

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA**

**Date of hearing : 03.06.2019**  
**Date of Order : 03.06.2019**

**In the Matter of**

**In the matter regarding implementation of Order dated 26.02.2019 issued by the Hon'ble Punjab and Haryana High, Chandigarh in CWP 5140 of 2019 titled as K.R.Taneja V/s State of Haryana & Others with directions to the Haryana Electricity Regulatory Commission (Respondent No. 2) to decide the representation dated 11.06.2018 (Annexure P-36) within a period of three months from the date of certified copy of the order.**

**Petitioner**

K.R.Taneja

**Quorum**

**Shri Jagjeet Singh, Chairman**

**Shri Naresh Sardana, Member**

**ORDER**

1. The matter is being considered in accordance with the orders of the Punjab and Haryana High Court in CWP No.5140 of 2019 in the matter of Shri K.R.Taneja Versus State of Haryana and others and communicated to the Respondent No.2 HERC through its Chairman at Bays No.33-36, Sector 4, Panchkula. The operative part of the order is reproduced below:

*“Without commenting upon the merits of the case or about the entitlement of the petitioner for the relief which has been claimed by him in the representation dated 11.6.2018 (Annexure P-36), the present writ petition*

*is disposed of with a direction to respondent No.2 to decide the representation dated 11.6.2018 (Annexure P-36) within a period of three months from the receipt of certified copy of this order.”*

2. Before taking a view on the matter, the Commission thought it appropriate to hear the petitioner. Accordingly, a notice was issued to Sh. K.R. Taneja for hearing to be held on 03.06.2019.
3. Matter was heard as scheduled. During the hearing, Sh K.R.Taneja, reiterated his written submissions for seeking consideration of his service with Haryana State Small Industries & Export Corporation Limited (HSSI&EC) from 16.01.1979 to 30.06.2002 and further counting the contract service from 25.07.2002 to 28.05.2003 followed by regular service in HERC from 29.05.2003 to 31.05.2013 for the purpose of grant of pension and pensionary/retiral benefits as per the mandate/order dated 04.03.2016 passed in CWP 7327 of 2015 titled Randhir Singh Lambra Vs. Haryana Electricity Regulatory Commission, Panchkula upheld by the Division Bench in LPA No. 2362 of 2016 dismissed on 06.012.2016 and by the Hon'ble Supreme Court of India in SLP No. 22261 of 2017 (Diary No. 15910 of 2017) decided on 18.08.2017.
4. The petitioner further submitted that some similarly situated employees, retrenched from HSSI&EC and Haryana State Minor Irrigation and Tubewell Corporation (HSMITC) were reappointed in Haryana State Agriculture Marketing Board (HSAMB) after their retrenchment and have been allowed benefit of their pre retrenchment service for calculation of their pensionary benefits on orders of the Hon'ble Supreme court. ( CWP nos 3792 of 2012 and 11987 of 2015, LPA No. 1804 and 1805 of 2016 and SLP no 15150 and 15166 of 2017)
5. The Commission now proceeds to examine and considered the representation of Sh. K.R.Taneja, dated 11.6.2018(Annexure P-36).
6. It is observed that pursuant to the request received from Shri K.R. Taneja to grant him pension considering his earlier service with HSMITC and HSSI&EC along with his service with HERC and to grant him pension in line with the case of Shri R.S. Lambra as per the decision of the Hon'ble Supreme Court in CWP 7327 of 2012, the office of HERC asked Shri Taneja to provide similarity of his case with that of

Shri R.S. Lambra vide Memo No.745/HERC/Admn-161, dated 6.6.2018. In response to the said memo Shri K.R. Taneja has submitted as under:

*“In this regard, it is submitted here that all the facts that my case is similar to the case of Shri R.S. Lambra have been mentioned in my above referred request dated 05.03.2018 and I do reiterate the same which are also available in the office record of HERC. However, even then since HERC is asking me to provide the same, I again furnish the relevant facts here-under for the convenience of the office”:-*

*As has already been brought to the notice of HERC vide my various communication, in reply to which I was informed vide Memo No. 1091/HERC/Admn-183 dated 23.06.2014 that my request shall be considered in the light of the decision of the Hon'ble High Court in CWP filed by Shri R.S. Lambra.*

*In spite of receipt of an advice from the O/o the Chief Secretary, Haryana vide Memo No. 22/153/2015-2GS-II dated 28.06.2016 (copy also supplied to me by HERC) regarding payment of balance earned leaves, payment of earned leaves earned by me during service in HERC has not been released to me. Relevant part of the advice is re-produced as under:-*

*“It is intimated that if a person is re-employed with the benefit of previous service and pay protection, benefit of leave encashment beyond 300 days (counting both the organization) cannot be provided to him”.*

*Obviously, keeping in view that my case is very much similar to Shri Randhir Singh Lambra, payment of earned leaves has not been released to me so far even after the receipt of the advice as has been done in the case of Shri R.S. Lambra.*

*Only after considering my case similar to Shri Randhir Singh Lambra by the HERC, my Service Book and other information has been got collected from HSSI&EC for release of my full pension. Information sought from me in this regard, has also been supplied vide my *ibid* letter dated 05.03.2018.*

