMKUR DISTRICT-572 130

20. MANOHAR SHETTY
S/O K. SHENAPPA SHETTY KUDIBAIL
AGED ABOUT 47 YEARS
KRODHA BAILOR
SHANKARANARAYANA VILLAGE
KUNDAPURA TALUK
UDUPI DISTRICT-576 227

21. RAJESH KAMBLEKAR
S/O JEEVAPPA KAMBLEKAR
AGED ABOUT 44 YEARS
ASSISTANT EXECUTIVE ENGINNER (ELE.)
DIVISIONAL WORK UNIT
H.NO.13-1-266/267
SHREE KRISHNA NILAYA
PARAS VATIKA LAYOUT
RAICHUR-584 135

22. CHANDRASHEKARA POOJARY
S/O THYAMPA POOJARY
AGED ABOUT 43 YEARS
THADENGALA HOUSE
KULALA POST
KOLNADU VILLAGE
BANTWALA TALUK
DAKSHINA KANNDA-574 323

23. ABHISHEK B.S
S/O SHREEPALIAH B
AGED ABOUT 42 YEARS
ASSISTANT EXECUTIVE ENGINEER (ELE.)
BILALGODE ESTATE
SAMSE POST (VIA KALASA)
MUDIGERE TALUK
CHIKKAMAGALUR DISTRICT-577 132

24. STATE OF KARNATAKA
ENERGY DEPARTMENT
VIKASA SOUDHA
BANGALORE-560 001
REPRESENTED BY ITS SECRETARY

...RESPONDENTS

(BY SRI: VIJAYKUMAR V B, ADVOCATE/CR FOR R1 AND R8;
SRI: MOHAN C, ADVOCATE FOR R2, R3 TO R5, R6, R7, R9 TO R18, R19, R20 TO R23
SRI: G S ARUNA, HCGP FOR R24)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 28/08/2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P NO.9774/2016 AND CONSEQUENTLY DISMISS THE WRIT PETITION.

IN WA NO. 1254/2023

BETWEEN:

1. THE MANAGING DIRECTOR
KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
CORPORATE OFFICE
CAUVERY BHAVAN, K.G. ROAD
BENGALURU-560 009

2. THE DIRECTOR (A AND HR)
KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED
CORPORATE OFFICE

CAUVERY BHAVAN
K.G.ROAD
BENGALURU-560 009

3. THE MANAGING DIRECTOR
BANGALORE ELECTRICITY SUPPLY
COMPANY LIMITED
CORPORATE OFFICE
DR. B.R. AMBEDKAR VEEDHI
NEAR K.R. CIRCLE
BENGALURU-560 001

4. THE MANAGING DIRECTOR, CESCOM
CORPORATE OFFICE,
NO.29, VIJAYANAGAR 2ND STAGE
HINAKAL, MYSURU-570 017

5. THE MANAGING DIRECTOR
HUBLI ELECTRICITY SUPPLY
COMPANY LIMITED
CORPORATE OFFICE
NAVANAGAR, P.B. ROAD
HUBBALLI-580 025

6. THE MANAGING DIRECTOR
MANGALORE ELECTRICITY
SUPPLY COMPANY LIMITED
CORPORATE OFFICE
BIJAI KAVOUR ROAD, BIJAI
MANGALURU-575 004

7. THE MANAGING DIRECTOR
GULBARGA ELECTRICTIY
SUPPLY COMPANY LIMITED
CORPORATE OFFICE
STATION ROAD
KALABURGI-585 102

...APPELLANTS

(BY SRI: S S NAGANAND, SENIOR COUNSEL FOR
SMT: SUMANA NAGANAND, ADVOCATE)

AND:

1. KARNATAKA POWER TRANSMISSION
CORPORATION EMPLOYEES' UNION
(R)- 659, KPTCL COMPOUND
A STATION, S.C. ROAD
ANAND RAO CIRCLE
BENGALURU-560 009
REPRESENTED BY ITS GENERAL SECRETARY

2. STATE OF KARNATAKA
VIKASA SOUDHA
DR. B.R.AMBEDKAR ROAD
BENGALRUU-560 001
REPRESENTED BY THE
ADDITIONAL CHIEF SECRETARY
DEPARTMENT OF POWER AND ENERGY

...RESPONDENTS

(BY PROF: RAVIVARMA KUMAR, SENIOR COUNSEL FOR
SRI: K SRINIVASA, ADVOCATE/CR FOR R1;
SRI: G S ARUNA, HCGP FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 28.08.2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P No.13498/2021 (S-RES) AND CONSEQUENTLY DISMISS THE WRIT PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 31.08.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

COMMON CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

PLEADINGS AND BACKGROUND OF THE LIS:

Writ Appeal No. 1240 of 2023 arises out of the order passed in Writ Petition No.9774 of 2016. The writ petitioners were all appointed as Assistant Engineers on contract basis, pursuant to Notification dated 07.05.2003 issued by Karnataka Electricity Board (KEB), now named as Karnataka Power Transmission Corporation Ltd., (KPTCL). Petitioner No.1 is the Association of Engineers. By Resolution dated 16.03.2007 at Annexure-C, the Board of the appellant approved the appointment of Assistant Engineers (Electrical) and Junior Engineers (Electrical) on permanent basis subject to terms and conditions stipulated in the order of appointment.

2. The relevant portion of the Resolution dated 16.03.2007 of Board of the appellant is extracted herein below for ready reference:

> *"After detailed deliberations, the Board resolved to appoint the Contract Assistant Engineers (Elec.) and Contract Junior Engineers (Elec.) appointed against Employment Notification No.KPTCL/B16/2834/1999-2000 (II) dated 07.05.2003 on a permanent basis and in the time scale of Assistant Engineers and Junior*

Engineers prospectively from the date of issue of the appointment orders."

3. Pursuant to the said Resolution, Writ Petitioners/respondent Nos.2 to 23 herein were issued with appointment orders dated 30.04.2007. One such appointment order has been placed on record as Annexure-H. Condition Nos.2 and 5 of the order of appointment reads as follows:

"2. Your service on contract basis shall not count for any purpose including for fixing salary, seniority, promotion or pension.

5. You are not entitled to the pension as per the existing pension Rules. However, you will be covered under the contributory pension scheme which is under consideration for adoption by KPTCL w.e.f. 01.04.2006."

4. Clause-7 of the conditions of letter of appointment requires execution of an agreement in the prescribed proforma on a stamp paper of value of Rs.100/-. One such agreement entered into by the appellant and the employee is part of the record at Annexure-J. Clause-4 of the said agreement is concerning the service conditions, which reads as follows:

"4. My appointment and continuance shall be subject to the KEB Employees Service Regulation, KEB

Recruitment and Promotion Regulations, Employees (Probation) Regulations and Employees (Seniority) Regulations, KEB Employees (Classification, Disciplinary Control and Appeal) Regulations, 1987 and KEB Employees Service (Conduct Rules) 1988, as amended from time to time and other Rules and Regulations framed and made applicable from time to time."

5. Government Order dated 31.03.2006 New Defined Contributory Pension Scheme (NPS) was introduced and made it mandatory to all new recruits to the services of State Government joining on or after 01.04.2006. In terms of NPS, the monthly contribution of the employees shall be 10% of the basic pay and dearness allowance to be paid by the employee and matched by the State Government in equal proportion.

6. The appellant - KPTCL vide order dated 05.07.2007 accorded approval for implementing New Defined Contributory Pension Scheme w.e.f. 01.04.2006 for new entrants to KPTCL/BESCOM service as follows:

"The new defined contributory pension scheme shall be mandatory to all new recruits to KPTCL/ESCOMs service joint on or after 1.4.2006. The monthly contribution shall be 10% of the Basic Pay & Dearness Allowance thereon to be paid by the employee and matched by KPTCL/ESCOMs in equal proportion. However, there shall be no contribution from

KPTCL/ESCOMs in respect of individuals who are not KPTCL/ESCOMs employees."

7. After 7 years from the date of absorption/Regularization of the contract Assistant Engineers on 30.04.2007, some of the respondents/writ petitioners submitted the representation dated 27.09.2014 requesting to consider their case under old pension scheme, contending that the New Defined Contributory Pension Scheme was brought into effect from 01.04.2006 for new recruits who have joined after 01.04.2006, however, they are already in the services of the appellant as contract Assistant Engineers since November 2003. Therefore, the word "newly recruited" stipulated in the order dated 01.04.2006 or 30.04.2007 cannot be construed and applied to their cases. In addition, it is stated that identical questions have been decided by the High Court of Madras in Writ Petition (MD) No.11221 of 2010, Writ Petition No.25293 of 2010, Writ Petition No.8207 of 2011 and Writ Petition No.8206 of 2011 in respect of various departments, wherein, in identical circumstances, though the employees were appointed on consolidated pay before the implementation of New Defined Contributory Pension Scheme, but were regularised after coming into force (NPS) were considered under the old pension

scheme and therefore, they are also entitled for the similar reliefs.

