

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Full Bench)

W.A. No.897/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Sita Ram Patel and others

W.A. No.931/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Pravin Kumar Tiwari and others

W.A. No.932/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ramadhar Verma and others

W.A. No.934/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Alla Bhasori and others

W.A. No.935/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Jugal Kishore Verma and others

W.A. No.936/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Uday Kumar Kushwaha and others

W.A. No.937/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Geeta Dwivedi and others

W.A. No.938/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Chandra Bhan Vishwakarma and others

W.A. No.939/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Babulal Singh and others

W.A. No.940/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Lakhan Sharma and others

W.A. No.941/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Bhaiyalal Sondhiya and others

W.A. No.942/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Jai Pal Rajput and others

W.A. No.943/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Dharmendra Kumar Jain and others

W.A. No.944/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Sitaram Tiwari and others

W.A. No.945/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Premlal Kachhi and others

W.A. No.946/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Lekhraj Singh and others

W.A. No.947/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Kumar Tiwari and others

W.A. No.948/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Manoj Kumar Mishra and others

W.A. No.949/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Anarth Singh Thakur and others

W.A. No.950/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Bhupendra Singh Baghel and others

W.A. No.951/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Shyam Lal Sharma and others

W.A. No.952/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-
Ganesh Prasad Pandey and others

W.A. No.953/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Todulal Dhamgaye and others

W.A. No.954/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Smt. Rambai and others

W.A. No.956/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Chhotelal Verma and others

W.A. No.957/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Pratap Sahu and others

W.A. No.959/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Khilawan Verma and others

W.A. No.960/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ayodhya Prasad Verma and others

W.A. No.961/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Jiyawan Verma and others

W.A. No.963/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Jiyawan Verma and others

W.A. No.964/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Bhagwat Prasad Mishra and others

W.A. No.965/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Smt. Kusum Verma and others

W.A. No.966/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Kishori Lal Verma and others

W.A. No.967/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Dashrath Prasad Pandey and others

W.A. No.968/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Sheshmawni Tiwari and others

W.A. No.969/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Om Prakash Sharma and others

W.A. No.970/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-
Shyam Lal Uike and others

W.A. No.971/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Premlal Vishwakarma and others

W.A. No.972/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Devmani Rajak and others

W.A. No.973/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Arjun Kumar Sen and others

W.A. No.986/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Mahesh Pratap Singh and others

W.A. No.988/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Shri Ram Vishwakarma and others

W.A. No.989/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Santosh Kumar Verma and others

W.A. No.990/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Santosh Kumar Soni and others

W.A. No.991/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Yadvendra Singh and others

W.A. No.992/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Narayan Mishra and others

W.A. No.993/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Motilal Verma and others

W.A. No.994/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Sajeewan Tiwari and others

W.A. No.995/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Laxmi Narayan Sharma and others

W.A. No.999/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Suryaden Bharti and others

W.A. No.1001/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Yagyabhan Patel and others

W.A. No.1003/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-
Madhav Prasad and others

W.A. No.1015/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Shashi Prabhakar Shukla and others

W.A. No.1016/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Babu Rao Athnere and others

W.A. No.1017/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Puspendra Kumar Pandey and others

W.A. No.1018/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ram Sajeewan Verma and others

W.A. No.1020/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Usha Singh and others

W.A. No.1021/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ramayan Prasad Shukla and others

W.A. No.1022/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Smt. Kanti Devi Verma and others

W.A. No.1023/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ashutosh Prasad Mishra and others

W.A. No.1024/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Maniraj Bharti and others

W.A. No.1029/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Momin Khan and others

W.A. No.1030/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Tulsi Ram Sen and others

W.A. No.1032/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Mohd. Ahamed Jameel Khan and others

W.A. No.1033/2019

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-Versus-
Uma Shankar Dwivedi and others

W.A. No.1034/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Vishwanath Singh and others

W.A. No.1035/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-
Mohd. Nawab Khan and others

W.A. No.1036/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Sharad Kant Khare and others

W.A. No.1038/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Bharat Sharan Sharma and others

W.A. No.1039/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Sampati Kumar Dahiya and others

W.A. No.1040/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Rakesh Kumar Jain and others

W.A. No.1041/2019

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Ramadhar Verma and others

W.A. No.1048/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ashok Kumar Pandey and others

W.A. No.1049/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Ramvilas Patel and others

W.A. No.1050/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Chhotelal Kushwaha and others

W.A. No.1051/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Surya Prakash Pandey and others

W.A. No.1052/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Vanshroop Verma and others

W.A. No.1053/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Munnalal Sharma and others