7. It is observed that the representation of Sh. Taneja, received in this office on 11.6.2018, was examined and put up to a Committee constituted by the competent

authority for consideration of such matters comprising of officers of the respondent Commission from Accounts, Legal, Tariff and Administration section. The representation was duly examined by the Committee. Legal opinion was sought whether the representation of Shri K.R.Taneja can be considered and relief granted in view of the judgement of the Hon'ble Apex Court. The legal opinion available in the file of Shri K.R.Taneja which is reproduced below:

*“Sh.R.S.Lambra’s case was an individual case decided up to the level of Hon’ble Apex Court. After perusing the order of the Hon’ble Supreme Court it appears to the undersigned that the order/judgement passed is applicable only respect of Shri R.S.Lambra.*

*Further, general guidelines, if any, in such mater issued by the State Government may please be looked into by the Admn. Section while dealing with the case of Shri Taneja.*

*Further, similarity of the cases is to be determined by the Administrative wing in the light of letter dated 23.8.2014 as mentioned in the note of Admn.wing.*

*However, the Hon’ble Commission, if deems appropriate may take a view on the basis of findings given by the Amn. wing in order to avoid further litigation.”*

8. Further the Committee was of the opinion that if some of the cases are considered to be similar to that of Shri R.S.Lambra case, the financial liability is to be borne by the State Government as the owner of those corporations and till the constitution of HERC Fund under “HERC Fund Rules, 2014 (Annexure -D). Most of the applicants either retired prior to creation of HERC Fund or major part of their service rendered was before creation of HERC Fund Rules. It is added that prior to the Fund Rules, 2014, all the expenses of HERC were charged to the consolidated Funds of Haryana Government and all the receipts and balance funds were deposited in Government Treasury/ exchequer. HERC is not in a financial position to bear the liability of State-owned Corporations and till HERC Fund was

created. Further, in the case of Shri R.S.Lambra, the Committee observed that the financial liability due to counting the past service (Other than that rendered in HERC) allowed by the Hon'ble Supreme Court of India is about Rs. 70 lakhs. Hence, this gives some idea of financial liability that may arise while dealing with the claims of these employees.

9. The recommendations of the Committee as above were duly considered by the competent authority i.e. Hon'ble Chairman of the HERC and accepted. In accordance with the above decision of the Hon'ble Chairman, a reference has been made to the learned L.R., Haryana who has vide Endst No. 19765/Co.2497/h/2018 dated 07.12.2018 sought further legal advice from the Advocate General, Haryana. It is observed that the matter is being perused at the highest level in the State Government as the impugned matter affects the rights of the certain other employees also and also due to the affect that the respondent No.2 HERC is a quasi-judicial body formed under a specific Act of the Legislature.
10. The said matter was referred by the L.R., Haryana to Advocate General, Haryana for his opinion which has been received vide Memo No.4668/HERC-dmn-161/180/183/184, dated 23.4.2019. In his opinion learned Advocate ,General has informed as under:
  - (i) *After undergoing the judgment passed by the Ld. Single Judge in CWP No. 7327 of 2015 titled Randhir Singh Lambra as upheld by the Hon'ble Division Bench in LPA No. 2362 of 2016 decided on 6.12.16 as upheld by the Hon'ble Supreme Court of India which are being made a base by the above stated four employees to claim parity for grant of calculation of service rendered with either HSMITC or HSSI & EC for pensionary benefits. Though it appears that prima facie the case appears to be identical to the case of Sh. R.S.Lambra but the fact is that Sh. R.S.Lambra's case is based on the wrong construction and appreciation of earlier judgments, therefore same cannot be treated as a precedent for adjudication of the claims of other similar situated employees.*

- (ii) *Subsequently the same controversy has been decided by the Hon'ble Division Bench in LPA No. 1105 of 2017 on 29.5.2018 and the same order has been upheld by the Hon'ble Supreme Court in SLP(C) No. 23416/2018 titled as Nathu Singh Vs. State of Haryana. Thus, the service period rendered by these employees with HSMITC and HSSI & EC is not required to be calculated for pension and earlier decision relied upon by the Ld. Single Judge while deciding R.S.Lambra's case were not rightly appreciated and are distinguishable on facts as well as law. In all those relied judgments the employees were never retrenched nor paid retrenchment compensation as admittedly received by these employees but declared surplus when working either in the HSMITC or HSSI & EC and they were transferred to the different Government departments and they were absorbed granting benefit of protection of pay.*
- (iii) *Apart from above the retrenched employees whose particular given in the factual matrix, are also getting pension from the EPF organization for the service which they rendered with HSMITC and HSSI & EC which disentitles to the claimed relief. It appears that the entitlement and drawing of pension by Sh. Randhir Singh Lambra from the EPF Organization was neither disclosed by the Department in the written statement nor by the petitioner Sh. R.S. Lambra in his writ petition. Hon'ble Supreme Court in a reported case (2014) 15 SCC 715 held that earlier decision based on concealment of facts or non impleadment of necessary defendants cannot be treated as a precedent to claim parity under article 14 of the Constitution of India. Particulars of R.S.Lambra as given in the noting sent to this office which is reproduced as below:-*

|   |   |
|---|---|
| <i>Particulars</i>                          | <i>Sh.R.S.Lambra</i>                          |
| <i>Initial joining in parent department</i> | <i>Joined in HSSI &amp; EC on 13.07.1979-</i> |

|   |  |
|---|--|
| <i>Retrenched on</i>  | <i>30.06.2002</i>  |
| <i>Broken Period</i>  | <i>01.07.2002 to 24.07.2002</i>  |
| <i>Worked on contract basis in HERC</i>                                       | <i>25.07.02 to 28.05.03</i>  |
| <i>Worked on regular basis in HERC</i>  | <i>29.05.03 to 30.04.2012</i>  |
| <i>Pension from EPF for the period worked with their initial organization</i> | <i>Yes</i>   |
| <i>Pension for the period worked with HERC</i>                                | <i>At the time of retirement not getting pension due of lack of regular qualified service period for pension in HERC. After the Judgment passed by Apex Court, PPO was issued to him</i> |
| <i>Gratuity</i>   | <i>Paid by HSMITC and HERC</i>   |
| <i>Leave Encashment</i>   | <i>Form HSSI&amp;EC</i>  |