8. The representation of the writ petitioners have been forwarded to appellant No.1, who in turn, communicated to appellant No.2. Appellant No.2 had informed respondent No.1 - Association through a detailed communication dated 30.01.2016, quoting the conditions stipulated in the order of appointment, which has been culled out at paragraph 3 above. Further pointed out that the entry of respondents - petitioners into the services of the appellant - Corporation is only w.e.f. 30.04.2007 and therefore, the employees who are working on contract basis from 2003 cannot be granted with the old pension scheme.

9. The said communication was called in question in Writ Petition No.9774 of 2016 on the ground that the New Defined Contributory Pension Scheme cannot be made applicable retrospectively to the petitioners with effect from 01.04.2006, and they are entitled to the Old Pension Scheme prevailing prior to the impugned order dated 05.07.2007. The appointment of the petitioners on contract basis was pursuant to a valid recruitment Notification dated 07.05.2003. Since all

the writ petitioners were eligible to be appointed to the post of Assistant Engineers were recruited to the said post after due consideration of their eligibility. But for the ban on regular recruitment, the writ petitioners would have been appointed on a regular basis in the year 2003 itself. They were all appointed as against the sanctioned vacant posts. Therefore, for all practical purposes, their appointment in the year 2003 is to be considered as a regular appointment. The writ petition was opposed by the appellant – Management contending as follows:

i) The appointment of the writ petitioners in the year 2003 was purely on contract basis with a consolidated remuneration of Rs.8,000/- per month and their appointment was governed by the conditions of appointment order.

ii) The services of the writ petitioners has been absorbed into the services of the appellant pursuant to the decision of the Board on 16.03.2007, resolving to appoint them on permanent basis subject to conditions indicated in the order of appointment.

iii) The decision of the Board was called in question in Writ Petition No.7425 of 2007 by certain Junior Engineers who

were already in the services of the appellant – Corporation contending that on account of absorption of the contract Assistant Engineers, their promotional avenue is blocked. While disposing of the said writ petition, this Court has clarified that the regularisation of the contract Assistant Engineers would not affect the seniority of in-service candidates, since the regularization cannot be with a retrospective effect. Therefore, the petitioners cannot contend that their appointment for the purpose of applying the pension scheme shall be reckoned from the year 2003, when they were appointed on contract basis, is not justified.

iv) In the order of appointment itself, the writ petitioners were made known specifically that they are covered under New Defined Contributory Pension Scheme, which is under consideration for adoption w.e.f. 01.04.2006. Being aware of the said condition, the respondents have accepted the appointment and executed an agreement in the prescribed proforma. Therefore, the writ petitioners cannot resile from the understanding.

v) The Central Government and the State Government have brought in the policy of implementation of New Pension

Scheme. The appellant- Corporation has also taken a policy decision to adopt NPS w.e.f. 01.04.2006 on par with the service conditions of the employees of State Government and Central Government from the year 2007, accordingly the NPS has been adopted.

vi) The petitioners have worked nearly 7 years from the date of the absorption without demur and all these years 10% of the basic pay and DA has been deducted towards the employee's contribution of the pension, which has been matched by the Management and the appellant and the petitioners did not raise any objection for deduction of 10% of the basic pay and dearness allowances towards the employee's contribution of the pension, cannot turn back after 7 to 8 years and contend that the adoption of New Pension Scheme in respect of the writ petitioners is illegal.

vii) The submission of the representation in the year 2014 and issuance of the endorsement – Annexure-R dated 30.01.2016 cannot become the cause of action for the petitioners to file the writ petition in the year 2016. The writ petition is hit by delay and latches. Filing of repeated

representations would not satisfy the requirement of explanation of delay in approaching the Court.

viii) Reliance placed on Regulation 181(A) cannot be pressed into service in the present case, since the said Regulation is applicable only for temporary and permanent employees. However, in the present case, the petitioners are neither temporarily appointed nor appointed on permanent basis. However, they were appointed on contract basis for a fixed term. Therefore, their services cannot be equated either with the temporary employees or the permanent employees.

10. The writ petition was amended by the petitioners raising a further contention that they are not new entrants to the services of the appellant and they were already in the services from the year 2003. Therefore, the Resolution passed by the appellant adopting the NPS in respect of the new entrants cannot be made applicable to the case of the writ petitioners.

11. The application for amendment having been allowed, the appellants – respondents were permitted to file additional statement of objections. Accordingly, the

respondents have filed additional statement of objections re-iterating the earlier contention regarding the conditions stipulated in the order of appointment with regard to the applicability of NPS in respect of the employees who are recruited on or after 01.04.2006. It was contented in the additional statement of objections that, when the appointment order stipulates certain conditions relating to the applicable pension scheme, it is open for the employees either to accept the order of appointment with the conditions stipulated therein or to refuse the employment. After having accepted the appointment with the conditions stipulated, the petitioners cannot approbate and reprobate after 7 years of their appointment.

12. Writ Appeal No.1252 of 2023 arises out of the Writ Petition Nos.32866-32874 of 2017. These writ petitions were filed by another set of Assistant Engineers who were also appointed on contract basis in the year 2003. The contentions urged in the said writ petitions, so also, in Writ Petition No.9774 of 2016 are somewhat similar in nature, except the contention regarding filing of writ petition by the Junior Engineers who are already in service challenging the decision of

the appellant - Board regularising/absorbing the services of contract Assistant Engineers into the service and order passed in Writ Petition No.7425 of 2007 and Writ Appeal No. 2478 of 2010. The contentions urged by the appellant in the writ petition are also identical.

13. Writ Appeal No.1254 of 2023 arises out of Writ Petition No.13498 of 2021. This writ petition was filed by the Karnataka Power Transmission Corporation Employees Union. The facts set out in the writ petition are that, upto the year 1998, the erstwhile KEB was appointing temporary lineman to discharge the work in the cadre of Assistant lineman. The separate Rules were framed for absorption of lineman. Thereafter, the KEB started engaging the employees on contract basis and they were designated as Gangmen. It is stated that the employees who were working as Gangmen had approached this Court in Writ Petition Nos.1271-1296 of 1997 seeking regularisation of their services. This Court had disposed of the said writ petitions with a direction to KEB to give preference to the services rendered by the Gangmen, while making permanent appointments.

14. After establishment of KPTCL, the cases of Gangmen was considered and they were converted as Probationary Mazdoors. After obtaining approval from the State Government on 25.02.2004, KPTCL had identified 7528 Gangmen and converted them into the cadre of Probationary Mazdoors, who were subsequently absorbed as Junior lineman. The said one time measure of absorption was in respect of those Gangmen, who had completed 6 years of service as on 01.04.2003. Thereafter, vide order dated 28.04.2005, KPTCL has accorded approval for conversion of Gangmen, who has completed 6 years of continuous service as on 01.04.2003 as Probationary Mazdoors. The said employees were absorbed into the cadre of Junior lineman only after 01.04.2006 and in the earlier writ petition, the KPTCL has contented that most of the Gangmen have entered into service by the end of 23.10.2010.

15. The contention of the petitioner - Union in the said writ petition was that the services of 7528 Gangmen have been absorbed into the permanent cadre w.e.f. 25.02.2004 and therefore, the said Gangmen who were working prior to their absorption were also eligible for similar reliefs. While appointing the Gangmen, all the requisite procedure for appointment has

been followed and thereafter, the appointment orders were issued. Therefore, though the appointment was on temporary basis, but it was preceded by proper selection process. Petitioners have also relied upon Regulation 181(1) and 181(A) of the Board Employee Service Regulation.

16. The appointment of Gangmen into the service of the appellant- Corporation relates back to 01.04.2006 and therefore, they cannot be brought under NPS. Only based on the different date on which the employees were absorbed into the service, the later absorbed employees cannot be discriminated while applying the pension scheme.

17. Petitioners have relied upon the order passed by this Court in Writ Petition No.11679 of 2011 and Writ Petition No.55076 of 2015.

18. Writ Petition No.13498 of 2021 was opposed by the appellant - Corporation contending that in terms of the order dated 28.04.2005 approval was accorded for conversion of some of the Gangmen who have completed 6 years of continuous service in the Corporation as on 01.04.2005, subject to certain terms and conditions.

