

(2016) 06 SHI CK 0142
In the High Court Of Himachal Pradesh
Case No : LPA No. 430 of 2012.

Pankaj Sharma and Others - Appellants @HASH H.P. State Electricity Board and Others

Date of Decision : 29-06-2016

Acts Referred:

Citation : (2016) ILRHP 2282

Hon'ble Judges : Mansoor Ahmad Mir, CJ. and Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Mr. Tirlok Jamwal, Advocate, for the Appellant; Mr. R.K. Gautam, Senior Advocate with Ms. Archana Dutt, Advocate, for the Respondent Nos. 4, 7, 12 and 13; Mr. Sanjeev Sood, Advocate, for the Respondent Nos. 57, 73, 84, 85, 89 and 95; Nemo, for the other R

Final Decision : Disposed Off

Judgement

Mr. Sureshwar Thakur, J. - LPA Nos. 434 of 2012, 450 of 2012 and LPA No. 148 of 2014.

The aforesaid LPAs stand directed against the judgment dated 20.07.2012 passed by the learned Single Judge in CWP(T) No. 2736 of 2008 whereby the learned Single Judge allowed the Writ Petition aforesaid (for short "impugned judgment").

2. The facts necessary for recording a decision qua the instant LPAs are of January, 1997 there occurring 125 vacant posts for theirs standing filled up from the direct quota. However, from amongst the aforesaid 125 posts only 21 vacancies stood advertised by the H.P. Public Service Commission (for short "Commission") in consonance with the apposite requisition sent by the H.P. State Electricity Board (for short "Board") to the Commission. The posts aforesaid were to be filled up by direct recruits. The writ petitioners applied for the aforesaid posts advertised by the Commission. On the writ petitioners standing selected by the Commission, the latter forwarded in March, 1998, the list of selected candidates to the Multi Purpose Project and Power Department, State of H.P. (for short "MPP and Power Deptt."). The writ petitioners and others were appointed as

Assistant Engineers (Electrical) {for short "AEs (E)} with the Board. The Himachal Pradesh State Electricity Board Recruitment and Promotion Regulations as enacted for recruitment and promotion to the posts of AEs (E) stipulate a 6% quota for AMIE holders, 34% quota for J.E. (Electrical) and equivalent for promotion to the posts of AEs (E) and 60 % vacancies stand reserved for direct recruits.

3. The writ petitioners on standing awakened qua the factum of the Board in digression of or in excess of the quota stipulated for promotees under the apposite regulations, coming to issue the contentious promotion orders on 31.12.1997 and 27.3.1998 whereupon the private respondents in the aforesaid CWP(T) No. 2736 of 2008, who were rendering service under the Board on adhoc basis in the capacity of Assistant Engineers or Junior Engineers with AMIE degree and diploma holders besides, also non diploma holders, stood hence promoted as AEs(E) against the residue of 104 vacancies meant for being filled up by direct recruits. Also the Board had made some promotions on 12.6.2000 after the joining of the petitioners as AEs (E). Consequently, on 12.6.2000, the Board in supersession of all the previously circulated final seniority lists, issued a final seniority list of AEs(E) displaying therein, all AE(s)(E) who stood promoted by the Board on 31.12.1997, 27.3.1998 and 12.6.1998 against vacancies solitarily meant to be filled up by direct recruitment standing placed higher in seniority vis-a-vis the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008. The said action of the Board was contended before the learned Single Judge of this Court to be unwarranted as there existed no provision in the Rules for diluting or relaxing the quota meant to be filled up by direct recruits whereupon as a natural corollary the act of the Board in filling 104 vacancies in the category of AEs, though meant to be filled up by direct recruits, by its rather promoting the private respondents/promotees thereto, who hitherto either were working on adhoc basis as Assistant Engineers or as Junior Engineers with AMIE degree and Diploma holders and also non diploma holders, stood canvassed therebefore to stand grossly vitiated with a vice of illegality.

4. The legal onslaught constituted by the writ petitioners to the promotions made by the Board of the private respondents/promotees against posts/vacancies reserved for theirs standing filled up from the source/channel of direct recruits stands hinged upon its office order No. 302 of 31.12.1997 where under a one time decision stood recorded by the Board to bring in the manner hereinafter extracted a one time relaxation to the hitherto apposite regulations. With the Board in compliance therewith effectuating promotions of the private respondents/promotees against the quota meant to be filled up by direct recruits concerned it hence concerts to validate the promotions of private respondents/promotees. The apt portion of Order No. 302 of 31.12.1997 aforesaid reads as under:-

"As a one time relaxation to the R&P Regulations 50% AMIE/Graduate Junior Engineers (E) and 27 AMIE/G Graduate JE(C/M) who are working as Assistant

Engineers on Adhoc or Acting basis shall be considered for regular promotion as Assistant Engineers if otherwise found fit against vacant posts falling to the share of Graduate meant for direct recruitment. Similarly another 56 Junior Engineers (Elect.) and 22 (C/M) who obtained AMIE/Degree qualification after the above Adhoc/Acting A.Es but became senior to them, AMIE Holders, as a result of Supreme Court decision/Board's order shall be considered for regular promotion as A.E. (E) against vacancies meant for the direct recruitment category."

