

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL

**Sub: In the matter of the violation of MP Vidyut Sudhar Adhiniyam 2000, Electricity Act, 2003, MP Vidyut Sudhar 1st transfer scheme – gazette notification dated 13.06.2005 and gazette notification MPERC (Terms and Conditions for Allowing Pension and Terminal Benefits Liabilities of personnel of the Board and Successor Entities) Regulations, 2012 notified on 13.04.2012 by respondent and seeking necessary order from MPERC against the default in timely payment of pension and D.A. to electricity pensioner by electricity companies in violation of decision of MPERC passed in Petition No.13 of 2018.**

**ORDER**

(Date of Order: 29<sup>th</sup> September' 2023)

**Electricity Pensioners Hit Rakshak Sangh** : **Petitioner**

V/s

1. The Energy Dept. MP Govt.
2. M.P. Power Management Co. Ltd, (MPPMCL) : **Respondents**
3. M.P. Power Transmission Co. Ltd. (MP Transco)
4. M.P. Power Generating Co. Ltd. (MP Genco)
5. M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., (East Discom)
6. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd, (Central Discom)
7. M.P. Paschim Kshetra Vidyut Vitran Co. Ltd, (West Discom)

Shri Ashok Kumar Gupta appeared on behalf of the Petitioner.

Shri Manoj Dubey, Advocate, Shri Swapnil Ganguly, Deputy Advocate General, and Shri S.G Hiremath, Jt. Director appeared on behalf of the Respondents.

2. The subject petition has been filed by the petitioner who is registered regional Association and represents the pensioners of erstwhile Board and its successor companies, to seek an appropriate order under section 142 and 146 of the Electricity Act 2003 from the Commission against the default in timely payment of pension and dearness allowance to Electricity Pensioners' and non-compliance of provisions of Act/ Regulations/ orders viz. (i) the MP Vidyut Sudhar Adhiniyam 2000, (ii) the Electricity Act, 2003, (iii) MP Vidyut Sudhar 1<sup>st</sup> transfer scheme dated 13.06.2005, (iv) MPERC (Terms and Conditions for Allowing Pension and Terminal Benefits Liabilities of Personnel of the Board and Successor Entities) Regulations, 2012 and, (v) directives issued by the Commission vide order dated 11.05.21 in Petition No. 13/2018. Petitioner has made following prayer :-

- a. Admit the petition and take necessary action under Section 142 and 146 of the Electricity Act, 2003 against Respondent Electricity companies for default in payment of pension, Dearness Relief (D.R.) and other terminal benefits to pensioners.
  - b. Issue necessary orders to Electricity Companies and MP Govt. to pay difference of D.R. actually paid and required to be paid as decided by the Central Govt. to the pensioners as per their service terms & conditions with erstwhile MPEB/MPSEB
  - c. Issue necessary order to MP Govt. to make permanent arrangement for the payment of pension, DR at the rate of, and as & when declared by Central Govt., to its employees (without waiting for State Govt. order as before) & other terminal benefits in timely manner from Govt. fund.
3. The Petitioner in the subject matter has made the following broad submissions:
- (i) Petitioner in his petition has submitted that Respondents have not complied the provisions of MP Vidyut Sudhar Adhiniyam 2000, Electricity Act, 2003, MP Vidyut Sudhar 1<sup>st</sup> transfer scheme – gazette notification dated 13.06.2005, MPERC Regulations namely MPERC (Terms and Conditions for allowing pension and terminal benefits liabilities of personal of the board and successors entities) Regulations, 2012 and directions issued in MPERC order dated 11.05.21 in P. No 13/18. It is stated that due to non-compliance of aforesaid Regulations and directions issued by the Commission, the pensioners are not getting their pension and DR on time and therefore appropriate penal action be taken against the Respondent under section 142 and 146 of Electricity Act 2003.
  - (ii) The petitioner has referred section 24(2A) and 24 (2C) of MP Vidyut Sudhar Adiniyam 2000; Section 65 of the Electricity Act 2003, Rule 8, 10 and 11 of MP Vidyut Sudhar 1<sup>st</sup> transfer scheme – gazette notification dated 13.06.2005 along with MPERC (Terms and Conditions for allowing pension and terminal benefits liabilities of personal of the board and successors entities) Regulations, 2012 and directions issued in MPERC order dated 11.05.21 in P.No 13/18 in this regard.
  - (iii) The petitioner has raised following grounds in his petition :
    - a. *Because by defaulting in paying pension and dearness relief to electricity pensioners on time and at the rate and date declared by the Central Government, the electricity companies are in violation of Section 24(2A) and Section 24(2C) of the Madhya Pradesh Electricity Reform Act 2000 and that Madhya Pradesh Electricity Reforms First Transfer Scheme - Rules 8, 10 and 11 of Gazette Notification dated 13.06.2005 are being violated.*
    - b. *Because the power companies have failed to make arrangements to pay pension, dearness relief and terminal benefits and other benefits to the power pensioners through the Terminal Benefits Trust and are not depositing sufficient amount in the Terminal Benefits Trust and using the amount of terminal benefits elsewhere while recovering it from the consumers through tariff, thus they are violating provisions*

