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

% Judgement delivered on: 06.05.2014

+ W.P.(C) 6390/2012

KAMPURI

..... Petitioner

versus

BSES RAJDHANI POWER LTD & ANR.

..... Respondents

**Advocates who appeared in this case:**

For the petitioner: Mr Ashish Deep Verma & Mr Kaushal Budhia, Advs.

For the respondents: Mr S.N. Choudhri, Ms Anjana Sinha & Ms Shruti Choudhri,  
Advocates for R-1.

Mr Sumeet Pushkarna, CGSC with Mr P. Narayam, Manager  
(Pension Trust) for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J**

1. This is a gross case where the petitioner, who is the wife of the deceased Ram Kishan, the erstwhile employee of Delhi Vidyut Board (DVB) is being made to run from pillar to post for receipt of family pension by the two respondents arrayed before me, in the matter. Respondent no.1 is the successor of DVB, which took birth on 01.07.2002, after an extensive unbundling exercise. The facts, which are necessary for the purpose of disposal of this petition are, therefore, articulated to give a brief background of the dispute in issue.

2. The husband of the petitioner, late Sh. Ram Kishan, retired from service on 30.04.1996. It appears, just before his retirement in 1995, departmental proceedings were initiated against late Sh. Ram Kishan on the charge of wilful/ unauthorized absence/ dereliction of duty.

2.1 These proceedings were ultimately dropped by respondent no.1 on 28.02.2004. The order whereby proceedings qua late Sh. Ram Kishan were dropped reads as follows:

“...Now Therefore, keeping in view all the facts and circumstances of the case and taking a lenient view the undersigned being the Competent Authority hereby orders that the charges against Sh. Ram Kishan, ALM, E. No. 14430 be treated as dropped and Disciplinary case be closed.

It is further ordered that the unauthorized absence period of Sh. Ram Kishan, ALM be treated as Leave of the Kind Due..” (emphasis is mine)

2.2 The petitioner, has averred that finally dues of her husband, for the period which was regularized by virtue of an order dated 28.02.2004, were paid on 24.09.2004. Unfortunately, for the petitioner, her husband expired on 14.08.2011.

2.3 It appears that in 2004 when, the case against late Sh. Ram Kishan was dropped, he had thereafter in the month of April submitted his papers to claim pensionary benefits. This aspect emerges from a reading of the averments made by respondent no.1 in paragraph 7 of the counter affidavit filed in this court. Evidently, respondent no.2, which is the trust which was created on unbundling of the DVB, refused to entertain the claim of late Sh. Ram Kishan.

2.4 The petitioner, upon death of her husband on 22.02.2012, sent a communication to respondent no.1, whereby a grievance was made that pensionary benefits were neither paid to her nor to her late husband. The reminders in this behalf were issued on 09.03.2012, 13.03.2012 and 04.04.2012. These reminders were issued in the form of letters/ Emails.

2.5 The petitioner, having received no response to the aforementioned

communications, took recourse to the Right to Information Act, 2005 on 30.06.2012. However, in that application information was sought with regard to why the pension was not paid to her late husband w.e.f. 01.05.1996. Respondent no.1 vide its response dated 05.07.2012 took the stand that since it was not a public authority, it was not required to give information against the RTI application filed by the petitioner.

3. It is in this background that the petitioner approached this court by way of the captioned writ petition. Initially respondent no.2 was not impleaded as a party. This court on the very first date of hearing, i.e., 08.10.2012, while issuing notice to respondent no.1, impleaded respondent no.2 as a party to the present proceedings, based on an oral application. Since then, both respondents, have filed their counter affidavit.

4. After hearing the counsels for the parties, what has emerged is that there is no dispute that the late husband of the petitioner was an employee of DVB, and he retired, from service on 30.04.1996. It is also not in dispute that respondent no.1 is the successor entity of DVB.