19. The conversion of 7528 Gangmen to the Probationary Mazdoors was done as per the provisions contained in the KPTCL order dated 28.04.2005 in respect of the said Gangmen who was working in KPTCL/BESCOM continuously for 6 years as on 01.04.2005 and completing 6 years in the subsequent years remain subject to seniority, suitability and verification of the eligibility of each of the Gangmen. The Gangmen after conversion as Probationary Mazdoors was absorbed into maintenance cadre of Junior Linemen only after 01.07.2006. In view of the adoption of policy of NPS, all the recruits of KPTCL/BESCOM joined on or after 01.04.2006 were brought under NPS. The Gangmen/Probationary Mazdoors who were absorbed to regular services have signed agreement for their absorption very recently, wherein, it is specifically mentioned that their appointment is governed by the prevailing Rules and Regulations of the Government and the said Rules and Regulations were made applicable. After having accepted the appointment, the conditions stipulated therein and working for all these years cannot now contend that their cases will have to be considered under old pension scheme.

20. All the aforesaid writ petitions were heard and disposed of by allowing the writ petitions quashing the endorsement dated 30.01.2016 at Annexure-H in Writ Petition Nos.32866-32874 of 2017 and the endorsement dated 30.01.2016 at Annexure- R and the order dated 05.07.2007 at Annexure-K in Writ Petition Nos.9774-96 of 2016. Learned Single Judge further issued a writ of mandamus directing the appellant - Corporation to apply the old pension scheme, which was invoked as on the date of entry of the petitioners into service through Notification dated 07.05.2003 and with all consequential benefits including refund of contribution, if any, deducted by the appellant - Corporation and general direction has been issued to the appellant - Corporation to refund the contribution in excess in terms of the observation made in the body of the order.

21. While disposing of the writ petitions, the learned Single Judge has negative the contention of the appellant - Corporation that the writ petitioners entry into service shall be reckoned only from 30.04.2007 and not from the date of their appointment on contract basis in the year 2003. The learned Single Judge also rejected the contention of the appellant that

the writ petitions are barred by delay and latches. The finding of the learned single Judge is that, for the purpose of applying the pension scheme, notwithstanding the fact that the services of the employees have been absorbed/regularised on 30.04.2007, their entry into services w.e.f. 01.04.2003 shall be taken into consideration.

22. To come to such a conclusion, the learned Single Judge recorded a finding that the employees who were appointed in the year 2003 as against substantive posts and therefore, their entry into service cannot be from 2007 and thus, the new pension scheme introduced on 01.04.2006 cannot be made applicable. Learned single Judge has accepted the contention of the writ petitioners that their cases fall within the mischief of Regulation 181(1) and 181(A) of the Regulations.

23. The learned Single Judge further held that fixation of cut-off date for applying the pension scheme to appellant - Corporation has not acted fairly and reasonably. Therefore, the writ court under Article 226 of the Constitution of India is empowered to interfere with the fixation of the cut-off date. To come to the aforesaid conclusion, the learned Single Judge has

relied upon and has accepted the reliance placed on the judgment of the Hon'ble Supreme Court in the case of ***Union of India and another Vs K Punniyakoti[1], Union of India and others Vs Tarsem Singh[2], Union of India Vs Ajay Kumar and Others[3], Rushibhai Vs Bhavanagar Municipal Corporation[4], The State of UP and others Vs Rajmathi Singh[5]*** and the order passed by the co-ordinate Bench in Writ Petition No.11679 of 2011.

24. We have heard Sri S S Naganand, learned senior counsel for Smt Sumana Naganand, learned counsel appearing for the appellants in all the cases; Sri V B Vijaykumar, learned counsel for respondent Nos.1 and 8, Sri Mohana C, learned counsel for respondent Nos.2, 3 to 5, 6, 7, 9 to 18, 19, 20 to 23 and Sri G S Aruna, learned High Court Government Pleader for respondent No.24 in Writ Appeal No.1240 of 2023; Sri R Anil Kumar, learned counsel for respondent Nos.1, 6, 8 and 9, Sri Puttegowda, learned counsel for respondent Nos.2, 5 and 7, Sri Yashodhar Hegde and Sri K Manu, learned counsel for respondent Nos.3 and 4 in Writ Appeal No.1252 of 2023; Sri

[1] (2014) 2 CTC 777
[2] (2008) 8 SCC 648
[3] 2008 SCC Online Delhi 763
[4] 2022 SCC Online SC 641
[5] 2022 SCC Online 1785

Prof Ravi Varma Kumar, learned senior counsel for Sri K Srinivasa, learned counsel for respondent No.1 and Sri G S Aruna, learned High Court Government Pleader for respondent No.2 in Writ Appeal No.1254 of 2023 and perused the writ appeal papers.

SUBMISSIONS:

25. Re-iterating the contentions which were urged before the learned Single Judge and the contentions raised in the memorandum of writ appeal, learned senior counsel for the appellants has made the following submissions:

(i) The order passed by the learned Single Judge is contrary to the conditions stipulated in the appointing orders, more particularly, clause-V of the appointment order which categorically states that the appointee will be covered under contributory pension scheme and that they are not entitled to pension as per the existing pension Rules. Having accepted the said condition, the respondents are estopped from claiming benefit of old pension scheme.

(ii) The old pension scheme, though, not in existence, the learned Single Judge has directed the appellants to extend

the benefit of a nonexistent pension scheme. Inasmuch as, on the date of the appointment of the respondents, the old pension scheme was discontinued.

(iii) Before implementation of new pension scheme wide publicity has been given regarding the adoption of Government order dated 01.04.2006. The decision of the Board was also communicated to General Manager (Admin) and also published in the website of KPTCL pursuant to the decision of the Board, pension contribution has been deducted from out of the salary paid to the respondents and the grievance about the new pension scheme has been raised after more than 10 years by filing the writ petition in the year 2017 and the learned Single Judge has erroneously held that the amendment made to the Service Regulations is void.

(iv) There is long lapse of delay and latches in raising objections for adoption of new pension scheme and the conditions stipulated in the order of appointment were never challenged.

(v) Mere submission of the representations without challenging the conditions of appointment would not enlarge

the limitation/reasonable time to file writ petition after 10 years of the cause of action.

(vi) The direction issued by the learned Single Judge amounts to directing the appellants to act contrary to their own regulation and the condition of the appointment orders. If the directions are complied, there would be invidious discrimination between the employees who are on the same status.

(vii) The direction issued by the learned Single Judge has huge financial implication on the appellant Corporation, the financial burden would be passed on to the consumers by increasing the tariff.

(viii) The Courts should have restraint in interfering with the policy decisions, inasmuch as, while implementing policy decisions, the authorities are empowered to stipulate the cut off date.

(ix) The provisions of Regulation 181(1) of the KEB Employees Service Regulation are not applicable to the facts of the present case.

26. Sri S. S. Naganand, learned senior counsel has made the following additional submissions insofar as Writ Appeal No.1254 of 2023 is concerned:

(i) The order passed by the learned Single Judge is contrary to the absorption orders in respect of the Gangmen. Condition No.8 of the terms and conditions of absorption categorically states that the Gangmen are covered by contributory pension scheme. After having accepted the said condition, they are estopped from claiming the benefits of old pension scheme.

(ii) The appellant had availed the services of the Gangmen only for a period of 3 to 6 months based on the requirement, most of the Gangmen were obsorbed only in the year 2010-11 as on the date of entry of Gangmen into service the old pension scheme was not in force.

(iii) The terms of memorandum of settlement between the management of KPTCL and respondent No.1 are binding. The conversion of 7528 Gangmen into Probationary Mazdoors and subsequent absorption into the post of Junior Lineman was carried out in terms of the memorandum of settlement, in

which it is categorically stated that it is only the NPS would apply. After having accepted the said condition by executing the agreements on stamp papers, it is not open for them to now contend that they have vested right and they are covered under old pension scheme.