*of the Gazette Notification dated 13.04.2012 MPERC (Terms and conditions for allowing pension and terminal benefits liabilities of personnel of the board and successor entities) Regulations 2012 issued by MPERC and the order passed in petition number 13/2018 dated 11.05.2021 and the tariff order approved in petition number 04/22.*

- c. *Because the electricity companies are increasing their financial crisis by providing subsidy to the consumers without receiving the amount of subsidy being given to the electricity consumers in advance from the Madhya Pradesh Government and due to the alleged financial crisis, the payment of pension and terminal benefits to the electricity pensioners is not being made and they are making defaults in timely payment of dearness relief and in depositing adequate funds in the Terminal Benefit Trust, which is a direct violation of Rule 65 of the Electricity Act 2003.*
- d. *Because the Honorable Commission has been given the power and jurisdiction to accept the present petition and take punitive action under Section 142 and Section 146 of the Electricity Act 2003.*

- 4. After the motion hearing held on 07.02.23, the Commission vide daily order dated 10.03.2023 admitted the Petition for further deliberations and directed to issue notices to Respondents.
- 5. At the hearing held on 11.04.2023, Counsel for Respondents informed that the copy of Petition has not been served to them by the Petitioner and requested to provide the same. The Commission directed the Commission Secretary to ensure that copies of Petition be served to Respondents within three days by the Petitioner. Respondents were directed to file reply within three weeks thereafter.
- 6. At the hearing held on 23.05.2023, Counsel for the Respondents sought two weeks' time for filing the reply. The Commission considered the request and allowed two weeks' time for filing reply by Respondents.
- 7. The Respondents vide reply dated 05/06/2023 made following broad submission: :
  - (i) *That, by way of instant petition the Petitioner, as a representative association/ society of the pensioners of erstwhile Madhya Pradesh Electricity Board/ State Electricity Board and its Successor Companies has, inter-alia, prayed that necessary action be initiated against the respondents under Section 142 and 146 of the Electricity Act 2003 for alleged default in payment of Pension, DA and other Terminal Benefits to the pensioners. It has also been requested through the prayer that the Hon'ble Commission may issue orders to Electricity Companies and M.P. Government to pay difference of DA along with appropriate interests. Prayer has also been made through the petition requesting Hon'ble Commission to direct the M. P. Government to make permanent arrangement for the payment of Pension. DA at the rate as and when declared by the Central Government to its employees without waiting for State Government orders and other terminal benefits in timely manner from a Government fund.*
  - (ii) *It is submitted that the petition, by and large, takes the form of a prayer without*

*providing any specific pleads and is vague in its supporting composition. The petitioner, while seeking action under Sections 142 and 146 of the Electricity Act, 2003, has not pointed out which specific provisions of the said Act and Rules, Regulations and Orders notified under the same, that have been referred as alleged violation committed by the Respondents.*

(iii) *That, the State Government is a formal party in the petition, and the role of the State Government is limited to the policy issues and with regard to exercise of the powers delegated to it through legislation, namely the Electricity Act, 2003.*

(iv) *It is submitted that consequent upon enactment of the Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000 and the Electricity Act, 2003, the State Government notified Madhya Pradesh Electricity Reform First Transfer Scheme Rules, 2003 vide notification dated 30-09-2003. Subsequently some of the rules related to pension & terminal benefits of the employees were amended vide notifications dated 13-06-2005 and 24-02-2012. These rules establish and device a system/mechanism for payment of pension and terminal benefits of the retired employees of erstwhile MPEB/ MPSEB and as well as for those who are transferred to the State Power Companies. Accordingly, a terminal benefit trust has also been created by the State Government. The relevant rules in this regard are as under:-*