(iv) *Thus, comparing the facts of Sh. R.S.Lambra and other employees and the subsequent decision of the Hon'ble Division Bench in LPA No. 1105 of 2017 these employees are not entitled to the benefit which has been extended to Sh. R.S.Lambra on the basis of judicial decision concealment of facts and non impleadment of the necessary parties, which is to be distinguished by mentioning the following facts :*

(v) *As far as reliance by the Ld. Single Judge while adjudicating CWP No. 7327 of 2015 on 04.03.2016, the Hon'ble Single Judge relied upon the decision in CWP No. 24370 of 2012 decided on 21.02.2014 titled Mahavir Yadav Vs. State of Haryana and others and the same is distinguishable on the ground that Sh. Mahavir Yadav was neither retrenched from the HSMITC/HSSI&EC nor received any retrenchment compensation as taken by Sh. Randhir Singh Lambra & other employees. He worked in HSMITC upto 01.10.1992, thereafter he was declared surplus and appointed in the office of Deputy Commissioner as a driver by way of transfer on 4.7.2000 and continued till the date of his retirement i.e. 30.09.2009. Thus the case of Sh. Mahavir Yadav is not applicable to the facts and circumstances as earlier applied by the*

*Ld. Single Judge while adjudicating CWP No. 7327 of 2015 and the cases of the present representationist whose file has been sent to this office is not covered by the decision of Sh.Mahavir Yadav as stated above. Sh.Mahavir Yadav not got any separate pension for the service rendered in the HSMITC but got only one pension from the govt.*

- (vi) *Similarly the reliance on the decision in CWP No. 20057 of 2009 titled Ved Parkash Bali and ors. Vs. State of Haryana decided on 01.12.2011 is also distinguishable on the ground that these employees were never retrenched from their earlier services and they were declared surplus and absorbed/appointed in the other departments not after retrenchment but during active service in the HSMITC & never received retrenchment compensation. So the case of the representationist is also distinguishable on this count as they were retrenched, received retrenchment compensation their appointment in the present organization was a fresh appointment initially on contract base & then on permanent basis in pursuance to a fresh advertisement.*
- (vii) *As far as the decision in LPA No. 1261 of 2011 decided on 18.08.2011 titled, Director, Treasury and Accounts, Haryana and others Vs. Shubkaran Sharma and others is concerned the same again cannot be applied to the facts and circumstances of the representationist as the perusal of para 2 & 3 of the judgment shows that the same has been passed as a consensual order, consent given by the counsel for the State as well as the respondents. Otherwise also facts are distinguishable as the order passed by Ld. Single Judge in CWP No. 18370 of 2009 out of which LPA No. 1261 of 2010 arose, petitioners were appointed/absorbed from active service of HSMITC to the SAS cadre of Finance Department i.e. Govt. service & never retrenched like Sh. R.S.Lambra and other representationist. The relevant paras 2 & 3 of the order dated 18.08.2011 is reproduced as below:*



2. **Mr. Indresh Goyal, learned State Counsel has made an attempt to point out distinguishing feature of the case in hand with the one which has been cited by the learned Single Judge for the purposes of allowing the petition. Learned counsel has, however, confined his prayer that the writ petitioner-respondents cannot be granted every other benefit as the particular prayer made by them also does not claim any such thing.**

3. **Mr. R.N.Sharma, learned counsel for the writ petitioner-respondents has made a statement that the writ petitioner-respondents would be satisfied if they are given the relief of counting their past service rendered in the HSMITC for the purposes of granting pensionary/retiral benefits, subject to the condition that they would deposit the amount of CPF contribution, which they have already withdrawn from the earlier employer, as per rules.**

(viii) *Thus taking into consideration the above said facts and circumstances, HERC is advised to pass a speaking order in pursuance to the directions issued by the Hon'ble Single Judge in CWP No. 5140 of 2019 in which the Hon'ble Single Judge directed to consider the representation dated 11.06.2018 taking into consideration the earlier decision passed by the Hon'ble High Court in CWP No. 7327 of 2015, which is based on wrong reliance of earlier judgments & non-disclosure of true facts in the pleadings as per law laid down by Hon'ble Supreme Court in Chaman Lal Vs. State of Punjab and ors. reported as (2014) 15 SCC 715, the decision dated 4.3.2016 cannot be treated as a*

*binding precedent taking into consideration the law laid down by Hon'ble Division Bench in LPA No. 1105 of 2017.*