27. In support of the proposition that subsequent regulation do not relates back from the date of initial appointment the following judgments are relied upon:

i) ***Union of India and Others Vs Tarsem Singh*** reported in ***(2008) 8 SCC 648***;

ii) ***Rushibhai Jagdishbhai Pathak Vs Bhavnagar Municipal Corporation*** reported in ***(2022) 18 SCC 144***;

28. In support of the contention that the employees aggrieved for the absorption in public employment on certain terms and conditions stipulated in the order of absorption cannot subsequently turn around and challenge the conditions:

iii) ***Central Inland Water Transport Corporation Limited and Another Vs Brojo Nath Ganguly and Another*** reported in ***(1986) 3 SCC 156;***

iv) ***Pani Ram Vs Union of Indid and Others*** reported in ***(2021) 19 SCC 234;***

29. In support of the contention that the writ Court should refuse to issue writ, if the petitioner is guilty of delay and latches the following judgments have been relied upon:

v) ***Bhola Nath Vs The State of Jharkhand and Others*** passed in ***SLP (Civil) No.30762 of 2024;***

vi) ***Union of India and Another Vs K Punniyakoti and Others*** passed by Madras High Court in ***WP No.2110 of 2024;***

30. In support of the contention that mere submission of repeated representations without approaching the Court at the earliest point in time would not enlarge the period of limitation for approaching the writ Court the following judgments are relied upon

vii) ***The Director, Local Fund Audit Chennai Vs ARD Nayagam*** passed by Madurai Bench of Madras High Court in ***WA No.760 of 2013;***

viii) ***Harbans Lal Vs The State of Punjab and Others*** passed by High Court of Punjab and Haryana at Chandigarh in ***CWP No.2371 of 2010;***

31. In support of the contention that the public authorities need not have to assign reasons while setting out the cut off date in implementation of the policy decision the following judgments were relied upon:

ix) ***State of Punjab and Others Vs Harbans Lal*** passed by Hon'ble Supreme Court in ***SLP No.23578 of 2012*** and connected matters;

x) ***State of Himachal Pradesh and Another Vs Sheela Devi*** passed by Hon'ble Supreme Court in ***SLP No.10399 of 2020*** and connected matters;

32. Prof Ravi Varma Kumar, learned senior counsel instructed by Sri K Srinivas appearing for the respondents in

Writ Appeal No.1254 of 2023 has made the following submissions:

(i) The appointment of helpers was discontinued in the year 1992 and the process of appointment of Linemen was introduced in the year 1992. The designation of helpers was changed as Gangmen and they were called as temporary Gangmen, strong Gangmen, monsoon Gangmen, emergency Gangmen etc., The appellants have introduced a new cadre called as Probationary Mazdoors, earlier cadre was Assistant Linemen. The Union of temporary Gangmen working in the entire State have raised industrial dispute before the Industrial Tribunal seeking their absorption into the permanent cadre. The meeting of the Chairman and Managing Director of KPTCL with the Managing Directors of all the ESCOMs was held to consider the absorption of 7528 Gangmen into the permanent cadre. The proposal was sent to the State for approval.

(ii) The State Government had accorded approval for the proposal of KPTCL and 5 ESCOMs on 25.02.2004 for absorption of Gangmen as Probationary Mazdoors subject to conditions including following of the reservation policy of the Government. As provided under Section 2(p) of the Industrial

Disputes Act, a settlement was entered into between appellant No.1 with the respondent - Union for providing absorption of 7528 Gangmen as Probationary Mazdoors in a phased manner. On 01.04.2005, more than 2000 Gangmen were absorbed as Probationary Mazdoors and the same process continued in the year 2006 and 2007. By 2007 more than 50% of 7528 Gangmen were absorbed into permanent cadre of Probationary Mazdoors. On 05.07.2007, appellant No.1 passed a Resolution to adopt new contributory pension scheme in respect of the employees appointed after 01.04.2006.

(iii) A combined reading of Sections 174, 178, 179, 181 and 181A of the Service Regulation of the appellant, it is unmistakably clear that even the employees appointed on a temporary basis are entitled for pension, let alone on contract basis. When a temporary employee is entitled for pension in terms of the aforementioned Rules, the respondents who have been absorbed to the post of Probationary Mazdoors with the applicable pay scale much prior to the adoption of new pension scheme are entitled to be considered under the old pension scheme.

(iv) The Resolution of the appellant for implementation of the new defined contributory pension scheme clearly stipulates that the said scheme is applicable from 01.04.2006 for new entrants to KPTCL/ESCOMs services. Therefore, condition No.1 of the decision of the appellant is not applicable to the case of the respondents, since the members of the respondent - Union have joined the services 6 years prior to 01.04.2003.

(v) Referring to the very same decision of the Board, learned senior counsel pointed out that Clause-10 of the said order speaks about the amendment of KEB Employees Service Regulation. However, no such amendment to the Service Regulations has been carried out. Only recently, the submission has been made on behalf of the appellants that an amendment has been brought into the Employees Service Regulation. However, the same has not been notified to the concerned. Therefore, any such amendment carried out without following the due process of law would not stand in the way of grant of relief to the respondents.

(vi) Elaborating the said submission, learned senior counsel takes us to the Memorandum of Settlement dated

03.06.2004 and points out that the management and the union have agreed for conversion of Gangmen who were working continuously and completed 6 years of continuous service as on 01.04.2003 as Probationary Mazdoors in a phased manner every year commencing from 01.04.2003 subject to seniority and suitability as per Probationary Mazdoors Regulations as amended. After successful completion of three years of tenure as Probationary Mazdoors, they are agreed to be absorbed as Junior Linemen in a new cadre proposed to be created in the pay scale of 3125 - 6575.

(vii) It is the submission of learned senior counsel that the aforesaid settlement was arrived at pursuant to the approval of the State Government dated 25.02.2004. Referring to the communication dated 23.10.2010 addressed by the appellant to the Principal Secretary, Department of Energy, points out that the appellant - Corporation and other 5 ESCOMs have converted the services of Gangmen into the services of Probationary Mazdoors from the year 2005 till 2010.

(viii) It is further pointed out that as on 23.10.2010, services of 7045 Gangmen have been converted into Probationary Mazdoors and the remaining Gangmen were only

483 in numbers. Therefore, submits that, by 01.04.2006 services of more than 5000 Gangmen have been converted into Probationary Mazdoors and the remaining employees were converted into Probationary Mazdoors post 2007 since the conversion of the services of Gangmen into Probationary Mazdoors has occurred prior to the decision of KPTCL to adopt new pension scheme, the benefit of old Pension Scheme cannot be denied.

(ix) In support of the aforesaid submissions the Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Others Vs Tarsem Singh***[6] and contended that in the service jurisprudence, if there is a continuous wrong and recurring successive wrongs, the question of delay in approaching the Court does not arise. Belated service related claims will be rejected on the ground of delay and latches or limitations. However, one of the exception to the said Rule is cases relating to the continuing wrong.

[6] (2008) 8 SCC 648

(x) Learned senior counsel relies upon paragraph 7 of the said judgment, which reads as follows:

> *"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a*

period of three years prior to the date of filing of the writ petition."

(xi) Learned senior counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Bhola Nath Vs The State of Jharkhand and Others***[7] and submits that that there can be no waiver of fundamental rights guaranteed under the Constitution. The mere fact that the management and the employees were governed by the contractual terms and conditions cannot be construed as waiver of their fundamental right. It is further pointed out from the said judgment that where the employees have continued to discharge their duties on contractual basis for a considerable length of time, it is quite natural that the legitimate expectation arises that the State would at some stage recognize their long and continuous service.

(xii) Learned senior counsel has further relied upon the judgment in the case of ***Bhikhani Devi and Others Vs Union of India and Others***[8]***.*** The point that was formulated for consideration in the said judgment is as follows:

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[7] SLP (Civil) No.30762/2024 DD 30.01.2026
[8] SLP (C) Nos.28802-28804/2019 DD 01.06.2026

"Whether temporary status casual labourer, in the absence of a formal order of regularization, would be entitled to pensionary benefits on superannuation or not?"

The said question has been answered in paragraph 76 of the said order as follows:

"A temporary status casual labourer would be entitled to pensionary benefits on superannuation, even in the absence of regularization."

(xiii) Learned senior counsel has placed reliance on paragraphs 40, 41, 42, 51 and 76 of the said judgment, which reads as follows:

"40. The concept of the State as a model employer, read in conjunction with the aforesaid constitutional mandate, reinforces the obligation upon the State to extend fair and equitable treatment to employees who have rendered long and continuous service and that the State cannot extract services of a permanent nature while denying corresponding benefits.

41. At this stage, it is also necessary to note that pension is not a bounty but a vested and enforceable constitutional right. This Court in State of Jharkhand v. Jitendra Kumar Srivastava has categorically held that pension is a hard-earned benefit amassed by an employee by virtue of long and continuous service and

is in the nature of "property" within the meaning of Article 300A of the Constitution of India.