W.A. No.1056/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Amar Singh Thakur and others

W.A. No.1057/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Rohini Prasad Mishra and others

W.A. No.1063/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Chhotelal Singh and others

W.A. No.1093/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Rajneesh Kumar Dwivedi and others

W.A. No.1095/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Praveen Kumar Tiwari and others

W.A. No.1096/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Pancharaj Tiwari and others

W.A. No.1097/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Yagyasen Patel and others

W.A. No.1098/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Lakhanlal Sahu and others

W.A. No.1099/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Kanhai Prasad and others

W.A. No.1100/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Smt. Savitri Singh and others

W.A. No.1101/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others

-Versus-

Chhotelal Verma and others

W.A. No.1107/2019

Managing Director, M.P. Poorva Kshetra V.V. Co. Ltd. and others
-Versus-
Manohar Lal Pawar and others

Shri Amalpushp Shroti, Shri A.K. Sthapak and Shri Ved Prakash Tiwari, Advocates for the appellants.

Shri K.C. Ghildiyal and Shri Ajit Singh, Advocates for the private respondents.

Shri Bhoopesh Tiwari, Govt. Advocate for the respondents/State.

Shri J.K. Pillai, Advocate for the respondent – Commissioner, Employees' Provident Fund, Jabalpur.

CORAM :

Hon'ble Shri Justice R.S. Jha, Acting Chief Justice
Hon'ble Shri Justice J.K. Maheshwari, Judge &
Hon'ble Shri Justice V.K. Shukla, Judge.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	<p>1. The terms and conditions of an absorbed employee, after merger, is governed by the terms of absorption and statute/rules/regulations or circular made in that behalf.</p> <p>2. The law laid down by the Division Bench in the case of <i>M.P. State Electricity Board (now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.) Indore vs. Bijali Karmachari Sangh (W.A. No.334/2015)</i> wherein it has been held that employees of the societies are entitled to pension, does not lay down the correct law.</p> <p>3. Dismissal of an SLP <i>in limine</i> by a non-speaking order, does not culminate in merger of the impugned decision and does not constitute <i>res judicata</i>.</p>
<i>Significant paragraph Nos.</i>	24,25 & 26

JUDGEMENT
(Jabalpur, dtd.22.8.2019)

Per : V.K. Shukla, J.-

In view of the obtaining factual matrix, the Division Bench, by order dated 27-6-2019 has referred the following questions for consideration before this Bench :

“(i) Whether the decision in the case of **M.P. State Electricity Board (now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.) Indore vs. Bijli Karmchari Sangh, W.A. No.334/2015** wherein it has been held that the employees of the society are entitled to pension in view of the decision rendered in the case of **Panchraj Tiwari vs. M.P. State Electricity Board, (2014) 5 SCC 101**, lays down the correct law ?

(ii) Whether in view of the decisions of the Supreme Court rendered in the case of **Panchraj Tiwari vs. M.P. State Electricity Board, (2014) 5 SCC 101; M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. vs. Uma Shankar Dwivedi, 2018 SCC Online SC 1461 : Civil Appeal No.9146-9148/2018; and Brajendra Singh Kushwaha and others vs. M.P. State Electricity Board and others, SLP(C) No.28516/2013**, the respondents are entitled to the benefit of pension as claimed by them or whether they are governed by the terms of absorption which provides for payment of pension/gratuity as per the Rules and Regulations of the society concerned ?”

2. Before advertng to the issues, it is apt to quote the reliefs prayed in the writ petitions and the directions passed by the learned Single Judge thereon. The writ-petitioners/respondents sought for the following reliefs:

“(i) *It is, therefore, prayed that this Hon’ble Court may kindly be pleased to quash the impugned*

orders dated 15-12-2014 (Annexure-P/1), order dated 19-10-2015 (Annexure-P/2), order dated 27-7-2015 (Annexure-P/3) and order dated 25-3-2017 (Annexure-P/4) and the respondents be directed to give the benefits of third higher payscale to the petitioner by counting his previous service from the date of his entitlement in terms of order dated 4-01-2016 with all service benefits including arrears.

(ii) Respondents be further directed to give the benefits of Revision of Pay Regulation, 2001 as well as benefits of 6th Pay Commission w.e.f. 01-01-2006 by modifying the pay fixation dated 11-02-2015 with arrears and merge the EPF account into the GPF account w.e.f. 15-03-2002 and give the benefit of pension at par with the original employees of MPEB by counting his previous service.

(iii) This Hon'ble Court be further pleased to pass any such other orders as this Hon'ble Court may deem fit under the circumstances of the case."