(ix) *Similarly the reliance on the earlier order passed by this Hon'ble Court in Civil Writ Petition No. 781 of 2014 filed by Randhir Singh Lambra the directions was given to the respondents to consider the earlier judgments passed in CWP No. 17343 of 2007 titled Jai Parkash Vs. State of Haryana decided on 28.11.2008, the same is also distinguishable on facts as the petitioner of CWP No. 17343 of 2007 was never retrenched, he was declared surplus and absorbed/appointed as Driver in the Haryana Excise and Taxation Department and at the time of absorption in the year 1997 it was mentioned that his services will be governed by the Haryana Excise and Taxation Drivers State Service Group C Rules 1980 and he never received the retrenchment compensation and his appointment is in continuation to the earlier appointment in HSMITC and ultimately retired from Govt. service. There is no rule even under P.C.S. Rules Vol.II which governs the pension conditions of the govt. employee that same length of service can be counted twice for grant of pension, one from the EPF organization & the other from the govt.*

(x) *It is also a fact that in the present case all the representationist who rendered different length of services either with the HSMITC and HSSI & EC, all received the retrenchment compensation, gratuity for the earlier service rendered, benefit of accumulated earned leave and was also getting pension from the Employees Provident Fund Organization and this fact was neither disclosed in the earlier CWP filed by Sh. Randhir Singh Lambra nor by the department while filing the written statement. Thus the factum of non impleadment of EPF Organization who was granting pension to the retrenched employees after their retrenchment in the year 2002 is also a fact to distinguish the cases of the representationist & Sh. K.R.Taneja from Sh. Randhir Singh Lambra's case which was decided in favour of Sh. R.S.Lambra on*

*account of non disclosure of complete facts. Even if the department has filed LPA in Randhir Singh Lambra's case the same has been decided by the Hon'ble High Court relying on the decision in LPA No. 1261 of 2016 the same relied by the Hon'ble Division Bench while dismissing the LPA No. 2362 of 2016, as mentioned in the preceding para being a consensual order and is also distinguishable on facts as mentioned in the preceding para.*

- (xi) *That Sh. Prem Parkash's case is also not applicable as the facts was different as Prem Parkash was never retrenched he was transferred to Haryana State Agricultural Marketing Board on deputation basis though he was retrenched but he got the stay from High Court and ultimately he was absorbed by the HSAMB and there was no break in service and he never either received the retrenchment compensation or pension from the EPFO, like the present representationist. This was/is neither the aims & objectives nor the intent in issuance of the O.M. dated 7.1.2002 to count the length of service for pension twice. Thus the earlier decision rendered by the Hon'ble Division Bench in LPA No. 2362 of 2016 decided on 06.12.2016 is also distinguishable, taking into consideration law laid down by Hon'ble Supreme Court reported as (2014) 15 SCC 715 is equality based on the principle that erroneous order based on concealment of facts cannot be perpetuated under the guise of equality under article 14 of the Constitution of India.*
- (xii) *That as far as the appointment of the present representationist in the HERC is concerned, the same has been made in pursuance to the fresh advertisements and is neither in continuation to the service rendered with HSMITC/HSSI & EC nor they were absorbed/adjusted but all were retrenched on 30.6.2002 with advance payment of one month's salary for the month of July 2002. The initial appointments were on contract basis there is a break in service and even after their initial appointments on contract basis the representationists were appointed on permanent basis in pursuance to fresh advertisements. Therefore at the best their*

*contract period of services can be counted for pension purposes as per existing govt. pension policy as per judgment of Hon'ble High Court in CWP No. 14088 of 2012 decided on 9.10.2013 and not the earlier service rendered with HSMITC/HSSI & EC. The O.M. dated 7.1.2002 as applied by the Ld. Single Judge while deciding CWP No. 7327 of 2015 is not applicable as relevant para 4 & 5 has been considered by the Hon'ble Division Bench in para 18 of order passed in LPA No. 1105 of 2017 decided on 29.5.2018. Similarly as per Rule 2.8(a) of the Punjab Civil Services Vol.II as applicable to State of Haryana which lays down that the Govt. employees cannot earn two pensions on the same post at the same time or by the same continuous service. In the present case, once the representationist alongwith Sh. R.S.Lambra was getting pension from the EPF organization for the service which they have rendered with HSMITC/HSSI&EC the same period cannot be counted twice for the subsequent service rendered by these representationist as well as Sh. R.S.Lambra to be added with HERC service. It is appropriate to mention here that if Sh. R.S.Lambra has already availed the pension of earlier service from the EPF organization then the same is required to be recovered from him alongwith interest as it would tantamount to grant two pensions for the same service which is also not legally permissible as per the above quoted rule.*

- (xiii) *That the representationists are also not entitled to the benefit on the basis of parity as claimed with Sh. R.S.Lambra as earlier the similar prayer has been dismissed by the Hon'ble High Court while adjudicating CWP No. 24484 of 2011 titled Jai Narain Kaushik & ors. Vs. State of Haryana against which LPA No. 570 of 2012 has also been dismissed on 4.2.2014 and LPA No. 857 of 2014 dismissed on 12.8.2014 same view has been followed by Hon'ble Division Bench in LPA No. 1105 of 2017. Thus the above stated decisions were not brought to the notice of Hon'ble High Court or Hon'ble Supreme Court when R.S.Lambra's case earlier adjudicated. Even in LPA No. 570 of*

2012 decided on 4.2.2014. SLP (C) No. 36529-30 of 2014 by the aggrieved employee is still pending for adjudication.