42. Once pension is recognised as a constitutional right in the nature of property, it cannot be taken away except by authority of law. A statutory right cannot be rendered illusory on account of inaction of the employer, and such inaction cannot defeat or deny a constitutional right. It is in the light of this above discussed judicial approach of this Court over a period of time, the provisions of the Scheme and the subsequent applicable circulars must be read, understood and interpreted.

51. Clause 17 assumes equal significance in understanding the true intent underlying the Scheme. It mandates that no recruitment from open market for Group 'D' posts, except compassionate appointment, shall be undertaken so long as eligible casual labourers possessing requisite qualifications are available for appointment. Such a provision clearly manifests the intention of the Scheme to accord primacy to existing temporary status casual labourers for eventual absorption against Group 'D' posts and to ensure that such employees are not indefinitely deprived of regular service benefits despite long years of continuous service.

76. The question as framed in para 32 above stands answered as follows:

'A temporary status casual labourer would be entitled to pensionary benefits on superannuation even in the absence of regularisation.'

(xiv) Learned senior counsel has placed reliance on Sections 133 and 185 of Electricity Act, 2003, which reads as follows:

> ***"133. Provisions relating to officers and employees.–***
>
> *(1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.*
>
> *(2) Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:*
>
> *Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:*
>
> *Provided further that the transfer can be provisional for a stipulated period.*
>
> *Explanation.–For the purposes of this section and the transfer scheme, the expression "officers and employees" shall mean all officers and employees who on the date specified in the scheme are the officers and*

employees of the Board or transferor, as the case may be.

185. Repeal and saving.–

(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 998) are hereby repealed.

(2) Notwithstanding such repeal,–

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be

in force till the regulations under section 53 of this Act are made;

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."

33. Sri V B Vijaykumar, learned counsel appearing for the respondents in Writ Appeal No.1240 of 2023 has made the following submissions:

(i) On 07.05.2003, Notification was issued by the appellant inviting applications for recruitment to the post of Assistant Engineers and Junior Engineers on a contract basis. Pursuant to the process of appointment, the appointment orders have been issued to the respondents on 26.10.2003. Thereafter, on 16.03.2007, the appellant - Board passed a Resolution to regularize the services of Assistant Engineers and Junior Engineers, who were appointed on a contract basis. Writ Petition No.7425 of 2007 was filed by the Junior Engineers who were already in service of the appellant with Diploma qualification on the ground that on account of regularization of the respondents in the post of Assistant Engineers on contract basis and thereafter in the regular post they were deprived of applying for the post of Assistant Engineers, since the Notification which was issued on 07.05.2003 was for appointment on contract basis. The said writ petition came to be disposed of with an observation that the regularization of the respondents would not affect the seniority of in-service

candidates. The said order was called in question by one of the existing Junior Engineers by filing Writ Appeal No.2478 of 2010 and Writ Appeal Nos.4516-17 of 2010, which appeals was dismissed on 15.06.2012. Challenging the same, SLP No.20338 of 2012 was filed before the Hon'ble Apex Court, which also came to be dismissed on 08.04.2013. It is thereafter, the respondents - writ petitioners had submitted a representation on 11.11.2014, which was rejected in the year 2016 and immediately thereafter, the respondents – writ petitioners have approached this Court in the year 2016. Therefore, there is no delay in approaching this Court.

(ii) It is the submission of learned counsel that the appointment of the petitioners on contract basis was pursuant to a valid recruitment Notification dated 07.05.2003. Since all the writ petitioners were eligible to be appointed to the post of Assistant Engineers were recruited to the said post after due consideration of their eligibility. But for the ban on regular recruitment, the writ petitioners would have been appointed on a regular basis in the year 2003 itself. They were all appointed as against the sanctioned vacant posts. Therefore, for all

practical purposes, their appointment in the year 2003 is to be considered as a regular appointment.

(iii) Referring to the decision of the appellant regarding appointment of the writ petitioners to the post of Assistant Engineers and contract Junior Engineers and the agreement signed by the employees the Learned Counsel points out that no condition or undertaking is obtained as regards the applicable pension scheme. He further points out that in the order of appointment dated 30.04.2007 at Annexure-H condition No.5 states regarding the applicability of contributory pension scheme which is under consideration for adoption by the appellant w.e.f. 01.04.2006. It is his submission that when the new contributory pension scheme was adopted on 05.07.2007, the imposition of condition No.5 in the appointment order dated 30.04.2007 that the employees are covered by the new pension scheme which has not yet been adopted as on the date of issuance of appointment order dated 30.04.2007 is *void* and *non-est*. As on the said date, the new pension scheme was not yet adopted by the appellant. Learned counsel has adopted the other submissions made by Prof Ravi

Varma Kumar, learned senior counsel on the other aspects are concerned.

(iv) In support of the aforesaid contentions, learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of ***Central Inland Water Transport Corporation Ltd. and Others Vs Brojonath Ganguly and Another***[9] and submits that the Courts when called upon will strike down an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power. Placing reliance on the aforesaid principle, learned counsel submits that in the present case, the writ petitioners had no bargaining power against the mighty appellant corporation and therefore, any contracts between the appellant and the writ petitioners regarding applicable pension scheme is *non-est* in the eye of law, since the writ petitioners were not in a position to oppose any conditions stipulated in the order of appointment.

(v) He places reliance on the judgment in ***Pani Ram Vs Union of India and Others***[10]***,*** more particularly,

[9] (1986) 3 SCC 156

[10] (2021) 19 SCC 234

paragraph 23 and points out that the employee who has been asked to assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract marked form or rules may be, opposed to Article 14 of the Constitution of India. The sum and substance of the aforesaid Resolution of the appellant is also on the same line of the judgment in the case of ***Central Inland Water Transport Corporation Ltd.*** *(supra).* Placing reliance on the aforesaid two judgments, learned counsel submits that condition No.5 in the order of appointment cannot be a ground to deny the old pension scheme.

(vi) Regarding the expression 'new entrant', learned counsel has placed reliance on the judgment of the Madras High Court in the case of ***Union of India and Another Vs K Punniyakoti and Others***[11] and submits that the writ petitioners have entered into services of appellant - Corporation on 07.05.2003 and their services has been regularized pursuant to the Board Resolution dated 16.03.2007 and therefore, their entry into service of the appellant - Corporation is not on

[11] WP No.2110/2014 DD 19.03.2014

30.04.2007, but it was on 07.05.2003 itself and hence, the writ petitioners cannot be called as new entrants to apply new contributory pension scheme pursuant to the Resolution dated 16.03.2007. Accordingly, submits that the order passed by the learned Single Judge requires no interference at the hands of this Court.

34. In reply, Sri S S Naganand, learned senior counsel for appellant has made the following submissions:

(i) The Electricity Act is in the concurrent list. Therefore, the State has promulgated the Karnataka Electricity Reforms Act, 1999. Section 13 deals with the constitution of the company pursuant to which, the appellant Corporation has been incorporated under the Indian Companies Act. All the functions of the appellant is in terms of its memorandum of association and under the provisions of the Karnataka Electricity Reforms Act. Upon Constitution of the appellant Corporation, it is the principal company which undertakes transmission and other related work of determining the electricity requirement of the State, co-ordination with the generating companies, the State Government, Commission etc. Section 14 recognizes the Karnataka Electricity Board. Upon

constitution of the appellant Corporation, the property, interest in property, rights and liabilities which immediately before the effective date of first transfer belonged to the Board shall vest in the State Government and thereafter under sub section (2) of Section 14, the property, interest in the property, rights and liabilities vested in the State Government under sub Section (1) of Section 14 may be re-vested by the State Government in the appellant – Corporation or in the generating Company in accordance with the transfer scheme by virtue of Section 185 of the Electricity Act, 2003. Indian Electricity Act, 1910, Electricity Supply Act, 1948 and Electricity Regulatory Commission Act, 1998 are all repealed and the function of appellant is only in terms of Electricity Act, 2003 read with Karnataka Electricity Reform Act, 1999. Therefore, the amendment as suggested in the Resolution dated 05.07.2007 regarding amendment to KEB Employees Service Regulation is misnomer.

(ii) It is his further submission that Gangmen and the contract Engineers who were appointed on consolidated monthly remuneration are not covered under the old pension scheme. Their entry into regular service of the appellant –

Corporation is only from the date of their absorption or appointment on permanent basis. Therefore, the writ petitioners had no vested right in insisting the appellant – Corporation to apply the old pension scheme in respect of their services.