3. The learned Single Judge taking into consideration the judgment passed by a Division Bench of this Court at Indore in **W.A. No.334/2015 [M.P. State Electricity Board (Now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd., Indore vs. Bijli Karmchari Sangh, decided on 14-6-2016]** – hereinafter referred to as "*Bijli Karmchari Sangh case*", allowed the writ petition with the following directions :

"(i) The petitioners may claim and shall be entitled to get the payscale prescribed in the Regulations of 2001 provided their cases are covered by para 4 of the order passed by the Supreme Court in the case of Uma Shankar Dwivedi (supra). If their cases are covered, the petitioners may file applications claiming the said benefits and if they are similar qua the employees of Manawar Society and their cases are covered by para 4 of the judgment of Uma Shankar

Dwivedi (supra), it shall be the duty of the respondents to extend the similar benefit of payscale to the petitioners from due date.

(ii) the petitioners are entitled to get the benefit of 6th Pay Commission in terms of revised pay scale. If the revised payscale has not been to the petitioners as per the recommendations of 6th Pay Commission, it shall be the duty of the respondents to extend the same from due date with arrears.

(iii) The previous service rendered in the society shall not be counted for the purpose of grant of higher payscale/financial up-gradation.

(iv) The petitioners shall be entitled to get the benefit of pensionary scheme and other fringe benefits, which are applicable for the employees of MPSEB as per the judgment of Indore Bench in W.A. No.334/2015 (M.P. State Electricity Board (Now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. Indore) vs. Bijali Karmchari Sangh).

(v) The petitioners shall get the benefits mentioned in Clause (4) of the order dated 15-12-2014 (Annexure-P/1) from the date of their absorption.

(vi) The entire exercise be completed within six months from the date of completion of formalities by the petitioners for grant of aforesaid benefits.

(vii) The petitioners are at liberty to file separate proceedings for other relief which have not been pressed and decided in the present petitions.”

4. At the outset, learned counsel appearing for the appellants submitted that the Board is not aggrieved by the directions issued by the learned Single Judge, except the direction contained in sub-para (iv), wherein the learned Single Judge has

held that the petitioners shall be entitled to get the benefit of pensionary scheme and other fringe benefits.

5. The learned counsel for the appellants submitted that the decision of the learned Single Judge as well as Division Bench of Indore Bench in **Bijali Karmchari Sangh case**, are based on the judgment of the Supreme Court in the case of **Panchraj Tiwari vs. M.P. State Electricity Board and others, (2014) 5 SCC 101** and **Brijendra Singh Kushwaha and others vs. M.P. State Electricity Board and others, SLP (C) No.28516.2013**. The learned Single Judge has also taken into consideration the order passed by this Court in **W.P. No.1962/2010 (Electricity Supply Employees Union vs. State of M.P.)** and in the writ appeal arising thereon, i.e. **W.A. No.685/2011**. It is contended that none of the petitions, decided by this Court prior to the decision in the **Bijali Karmchari Singh case**, dealt with the issue of pension. It is putforth that all the previous petitions and litigations before this Court were related either to grant of payscale or promotion, and the issue of pension to the absorbed employees of the Society was neither considered nor decided at any point of time. In support of his submissions, he referred to para 12 of the order passed by the learned Single Judge at Indore Bench in **Bijali Karmchari Sangh case**.

6. The learned counsel for the appellants also submitted that even in the cases of **Brajendra Singh Kushwaha (supra)** and **Panchraj Tiwari (supra)** the Supreme Court dealt with the issue of payscale and promotion respectively. To bolster his submissions he referred to para 3 of the judgment in the case of **Panchraj Tiwari (supra)** and also para 17 of the said judgment where the Apex Court affirmed all other principles/conditions of absorption, except those relating to promotion and payscale, after reproducing the terms and conditions of the absorption.

7. The learned counsel appearing for the writ petitioners/respondents *per contra*, submits that the issue of pension was specifically considered and decided by the Division Bench of this Court in the **Bijali Karmchari Sangh case**. He has also placed reliance on the decision of the Single Bench of this Court at Indore Bench in the case of **Umashankar Dwivedi vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. & ors. (W.P. No.3547/2015, decided on 6-10-2015)**. The said judgment was affirmed by the Division Bench in **W.A. No.883/2015** and Review petitions preferred by the Board were dismissed on 18-12-2015. The SLP No.9146-9148/2018 against the said order were also disposed of by the Apex Court with certain observations. It is also argued that an SLP filed by the respondents against the decision of the Division

Bench of Indore Bench in the **Bijali Karmchari Sangh case** was also dismissed by the Supreme Court on 30-11-2018 in S.L.P (C) No.24772/2016, therefore, the issue regarding pension of absorbed employees of erstwhile Rural Electricity Co-operative Society (RECS) has already been decided in favour of the employees by various judgments of this Court as well as the Supreme Court.

