

**(2014) 01 DEL CK 0276**

**In the Delhi High Court**

**Case No :** Regular Second Appeal . 178 of 2006, CM. 7909 of 2006 and 5897 of 2012

Delhi Power Company Ltd

APPELLANT

Vs

G.C. Garg and Others

RESPONDENT

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**Date of Decision :** 06-01-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10 100

**Citation :** (2014) 01 DEL CK 0276

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Sumeet Pushkarna, Mr. Vinay Kasana, Ms. Aditi Mohan and Ms. Sana Sundaram, for the Appellant; Shweta Bari, for R-1, Mr. Sandeep Sethi Mr. Anupam Verma, Nikhil Sharma and Mr. Jibran, Advocates for R-2 and Mr. S.K. Chaturvedi, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Valmiki J Mehta, J.—This regular second appeal u/s 100 of the CPC 1908 (CPC) is filed by the defendant (respondent in the appellate court below) impugning the judgment of the appellate court dated 14.2.2006. The judgment of the trial court is dated 22.1.2005 by which the trial court in the suit of the respondent no. 1 herein (the plaintiff in trial court) was decreed by holding that the date of retirement of the respondent no. 1/plaintiff was to be taken as 1.1.1996 and not 31.12.1995. However, since the trial court did not give monetary benefits which would be available to the respondent no. 1-plaintiff, on implementation of the 5th Pay Commission Report, plaintiff-respondent no. 1 filed an appeal on this aspect, and the same has been allowed by the impugned judgment dated 14.2.2006 noting that at no point of time there was any dispute with respect to non-payment of the benefits of 5th Pay Commission Report to the employees of the erstwhile Delhi Vidyut Board (DVB). The subject suit was filed on 30.3.2002 when the erstwhile entity called the Delhi Vidyut Board (DVB) was existing. DVB was thereafter unbundled, and services of its employees, including retired

employees, stood transferred to various distribution companies (DISCOMS). There is therefore devolution of interest so far as the DVB is concerned to its successor entities and which devolution of interest will take place in terms of Order 22 Rule 10 CPC and the judgment of the Supreme Court in the case of Dhurandhar Prasad Singh Vs. Jai Prakash University and Others,

2. As per the judgment of the Supreme Court in the case of Dhurandhar Prasad Singh (supra), the decree in question in favour of respondent no. 1 will be binding on all successor entities of DVB and which are the successor entities on whom devolved the rights and liabilities of the DVB. The employees of DVB were transferred to those DISCOMS as per the territories where the DISCOMS had to operate and where the officials of the DVB were employed/stood transferred when there took place unbundling of DVB.

3. The Supreme Court in its judgment of North Delhi Power Limited Vs. Govt. of National Capital Territory of Delhi and Others, has observed in paras 28 and 33 that services of the employees of the DVB, whether existing employees or retired employees, would stand directly transferred to the DISCOMS.

4. In view of the two judgments of the Supreme Court referred to above, what would be the end result is that the decree which is obtained by the plaintiff-respondent no. 1 would be binding upon that DISCOM which has taken over the services of respondent no. 1 i.e. that DISCOM which is operating in the area where the respondent no. 1 was last posted at the time of his retirement or at the time of unbundling of DVB as the case may be.

5. Respondent no. 2-M/s. BSES Yamuna Power Ltd., if is the DISCOM company to whom the services of respondent no. 1 would stand transferred, then, the liability under the decree would be of the said DISCOM/respondent no. 2/BSES Yamuna Power Ltd. because in view of the judgment of the Supreme Court in the case of Dhurandhar Prasad Singh (supra) there is no need to add or substitute the successor entity as a party to the litigation and the successor entity is automatically bound by the decree passed against the original entity. In the present case, I would like to note that there is no hiatus or break in the period of transfer of services of employees of DVB to the DISCOMS in the sense that there took place extinction of Delhi Vidyut Board and the DISCOMS came into existence subsequently, because the fact of the matter is that the DISCOMS came into existence simultaneous to and at the same point of time of extinction of DVB and there was automatic transfer of the services of the employees of DVB to the respective DISCOMS.

6. Learned senior counsel appearing for the respondent no. 2 states that respondent no. 2 is not a necessary party to this appeal and that in fact it was never impleaded at any stage either in the suit or in the first appeal. This argument is raised as per the judgment of the Supreme Court in the case of Dhurandhar Prasad Singh (supra). I agree with the arguments urged on behalf of learned senior counsel for respondent no. 2, however, it will be for the

appropriate court including the executing court to look into the issue as to the entitlement of respondent no. 1 to execute the decree against which DISCOM in accordance with law.

7. Since Delhi Power Company Limited was never the successor entity of the DVB so far as the services of the respondent no. 1 are concerned, and which is so rightly argued on behalf of the appellant in view of the judgment of the Supreme Court in the case of North Delhi Power Ltd. (supra), this appeal filed by the appellant in fact would not be maintainable because the appellant who was sued as the respondent before the appellate court is not in any manner prejudiced because the services of the respondent no. 1 never came to be taken over by the present appellant and who was sued as the respondent in the appellate court. The appeal is therefore dismissed with the aforesaid observations.