(iii) Insofar as reliance placed by Prof Ravi Varma Kumar, learned senior counsel and Sri Vijaykumar, learned counsel on the judgment of the Hon'ble Apex Court in the case of ***Bhola Nath*** *(supra)* and ***Bhikhani Devi*** *(supra),* it is the submission of learned senior counsel Sri S. S. Naganand that in the case of ***Bhola Nath*** *(supra)*, the prayer of employee for regularization was refused on the ground that their appointment was purely on a contract basis. In terms of the conditions stipulated in the office order by which they were temporarily engaged in services and there is no obligation to regularize or absorb the appointees. In the said context relying upon the judgment in the case of ***State of Karnataka Vs Uma Devi*** reported in *(2006) 4 SCC 1,* the Apex Court has directed regularization of the services of the employee against the sanctioned post, to which they were initially appointed with all consequential benefits. While granting such a relief, the

Hon'ble Apex Court has deprecated the practice adopted by States i.e engaging the employees under the nominal lables of part-time, contractual or temporary in perpetuity and exploiting them by not regularizing their positions. It is the submission that the case on hand is not the one relating to the regularization of services of the employees. It is the applicable pension scheme post absorption/regular appointment.

(iv) As regards the judgment in the case of ***Bhikhani Devi*** *(supra),* learned senior counsel taking us through paragraph 75 of the said order, points out that the subject matter of the said case is with regard to the applicability of the pension scheme subject to fulfilment of the conditions and eligibility criteria provided therein. The applicability of the pension scheme in the said case was not dependent on the order of regularization. The scheme provided for conferment of additional benefit to the previous service of an employee upon his regularization and acquisition of new status of regular employee, apart from the benefits conferred under the Rules. When the benefit provided under the scheme for the employees who are regularized on a subsequent date for grant of additional benefit in respect of the services rendered prior to

the regularization cannot be denied only on the ground of delay in approaching the Court. The Hon'ble Apex Court has further observed that the arrears, if any, payable to the employees in terms of the applicable scheme has been restricted to a period of 3 years preceding the date of filing of the application before the Tribunal. It is his submission that the facts and circumstances of the present case are altogether different from the one obtaining in the cited decision. On these submissions, learned senior counsel Sri S. S. Naganand, prays for allowing the appeals and setting aside the judgment passed by the learned Single Judge.

CONSIDERATION OF THE SUBMISSIONS AND REASONING

35. Having heard the learned Counsels and perused the material on record including the judgment passed by the learned Single Judge we proceed to consider the submissions with the following reasons.

36. It is not in dispute that the writ petitioners in Writ Petition No.32866 of 2017 and Writ Petition No.9774 of 2016 were appointed on 07.05.2003 on contract basis for a period of one year extendable for a further period of three years on a

consolidated remuneration of Rs.8,000/- per month with a specific condition that the said employment was on contract basis and would be governed by the terms of the contract appointment. Therefore, the appointment made in the year 2003 was in the nature of contract appointment and there was no permanency of the appointment. The employment of the aforesaid writ petitioners assumed the characteristic of the permanent employment only pursuant to the decision of the Board of appellant in the meeting held on 16.03.2007 followed by the issuance of appointment orders dated 30.04.2007 with the time scale of pay of Rs.8,645/- - Rs.15,025/- with effect from the date of appointment order i.e., dated 30.04.2007. The relevant portion of the Resolution of the Board dated 16.03.2007 and the relevant conditions contained in the appointment order dated 30.04.2007 has already been noticed and extracted in the early part of this judgment.

37. As could be seen from the terms of the Resolution of the Board that the appointment of writ petitioners was made permanent prospectively from the date of issuance of the appointment order. In the order of appointment, a specific condition has been spelt out that the service rendered by the

writ petitioners on contract basis shall not count for any purpose including fixation of salary, seniority, promotion or pension. It is also specifically informed to the appointees that they are not entitled for pension as per the existing pension Rules, however, they are covered under the contributory pension scheme, which was under consideration at relevant point of time and which has been subsequently adopted by the appellant with effect from 01.04.2006. Followed by issuance of the appointment order, each of the writ petitioners who were appointed to the post of Assistant Engineers have executed an agreement dated 30.05.2007 accepting the terms and conditions of the order of appointment dated 30.04.2007 and also undertaking to abide by the conditions stipulated in the agreement. Therefore, the terms and conditions of the order of appointment dated 30.04.2007 and the agreement dated 30.05.2007 are to be read in conjunction to understand the consensus of the employer and the employee regarding the terms of the appointment.

38. We have noticed that the appellant - Corporation had taken a decision on 05.07.2007 for implementing new defined contributory pension scheme with effect from

01.04.2006. The condition No.1 of the order of approval for implementing the new pension scheme is as follows:

> *"The new defined contributory pension scheme shall be mandatory to all new recruits of KPTCL/ESCOMS service joining on or after 01.04.2006. The monthly contribution shall be 10% of the basic pay and dearness allowance thereon to be paid by the employee and matched by KPTCL/ESCOMS in equal proportion. However, there shall be no contribution from KPTCL/ESCOMS in respect of individuals who are not KPTCL/ESCOMS employees."*

39. From a reading of the aforesaid conditions, it is understandable that, for implementation of new pension scheme, what is relevant is that the employees must have been appointed on or after 01.04.2006 on a permanent basis. If only the appointment was on a permanent basis, the question of deduction of 10% of the basic pay and dearness allowance would arise. A permanency in appointment could be gathered only if the appointment of the employees is on a pay scale attached to the particular cadre post. The appointment of the writ petitioners in the services of the appellant - Corporation with the pay scale attached to the post of Assistant Engineers was pursuant to the issuance of the appointment order dated

30.04.2007. Prior to the said date, the writ petitioners were drawing a consolidated remuneration of Rs.8,000/- on the basis of contractual employment. Therefore, the entry of writ petitioners into the services of appellant cannot be prior to the orders of appointment dated 30.04.2007. For the purpose of consideration, as to the application of old pension scheme or new pension scheme, the relevant date is the entry into the services on a permanent basis and not the contractual appointment.

40. The expression "New Entrants" depicted in the proceedings of the appellant dated 05.07.2007 cannot be interpreted to mean that the entry of the writ petitioners to the services of the appellant – Corporation on 07.05.2003 on contractual basis was the entry into the services of the appellant – Corporation. The expression "New Entrants" will have to be understood as the entry into the services of the appellant on permanent basis with the pay scale attached to the post. Therefore, the argument of the writ petitioners that they are not "New Entrants" as on 01.04.2006 and they were already in service from 07.05.2003, therefore, they are covered

by the old pension scheme and not the new contributory pension scheme deserves to be rejected.

41. It is to be noticed that though the writ petitioners had worked in the establishment of the appellant – Corporation from 07.05.2003 till their appointment had been given the status of permanence on 30.04.2007 they did not had any vested right in the respective posts in which they worked on contract basis on the consolidated remuneration. Any right which had accrued in favour of the writ petitioners in the post of Assistant Engineers was only from the date of issuance of appointment order dated 30.04.2007. We say so, because, if the arguments of the writ petitioners is accepted that their entry into service was on 07.05.2003, it amounts to declaration that the actual date of appointment of the writ petitioners is on 07.05.2003 and not 30.04.2007. The said declaration cannot be made in the light of the admitted proposition that even in the case of regularization of the employees, the order of regularization would not relates back to the date of entry into service on contract or casual nature. Any order of regularization would be effective only from the date of the order of regularization. The doctrine of relation back is not applicable in

the matter of regularization of the employees in the services of the State.

42. As observed above, the petitioners were issued with the order of regular appointment on 30.04.2007 with the specific conditions as extracted above. As on the date of issuance of the said appointment orders they were clearly made known that the services rendered by them on a contract basis shall not count for any purpose including the pension. It was also made known that their services are covered under contributory pension scheme and not the existing pension Rules. Knowing full well the aforesaid two important conditions stipulated in the orders of appointment, the writ petitioners have accepted the appointment and discharged their duties without any demur. From the day one of the order of appointment on a permanent basis, the appellant- Corporation has deducted 10% of the basic pay and the dearness allowance being the employee's contribution under the new pension scheme. Therefore, from the first day of drawing of the salary by the writ petitioners, they were aware about the applicable pension scheme in respect of their services. The deduction of

the contribution was never opposed by the writ petitioners till 2014 when the representation was submitted for the first time.

43. On a close reading of the representation dated 27.09.2014, what is discerned is that the writ petitioners have woken up to agitate for applying old pension scheme for their services taking cue from the orders passed by the Hon'ble Madras High Court in Writ Petition No.11221 of 2010 and other connected matters. Even according to the writ petitioners, there was no representation seeking to apply old pension scheme from the year 2007 till 27.09.2014 i.e., for a period of more than 7 years.