- (xiv) *That when the representationists were retrenched from the HSMITC/HSSI&EC there was no promise of adjustment/absorption in future in any of the Govt. department. Even when they applied for in HERC in pursuance to a fresh advertisement they applied independently, accepted the terms and conditions of the contractual appointment independently and also when they were appointed on permanent basis neither such assurance was given by HERC nor they raised any objection & never claimed any such right which they are claiming now belatedly. They were not granted benefit of pay protection and the same was appears to be declined if anyone claimed. Apart from above the noting qua Sh. K.R. Taneja sent to this office again appears to be not as per the official record as he was initially appointed on contract basis, thereafter on permanent basis and from 7.5.2007 till the date of superannuation i.e. 31.5.2013 he remained on deputation with HUDA. Thus service rendered with HUDA, HERC or the govt. cannot be compelled to pay the pension and even if for the sake of argument it is assumed that Sh. K.R.Taneja is entitled to the claimed relief (though specifically denied), the proportionate share of pension amount is required to be borne by the HUDA. Similarly there was no promise either by the govt. or any other authority for their adjustment by the govt. on any count. Same view has been taken by Hon'ble Supreme Court in a reported case i.e. (2006) 4SCC 132 which also disentitled to the claimed relief by the representationist.*
- (xv) *That apart from above, the similar controversy has again been decided by the Hon'ble Single Judge in bunch of writ petitions including CWP No. 11797 of 2016 decided on 26.3.2019 relying upon decision in LPA No. 1105 of 2017 and also considered the various judgments relied upon by the Ld. Single Judge in CWP No. 7327 of 2015 and held that the retrenched employees upon their appointment on a fresh post or*

*adjustment are not entitled to grant the benefit of earlier service rendered with the earlier employer for any purpose.*

**11. Keeping the above legal opinion of Ld Advocate General, Haryana in view, the representation dated 11.06.2018 of Sh K.R.Taneja (Annexure P/36) has been considered by this Commission. Parawise representation of Sh. K.R.Taneja and observations of the Commission thereupon are as given hereunder:**

**12. Para 2(i) of the representation:** Sh. K.R.Taneja has requested that as informed by HERC vide memo no 1091/HERC/Admn – 183 dated 23.06.2014 that his request shall be considered in light of the decision of the Hon'ble High Court in CWP filed by Sh Lambra.

**13. The Commission observes that the** LD Advocate General, in his opinion dated 23.04.2019 has observed that though prima facie the case appears to be identical to the case of Sh. R.S.Lambra but the fact is that Sh. R.S.Lambra's case is based on the wrong construction and appreciation of earlier judgments, therefore same cannot be treated as a precedent for adjudication of the claims of other similar situated employees. The Ld Advocate General has further observed that:

*“Subsequently the same controversy has been decided by the Hon'ble Division Bench in LPA No. 1105 of 2017 on 29.5.2018 and the same order has been upheld by the Hon'ble Supreme Court in SLP(C) No. 23416/2018 titled as Nathu Singh Vs. State of Haryana. Thus, the service period rendered by these employees with HSMITC and HSSI & EC is not required to be calculated for pension and earlier decision relied upon by the Ld. Single Judge while deciding R.S.Lambra's case were not rightly appreciated and are distinguishable on facts as well as law. In all those relied judgments the employees were never retrenched nor paid retrenchment compensation as admittedly received by these employees*

*but declared surplus when working either in the HSMITC or HSSI & EC and they were transferred to the different Government departments and they were absorbed granting benefit of protection of pay.*

*Thus, comparing the facts of Sh. R.S.Lambra and other employees and the subsequent decision of the Hon'ble Division Bench in LPA No. 1105 of 2017 these employees are not entitled to the benefit which has been extended to Sh. R.S.Lambra on the basis of judicial decision concealment of facts and non impleadment of the necessary parties, which is to be distinguished by mentioning the following facts :*

*i) As far as reliance by the Ld. Single Judge while adjudicating CWP No. 7327 of 2015 on 04.03.2016, the Hon'ble Single Judge relied upon the decision in CWP No. 24370 of 2012 decided on 21.02.2014 titled Mahavir Yadav Vs. State of Haryana and others and the same is distinguishable on the ground that Sh. Mahavir Yadav was neither retrenched from the HSMITC/HSSI&EC nor received any retrenchment compensation as taken by Sh. Randhir Singh Lambra & other employees. He worked in HSMITC upto 01.10.1992, thereafter he was declared surplus and appointed in the office of Deputy Commissioner as a driver by way of transfer on 4.7.2000 and continued till the date of his retirement i.e. 30.09.2009. Thus the case of Sh. Mahavir Yadav is not applicable to the facts and circumstances as earlier applied by the Ld. Single Judge while adjudicating CWP No. 7327 of 2015 and the cases of the present representationist whose file has been sent to this office is not covered by the decision of Sh.Mahavir Yadav as*

stated above. *Sh.Mahavir Yadav* not got any separate pension for the service rendered in the HSMITC but got only one pension from the govt.

ii) Similarly the reliance on the decision in CWP No. 20057 of 2009 titled *Ved Parkash Bali and ors. Vs. State of Haryana* decided on 01.12.2011 is also distinguishable on the ground that these employees were never retrenched from their earlier services and they were declared surplus and absorbed/appointed in the other departments not after retrenchment but during active service in the HSMITC & never received retrenchment compensation. So the case of the representationist is also distinguishable on this count as they were retrenched, received retrenchment compensation their appointment in the present organization was a fresh appointment initially on contract base & then on permanent basis in pursuance to a fresh advertisement.

iii) As far as the decision in LPA No. 1261 of 2011 decided on 18.08.2011 titled, *Director, Treasury and Accounts, Haryana and others Vs. Shubkaran Sharma and others* is concerned the same again cannot be applied to the facts and circumstances of the representationist as the perusal of para 2 & 3 of the judgment shows that the same has been passed as a consensual order, consent given by the counsel for the State as well as the respondents. Otherwise also facts are distinguishable as the order passed by Ld. Single Judge in CWP No. 18370 of 2009 out of which LPA No. 1261 of 2010 arose, petitioners were appointed/absorbed from active service of HSMITC to the SAS cadre of Finance Department i.e. Govt. service & never retrenched like *Sh. R.S.Lambra* and other representationist.