8. The learned counsel appearing for the respondent No.3 supported the arguments advanced on behalf of the appellants and submitted that the employees of the society have been availing of and still continue to avail the benefit of the EPF Scheme to which the appellants are making their employers contribution and there is no need of transfer of the EPF amount to the Board and further submitted that since there was no prayer for grant of pension therefore, the learned Single Judge has erred in granting benefits of the same to the respondents. It is further submitted that as the respondents accepted the terms of absorption and opted for the EPF Scheme they cannot be granted the benefit of regular pension in view of the statutory provisions.

9. Considering the aforesaid rival submissions raised at the Bar, the Division Bench by order dated 27-6-2019 has referred the questions before the larger Bench that as to whether the decision in

the case of **M.P. State Electricity Board (now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.) Indore vs. Bijali Karmchari Sangh [W.A. No.334/2015]** wherein it has been held that the employees of the societies are entitled to pension in view of the decision rendered in the case of **Panchraj Tiwari (supra)** lays down the correct law; and as to whether in view of the judgments rendered in the cases of **Panchraj Tiwari (supra)**; **M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. vs. Uma Shankar Dwivedi and Brijendra Singh Kushwaha and others vs. M.P. State Electricity Board and others, SLP(C) No.28516/2013**, the respondents are entitled to the benefit of pension as claimed by them, or whether they are governed by the terms of absorption which provide for payment of pension/gratuity as per Rules and Regulations of the society concerned.

10. Before adverting to the aforesaid questions, it is apposite to refer to the facts of the present case and also various orders passed by the Single Bench, Division Bench and the Supreme Court which have been referred by the Division Bench at Indore in W.A. No.334/2015 and in the impugned order by the learned Single Judge.

For the sake of clarity and convenience and considering the commonality of issues exposited in these writ appeals, the facts

adumbrated in W.A. No.897/2019 are noted. The respondents/writ-petitioners are erstwhile employees of the Rural Electricity Co-operative Societies [for short “the RECS”] now known as M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. The State Government had taken a decision regarding abolition of these societies. On an application being filed by the State Government seeking cancellation of licences of 12 RECS on account of various factors including their precarious financial condition, the Registrar Co-operative Societies revoked the licences in exercise of powers under Section 18(1)(b) and 2(d) of the M.P. Vidyut Sudhar Adhiniyam, 2000 w.e.f. 15-03-2002, and consequently services of the respondents/writ-petitioners were merged with the M.P. State Electricity Board [hereinafter referred to as “the Board”] by order dated 18-5-2004, with effect from 15-3-2002. By way of the policy decision it was also resolved that a duly constituted scrutiny committee will scrutinize each and every case for absorption of service of the employees of the societies in the Board.

11. The petitioners being aggrieved by the aforesaid policy decision came up before this Court by filing a writ petition forming the subject-matter of **W.P. No.989/1995** before the Indore Bench and the same was transferred to the Principal Seat at Jabalpur and got renumbered as **W.P. No.2480/1997**. The petition was decided

on 31-03-2003 with a direction to the parties to screen the case of each daily wagers before terminating their services. Thereafter, the societies were abolished and the matter relating to revocation of the licences of the Society came up before the M.P. State Regulatory Commission which passed an order on 20-02-2002 revoking the licences of the Societies w.e.f. 15-03-2002.

12. As per terms and conditions of absorption laid down in the order, the regular employees were required to be taken over by the Board on the same terms and conditions that were existing in the Society. They were not held to be entitled for deputation allowance. A review petition was preferred before the Regulatory Commission and time was granted to the Board to comply with the order. Ultimately, on 18-5-2004 the Board passed an order for absorbing the services of 870 regular employees of eight different societies in the Board on the same terms and conditions existing in the erstwhile Society with a clear direction, that no deputation allowance will be paid to any of the employees.

13. Thereafter, by order dated 15-6-2004 the Board formulated the following terms and conditions for absorption :

“1. The regular employees of the above societies shall be taken over on the same terms and conditions as existing in the Society except that no deputation allowance shall be paid.