44. Analogous to the averments made in the representation of the petitioners, if the averments made in the writ petition is seen, it is quite clear that the cause of action for the petitioners to approach this Court in the year 2016 is the order passed by the Madras High Court. In paragraph 9 of the writ petition, it is averred that they were advised that their appointment was much prior to 01.04.2006 therefore, are entitled to be covered by the old pension scheme, though their recruitment was on a contract basis. Hence, a representation dated 27.09.2014 was submitted. The said representation

having been rejected through endorsement dated 31.01.2016, which resulted in the filing of the writ petitions. Therefore, it is clear that the cause of action pleaded by the petitioners is the order passed by the Madras High Court and the submission of representation dated 27.09.2014 and the issuance of endorsement dated 30.01.2016. On noticing the facts of the judgment of the Madras High Court and the facts and circumstances obtaining in the present case we are opinion that the said judgment cannot fit into to the present case.

45. It is well established that the submission of representation after long lapse of time and issuance of the endorsement in response to the said representation would not become a cause of action to approach the writ court after long lapse of delay. We have noticed that the prayer in the writ petition was for quashing of the endorsement dated 30.01.2016 and for issue of writ of mandamus to apply the old pension scheme in respect of the services of the petitioners and also for refund of the contribution deducted from the pay of the writ petitioners along with accumulated interest. The decision of the appellant for adoption of new pension scheme with effect from 01.04.2006 nor the conditions stipulated in the order of

appointment dated 30.04.2007 were not challenged. If the conditions of the appointment were not challenged, the question of issuance of writ of mandamus to apply the old pension scheme considering the date of entry of the petitioners in the services of the appellant – Corporation as 07.05.2003 and the refund of contribution does not arise. No reasons are assigned in the writ petition as to the reason for long lapse of delay of 9 years in approaching the writ court. If the writ petitioners were aggrieved by the conditions stipulated in the order of appointment as regards the applicable pension Rules, nothing prevented the petitioners from approaching this Court seeking redressal.

46. The submission of the learned counsel for the writ petitioners that the writ petitioners were not having the equal amount of bargaining power with that of the appellant – Corporation cannot be accepted for the simple reason that, if the writ petitioners could approach this Court for redressal of their grievances in the year 2016, nothing prevented them from approaching the Court in the year 2007 when the orders of appointment were issued with specific conditions.

47. The other reason assigned by the writ petitioners in Writ Petition No.9774 of 2016 that their appointment to the post of Assistant Engineers was challenged by existing Junior Engineers of the appellant – Corporation in Writ Petition No. 7425 of 2007, Writ Appeal No. 2478 of 2010 and SLP No.20338 of 2012, which proceedings was concluded only in the year 2013 and immediately thereafter they approached this Court is difficult to accept. Because, the grounds of challenge to the appointment of the writ petitioners was that the petitioners in the said writ petition were working as Junior Engineers with diploma qualification and they were not aware of the fact that the appellant – Corporation is going to appoint the Assistant Engineers who were appointed on a contract basis pursuant to Notification dated 07.05.2003 on permanent basis. If the same was made known to the Junior Engineers who were in service, they would have applied for the appointment pursuant to Notification dated 07.05.2003. The pendency of the said writ petition was not an impediment for the writ petitioners to challenge the conditions of appointment. While dismissing Writ Petition No.7425 of 2007, the learned Single Judge has observed that there cannot be a regularization with retrospective effect. The regularization will not affect the

seniority of the in-service candidates. Therefore, the writ petition was dismissed, which was confirmed in the writ appeal, so also, by the Hon'ble Apex Court. At any stretch of imagination, it could be inferred that the pendency of the said writ petition was an impediment for the petitioners to challenge the terms and conditions of the appointment. It is the very same Resolution dated 16.03.2007 passed by the appellant – Corporation, followed by the orders of appointment that was sought to be defended/sustained by the writ petitioners in the earlier writ petition. If that be so, it does not lie in the mouth of the writ petitioners to contend that because of the challenge made to the Resolution of the appellant – Corporation, they were prevented from challenging the terms and conditions of the appointment order dated 30.04.2007.

48. As regards the issue relating to fixing the cut-off date is concerned, the Board of the appellant - Corporation has resolved to adopt the new pension scheme pursuant to its Resolution dated 05.07.2007, which were made applicable to all the new recruits joining the services of the Corporation on or after 01.04.2006. The stipulation of date 01.04.2006 cannot be held to be illegal or arbitrary, inasmuch as, it is the said date

from which the new defined contributory pension scheme has been adopted by the State Government in respect of the employees of the State. The very same date has been stipulated by the appellant – Corporation for adoption of the new pension scheme. The decision of the appellant – Corporation for adoption of the new pension scheme with effect from 01.04.2006 could neither be called as arbitrary or whimsical or malafide. Therefore, no amount of argument as as against the stipulation of cut-off date for applying the new pension scheme does hold any substance, inasmuch as, the observation made by the learned Single Judge at paragraph 33 of the order that the act of the appellant – Corporation in fixing the cut-off date is not fair and reasonable is unsustainable. The question to be considered is not as to the stipulation of the cut-off date of applying the new pension scheme in respect of the employees who are appointed after 01.04.2006. What is relevant for the consideration in the present case is as to whether the services rendered by the writ petitioners on the basis of contract employment with effect from 07.05.2003 is to be considered for applying the pension scheme. As observed above, the date 01.04.2006 is not the date which has been chosen by the appellant – Corporation. It is the date on which

the State Government has adopted the new pension scheme to the employees of the State. The same scheme has been adopted by the appellant – Corporation to the services of its employees. The effective date for applying the new pension scheme in respect of the employees of the State is with effect from 01.04.2006. The applicability of the very same scheme in respect of the employees of the Corporation cannot be from a different date. Therefore, the observation of the learned Single Judge at paragraph 33 of the impugned order regarding the fixation of the cut-off date does not stand for reason.

49. The other argument of the learned counsel for the writ petitioners that the appointment of the writ petitioners is covered by Regulation 181 of the KEB Employees Service Regulation is also liable to be rejected for the reason that the said Regulation was made applicable to the temporary and permanent employees of the Corporation. However, in the present case, the appointment of the writ petitioners was on contract basis with the consolidated remuneration and not with the pay scale. Therefore, the services of the contract employees cannot be equated with that of the temporary or

permanent employees. This distinction has not been noticed by the learned Single Judge while passing the impugned order.

50. Much of the arguments have been canvassed, contending that the right to receive the pension is a fundamental right. In view of the series of judgments of the Hon'ble Apex Court, there is no quarrel about the proposition that the right of an employee to receive pension is a fundamental right. The question which is involved in the present case is not about the right of the employees to receive pension, but it is about the applicability of the relevant pension scheme. In the present case, there is no denial of the pensionary benefit. But, issue is as to whether the writ petitioners who are appointed on a contract basis with effect from 07.05.2003 are entitled to receive the pension under the old pension scheme considering their entry into service as 07.05.2003 as against their appointment on permanent basis with effect from 30.04.2007. This aspect has already been considered elaborately with the finding that the entry into service of the appellant – Corporation by the writ petitioners for consideration of the applicable pension scheme is on 30.04.2007 and not 07.05.2003. Therefore, the argument that

the right of the writ petitioners to receive pension is being infringed by the appellant – Corporation cannot be accepted and id accordingly rejected.

51. All the judgments which are relied upon by the petitioners are concerning the right of the employee to receive pension and the Hon'ble Apex Court has come to the rescue of the employees wherever their right to receive pension has been infringed.

52. In the case of ***Bhola Nath*** *(supra)*, the prayer of the employee for regularization was refused on the ground that their appointment was purely on a contract basis. In terms of the conditions stipulated in the office order by which they were temporarily engaged in services and there is no obligation to regularize or absorb the appointees in the said posts. The Hon'ble Apex Court relying upon the judgment in the case of ***State of Karnataka Vs Uma Devi*** reported in *(2006) 4 SCC 1,* has directed regularization of the services of the employee against the sanctioned post, to which they were initially appointed with all consequential benefits. While granting such a relief, the Hon'ble Apex Court has deprecated the practice adopted by States of engaging the employees under the

nominal lables of part-time, contractual or temporary in perpetuity and exploiting them by not regularizing their positions. The case on hand is not the one relating to the regularization of services of the employees. It is the applicable pension scheme post absorption/regular appointment.