14. Further, the Ld Advocate General has observed that as per law laid down by Hon'ble Supreme Court in Chaman Lal Vs. State of Punjab and ors. reported as (2014) 15 SCC 715, the decision dated 4.3.2016 cannot be treated as a binding precedent taking into consideration the law laid down by Hon'ble Division Bench in LPA No. 1105 of 2017 as below:

*iv) Similarly the reliance on the earlier order passed by this Hon'ble Court in Civil Writ Petition No. 781 of 2014 filed by Randhir Singh Lambra the directions was given to the respondents to consider the earlier judgments passed in CWP No. 17343 of 2007 titled Jai Parkash Vs. State of Haryana decided on 28.11.2008, the same is also distinguishable on facts as the petitioner of CWP No. 17343 of 2007 was never retrenched, he was declared surplus and absorbed/appointed as Driver in the Haryana Excise and Taxation Department and at the time of absorption in the year 1997 it was mentioned that his services will be governed by the Haryana Excise and Taxation Drivers State Service Group C Rules 1980 and he never received the retrenchment compensation and his appointment is in continuation to the earlier appointment in HSMITC and ultimately retired from Govt. service. There is no rule even under P.C.S. Rules Vol.II which governs the pension conditions of the govt. employee that same length of service can be counted twice for grant of pension, one from the EPF organization & the other from the govt.*

*v) It is also a fact that in the present case all the representationist who rendered different length of services either with the HSMITC and HSSI & EC, all received the retrenchment compensation, gratuity for the earlier service rendered,*

*benefit of accumulated earned leave and was also getting pension from the Employees Provident Fund Organization and this fact was neither disclosed in the earlier CWP filed by Sh. Randhir Singh Lambra nor by the department while filing the written statement. Thus the factum of non impleadment of EPF Organization who was granting pension to the retrenched employees after their retrenchment in the year 2002 is also a fact to distinguish the cases of the representationist & Sh. K.R.Taneja from Sh. Randhir Singh Lambra's case which was decided in favour of Sh. R.S.Lambra on account of non disclosure of complete facts. Even if the department has filed LPA in Randhir Singh Lambra's case the same has been decided by the Hon'ble High Court relying on the decision in LPA No. 1261 of 2016 the same relied by the Hon'ble Division Bench while dismissing the LPA No. 2362 of 2016, as mentioned in the preceding para being a consensual order and is also distinguishable on facts as mentioned in the preceding para.*

*vi) That Sh. Prem Parkash's case is also not applicable as the facts was different as Prem Parkash was never retrenched he was transferred to Haryana State Agricultural Marketing Board on deputation basis though he was retrenched but he got the stay from High Court and ultimately he was absorbed by the HSAMB and there was no break in service and he never either received the retrenchment compensation or pension from the EPFO, like the present representationist. This was/is neither the aims & objectives nor the intent in issuance of the O.M. dated 7.1.2002 to count the length of service for pension twice. Thus the earlier decision rendered by the Hon'ble Division Bench in LPA No. 2362 of 2016 decided on 06.12.2016 is also distinguishable, taking into consideration law laid down by*

*Hon'ble Supreme Court reported as (2014) 15 SCC 715 is equality based on the principle that erroneous order based on concealment of facts cannot be perpetuated under the guise of equality under article 14 of the Constitution of India.*

**15. The Commission, on consideration of the facts of the case of Sh. R.S.Lambra along with the facts of the case of the applicant, Sh. K.R Taneja, is of the considered view that as the true facts were not disclosed nor were necessary parties impleaded in case of Sh. R.S.Lambra, as pointed out above, benefits claimed by Sh. K.R.Taneja seeking parity with him cannot be granted in view of the Hon'ble Supreme Court reported as (2014) 15 SCC 715 that equality based on the principle that erroneous order based on concealment of facts cannot be perpetuated under the guise of equality under article 14 of the Constitution of India.**

**16. Para 2(ii) of the representation:** Inspite of receipt of an advice from the O/o Chief Secretary, Haryana vide Memo No. 22/153/2015-2GS-II dated 28.06.2016 (copy also supplied to me by HERC regarding payment of balance earned leaves, payment of earned leaves earned by me during service in HERC has not been released to me. Relevant part of the advice is re-produced as under:-

“It is intimated that if a person is re-employed with the benefit of previous service and pay protection, benefit of leave encashment beyond 300 days (counting both the organization) cannot be provided to him”.

Obviously, keeping in view that my case is very much similar to Shri Randhir singh Lambra, payment of earned leaves has not been released to me

so far even after the receipt of the advice as has been done in the case of Shri R.S. Lambra.