The Board is further pleased to order that:-

"25 posts of Junior Engineers (Elect.) and 5 posts A.Es(C/M) upgraded as Assistant Engineers shall be filled up by promotion on regular basis from amongst Diploma holders only as one time relaxation to the R&P Regulations."

5. During the pendency of the aforesaid writ petition before the Hon"ble Division Bench of this Court, an order stood recorded on 27.11.2009 on an application moved thereat by the writ petitioners for securing an amendment in the writ petition whereby the apposite application of the writ petitioners for effectuating an amendment to the writ petition by incorporating a challenge therein to office order No. 302 of 31.12.1997 issued by the Board for hence facilitating them to assail it, stood allowed by the Hon"ble Division Bench of this Court. The order of the Hon"ble Division Bench of this Court recorded on 27.11.2009 wherein the apposite permission stood granted by it to the writ petitioners to incorporate in the writ petition a challenge to the office order aforesaid was hedged with a fetter of the apposite permission being subject to all just exceptions. The learned counsel for the appellant contends with immense fervor of the order of the Division Bench of this Court recorded on 27.11.2009, where under it permitted the writ petitioners to incorporate a challenge to the office order No. 302 of 31.12.1997 yet with the apposite permission thereunder to the writ petitioners to effectuate an amendment qua the facet aforesaid in the writ petition standing trammelled by a rider of its standing afforded to the writ petitioners subject to all just exceptions, hence, foisting in the promotees/private respondents/appellants herein a latitude to hereat contend of the granting of the amendment by the Hon"ble Division Bench of this Court under its order recorded on 27.11.2009 being hereat assailable on all fronts at the instance of the promotees/appellants herein whereupon one Madan Lal respondent No. 109 in CWP(T) No. 2736 of 2008 had opposed the endeavour of the writ petitioners to effectuate an amendment in the aforesaid writ petition qua the facet aforesaid.

6. Be that as it may, even if, assuming of the aforesaid espousal of the learned counsel for the appellants of theirs also holding leverage to assail the order of the Hon"ble Division Bench of this Court recorded on 27.11.2009 in CMP No. 6465 of 2009, where under it permitted the writ petitioners to incorporate by way of an amendment to the writ petition the aforesaid challenge to the apposite office order No. 302 of 31.12.1997 issued by the Board, may hold tenacity yet the aforesaid submission is liable to be discountenanced by this Court for the reasons hereinafter afforded. (a) With a decision recorded by this Court on

9.10.2009 in LPA No. 45 of 2009 along with other connected matters, titled as Anokhi Ram Verma v. Arun Kumar and others, where under this Court while standing seized of the office order No. 302 of 31.12.1997, the apt portion whereof stands extracted herein above, holding the appointments of the promotees therein being fortuitous whereupon the contention raised therebefore by the writ petitioners therein of their hitherto period of appointment on adhoc basis against posts enjoined to be filled up by direct recruits being reckonable for fixing or determining their seniority vis-a-vis the direct recruits also hence suffered effacement. The relevant portion of the pronouncement of this Court in LPA No. 45 of 2009 reads as under:

"Before us it has also been urged on behalf of the writ petitioners that they were appointed on ad hoc basis against the regular vacancies since their services have been regularised the period of ad hoc service rendered by them must also be counted for determining their seniority. No such plea was taken in the writ petition nor before the learned Single Judge. We also find that their appoints were fortuitous since no direct recruitment was being done during that period. They cannot be given benefit of the ad hoc service rendered by them."