5. Mr Choudhri, who appears for respondent no.1, also does not dispute the fact that under a transfer scheme formulated for unbundling, respondent no.1 acquired all assets and liabilities of DVB. The only point of concern, was that, in so far as the contributions made by the employees towards pension were concerned, the entire fund was transferred to respondent no.2. Thus, Mr Choudhri's stand was that, respondent no.1 would not be liable to pay the pensionary benefits to the petitioner.

6. On the other hand, Mr Pushkarna, who appears for respondent no.2, says that the issue as to who is liable to pay the pensionary benefits to the petitioner, is no longer res integra. For this purpose, he relies upon a series of judgements. The basic judgement on this issue, according to Mr

Pushkarna, is the judgement of the Supreme Court in *North Delhi Power Limited vs Govt. of National Capital Territory of Delhi & Ors. (2010) 6 SCC 278*. Apart from the above, reliance is also placed on the judgement of this court in the case of: *Babu Ram Jain vs BSES Yamuna Power Ltd.*, dated 04.08.2011, passed in WP(C) 1597/1998. To be noted, this was a judgement of a Single Judge of this court which was carried in appeal by the respondent therein to the Division Bench, which was numbered as LPA No. 113/2013. The Division Bench, however, dismissed the appeal of BSES Yamuna Power Ltd. on the ground that there was a delay of 541 days. I am informed that the matter has been carried in appeal to the Supreme Court. The Supreme Court, I am told, has stayed the operation of the judgement of the Division Bench.

6.1 Apart from the above, reliance was also placed on other judgements of the Single Judges of this court. These being: *Smt. Pawan Vohra vs The Chairman, DVB Pension Trust & Anr.*, dated 17.05.2013, passed in WP(C) 1680/2012; *Trilok Chand vs DVB Employee's Terminal Benefit Fund Trust & Ors.*, dated 20.05.2013, passed in WP(C) 4815/2012; and *Tulsi Ram Arya vs Chairman D.V.B. & Ors.*, dated 31.01.2013, passed in WP(C) 618/2001.

6.2 Reliance is also placed on a judgement of the Single Judge of this court which was passed prior to the judgement of the Supreme Court in the case of *North Delhi Power Limited vs Govt. of National Capital Territory of Delhi & Ors.* This judgement is dated 28.05.2009 and, has been passed in a batch of review petitions filed, the lead petition being: CM No. 16398/2008 and Review Petition No. 14778/2008 in WP(C) 17629/2005.

6.3 I am also informed that in *Tulsi Ram Arya vs Chairman, D.V. B. & Ors* case also, the matter was carried to the Division Bench, and that, the

Division Bench did not interfere in the matter on the issue as to who would be liable for payment of pensionary dues.

7. Having heard the learned counsels for the parties and perused the record, I am of the opinion, since the husband of the petitioner was an employee of the erstwhile entity, i.e., DVB, which was succeeded by respondent no.1, the petitioner herein, will be entitled to family pension; the husband having expired on 14.08.2011. This emerges on reading of the provisions of sub-rule 9(a) of Rule (6) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001. The said rule reads as follows:

(a) ‘existing pensioners’ mean all the persons eligible for the pension as on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme..” (emphasis is mine)

7.1 Clause (b) of sub-rule (9) of Rule (6), which defines the ‘terminal benefits’ reads as follows:

‘(b) ‘terminal benefits’ mean the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners...” (emphasis is mine)

7.2 I may also refer to Rule 2(h) & (k) which define entity and liabilities. The said rules read as follows:

“...(h) ‘DISCOMS’ means and includes DISCOM 1, DISCOM 2 and DISCOM 3 collectively;

(k) ‘liabilities’ include all liabilities, debts, duties, obligations and other outgoings including contingent liabilities, statutory liabilities and government levies of whatever nature, which may arise in regard to dealings before the date of the transfer in respect of the specified undertakings;...” (emphasis is mine)

8. A reading of the aforesaid rules is clearly indicative of the fact that family members of the personnel would also have to be treated as existing

pensioners, and that, liabilities would include contingent liabilities. The definition of ‘terminal benefits’ brings within its fold pension, as well.