2. *Their payscale will be the same which they were getting before the absorption.*

3. *The above employees may not be transferred out of the circle concerned, so that no anomaly arises.*

4. *Their age of superannuation will be the same as applicable in the societies.*

5. *Pension/gratuity will be payable to the employees absorbed in the Board as per the rules/regulations of the concerned authority.*

6. *Their designation will be maintained as it was in the society.”]*

(Emphasis supplied)

14. A petition forming the subject-matter of **W.P.(S) No.1151/2005 (Bijli Karmchari Sangh vs. M.P. State Electricity Board and others)** was filed in the year 2005 before the Indore Bench of this Court with the following reliefs :

“ (i) It is, therefore, prayed that this petition be allowed with costs and an appropriate writ, order or direction be issued to the respondents for quashing the order dated 20-02-2003 (Annexure-P/3) as well as the order dated 15-12-2004 (Annexure-P/10) and the respondents be directed to extend the same benefits to the petitioner as that of the employees of the Board.

(ii) Any other relief which this Hon’ble Court deems fit be granted to the petitioner.”

15. The said petition filed in the year 2005 came to be decided on 7-5-2015. In the meantime, as subsequent petitions filed in other Benches of this Court by employees of the society were decided, therefore, the learned Single Judge at Indore Bench decided the said

petition taking note of the order passed in W.P.No.1962/2010 by a Division Bench of this Court in the case of **Panchraj Tiwari vs. M.P. State Electricity Board (W.A. No.1361/2006)**, the order passed by the Apex Court on 23-8-2018 in a special leave petition against the judgment passed in W.A. No.685/2011 and also the judgment passed in W.A. No.685/2011, the judgment passed by the Apex Court in the case of **Panchraj Tiwari vs. M.P. State Electricity Board and others, (2014) 5 SCC 101** and while doing so has held that though the petitioners have admitted that they have been granted all the benefits to which the employees of the Society are entitled, however, the respondents have not granted the benefit of pension to the employees who were absorbed in the service of the Board. The Court held that once the employees have been absorbed in the services of the Board for all purposes, therefore, they cannot be discriminated in respect of benefit of regular pension that is paid to regular employees of the Board.

16. In order to decide the questions referred to the Full Bench, it is necessary to examine the judgments referred to and relied upon by the Division Bench of this Court in the case of **Bijli Karmchari Sangh (supra)**, with a view to ascertain as to whether the issue of pension was considered and decided in those cases. In **W.P. No.2459/2010 (Brajendra Singh Kushwah vs. M.P. State**

Electricity Board and others, the Gwalior Bench of this Court directed grant of benefit of the Board's Class-III and Class-IV employees, Revision of Pay Regulation, 2001 on the basis of a common judgment passed by the Indore Bench of this Court in **W.P. No.1962/2010 and W.P. No.12029/2011 (Electricity Supply Employees Union vs. State of M.P., decided on 13-9-2011)** whereby benefit of 2001 Pay Regulations were granted to the absorbed employees of Manawar RECS. However, the **Writ Appeal No.137/2012 (M.P. State Electricity Board vs. Brajendra Singh Kushwah)** filed by the Board was allowed setting aside the direction to grant parity in pay and the common judgment of the Indore Bench passed in **W.P. No.1962/2010, dated 13-9-2011 and W.P. No.12029/2010 (Electricity Supply Employees Union vs. State of M.P.)**, whereby benefits of the Pay Regulations 2001 were conferred to the absorbed employees of Manawar RECS, was distinguished.

17. One matter pertaining to claim of promotion and seniority after absorption and merger of service with the Board travelled to the Supreme Court in the case of **Panchraj Tiwari (supra)** arising out of the judgment dated 27-7-2007 passed by the Division Bench of this Court in W.A. No.1361/2006. The question before the Apex Court was that whether on

integration/merger/amalgamation is it permissible to have complete denial of promotion forever in the integrated service. The Apex Court reproduced the terms and conditions on which the employees were absorbed in para 3 of the judgment. The Apex Court after taking into considerations the terms and conditions of absorption held that the payscale on the date of absorption was protected, their designation was maintained as it was in the society at the time of absorption and the age of superannuation pension and gratuity of such employees were to be governed by rules/byelaws of the society concerned. (*Emphasis supplied*), as per the terms and conditions of absorption, which were affirmed.

18. W.P.(S) No.1151/2005 - Bijli Karmachari Sangh-I, decided on 7-5-2015, though was rendered infructuous, but on the prayer of the petitioners benefit of pension at par with the employees of MPSEB was granted in the following terms :

“12. Learned counsel for the petitioner has fairly admitted before this Court that all the benefits have been granted to the employees of the Society, however, in the matter of grant of pension, the respondents are not paying the pensionary dues to the employees who were absorbed in the services of the Board.