7. The afore referred pronouncement by this Court in LPA No. 45 of 2009 assumes immense significance, given the appellants therein as apparent on a reading of the hereinafter extracted portion of the verdict aforesaid occurring below the extraction by this Court in its apposite decision of the office order of 31.12.1997 on anchorage whereof the Board though hitherto enjoined to fill up the apposite vacancies by direct recruits, yet filled them by making promotions thereto of promotees, further when the Board placed the latter higher in seniority vis-a-vis the direct recruits, when loudly echoes of the appellants therein holding a status congruous to the private respondents/promotees in CWP(T) No. 2736 of 2008 hence with alikeness in status intra se promotees/private respondents in CWP(T) No. 2736 of 2008 and appellants/promotees in LPA No. 45 of 2009, the effect of the verdict of this Court recorded in LPA No. 45 of 2009 whereby this Court held the appointments of the promotees/appellants against posts/vacancies meant to be filled up by direct recruits being fortuitous also holding sway qua the appellants/promotees herein standing dis entitled to avail the benefit of their hitherto ad hoc service rendered against posts which they held fortuitously. A further effect whereof is of the decision recorded by this Court in the aforesaid LPA No. 45 of 2009 negating the purveying by the Board to the appellants/promotees therein, who held an analogous position in service vis-a-vis private respondents/promotees in CWP(T) No. 2736 of 2008, the benefit of office order of 31.12.1997 as extracted herein above embodying therein the decision of the Board to grant a one time relaxation in the apposite Recruitment and Promotion Regulations. Concomitantly also with this Court in LPA No. 45 of 2009 negating the purveying of the benefit of office order No. 302 of 31.12.1997 by the Board to the appellants/promotees therein who held/hold a position in service akin to the promotees/private respondents in CWP(T) No. 2736 of 2008, is of the office order aforesaid where under the Board took a decision to grant a

one time relaxation in the Recruitment & Promotion Regulations qua promotees, standing nullified. In aftermath, the decision recorded by the learned Single Judge of this Court while allowing the claim of the direct recruits for their standing entitled to seniority above the promotees especially when the latter had occupied posts meant to be filled up by direct recruits is undislodgeable, it being in concurrence with the verdict of this Court recorded in LPA No. 45 of 2009. The apt portion of the decision of this Court recorded in LPA No. 45, referred to herein above reads as under:-

"As a result of this decision the Board decided to grant one time relaxation for granting regular promotion as Assistant Engineers to 50 AMIE/Graduate Junior Engineers in Electrical Division and 27 AMIE/Graduate Junior Engineers in Mechanical who were already working as Assistant Engineers on ad hoc/acting basis. At the same time it was also decided to grant regular promotion to those AMIE Junior Engineers who had become senior to the ad hoc Junior Engineers on the basis of M.B. Joshi's judgment (supra). Thereafter, regular promotion of the petitioners and private respondents were made on 31.12.1997 and the seniority list was issued wherein the petitioners were shown junior the private respondents. Hence, the petition."

8. Further more, on the anvil of the judgment of Hon''ble Apex Court reported in Keshev Chandra Joshi and others v. Union of India and others, 1992 Supp.(1) SCC 272, the relevant paragraph whereof stands extracted hereinafter, wherein the Hon''ble Apex Court with immense formidability has held that when promotion made outside the quota, the apposite seniority being reckonable from the date of accruing of vacancy(ies) within the quota rendering the previous service to be fortuitous also its handing down a verdict qua the rule of quota being statutory, it is enjoined to be strictly implemented, unamenable to any deviation therefrom owing to administrative exigencies or expediency besides its rigor being not open for dilution even if it works hardship in fixing seniority qua the occupants of posts, who hold/held it beyond or in excess of the quota meant for them, in coagulation thereof when the verdict of this Court recorded in LPA No. 45 of 2009 also gives a firm impetus for reasons afore stated, to an irrefragable inference of hence nullification infecting the office order of 31.12.1997 on anchorage whereof an akin benefit to the appellants/promotees therein vis-a-vis the private respondents/promotees in CWP(T) No. 2736 of 2008 stood respectively to them purveyed by the Board. As a corollary with a vice of nullification percolating the office order of 31.12.1997, the purveying by the Board to the private respondents/promotees, its benefit is squarely off the legal tangent. The relevant portion of the decision of the Hon''ble Apex Court referred to herein above reads as under:-

".....When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of vacancy within the quota and seniority shall be counted from that date and not

from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would to be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1)....."

