

**Vijay Kumar Joshi
v.
Akash Tripathi & Ors.**

(Civil Appeal No. 6652 of 2025)

13 May 2025

[Vikram Nath* and Prasanna B. Varale, JJ.]

Issue for Consideration

Issue arose with regards to admissibility of pension to the employees of the Co-operative Societies who were absorbed with the Madhya Pradesh State Electricity Board (MPSEB); if the answer to the same is yes then what would be the length of service to be counted i.e. whether the service rendered in the Society would also be counted for determining the qualifying period for calculation of pension or only the service rendered after absorption in the MPSEB would be counted.

Headnotes[†]

Madhya Pradesh Civil Services (Pension) Rules – rr.3(p), 12(2), 13(1) – Admissibility of pension to the employees of the Societies absorbed with the Madhya Pradesh State Electricity Board (MPSEB) – Whether qualifying period for pension should be calculated from the date of their joining in the Society or from the date of absorption into the MPSEB:

Held: Appellants are entitled to pension from the MPSEB, however, the period of service rendered in the Society prior to absorption cannot be counted because such service was not under the State Government and was not governed by its rules – Thus, the appellants are eligible for pension from the date of their absorption into MPSEB, from which point they became employees governed by State rules – Impugned orders modified – Constitution of India – Art.142. [Paras 25, 26]

Service Law – Absorption – Pension – Entitlement to:

Held: Upon merger or absorption, the original identity of the service ceases to exist and complete functional integration must follow – Full functional integration carries with it the rights and benefits attached to the new service – It would be unjust to deny pension benefits

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to the absorbed employees when they are performing the same duties and discharging the same responsibilities as other MPSEB employees – Further in the case of Bijli Karamchari Sangh, the employees' Union, relief was already granted partially – Thus, there cannot be two classes of employees in the same organisation – All the absorbed employees are entitled to pension in the peculiar facts and circumstances of the present case. [Paras 20, 22, 23]

Case Law Cited

Panchraj Tiwari v. Madhya Pradesh State Electricity Board and Others [2014] 3 SCR 577 : (2014) 5 SCC 101; *M.P. Poorva Kshetra Vidyut Vitaran Co. Ltd v. Uma Shankar Dwivedi, Civil Appeal No. 9146-9148 of 2018; Brajendra Singh Kushwah & Ors. v. M.P. State Electricity Board and Ors., SLP (Civil) No.28516 of 2013 – referred to.*

List of Acts

Madhya Pradesh Civil Services (Pension) Rules; Constitution of India.

List of Keywords

Absorption; Merger; Pension; Madhya Pradesh State Electricity Board (MPSEB); Co-operative Societies; Terms of absorption; Pension payable; Rules of concerned society; Regular employees of MPSEB; Qualifying period for calculation of pension; Service rendered in the Society; Service rendered after absorption in the MPSEB; Date of joining in the Society; Date of absorption into the MPSEB; Two classes of employees in same organization; Unjust discrimination; Qualifying period for pension.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6652 of 2025

From the Judgment and Order dated 30.04.2019 of the High Court of Madhya Pradesh at Indore in CONC No. 2376 of 2018

With

Civil Appeal Nos. 6653-6674, 6675-6710, 6711-6741, 6742-6765, 6766-6775, 6776-6781, 6782-6783, 6784-6785, 6786, 6787-6788 and 6789 of 2025

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Appearances for Parties

Advs. for the Appellant:

N.K. Mody, S K Gangele, Sr. Advs. Ms. Ishita M. Puranik, Suresh Kumar Bhan, Ms. Jigisha Agarwal, Diwakar Shukla, Prabuddha Singh Gour, Karan Gupta, Nityanand Mahato, Praveen Swarup, Prashant Bhushan, Ms. Alice Raj, Ms. Priya Sharma, Prathvi Raj Chauhan, Mrs. Barnali Basak, Ms. Monica Goel, Ms. Saket Gautam, Satish Kumar, Arup Banerjee, Devesh Kumar Agnihotri, Ajeet Kumar Singh, Ms. Priya Mishra, Devvrat, Aditya Kumar Dubey.