17. The Commission observes that the petitioner, vide his representation, has sought counting of his previous service for grant of pensionary benefits due to the fact that he has been denied the benefit of leave encashment beyond 300 days and therefore has sought parity with Sh. R.S.Lambra as Sh Lambra has also been denied leave encashment beyond 300 days that he had availed from his previous employer. Commission observes that the matter of leave encashment beyond 300 days by an employee needs to be examined only in light of applicable Haryana Civil Services Rules. It is further observed that the Additional Chief Secretary to Government, Haryana, Power Department, vide his Memo dated 26.2.2015, also conveyed that in case an employee has already availed leave encashment of earned leave of 300 days during his entire service he cannot avail the same again and that the benefit of leave encashment of 300 days can be availed by a Government Servant only once in his service. It is admitted fact that Shri K.R. Taneja has availed encashment of earned leave of 300 days of his service with HSSI&EC and in accordance with the Haryana Civil Services (Leave ) Rules, total benefits of leave encashment, availed of in any department or organization under any Government including Haryana Government at one or more of the above said (eligible) occasions cannot exceed 300 days or up to the limit prescribed from time to time. These occasions include termination due to retrenchment or abolition of the post (rule 65(1)7) and retirement on superannuation (rule 65(1)1). Therefore, the Commission is of the considered view

that once Shri Taneja has availed the benefits of leave encashment of 300 days he is not entitled for any further leave encashment benefit. The grant of leave encashment beyond 300 days would be in contravention of the Civil Services Rules irrespective of the fact whether his past service is counted for grant of pensionary benefits or not and has no bearing on the matter of grant of pensionary benefits to Sh K.R.Taneja considering the similarity of his case with Sh. R.S.Lambra.

**18.** The Commission, therefore is of the considered view that the denial of leave encashment to Sh. K.R.Taneja for his accumulated leave for his service with HERC is due to the fact that he has already availed of maximum allowable days for which encashment is allowed as per the rules applicable to his service with HERC. It is also noted that the leave encashment to Sh. R.S.Lambra was also denied in view of the fact that he has already availed of encashment of 300 days of accumulated leave and the service rules do not permit any payment beyond 300 days of accumulated leave. Therefore, the presumption of Sh K.R.Taneja that he is entitled to counting of his previous service with HSSI&EC in view of denial of leave encashment is unfounded, having been denied in light of applicable rules only.

**19. Para 2(ii) of the representation: only after considering my case similar to Shri Randhir Singh Lambra by the HERC, my Service Book and other information has been got collected from HSSI&EC for release of my full pension. Information sought from me in this regard, has also been supplied vide my ibid letter dated 05.03.2018.**

20. Commission observes that the service record of Sh. K.R.Taneja was got collected from his previous employer for verification of facts submitted by him in his request for grant of pension by considering his previous service with HSSI&EC. Hence, mere collecting of records cannot be said to bestow any benefits on the applicants unless the same have been specifically granted.

**21. Considering the request of Sh. K.R.Taneja for granting him pension by taking into account his past service with HSSI&EC.**

22. From the service record of Sh K.R.Taneja, it is observed that he was appointed on deputation with HERC on 05.02.2002. However, his services were retrenched from his parent department w.e.f. 30.06.2002 and in consequence thereof, he was relieved from the service in HERC on the same date. He was granted retrenchment benefits from HSSI&EC in accordance with law including retrenchment compensation, gratuity and leave encashment. Thereupon, he was also granted pension for his service with HSSI&EC from the EPF authorities and he continues to avail of the same till date.

Subsequent to his retrenchment, upon his request, he was engaged on contract basis with HERC w.e.f.25.07.2002 on a consolidated remuneration. On 02.01.2003, HERC issued advertisements for the post of PA and Sh. K.R. Taneja also applied for the same. Upon being selected, he joined on regular basis as PA in the pay scale of Rs.5500-9000/- w.e.f.29.05.2003. He was granted increments and promotions from time to time also. Upon reaching the age of superannuation, he was retired from the services of HERC w.e.f.31.05.2013 and was granted

pension for his 10 years and 2 days of service with HERC and he continues to avail of the same till date.

It is pertinent to mention that HERC employees were covered under Contributory Provident Fund scheme w.e.f October, 2004 to March 2013. However, in consequence of judgement in CWP 21252 of 2012, the employees of HERC including Sh. K.R.Taneja, got covered under regular pension scheme as applicable to the employees of Haryana Government and HERC directed all employees to withdraw their CPF contributions and deposit the same with HERC so that they could be covered under the regular pension. Sh Taneja, instead of withdrawing the CPF contribution, deposited an equivalent amount from his savings and continues to avail of pension from CPF authorities for his service with HERC in addition to the pension being received by him from HERC.

23. The case of grant of pension to Sh. K.R.Taneja was referred to legal rembrancer, Haryana, who forwarded the matter to Advocate General Haryana for his opinion. The query in the matter as framed by Id. Advocate General, Haryana is as given below:

**i) Whether the ex-employee of HSMITC Haryana Small Scale Industrial and Export Corporation HSSI&EC who were retrenched, and appointed in the HERC are entitled to calculate the past service rendered by them either with HSMITC or HSSI & EC before their retrenchment can be calculated for pension & other retiral benefit after superannuating from HERC?**

ii) .....