9. Be that as it may, the pronouncement of this Court recorded in LPA No. 45 of 2009 with conclusivity rests the legal proposition of the appellants herein, when had secured appointments by promotion against posts to be filled up by direct recruits, their apposite appointments, when stood prodded by an inefficacious office order recorded on 31.12.1997 by the Board wherein it by making a one time relaxation to the hitherto apposite Recruitment and Promotion Regulations, besides whereupon exhaustion of the quota preserved for direct recruits stood sequeled also hence the appointment thereto of Junior Engineers (Electrical) and AMIE/Graduate JE(C/M) stood legalised besides regularisation of their hitherto rendition of service on adhoc basis as Assistant Engineers stood begotten, also the communication occurring therein of other 56 Junior Engineers (Electrical) and 22 (C/M) who had obtained AMIE/Degree qualification after the above ad hoc/ acting A.Es who became senior to them being also eligible for being considered for promotion to the post of AEs(E) against posts/vacancies meant for direct recruits, omnibusly holding no validation. (b) With the decision of this Court recorded in LPA No. 45 of 2008 benumbing the effect of office order No. 31.12.1997, with the sequeled effect of promotions of the appellants/promotees therein alike the private respondents/promotees in CWP(T) No. 2736 of 2008 against posts meant to be filled up by direct recruits suffering impairment, yet besets this Court with an onerous task of gauging the effect of the rider incorporated in the order of the Division Bench of this Court recorded on 27.11.2009 whereby liberty as afforded to the writ petitioners in CWP(T) No. 2736 of 2008 to incorporate a challenge to the office order No. 302 of 31.12.1997 being subject to all just exceptions, whereupon the learned counsel appearing for the appellants/promotees make a vociferous espousal of the parlance "just exceptions" occurring therein holding the import of the appellants/promotees holding a capacity to extantly assail it on all grounds as embodied in the apposite reply meted by the promotees/private respondents to the apposite application, qua apposite application whereof the apposite order stood recorded on 27.11.2009 by the Hon"ble Division Bench of this Court, yet any acceptance by this Court of the aforesaid submission would subvert the conclusive decision of this Court recorded in LPA No. 45 of 2009 where under this Court had frowned upon the meeting of appointments by the Board to promotees against posts meant to be filled up by direct recruits besides had construed their appointments thereto to be fortuitous. Since, the conclusive decision of this Court recorded in LPA No. 45 of 2009 is qua an invalid office order of 31.12.1997 hence obviously

holds sway for resting a secure conclusion thereupon of the office order of 31.12.1997 on foundation whereof the validity of appointments of promotees against posts meant for direct recruits became thereafter amenable to impeachment, of even the apposite permission to the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008, for its incorporation therein as stood accorded by the Hon''ble Division Bench of this Court, though standing trammelled with a rider of it being subject to all just exceptions, nonetheless, when any acceptance of the concert of the counsel on anvil thereto score off the amendment qua the facet aforesaid would beget derogation of the findings of this Court recorded in LPA No. 45 of 2009 where under untenability stood foisted qua the office order of 31.12.1997. As a corollary when the countenancing of the submission of the learned for the appellants/promotees, an inefficacious order would yet hold clout, it would be in-sagacious for this Court to score off the apposite amendment permitted to be incorporated in the writ petition under an order recorded on 27.11.2009 by the Hon''ble Division Bench of this Court dehors its standing granted to the writ petitioners/direct recruits therein with all just exceptions. (c) With the necessity of inclusion in the pleadings, of the office order aforesaid besides the imperativeness of its being prayed to be set aside for ensuring concurrence with the verdict of this Court recorded in LPA No. 45 of 2009 both judicial ethos as well as judicial discipline enjoins this Court to revere the verdict of this Court recorded in LPA No. 45 of 2009 whereupon it illegalized any reliance by the Board upon office order No. 302 of 31.12.1997. An apt sequitur thereto is of the concert of the learned counsel for the appellants to score off the apposite amendment permitted to be incorporated by the Division Bench of this Court being unacceptable as any acceptance thereof would give vigour and strength to the office order of 31.12.1997 even when its validity stands frowned upon by the earlier decision of this Court recorded in LPA No. 45 of 2009. In aftermath, to avoid conflicting decisions qua the validity of the office order No. 302 of 31.12.1997 it would be apt to revere the hallowed decision of this Court recorded in LPA No. 45 of 2009.

10. Since, the appointments of the private respondents in CWP (T) No. 2736 of 2008 stood harboured upon an office order No. 302 of 31.12.1997, permission for incorporation therein stood afforded to the writ petitioners by the Division Bench of this Court under its order recorded on 27.11.2009 preeminently when an apposite liberty to the writ petitioners/direct recruits for its incorporation in their petition by the Hon''ble Division Bench of this Court stood afforded to them on 27.11.2009 whereas with the judgment of this Court recorded in LPA No. 45 of 2009 standing recorded prior thereto also peremptorily warranted its incorporation in CWP (T) No. 2736 of 2008 for obviously facilitating its being prayed to be quashed and set aside, in absence whereof the learned Single Judge may have been constrained to render a decision in conflict therewith. Moreover, with the apposite amendment permitting the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008 to challenge the apposite office order hence thereupon a right in favour of the writ petitioners/direct recruits/respondents herein of