Advs. for the Respondents:

V.V.V. Pattabhiram, D.A.G., G. Umapathy, Sr. Adv., Rohit K. Singh, Pritam Bishwas, Amalpushp Shrotri, Ms. Mrinal Gopal Elker, Aditya Vaibhav Singh - G.A, Ms. Chhavi Khandelwal, Siddharth, Harshit Manwani.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Leave granted in all the Special Leave Petitions.
2. The present appeals, except the two mentioned in paragraph 3 hereafter, assail the correctness of the judgment and order dated 22.08.2019 passed by the Full Bench of the High Court of Madhya Pradesh at Jabalpur in a bunch of Writ Appeals whereby it answered the two questions referred to it and held that the judgment of the Division Bench in the Writ Appeal No.334 of 2015, holding that the employees of the Society were entitled to pension, did not lay down the correct law and further that the employees were not entitled to the benefit of pension as claimed by them but would be governed by the terms of absorption which provided that pension and gratuity would be admissible as per the rules and regulations of the Society. These appeals further assail the consequential orders passed by the Division Bench disposing off Writ Appeals in the light of the judgment of the Full Bench dated 22.08.2019.
3. The following two appeals that arise out of SLP(C) No.23286/2019 and SLP(C) No.3805/2021 arise from separate orders passed in contempt proceedings whereby the contempt proceedings were

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closed. In one of the contempt proceedings, it was held that the employees had been granted pension counting their service from the date of absorption in the Madhya Pradesh State Electricity Board,¹ whereas in the other contempt proceedings, the proceedings were dropped in view of the judgment of the Full Bench dated 22.08.2019 referred to above.

4. The only issue which is relevant for adjudication in these appeals is with regard to admissibility of pension to the employees of the Societies who were absorbed with the MPSEB and if the answer to the same is yes, then what would be the length of service to be counted i.e. whether the service rendered in the Society would also be counted for determining the qualifying period for calculation of pension or only the service rendered after absorption in the MPSEB would be counted.
5. In the State of Madhya Pradesh, large number of Co-operative Societies were registered which were involved in the work of distribution of electricity in different areas. At some stage the financial health of the Societies became poor and they were unable to manage and control their affairs, as such a policy decision was taken in 1995 to merge them with the MPSEB subject to terms and conditions being set out in all respects. In particular, with respect to the employees of the Societies both regular and daily wagers.
6. The policy decision of 1995 ultimately fructified in the year 2002 when the Societies were dissolved and the merger took place with effect from 15.03.2002 notified subsequently *vide* order of MPSEB dated 18.05.2004 and 14.12.2004. Further, the terms and conditions for absorption were formulated and declared by the MPSEB in its order dated 05.06.2004, which are reproduced hereunder:
 - “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 pay scale will be the same which they were getting before the absorption.

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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 society.
6. Their designation will be maintained as it was in the society.”
7. Soon after the absorption, the employees’ Union by the name Bijli Karamchari Sangh² filed a Writ Petition registered as W.P.(S)No.1151 of 2005 titled Bijli Karamchari Sangh vs. M.P.State Electricity Board and others. The relief claimed in these petitions was with respect to quashing of the order issued by the Regulatory Commission dated 20.02.2003 and 15.12.2004 which related to the merger and absorption. Further relief claimed was that the same benefit should be extended to the petitioner therein as that of the employees of the MPSEB.
8. During the pendency of the petition filed by the BKS, another petition was filed by one Panchraj Tiwari registered as Writ Petition No.1962 of 2010. The decision in the said writ petition was carried up to this Court in Civil Appeal No.4371 of 2008, which was decided *vide* judgment dated 04.03.2014, whereby, Clause 3 and 6 of the terms and conditions of absorption were found unsustainable.
9. Subsequently *vide* judgment dated 07.03.2015, the writ petition of the BKS was decided and a direction was issued to the effect that once the employees of the society have been absorbed in the services of the MPSEB for all purposes they cannot be discriminated in respect of benefit of regular pension which is paid to the regular employees of the MPSEB. The operative part of the aforesaid judgment as contained in paragraph 14 is reproduced hereunder:

“14. Resultantly, the writ petition stands allowed. The respondents are directed to extend the pensionary benefits and other fringe benefits to the absorbed employees who

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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. The writ petition stands allowed. No order as to costs.”

10. This judgment of the Single Judge dated 07.05.2015 was challenged by the MPSEB before the Division Bench by way of intra Court appeal. The Writ Appeal No.334 of 2015 preferred by the MPSEB was dismissed vide judgment dated 14.06.2016. Aggrieved by the same, the MPSEB preferred a Special Leave Petition which came to be dismissed on 30.11.2018 and the review filed against the same by the MPSEB was dismissed on 23.04.2019.
11. In the meantime, multiple proceedings were initiated by individuals claiming reliefs upon their merger with the MPSEB relating to promotion, applicability of the 6th Pay Commission and modification of their pay fixation etc. The Single Judge vide judgment dated 03.04.2019 disposed of the bunch of petitions and issued certain directions, wherein direction no.(iv) related to entitlement of pensionary scheme and other fringe benefits as were applicable for the employees of the MPSEB relying upon the judgment in the Writ Appeal No. 334 of 2015. The said direction is reproduced hereunder:

“(iv) The petitioners shall be entitled to get the benefit of pensionary scheme and other fringe benefits, which are applicable for the employees of M.P.S.E.B. 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 Company Ltd. Indore) vs. Bijali Karmchari Sangh).”
12. Aggrieved by the said judgment, the MPSEB filed a bunch of Writ Appeals, the first being Writ Appeal No.897 of 2019. The Division Bench, vide order dated 27.06.2019 disagreed with the judgment in the Writ Appeal No.334 of 2015 and, accordingly, referred the matter to the Chief Justice to constitute a larger Bench for adjudication of the following two questions:

“(i) Whether the decision in the case of M.P. State Electricity Board (Now known as M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.) Indore Vs. Bijli Karmchari Sangh, W.A. No. 334/2015 wherein it has been held that the

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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?

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 Kushwah 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?"

13. By the impugned judgment of the Full Bench, as already noted in the opening paragraph, it has been held that the judgment of the Division Bench in Writ Appeal No.334 of 2015 did not lay down the correct law and further that the employees of the Societies absorbed with the MPSEB would not be entitled to pension as applicable to the regular employees of the MPSEB but would be governed by the rules and regulations of the Society. Consequent to the answers given to the two questions referred to the Full Bench, the Writ Appeals preferred by the MPSEB were allowed.
14. Aggrieved, the present appeals have been preferred by the employees.
15. In the appeal preferred by V.K.Joshi & Ors., the impugned judgment of the High Court in the contempt proceedings is of 30.04.2019 i.e. prior to the Full Bench decision which is dated 22.08.2019. In the said contempt proceedings, on the instructions and statement made on behalf of the State of Madhya Pradesh, the High Court has held that the benefit of pension has been given to the absorbed employees from the date of their absorption. It was further held that they would not be entitled to counting of their service rendered in the society for purposes of calculating the period of qualifying service for determining the pension. In the other appeal relating to contempt filed by the BKS, the Contempt Court has closed the contempt proceedings based on the Full Bench judgment dated 22.08.2019.

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16. We have heard learned counsel appearing for the parties and have perused the material on record.
17. As the facts noted above would reflect, that things have become complicated because of the long duration during which litigation has remained pending and also because of multiplicity of proceedings. We will, however, deal with the issues raised one by one and ultimately these appeals may be decided by invoking this Court's power under Article 142 of the Constitution of India, as otherwise it would result into disparity and discrimination of similarly situated employees.
18. First and foremost, the litigation which started with Writ Petition No.1151 of 2005 instituted by BKS had attained finality upto this Court, much prior to the judgment by the Full Bench. To reopen and reconsider the reliefs granted to them on the basis of the judgment of the Full Bench would not only be unfair but also unwarranted. The *lis* between the parties arising from Writ Petition No.1151 of 2005 stood concluded and would be binding on the parties and, therefore, whatever relief was granted to the absorbed employees covered by the BKS petition will have to be extended to them. It is apparent from the perusal of the orders passed in the contempt proceedings and also from the pleadings placed before this Court, that the members of the BKS have been granted pension. However, the period of service has been counted from the date of their absorption till the date of their retirement. The claim of the BKS is that the period of service rendered in the Society should also be counted and treated as part of qualifying service for determining their pension.
19. On the other hand, if the view taken by the Full Bench is to be upheld, then the employees who had filed the petitions, which led to the Full Bench decision would not be entitled to any pension at all. So, on the one hand, pension has been awarded to members of the BKS, although the period of service considered is not to the satisfaction of the BKS. On the other hand, the writ petitioners, who are parties to the matters involved in the Full Bench judgment, would not be entitled to any pension. We now proceed to deal with this complex situation as to how to formulate relief uniformly for all the employees of the society who were absorbed by the MPSEB.
20. The employees, once absorbed, are required to be treated on par with other employees of the MPSEB, as held by this Court in the case of **Panchraj Tiwari vs. Madhya Pradesh State Electricity**

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Board and Others.³ This judgment recognises that upon merger or absorption, the original identity of the service ceases to exist and complete functional integration must follow. Paragraph 6 of the aforesaid judgment is reproduced hereunder:

- “6. Integration/merger of services means creation of a homogenous service by the merger of service personnel belonging to different services:
- 6.1. Though it is difficult to have a perfect coalescence of the services on such merger, the principle of equivalence is to be followed while absorbing the employees, to the extent possible.
- 6.2. Though integration of services thus postulates equation of posts, it is not invariably necessary to prepare the seniority list on the basis of the pay drawn by the incumbent in the equated category. It is always open to the authority concerned to adopt a just and the equitable principle on fixation of seniority.
- 6.3. Once a service is merged with another service, the merged service gets its birth in the integrated service and loses its original identity. There cannot be a situation, where even after merger, absorption or integration, such services which were merged or absorbed, still retain their original status. If so, it is not an absorption or merger or integration, it will only be a working arrangement without any functional integration.”
21. The terms of absorption relied upon by the respondents, have further been relaxed by this Court in **M.P.Poorva Kshetra Vidyut Vitaran Co. Ltd v. Uma Shankar Dwivedi⁴** and in **Brajendra Singh Kushwah & Ors v. M.P. State Electricity Board and Ors.⁵** Before this Court in the case of **Uma Shankar Dwivedi (supra)** statement was made by the learned Advocate General for the State of Madhya Pradesh that it had no objection in granting benefits similar to employees of MPSEB from the date of absorption. Order dated 02.08.2018 is reproduced hereunder:

3 (2014) 5 SCC 101

4 Civil Appeal No. 9146-9148 of 2018.

5 SLP (Civil) No.28516 of 2013.

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“The learned Advocate General for the State of Madhya Pradesh submits that the petitioners have no objection in granting the benefits to the respondent, as were granted to the employees of the Madhya Pradesh State Electricity Board (MPSEB) on the date of absorption.

To this extent, there is an agreement on both sides.”

Thereafter *vide* final order dated 05.09.2018, this Court directed for implementation of the 5th, 6th and 7th Pay Commission for the absorbed employees. Further the order in the case of **Brajendra Singh Kushwah (supra)** was based upon the judgment in the case of **Panchraj Tiwari (supra)**. The order dated 27.04.2015 is reproduced below:

“The respondent-Board has stated in paragraph 5 of the counter affidavit as follows:

“It is submitted that the Answering Respondent in compliance of the Judgment of this Hon’ble Court passed in judgment dated 4th March, 2014 in Civil Appeal No. 4371 of 2008 *vide* order dated 24.12.2014 and clarification order dated 18.04.2014 has decided to grant the benefits to the petitioners at par with the employees of the Answering Respondents in the matter of pay scale, dearness allowance and other fringe benefits w.e.f. 4th March 2014 after calculating the benefits till 3rd March, 2014 notionally.”

The respondent-Board shall grant the entire benefits to the petitioners as stated above within six weeks.

The special leave petition is disposed of accordingly.”

22. It is settled through these judgements that full functional integration carries with it the rights and benefits attached to the new service. However, it is pertinent to note that the benefits and relaxations given by the above judgments have already been implemented and the State had accepted the legal position of extending the benefits from the date of absorption.
23. It would be wholly unjust to deny pension benefits to the absorbed employees when they are performing the same duties and discharging

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the same responsibilities as other MPSEB employees. Further in the judgment in the case of BKS, relief has already been granted partially. Thus, there cannot be two classes of employees in the same organisation. One set with pension and the other without pension. In such circumstances, denying them the benefit of pension solely on the ground of their origin in the societies would amount to unjust discrimination. We therefore hold that all the absorbed employees would be entitled to pension in the peculiar facts and circumstances of the present case.

24. The remaining question is whether qualifying period for pension should be calculated from the date of their joining in the Society or from the date of absorption into the MPSEB. The entitlement for pension is governed by the Madhya Pradesh Civil Services (Pension) Rules, and the relevant provision is Rule 3(p), which reads as follows:

“3(p) ‘Qualifying service’ means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rule for the time being in force.”

Further, Rule 12(2) provides that qualifying service begins from the date the employee assumes charge of the post to which they are first appointed, whether on a substantive, officiating, or temporary basis, in the services of the State Government. Rule 12(2) of the Madhya Pradesh Civil Services (Pension) Rules are reproduced hereunder:

“12. Commencement of qualifying service.

(2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.”

Rule 13(1) lays down that the service of a government servant shall not qualify unless his duties and pay are regulated by the Government. Rule 13(1) is reproduced hereunder:

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“13. Conditions subject to which service qualifies.

(1)The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.”

25. In view of the above, while the appellants are held entitled to pension from the MPSEB, the period of service rendered in the Society prior to absorption cannot be counted. This is for the reason that such service was not under the State Government, and was not governed by its rules. The appellants would thus be eligible for pension from the date of their absorption into MPSEB, from which point they became employees governed by State rules.
26. Accordingly, the appeals are allowed to the extent that the appellants shall be paid pension by the MPSEB, with effect from their respective dates of absorption. Impugned orders stand modified as above. The respondents to implement the above directions within a period of four months from today and pay all the arrears of pension within the same time.
27. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

[†]*Headnotes prepared by:* Divya Pandey