13. This Court in the light of the judgment delivered in the earlier round of litigation and also keeping in view the order passed by the Hon’ble Supreme Court in the case of Brajendra Singh Kushwaha (supra) and order passed in the case of Panchraj Tiwari (supra), is of the considered opinion that once the employees have absorbed in the services of the M.P. State Electricity Board they are the

employees of M.P. State Electricity Board for all purposes. An instrumentality of the State cannot be permitted to discriminate between its employees by treating the absorbed employees as a different class of employees. There is one only class of employees, i.e. employees working in the M.P. State Electricity Board. There is a pensionary scheme for the employees of the M.P. State Electricity Board and, therefore, the members of the petitioner – Union, meaning thereby, all the employees absorbed in the services of M.P. State Electricity Board are certainly entitled for the benefits of pension scheme and other fringe benefits for which the employees of M.P. State Electricity Board are entitled.

14. Resultantly, the writ petition stands allowed. The respondents are directed to extend the pensionary benefits and other fringe benefit to the absorbed employees who are now the employees of M.P. State Electricity Board. The exercise of passing necessary orders in respect of pensionary benefits and other fringe benefits be passed within a period of ninety days from the date of receipt of certified copy of this order. This writ petition stands allowed.”

19. The judgment dated 7-5-2015 passed in W.P.(S) No.1151/2005, **Bijli Karmchari Sangh case** was affirmed by the Division Bench at **Indore in W.A. No.334/2015**. The relevant portion of the order is extracted hereunder:

“.....By the time, the present writ petition came up for final hearing in the year 2015. The issues in respect of service conditions such as promotion, pensionary benefits etc. has been decided by this Court as well as by the Supreme Court in respect of the employees who were working in the various societies and who were absorbed in the M.P. State Electricity Board. Hence the Hon’ble Single Judge vide order dated 7-5-2015 after considering all the orders passed by the High Court as well as by the Supreme Court has allowed the present writ petition and directed the respondents to extend the pensionary benefits and other fringe benefits to the

employees who are now the employees of M.P. State Electricity Board.

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.....The Hon'ble Single Bench has reproduced the relevant part of all the judgments, hence the issue regarding the service conditions of the employees and societies who were absorbed in the Board is no more res integra and has been settled by this Court as well as by the Supreme Court. It is not in dispute that the employees who were absorbed are treated at par with the employees of the Board shall get the benefits which include pensionary benefits and other fringe benefits also."

20. The **S.L.P.(Civil) CC No.24772/2016 [M.P. State Electricity Board vs. Bijali Karmchari Sangh and others (supra)]** preferred against the order passed in W.A.No.334/2015, dated 14-6-2016, was dismissed *in limine* by the Supreme Court by order dated 30-11-2018. The review petition - **R.P.(Civil) No.874/2019 (M.P. State Electricity Board vs. Bijali Karmchari Sangh and others)** against the order dated 30-11-2018 passed in **S.L.P. (Civil) CC No.24772/2016** was also dismissed on 23-4-2019.

21. The learned Single Judge having relied upon these judgments and orders dated 14-6-2016 passed in W.A. No.334/2015 and W.P. No.14594/2014 and other connected matters, granted benefit of pension to the absorbed employees of the RECS at par with the employees of the MPSEB in para 32(iv) holding thus:

“(iv). The petitioners shall be entitled to get the benefit of pensionary scheme and other fringe benefits which are applicable for the employees of MPSEB as per the judgment of Indore Bench in W.A. No.334/2015 (M.P. State Electricity Board, Now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. Indore) vs. Bijali Karmchari Sangh.”

22. We have gone through the orders passed by the Supreme Court in the cases of **Brajendra Singh Kushwaha (supra)** and **Panchraj Tiwari (supra)**. From perusal of the judgements it is crystal clear that the Supreme Court was only dealing with the issue of payscale and promotion and has in fact, specifically observed that all other conditions of absorption would remain the same. The Apex Court in para 3 of the judgment in the case of **Panchraj Tiwari (supra)** has reproduced the condition No.5 regarding the pension/gratuity payable to the absorbed employees and held that it would remain the same which was being paid to them by the Society concerned as per rules and regulations of the societies. The Supreme Court has enumerated the conditions of absorption which have been affirmed by making a specific observation in para 17 that the respondents/absorbed employees are not entitled to the benefit of pension even after their absorption. Paras 3 and 17 of the order passed in Panchraj Tiwari (supra), being relevant for the present purpose, are reproduced hereunder :

“3. The principles of merger were clarified by MPSEB after prolonged correspondence as per

Annexure P-12 dated 15-6-20014. For the purpose of ready reference, we shall extract the contents :

“Please refer to this office order cited under reference. It is requested to issue necessary orders for absorption of employees of REC societies falling under your area of jurisdiction on the same terms and conditions of the societies. The terms and conditions of the societies may be obtained from DE(STC), Jabalpur.