theirs holding a right to hold seniority above the appellants herein/promotees stood secured by the direct recruits/writ petitioners therein besides when on anvil thereof the appellants/promotees acquired seniority vis-a-vis the writ petitioners/direct recruits hence also upstaged the legitimate seniority of the writ petitioners/direct recruits in CWP (T) No. 2736 of 2008, office order whereof for reasons stated herein above, holding no validity, as a corollary when the writ petitioners herein stand under a decision of this Court recorded in LPA No. 45 of 2009 invested with a legal right to impeach the office order of 31.12.1997, predominantly, for obviating conflicting decision qua it besides to baulk the employer from proceeding to prepare a comprehensive seniority list vis-a-vis promotees and direct recruits bereft of any avoidable piece meal exercise with all the ensuing hazardous consequences, in case the decision recorded by this Court in LPA No. 45 of 2009 qua its invalidity is permitted to suffer dilution by irreverence standing meted to it. In sequel, the mere factum of delay, if any, occurring in the institution of the apposite application by the writ petitioners before the Hon"ble Division Bench of this Court for seeking an apposite communication in their pleadings qua quashing of office order No. 302 of 31.12.1997 cannot be amenable to a construction, of the apposite permission accorded to the writ petitioners/direct recruits for its incorporation in their pleadings standing discountenanced by this Court dehors the factum of a rider, if any, standing reserved in favour of the appellants/private respondents/promotees to contest the order of the Hon"ble Division Bench of this Court whereby it permitted the writ petitioners to incorporate a challenge to the office order No. 302 of 31.12.1997, office order whereof when already stands, for reasons aforesaid, to hold invalidity when, hence, gives no leverage to the learned counsel for the appellants herein/promotees to yet preclude its standing assailed by the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008. Consequently, with a vested right accruing in favour of the writ petitioners/ direct recruits/respondents herein to under an apposite permission accorded by the Hon"ble Division Bench of this Court for its incorporation by them in their pleadings as a ground of challenge to the promotions of the promotees/appellants herein made in consonance therewith by the Board to, hence, assail the office order of 31.12.1997. In aftermath, with a vested right accruing in favour of the writ petitioners/direct recruits qua the aforesaid facet, the apposite permission for its incorporation in their apposite pleadings by the writ petitioners/direct recruits for theirs constituting a challenge qua it, remains unvitiated. This Court in coming to the aforesaid inference derives succor from a decision of the Hon"ble Apex Court in B.K. Narayana Pillai v. Parameswaran Pillai and another, (2000)1 SCC 712, the relevant paragraph No. 4 whereof reads as under:-

"[4] This Court in A.K. Gupta and Sons v. Damodar Valley Corporation, (1966) 1 SCR 796 : (AIR 1967 SC 96 at pp. 97-98) held :

(21) "The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit or new case or cause of action is barred : Weldon v. Neale, (1887) 19 QBD 394. But it is also

well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : See Charan Das v. Amit Khan, AIR 1921 PC 50 and L.J. Leach and Company Limited v. Jardine Skinner and Company, 1957 SCR 438 : (AIR 1957 SC 357).

The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules or procedure is to decide the rights of parties and not to punish them for their mistakes (Cropper v. Smith, (1884) 26 Ch D 700) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended in Kishandas Rupchand v. Rachappa Vithoba, (1909) ILR 33 Bom 644 approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil, 1957 SCR 595 : (AIR 1957 SC 363).

The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke v. Gill, (1873) 8 CP 107, in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Limited, 1962 (2) All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new set of ideas". Doman v. J.W. Ellis and Company Limited, 1962 (1) All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Again in Smt. Ganga Bai v. Vijay Kumar, (1974) 2 SCC 393 : (AIR 1974 SC 1126) this Court held (Para 22 of AIR) :

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court". In M/s. Ganesh Trading Company v. Moji Ram, (1978) 2 SCC 91 : (AIR 1978 SC 484) it was held (Para 4 of AIR) :

"It is clear from the foregoing summary of the main rules of pleadings and provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the short coming can certainly be removed generally by

appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The Courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite part on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

11. Moreover with the Hon''ble Apex Court in a decision reported in Vasant Balu Patil and others v. Mohan Hirachand Shah and others, (2016)1 SCC 530, the relevant paragraph No. 16 whereof stands extracted hereinafter, propounding the proposition of the apposite amendment incorporated in the apposite relief clause relating back to the date of the suit besides when the amendment remains unchallenged hence foreclosing the right of the aggrieved to on the score of delay to assail the amendment constrains this Court to conclude of the apposite amendment permitted to be incorporated by the writ petitioners in the apposite pleadings under an order recorded on 27.11.2009 by the Hon''ble Division Bench of this Court relating back to the date of institution of the writ petition also given its imperativeness qua its occurrence/inclusion in the writ petition dehors the apposite rider engrafted in the order of the Hon''ble Division Bench of this Court, whereby the permission accorded therein to the writ petitioners to incorporate the apposite amendment in the writ petition was made subject to all just exceptions, hence, not yet affording any leverage to the appellants herein to on the score of the amendment as proposed to be incorporated by the petitioners qua which apposite liberty stood afforded to them, to contend hereat of given its standing concerted to be belatedly incorporated, its holding no tenacity. The relevant paragraph No. 16 of the aforereferred judgment reads as under:-

"16. So far as the plea of limitation is concerned there can be no manner of doubt that the amend of the plaint(s) to incorporate the relief of declaration of title has necessarily to relate back to the date of filing of the suit. Once, the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs."