**iii) Whether the cases of the employees whose particulars have been given in the above referred letter can be treated differently ignoring the earlier judgments in R.S.Lambra's case ? If so then the reasons?**

24. The Ld Advocate General has observed that considering the application of Sh. K.R.Taneja for counting of his service with HSSI&EC That as far as the appointment of the present representationist in the HERC is concerned, the same has been made in pursuance to the fresh advertisements and is neither in continuation to the service rendered with HSMITC/HSSI & EC nor they were absorbed/adjusted but all were retrenched on 30.6.2002 with advance payment of one month's salary for the month of July 2002. The initial appointments were on contract basis there is a break in service and even after their initial appointments on contract basis the representationists were appointed on permanent basis in pursuance to fresh advertisements. Therefore at the best their contract period of services can be counted for pension purposes as per existing govt. pension policy as per judgment of Hon'ble High Court in CWP No. 14088 of 2012 decided on 9.10.2013 and not the earlier service rendered with HSMITC/HSSI & EC. The O.M. dated 7.1.2002 as applied by the Ld. Single Judge while deciding CWP No. 7327 of 2015 is not applicable as relevant para 4 & 5 has been considered by the Hon'ble Division Bench in para 18 of order passed in LPA No. 1105 of 2017 decided on 29.5.2018. Similarly as per Rule 2.8(a) of the Punjab Civil Services Vol.II as applicable to State of Haryana which lays down that the Govt. employees



cannot earn two pensions on the same post at the same time or by the same continuous service. The Ld. Advocate General in his opinion dated 23.04.2019 has observed as below:

viii) *That the representationists are also not entitled to the benefit on the basis of parity as claimed with Sh. R.S.Lambra as earlier the similar prayer has been dismissed by the Hon'ble High Court while adjudicating CWP No. 24484 of 2011 titled Jai Narain Kaushik & ors. Vs. State of Haryana against which LPA No. 570 of 2012 has also been dismissed on 4.2.2014 and LPA No. 857 of 2014 dismissed on 12.8.2014 same view has been followed by Hon'ble Division Bench in LPA No. 1105 of 2017. Thus the above stated decisions were not brought to the notice of Hon'ble High Court or Hon'ble Supreme Court when R.S.Lambra's case earlier adjudicated. Even in LPA No. 570 of 2012 decided on 4.2.2014. SLP (C) No. 36529-30 of 2014 by the aggrieved employee is still pending for adjudication.*

ix) *That when the representationists were retrenched from the HSMITC/HSSI&EC there was no promise of adjustment/absorption in future in any of the Govt. department. Even when they applied for in HERC in pursuance to a fresh advertisement they applied independently, accepted the terms and conditions of the contractual appointment independently and also when they were appointed on permanent basis neither such assurance was given by HERC nor they raised any objection & never claimed any such right which they are claiming now belatedly. They were not granted benefit of pay protection and the same was appears to be declined if anyone claimed. Apart from above the*

*noting qua Sh. K.R. Taneja sent to this office again appears to be not as per the official record as he was initially appointed on contract basis, thereafter on permanent basis and from 7.5.2007 till the date of superannuation i.e. 31.5.2013 he remained on deputation with HUDA. Thus service rendered with HUDA, HERC or the govt. cannot be compelled to pay the pension and even if for the sake of argument it is assumed that Sh. K.R.Taneja is entitled to the claimed relief (though specifically denied), the proportionate share of pension amount is required to be borne by the HUDA. Similarly there was no promise either by the govt. or any other authority for their adjustment by the govt. on any count. Same view has been taken by Hon'ble Supreme Court in a reported case i.e. (2006) 4SCC 132 which also disentitled to the claimed relief by the representationist.*

*x) That apart from above, the similar controversy has again been decided by the Hon'ble Single Judge in bunch of writ petitions including CWP No. 11797 of 2016 decided on 26.3.2019 relying upon decision in LPA No. 1105 of 2017 and also considered the various judgments relied upon by the Ld. Single Judge in CWP No. 7327 of 2015 and held that the retrenched employees upon their appointment on a fresh post or adjustment are not entitled to grant the benefit of earlier service rendered with the earlier employer for any purpose.*

25. The Commission has considered the request of Sh. K.R.Taneja in light of the opinion rendered by Ld Advocate General Haryana and in light of various judgments referred above and is of the considered view that the benefit of past service rendered by Sh. K.R.Taneja with HSSI&EC cannot be granted in view of

the facts of service as mentioned at para 22 of this Order. It is further observed that the services of Sh. K.R.Taneja in HERC were neither in continuation of his service with HSSI&EC nor were under any scheme of the State Government formulated for absorption of retrenched employees. He was also not absorbed in HERC in continuation of his service on deputation from HSSI&EC.

26. The Commission has also examined the judgement in CWP 3792 of 2012 and CWP 11987 of 2015 as submitted by Sh. K.R.Taneja during the process of hearing. It is observed that as mentioned in the impugned judgement, the petitioners were reappointed in HSAMB keeping in view reservations provided by the State Government for retrenched employees. The fact that the petitioners in judgement in CWP 3792 of 2012 and CWP 11987 of 2015 were appointed under reservation provided by the State Government for such retrenched employees distinguishes the case of Sh K.R.Taneja in view of the admitted fact that his appointment was not made under any such scheme. Therefore the ratio is decided against Sh K.R.Taneja.

27. The representation dated 11.06.2018 ( Annexure P-36) of Sh. K.R.Taneja is accordingly disposed of in view of the observations of the Commission as above.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 03.06.2019.

Date: 03.06.2019

(Naresh Sardana)

(Jagjeet Singh)

Place: Panchkula

Member

Chairman