Further other terms and conditions on which employees can be absorbed :

1. *The regular employees of the above societies shall be taken over on the same terms and conditions as existing in the society except that no deputation allowance shall be paid.*

2. *Their payscale will be the same which they were getting before the absorption.*

3. *The above employees may not be transferred out of the circle concerned, so that no anomaly arises.*

4. *Their age of superannuation will be same as applicable in the societies.*

5. *Pension/gratuity will be payable to the employees absorbed in the Board as per the rules/regulations of the society concerned.*

6. *Their designation will be maintained as it was in the society.”*

(Emphasis supplied.)

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17. *In the above circumstances, we set aside the judgement in appeal. The absorbed employees of the Rural Electricity Co-operative Societies, having due regard to their date of appointment/promotion in each category in the respective societies, shall be placed with effect from the date of absorption viz. 15-3-2002 as juniors to the junior most employee of the Electricity Board in the respective category. Thereafter, they shall be considered for further promotions as per the rules/regulations of M.P.S.E.B.*

All other principles/conditions of absorption shall remain as such. However, it is made clear that on such promotions, in the exigencies of service, the employee concerned would also be liable to be transferred out of the circle, if so required.”

[Emphasis supplied]

23. We have also carefully gone through the judgment rendered in the cases of **Brijendra Singh Kushwaha (supra)** and **Uma Shankar Dwivedi (supra)**. Those cases were also not dealing with the issue of pension. In **Uma Shankar Dwivedi (supra)** it was held that the employees of the erstwhile co-operative societies which have been absorbed in the Board, are entitled to benefit of the pay scales and grant of benefit of 2001 Pay Regulations framed by the respondent-Board. Even in the **Bijali Karmchari Sangh case** the employees had only challenged the general terms of absorption in the Board as per regulations of the concerned society and grant of same benefit to the employees of the erstwhile society. However, the learned Single Judge has observed that all the necessary benefits have already been granted to the employees, except pension. The issue of pension was decided against the Board giving benefit to the employees on the strength of the decision of the Supreme Court in the cases of **Panchraj Tiwari (supra)** and **Brijendra Singh Kushwaha (supra)** which in fact, do not relate to denial or grant of pension but are related to promotion and pay scale respectively.

24. In the same manner the decision in **Uma Shankar Dwivedi (supra)** was also not a decision pertaining to claim of pension by the absorbed employees but the same only related to the claim of pay as well as revision thereof, and in that context the case of **Uma Shankar Dwivedi (supra)** was allowed. Thus, taking into consideration the specific clause (5) of the terms and conditions of absorption which has not been challenged in any case so far, which specifically provides that the pension/gratuity of the employees absorbed in the Board shall be payable as per the rules/regulations of the society concerned. Further, in paras 4 and 17 of **Pancharaj Tiwari (supra)** the Apex Court has clearly held that the employees of the erstwhile Rural Electricity Co-operative Societies shall be considered for further promotion as per rules/regulations of the Board, but all other principles/conditions of absorption shall remain as such. We find that the Division Bench of this Court has not taken into consideration the aforesaid aspect that the terms and conditions relating to pension of the absorbed employees of Rural Electricity Co-operative Societies shall be governed by rules and regulations prevailing in the societies and not by the Board.

25. In regard to the terms and conditions of an absorbed employee it is settled law that absorption of an employee can be considered subject to terms and conditions of the existing

rules/regulations/terms and conditions of absorption. At this juncture, we may profitably refer to the judgement of the Apex Court rendered in the case of **State of Uttar Pradesh and another vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and others, (2018) 12 SCC 675**, wherein while considering the cases of absorption of the employees of the U.P. State Mineral Development Corporation Ltd. the Court held that the High Court ought to have allowed the application filed by the Corporation for taking copy of the rules regarding absorption on record. The Supreme Court further held that absorption could be considered subject to the terms and conditions of the rules/regulations of absorption only which cannot be ignored and, therefore, no direction to absorb the employees dehors the terms of absorption could have been issued, unless a subsisting and enforceable right under the aforesaid rules/conditions of absorption are established.