12. Furthermore, the incorporation of the amendment was both just and essential, besides facilitative of clinching the entire controversy engaging the parties embedded upon the office order qua whose incorporation by the petitioners in the writ petition, the Hon''ble Division Bench of this Court recorded the apposite order on 27.11.2009. Quintessentially when its incorporation in the writ petition was essential for obviating multiplicity of litigation which would spur in the event of the writ petitioners therein standing driven to institute a separate writ petition, institution whereof may have been baulked by the provisions of Order 2, Rule 2 of the Civil Procedure Code (for short "CPC") where under the omission of the writ petitioners/direct recruits to embody the entire cause of action in the extant writ petition would forestall them to in the subsequently instituted writ petition incorporate therein the apposite relief of office order No. 302 of 31.12.1997 being quashed and set aside. Consequently, to avoid multiplicity of litigation besides to oust the invocation of Order 2, Rule 2 of the CPC against the direct recruits, the apposite orders of this Court recorded on 27.11.2009 permitting the writ petitioners/direct recruits to incorporate the apposite amendment in their pleadings is expedient as well as just. In coming to the aforesaid conclusion, this Court derives support from a decision of the Hon''ble Apex Court reported in Sampath Kumar v. Ayyakannu and another, (2002) 7 SCC 559, the relevant paragraphs No. 6, 7 and 11 whereof read as under:-

"6. It is true that the on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant, the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We failed to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

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11. In the present case the amendment is being sought for almost 11 years after the date of institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the relief of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed."

13. The Board conceals to validate its action, whereby it against the quota reserved for direct recruits made promotions thereto of promotees, on the anvil of the apposite office order No. 302 of 31.12.1997, concert whereof emanates from it standing empowered by apposite powers of relaxation vested in its by the provisions of Section 79(c) of The Electricity (Supply) Act, 1948, to beget amendments in the apposite Recruitment and Promotion Regulations, in exercise of the empowerment whereof, in-dilution of the hitherto apposite Recruitment and Promotion Regulations of accruing posts/vacancies being mandated to be filled up by direct recruits, a valid amendment thereto stood enacted by the Board by its making apposite office order, yet the aforesaid submission of the learned counsel for the Board of, hence, appointments on the anvil of the apposite office order of promotees against the posts/vacancies earmarked for being filled up by direct recruits being valid is unworthy of acceptance, as this Court in its decision recorded in LPA No. 45 of 2009 has undermined the appointments of the promotees against vacancies meant to be filled up by direct recruits. In sequel, when preeminently this Court in LPA No. 45 of 2009 has construed the appointments of the promotees against vacancies/posts earmarked for being filled up by direct recruits being fortuitous also the computation of the hitherto service of the promotees/respondents in CWP(T) Nos. 1358 of 2008, CWP(T) No. 53 of 2008 and CWP(T) No. 2158 of 2008 on adhoc basis being

unamenable for their computation as a qualifying period of service in the feeder category for hence eligiblizing them for promotion to the promotional post, whereas when on the anchorage of the office order of 31.12.1997, the Board purveyed qua them its benefits, benefits whereof when stood snatched by a decision recorded in LPA No. 45 of 2009. As a corollary, the private respondents/promotees in CWP(T)s when hold an alike position vis-a-vis writ petitioners/direct recruits in civil writ petition aforesaid renders them too being amenable to face a similar fate as has befallen upon alike promotees/respondents in CWP(T)s No. 1358, 53, 2158 of 2008, whereupon in the LPAs preferred therefrom before this Hon''ble Division Bench of this Court, sequeled a decision thereon of its holding no efficacy besides any reliance thereupon by the learned counsel for the appellants/promotees suffering impairment dehors the factum of the Board standing vested with powers to mete relaxation in the apposite R&P Regulations by enacting office order No. 302 of 31.12.1997. Consequently, the submission made by the learned counsel for the Board wanes.

LPA No. 430 of 2009.