53. As regards the judgment in the case of ***Bhikhani Devi*** *(supra),* the subject matter of the said case is with regard to the applicability of the pension scheme subject to fulfilment of the conditions and eligibility criteria provided therein. The applicability of the pension scheme in the said case was not dependent on the order of regularization. The scheme provided for conferment of additional benefit to the previous service to an employee upon his regularization, apart from the benefits conferred under the Rules, namely, upon acquisition of new status of the regular employee. When the benefit provided under the scheme for the employees who are regularized on a subsequent date for grant of additional benefit in respect of the services rendered prior to the regularization cannot be denied only on the ground of delay in approaching the Court. The Hon'ble Apex Court has further observed that the arrears, if any, payable to the employees in terms of the applicable

scheme has been restricted to a period of 3 years preceding the date of filing of the application before the Tribunal. The facts and circumstances of the present case is altogether different from the one obtaining in the cited decision. The argument that there is continuing and successive wrong therefore, doctrine of delay and latches is not applicable is also not available to the petitioners since, there is nothing on record to show that the deduction of 10% of the basis pay and dearness allowance from the date of permanent appointment is wrong or erroneous. It was not open for the petitioners to presume that the employer has committed wrong from the day one and the said wrong can be assailed at any point in time. As noticed by us from the pleadings in the Writ Petition and the representation submitted for the first time in the year 2014 the cause of action for their representation and filing of Writ Petition is the judgment of the Hon'ble Madras High Court. In the light of the above reasoning, the judgment of ***Tarsem Singh*** *(supra)* cannot be applied to the case on hand.

54. As regards the case of 7528 Gangmen are concerned, the facts are slightly different than the case of the Assistant Engineers/Junior Engineers. After much agitation and

consultation between the Union of employees and the appellant management, the appellant had forwarded the proposal for conversion of 7528 Gangmen into Probationary Mazdoors and consequent absorption as Junior Linemen. The State Government has conveyed its approval on 25.02.2004 with the condition that the Gangmen who have completed 6 years of service as on 01.04.2003 could be considered for conversion into Probationary Mazdoors and the same formula could be continued for the subsequent years. The State Government has further clarified that no subsidy would be granted by the State to the appellant Corporation on account of the scheme of absorption.

55. It is pursuant to the aforesaid approval of the State Government, the employees' Union and the Management have entered into a settlement dated 03.06.2004. The terms of the said settlement has been noticed and considered extensively. From the conditions imposed by the order of the State dated 25.02.2004 and the consequential memorandum settlement between the management and the Union, it discern that 7528 Gangmen would acquire eligibility for conversion as Probationary Mazdoors and for consequential absorption to the

post of junior Lineman only in terms of the conditions stipulated in the Government Order dated 25.02.2004, namely, the Gangmen who have completed 6 years of service as on 01.04.2003 were alone made entitle for conversion as Probationary Mazdoors. Therefore, it is clear that all 7528 Gangmen were not eligible for either conversion as Probationary Mazdoors and the consequential absorption to the post of Lineman. On the date of settlement itself, the conversion and absorption was made dependent upon the length of service put in by each of the Gangmen out of 7528 in numbers. It is only those Gangmen whose services was converted into Probationary Mazdoors and the consequential absorption to the post of Junior Lineman prior to 01.04.2006 are alone covered by the old pension scheme and the employees who have been converted as Probationary Mazdoors and absorbed into the post of Junior Lineman after 01.04.2006 are not entitled for application of old pension scheme. However, they are covered by new pension scheme. We say so because, the Gangmen who have been converted as Probationary Mazdoors were not entitled for the pay scale attached to the post of Junior Lineman immediately after their conversion. Upon conversion from the Gangmen to the Probationary

Mazdoors, they were entitled for the monthly remuneration at the rate of Rs.2,000/-, Rs.2,250/- and Rs.2,500/- per month during first, second and third year of probation, as could be seen from the proceedings dated 28.04.2005 at Annexure-R1 to the statement of objections filed by the appellant management.

56. The Probationary Mazdoors were entitled for fixation of pay scale only after their absorption to the post of Junior Lineman in the pay scale of Rs.3,125/- to Rs.6,575/-. At the most, the services of the employees as Probationary Mazdoors can only be considered for reckoning the length of service for fixation of the pension upon their superannuation and not for adoption of the old pension scheme. The entire argument of the learned senior counsel appearing for respondent No.1 in Writ Petition No.1254 of 2023 is to the effect that 7528 Gangmen have been absorbed to the post of Junior Lineman prior to 01.04.2006 and therefore, they are all covered by the old pension scheme. On a conjoint reading of the settlement dated 03.06.2004, communication of the Government dated 25.02.2004, the proceedings dated 28.04.2005 (Annexure-R1), proceedings dated 06.11.2004 (Annexure-R2), there can be no

doubt that the conversion of Gangmen to the Probationary Mazdoors did not have the effect of absorption. The effective date of absorption is only when the Probationary Mazdoors were absorbed to the post of Junior Lineman with the pay scale attached to the said post i.e., Rs.3,125/- - Rs.6,575/-. On a reading of the order impugned, we notice that the aforesaid foundational facts, the effect of conversion and absorption has neither been noticed nor considered.

57. Reliance is also placed by the learned counsel appearing for the respondents on the decision of the Division Bench of the High Court of Madras in ***K Punniyakoti*** *(supra).* In the said case, the casual labourers engaged by IGCAR had been conferred temporary status under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993, with an express assurance under the office order dated 13.01.2000 that 50% of the service rendered under temporary status would be counted for retirement benefits upon regularisation. Further, out of the same batch of 50 casual labourers, 34 had been regularised prior to the cut-off date, and the remaining 16 could not be absorbed only for want of vacancies. It was in that context that the Madras High Court

held that the said 16 employees could not be treated as fresh appointees. However, in the instant case, orders of appointment stipulate that service rendered on contract basis shall not count for any purpose, including pension, and that the appointees would be covered under the New Defined Contributory Pension Scheme. The writ petitioners accepted these conditions, executed agreements to that effect, and suffered deductions towards NPS without any objection for over seven years. Similarly, the Gangmen in Writ Appeal No.1254 of 2023 were absorbed under a separate order, only after 01.07.2006, on terms that expressly made the NPS applicable. The said decision, therefore, is distinguishable on facts.

58. The delay in approaching this Court for the reliefs is a matter assumes greater importance in the facts and circumstances of the present case. Because, from the year 2007 onwards, the appellant KPTCL has been deducting 10% of the basic pay and dearness allowance, even as on date. If a direction is now issued to apply the old pension scheme, which results in refund of the amounts, which has been deducted since 2007 till now, i.e., almost 19 years. Such a direction for refund of the amounts deducted, as stated supra, would

definitely dent the financial position of the appellant and would have the effect of huge financial burden, which would ultimately passed on to the consumers resulting in hike in the tariff. If only the writ petitioners had approached this Court at the earliest point of time, i.e., in the year 2007, when the deduction of 10% of basic pay and dearness allowance was commenced, the result would have been different. While exercising the jurisdiction under Article 226 of the Constitution of India, which is extraordinary one, the public interest, so also, the private interest will have to be balanced and in the present case, the balance of convenience lies in favour of the appellant in view of the long delay in approaching this Court by the writ petitioners.

59. In the result;

(i) Writ Appeal Nos.1252 of 2023 and 1240 of 2023 are ***allowed.***

(ii) The order dated 28.08.2023 passed in Writ Petition No.32866 of 2017 and Writ Petition No.9774 of 2016 is set aside.

(iii) Writ Appeal No.1254 of 2023 is ***disposed of*** by modifying the order passed in Writ Petition No.13498 of 2021 clarifying that only such of the employees who have been converted from the post of Gangmen to Probationary Mazdoors and absorbed to the post of Junior Lineman with the pay scale of Rs.3,125/- to Rs.6,575/- prior to 01.04.2006 alone are entitled to be considered under the old pension scheme and all other Gangmen who have been converted to the post of probationary mazdoors with the pay scale of Rs.3,125/- to Rs.6,575/- and the consequential absorption to the post of Junior Lineman after 01.04.2006 are to be considered under the new defined contributory pension scheme.

(iv) Upon conducting the exercise of identifying the employees who are covered by old pension scheme and the new pension scheme as observed above, the consequential benefits payable to such of the employees who are covered by old pension scheme will have to be paid/refunded within a period of three months from the date of receipt of the certified copy of the judgment.

(v) The above directions are not only applicable to the existing employees, but, it applies to the employees who have attained the age of superannuation or who died either while in service or post retirement.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

BGN