26. In the present case, the condition No.(v) of the principles of absorption contained in order dated 15-6-2014 are unequivocally clear that pension/gratuity will be payable to the employees absorbed in the Board as per rules/terms and conditions of absorption. In the case of **Uma Shankar Dwivedi (W.P. No.3547/2015)** the learned Single Judge while deciding the issue of 5th & 6th Pay-scales to the absorbed employees of RECS, regarding

relief for grant of family pension, held that the petitioners should approach to the Commissioner, Employees' Provident Fund. The Supreme Court in the same matter in **Civil Appeal Nos.9146-9148/2018 [M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. and ors. Vs. Uma Shankar Dwivedi]** in very first para of the order dated 5-9-2018 observed that the employees who have been absorbed shall be governed by the terms of absorption.

27. Thus, it is manifestly clear from a bare perusal of the judgments relied upon by the Division Bench of this Court in the case of **Bijali Karmchari Sangh (supra)** that they mainly dealt with the issue of promotion and pay scale of the absorbed employees and did not decide or direct that the absorbed employees were entitled to pension at par with the regular employees of the Board. The observations to the contrary in the case of **Bijali Karmchari Sangh (supra)** are apparently erroneous and factually incorrect. On the contrary, the Supreme Court in the case of Panchraj Tiwari (supra), Brijender Singh Kushwaha (supra) and Uma Shankar Dwivedi (supra) has categorically held that the conditions of service of the absorbed employees would be governed by the terms and conditions of absorption which clearly stipulate that the pension/gratuity payable to the absorbed employees would

be in accordance with the rules and regulations of the erstwhile society.

28. Apparently the conclusions recorded in the case of **Bijali Karmchari Sangh (supra)** is contrary to the judgment of the Apex Court in the case of **Pancharaj Tiwari (supra)** as well as **Brijendra Singh Kushwaha (supra)** and **Uma Shankar Dwivedi (supra)**.

29. We now advert to the contention of the learned counsel for the respondents that the judgment passed in the **Bijali Karmchari Sangh case** has been affirmed by the Supreme Court and, therefore, it is a binding precedent on the issue of pension. Upon perusal of the order of the Supreme Court it is evident that the SLP was dismissed *in limine* without adverting to the issues on merits and, therefore, the same would not lay down any binding precedent on the question of law. The Apex Court in the cases of **Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386** and **Kunhayammed vs. State of Kerala, (2000) 6 SCC 359** held that in case of dismissal of an SLP *in limine* by a non-speaking order does not culminate in merger of the impugned decision and does not constitute *res judicata*. The same view has been reiterated in a recent judgment of the Supreme Court in the case of **Khoday Distilleries Limited (now known as Khoday**

India Limited) and others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under liquidation) represented by the liquidator, (2019) 4 SCC 376 wherein it is held that dismissal of a special leave petition *in limine* is not an expression of opinion by the Court on the merits of the case or affirmation of law laid down in the said judgement.

30. In the light of the aforesaid facts and enunciation of law it is stated, at the cost of repetition, that the terms and conditions of an absorbed employee is governed by the terms and conditions of absorption under a statute/rules/regulations/circular. As per clause (5) of the terms and conditions of absorption, the pension/gratuity was payable to the employees absorbed in the Board as per rules/regulations of the society concerned and not of the Board. Further, the said condition stands approved and affirmed as per paras 4 and 17 of the judgment passed by the Apex Court in **Panchraj Tiwari (supra)** as well as the observations made in the case of **Brijendra Singh Kushwaha (supra)** and **Uma Shankar Dwivedi (supra)**. In none of the cases it was decided that erstwhile employees of the society shall be entitled for pension as per rules/regulations of the Board. Thus the Division Bench of this Court in **Bijali Karmchari Sangh case** has not laid down the correct law and the respondents who are the employees of the

erstwhile RECS shall be governed by the terms and conditions of the absorption which provide for payment of pension/gratuity as per rules and regulations of the society concerned and not of the Board and, therefore, they shall not be entitled to the benefit of pension at par with the employees of the Board.

31. In view of the aforesaid, we answer the reference No.(i) holding that the decision in the case of **M.P. State Electricity Board (now known as M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.) Indore vs. Bijali Karmachari Sangh (W.A. No.334/2015)** wherein it has been held that employees of the societies are entitled to pension, does not lay down the correct law. We also answer the reference No.(ii) that the respondents who are employees of the erstwhile RECS shall be governed by the terms and conditions of absorption which provides for payment of pension/gratuity as per rules and regulations of the society concerned, and therefore, they shall not be entitled to pension at par with the employees of the Board.

32. The reference is answered accordingly. These petitions may be listed before the concerned Bench as per roster for further orders.

(R.S. Jha)
Acting Chief Justice

(J.K. Maheshwari)
Judge

(V. K. Shukla)
Judge

ac.