14. Predominantly, the reasons which prevailed upon the learned Single Judge to decline relief to the direct recruits/writ petitioners though they therebefore ventilated alike grievance vis-a-vis the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008 qua their standing untenably relegated behind the promotees in the seniority list, on the score of the Board purveying to promotees the benefit of office order No. 302, dated 31.12.1997, was of the apposite office order standing therein prayed not its being quashed and set aside. However the aforesaid reason which prevailed upon the learned Single Judge, for declining the relief to the writ petitioners/direct recruits is legally unsound, as given the imminent portrayal of office order aforesaid when stood permitted under the order of the Hon''ble Division Bench of this Court recorded on 27.11.2009, to be incorporated in the apposite pleadings constituted in CWP(T) No. 2736 of 2008 for its being quashed and set aside yet with the writ petitioners/appellants herein not alike the writ petitioners in CWP(T) No. 2736 of 2008 rearing a challenge qua the validity of office order of 31.12.1997 recorded by Board, though their grievance was alike the one ventilated by the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008, was insufficient to constrain the learned Single Judge to disallow CWP No. 819 of 2009. His disallowing the claim of the writ petitioners/direct recruits in CWP No. 819 of 2009 is off the legal tangent inasmuch as (a) the learned Single Judge holding judicial notice of the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008 holding leverage to carry an apposite valid amendment to the writ petition where under they set a challenge to the recording of the order of 31.12.1997 by the Board, the learned Single Judge when proceeded to decide CWP(T) No. 2736 of 2008 along with CWP (T) No. 1470 of 2008 and CWP No. 819 of 2009 ought to have taken into consideration the impact of the tenable amendment effectuated by the petitioners in CWP(T) No. 2736 of 2008 besides ought to have thereupon, when the petitioners in all the writ petitions aforesaid more or less projected an alike grievance qua the

untenable affording by the Board of seniority to promotees/respondents therein against vacancies initially open for being filled up by direct recruits alike the petitioners in the writ petition aforesaid, revered the aforesaid amendment incorporated by the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008, reverence whereof by him would have obviated a dichotomous decision intra se writ petitions aforesaid. In aftermath, the learned Single Judge ought have recorded an alike decision in all the writ petitions, especially when he proceeded to decide them under a common judgment. The stark dichotomy besides disparity in verdicts recorded in the writ petitions aforesaid has obviously emerged in the learned Single Judge recording a decision in favour of the direct recruits/writ petitioners in CWP(T) No. 2736 of 2008, leanings whereof in favour of the writ petitioners/direct recruits therein emerges solitarily on the anvil of the petitioners therein impeaching the order of 31.12.1997 recorded by the Board yet the said onslaught qua it by the petitioners therein entailed its being hence implanted by him also qua CWP No. 819 of 2009 even when it stood unimpeached by the writ petitioners/directs recruits in CWP No. 819 of 2009, non impeachment whereof by the latter constitutes the untenable solitary ground for the learned Single Judge dismissing the writ petition of the writ petitioners/direct recruits, whereas writ petition No. 819 of 2009 when standing connected with CWP (T) No. 2736 of 2008 besides when both stood decided by him under a common judgment where under too a grievance alike the grievance of the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008, stood projected, enjoined the learned Single Judge for obviating palpable conflicting decisions qua alike petitioners or petitioners holding parity besides canvassing alike reliefs to afford an akin relief to the similarly situate direct recruits/writ petitioners in CWP No. 819 of 2009.

15. Be that as it may, if the Board embarks upon the exercise of drawing a seniority list inter se the promotees and direct recruits in consonance with the verdict of this Court, the upholding by this Court of the dichotomus verdicts rendered by the learned Single Judge of this Court would make the aforesaid exercise onerously cumbersome whereas this Court reversing the findings recorded by the learned Single Judge would facilitate the Board to draw up a comprehensive fresh seniority list vis-a-vis direct recruits and promotees in concurrence with the verdict of this Court. For promoting the aforesaid exercise by the Board with facility and ease, the decision recorded by the learned Single Judge in CWP No. 819 is quashed and set aside.

16. Further more, the dismissal of CWP No. 819 of 2009 by the learned Single Judge is also per incuriam vis-a-vis the recording of a decision by the Hon''ble Division Bench of this Court in LPA No. 45 of 2009, dictum whereof prohibits judicial pronouncements rendered in ignorance of conclusive verdicts to hold no binding effect. Consequently, with a conclusive finding stands recorded by the Hon''ble Division Bench of this Court in LPA No. 45 of 2009 of promotees/appellants therein, who hold parity with the promotees/private respondents in CWP(T) No. 2736 of 2008 spurring from theirs respectively holding leverage on