8.1 Furthermore if there was any doubt, it has been certainly put to rest by the Supreme Court by the following observations in paragraphs, 45, 50 and 52 of its judgement in the case of *North Delhi Power Limited vs Govt. of National Capital Territory of Delhi & Ors.* Pertinently, the observations of the Supreme Court referred to below, were made after discussing the provisions of the transfer scheme threadbare. For the purposes of convenience, the said observations are extracted hereinbelow:

“.....45. We have absolutely no quarrel with this proposition. However, this could be true if there was no “additional liability” brought in. For the reasons which follow, we do not think that in clothing NDPL with a liability regarding the personnel who were retired, compulsorily retired or otherwise dead, dismissed, etc. could be termed as “additional liability”. In fact the reading of the Rules and, more particularly, Rule 6(8) would indicate that liability was innate and accepted by DISCOMS.....

.... 50. The language is extremely clear. It not only specifies the employment related matters but also clarifies what those matters would be which include the benefit of the personnel and the existing pensioners. The words “existing pensioners” are extremely important. A plain reading of Rule 6(8) would leave no manner of doubt in respect of the liability having been transferred to the transferee company and NDPL is certainly the one. The language is broad enough to include all dismissed, dead, retired and compulsorily retired employees. As if that was not sufficient, sub-rule (9) requires the Government to make appropriate arrangements in terms of the tripartite agreement in regard to the fund of terminal benefits to the extent it is unfunded on the date of transfer from the Board.....

....52. A glance at these sub-rules is sufficient to come to the conclusion that the liabilities have undoubtedly been transferred to the DISCOMS which include both NDPL as

well as BSES. A feeble argument was raised that sub-rule (8) does not contemplate pension or any liability on account of the revised pay scale or interpretation of respective scheme of promotion so far as existing pensioners or the erstwhile DVB are concerned to the DISCOMS. Considering the broad language of the Rule, we do not think that such contention is possible.....” (emphasis is mine)

9. Having regard to the above, it is quite clear, not only would the petitioner be entitled to pension, being an “existing pensioner”, but the liability qua the same would fall on respondent no.1 being the employer as also the transferee under the relevant transfer scheme. There is no dispute raised before me that the provisions of the transfer scheme, to which I have referred to above, are not applicable to respondent no.1.

10. This brings me to the argument of Mr Choudhri that since funds, from which the pension is likely to be paid, have been transferred to respondent no.2 and, therefore, respondent no.2 should be called upon to make the payment, is according to me, an argument which pertains to accounting. Whether such funds have been transferred, and the extent to which this fund has been transferred, is an aspect which respondents, in my view, will have to sort out, between themselves. The Single Judge, in the case of *Tulsi Ram Arya vs Chairman D.V.B. & Ors.* has also taken this very view. I have no reason to take a different line on this issue.

11. I may only conclude by quoting the observations of the Supreme Court in *D.S. Nakara & Ors. vs Union of India (1983) 1 SCC 305*, which resonate repeatedly when matters pertaining to retiral benefits come up for adjudication. All employers and adjudicatory authorities would do well by adopting the same measure. The relevant observations are extracted below:

“.... Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex

gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with an furtherance of the goals of the Constitution. The most practical *raison d'être* for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution....”

12. Having regard to the aforesaid observations, the writ petition is allowed. Respondent no.1 shall pay the pensionary benefits and other retirement benefits, if any, to the petitioner. Respondent no.1, however, shall be free to agitate the issue with respondent no.2 by appropriate action in court; albeit in accordance with law. The pensionary dues and other retirement benefits would be paid within a period of three weeks from today, failing which the simple interest will run at the rate of 12% per annum. Respondent no.1 will also pay costs in the sum of Rs. 5000/- to the petitioner.

13. I have consciously declined for payment of interest on the arrears for the reasons that, in a sense the petitioner's husband has been remiss in approaching the court with alacrity after departmental proceedings were dropped on 28.02.2004.

14. The writ petition is, accordingly, disposed of in the aforesaid terms.

**RAJIV SHAKDHER, J**

**MAY 06, 2014**

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