the anvil of office order of 31.12.1997 to vindicate their appointment/promotion qua posts enjoined to be filled up by direct recruits, whereas with the apposite office order aforesaid, for reasons afore stated, holding no efficacy, warranted the learned Single Judge of this Court to reverse the earlier verdict of this Court recorded in LPA No. 45 of 2009, de hors the direct recruits/appellants herein not assailing the apposite office order No. 302 of 31.12.1997. Also the direct recruits/appellants herein stood not debarred from receiving the benefit of the decision of this Court recorded in LPA No. 45 of 2009, especially when the verdict of the learned Single Judge of this Court would hence beget the stain of its being per incuriam vis-a-vis the decision recorded by this Court in LPA No. 45 of 2009. Also this Court holding in LPA No. 45 of 2009 of the appointments/promotions of the appellants/promotees therein against posts meant for direct recruits being fortuitous, this Court likewise to obviate irreverence to the conclusive verdict of this Court recorded in LPA No. 45 of 2009 besides to obviate the decision recorded by the learned Single Judge in CWP No. 819 of 2009 being per incuriam vis-a-vis the previously recorded decision of this Court in LPA No. 45 of 2009, hence, proceeds to set it aside. Consequently, the instant LPA is allowed and the judgment of the learned Single Judge rendered in CWP No. 819 of 2009 is set aside.

LPA No. 141 of 2009.

17. The appellants herein stand aggrieved by the judgment of learned Single Judge of this Court recorded on 7.8.2009 in CWP (T) No. 5087 of 2008. Under his impugned judgment, the learned Single Judge while partly allowing the petition directed the Board to reframe the seniority list of the direct recruits/writ petitioners/appellants herein and the private respondents/promotees by showing the writ petitioners/direct recruits senior to promotees/respondents No. 51, 52, 55 and 56 therein. However, the other claims of the writ petitioners stood denied to them on the ground of the petitioners not constituting a challenge to the office order No. 302 of 31.12.1997 wherein the promotees stood promoted/appointed against the posts/vacancies to be filled up by direct recruits. In sequel, whereof the promotees stood placed higher in seniority list vis-a-vis the direct recruits/writ petitioners. The decision of the learned Single Judge stood recorded on 6.8.2009. Since, in LPA No. 434 of 2012 arising out of CWP(T) No. 2736 of 2008 this Court has while revering the verdict of the Hon'ble Division Bench of this Court recorded in the LPA No. 45 of 2009 wherein a conclusive verdict stands recorded of the appellants/promotees therein alike the promotees/respondents herein not holding any tenacity to on the anvil of the decision recorded by the Board on 31.12.1997 claim any benefit thereof. Consequently, when the appellants/direct recruits in LPA No. 141 of 2009 hold position alike the direct recruits/respondents in LPA No. 434 of 2009, imperatively they in equivalence stand entitled to the benefit of the decision of this Court recorded in LPA No. 45 of 2009 de hors the factum of only in CWP(T) No. 2736 of 2008, the writ petitioners therein assailing the order recorded by the Board on 31.12.1997. In sequel, to afford parity of treatment qua alike situated direct recruits, above

whom in derogation qua their legitimate rights of theirs standing placed higher in seniority list vis-a-vis the promotees, rather the promotees stand placed higher in seniority list vis-a-vis the direct recruits, also to obviate conflicting decision qua alike factual matrix embedded upon an order recorded on 31.12.1997 by the Board, validity whereof stands scored off by a judgment recorded by the Hon''ble Division Bench of this Court in LPA No. 45 of 2009, constrains this Court to afford qua the direct recruits in LPA No. 141 of 2009 an alike relief as stand afforded to the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008. Furthermore, unless the aforesaid parity of treatment stands afforded by this Court qua alike employees/direct recruits, the decision recorded by this Court in LPA No. 141 of 2009 would be per incuriam vis-a-vis the verdict recorded by this Court in LPA No. 45 of 2009. To obviate the aforesaid upsurgings, the writ petitioners/appellants/direct recruits herein are held to be entitled to a similar relief as afforded to the writ petitioners/direct recruits in CWP(T) No. 2736 of 2008.

18. In view of the above discussion, LPA No. 434 of 2012, LPA No. 450 of 2012 and LPA No. 148 of 2014 are dismissed and the impugned judgment dated 20.7.2012 rendered by the learned Single Judge in CWP(T) No. 2736 of 2008 is affirmed and maintained. However, LPA No. 430 of 2012 and LPA No. 141 of 2009 are allowed and the impugned judgment dated 6.8.2009 rendered by the learned Single Judge in CWP(T) No. 5087 of 2008 and judgment dated 20.7.2012 rendered in CWP No. 819 of 2009 are set aside. The respondent-Board is directed to draw a comprehensive seniority list in consonance with the apposite Recruitment and Promotion Regulations prevailing hitherto to its recording the office order No. 302 of 31.12.1997. All pending applications also stand disposed of.