*7(10)(c) The amount of pension and other terminal benefits payable each years, as well as subscription to the fund to be built-up for payment of pension and other terminal benefits in future, to the personnel of the Board, who retire after the date of transfer, shall be a charge on the revenues of the respective transferee, till the requisite fund is built up with the Terminal Benefit Trust.*

*7(11)(c) The amount of pension and other terminal benefits payable during each year, as well as subscription to the fund to be built-up for payment of pension and other terminal benefits in future, to the existing pensioners as on the date of transfer, shall be a charge on the revenues of the Transco till the requisite fund is built up with the Terminal Benefit Trust.*

(v) *It is further submitted that along with the aforesaid notification dated 24-02-2012 and as per the provisions of the Electricity Act 2003 and M. P. Vidyut Sudhar Adhiniyam, 2000, the Hon'ble Commission has notified MPERC (Terms & Condition for allowing pension and terminal liabilities of personnel of the Board and Successor Entities) Regulations, 2012. As per these Rules/ Regulations, the fund for pension and other terminal benefits in respect of personnel of the Board already retired or transferred to the successor entities shall be allowed in the manner provided in these regulations through tariff to be determined by the Commission for the successor entities from time-to-time.*

(vi) *It is submitted that the State Government has already made the enabling provisions regarding payment of pension and terminal benefits of personnel of Board retired or transferred to the Successor Companies.*

(vii) *It is provided by the State Government that till the requisite fund is built-up with the Terminal Benefit Trust Fund, the amount of pension and other terminal benefits payable during each year, as well as subscription to the fund shall be a charge on*

revenues of the Power Companies as laid down in Rules 7(10)(c), 7(11)(c) and 7(10 A)(iv) of M P Electricity Reforms First Transfer Scheme Rules, 2003. These provisions stipulate that the pension and other terminal benefits are paid each year from the revenues of the Power Companies.

- (viii) *It is to submit that the MPERC (Terms and Conditions for allowing Pension and Terminal Benefits of Personnel of the Board and Successor Entities) Regulations 2012, does not specifically deals with delays, if any, and neither does classify such delays to be an offence and treat it as liable for any penalty.*
- (ix) *The issue of Dearness Allowance to be paid at the rate and from the date in parity with that being paid by the Central Government is a policy matter, it is submitted, thereby, that such issues to be raised are beyond the jurisdiction / domain of the Hon'ble Commission and as such the same may be treated as not tenable.*

*Response to chronology of events provided in the petition:*

- (x) *Regarding the chronology of events as submitted by the Petitioners no comments are being offered at this stage except for the fact that:-*
  - a. *The Companies, arrayed in the cause-title Respondents no. 4 to 9 are Companies fully owned by the Government of Madhya Pradesh, however, the Companies are administratively independent & functioning under their own Board of Directors.*
  - b. *The Government of Madhya Pradesh has been providing subsidies claimed by the concerned Companies.*
  - c. *No default in payment of pension liabilities has been committed by the Companies till date.*
- (xi) *Apropos the grounds of petition as tendered by the Petitioner, it is submitted that the answering Respondents have not violated any of the provisions of Section 24 (2A) & (2C) of the Vidyut Sudhar Adiniyam, 2000 or the Sections 8, 10, 11 of the M P Electricity Reforms First Transfer Scheme Rules, 2003. It is also submitted that no default in payment of pension has been committed by the Companies. Further, the matter of payment of DA at Central Government rates are neither covered in the aforementioned Rules/Regulations, nor does it may fall under the purview of the Hon'ble Commission.*
- (xii) *That, Petition No. 13/2018, on similar grounds has already been decided by the Hon'ble Commission. The same was subsequently appealed, by way of Appeal No. 299/2023, before the learned Appellate Tribunal for Electricity, New Delhi and the same has been decided / disposed of. As such the subject matter and substantive reliefs claimed in present are hit by celebrated principle of res-judicata.*
- (xiii) *That, in line with the provisions of the MPERC (Terms & Conditions for allowing Pension & Terminal Benefits Liabilities of the Board and Successor Entities) Regulations, 2012, claims pertaining to Terminal Benefits, treating as a separate item, are being raised through the ARR/True-up of MPPTCL every year.*
- (xiv) *That, further, it is submitted that the above Regulations determine the matter of*

*funding of pension & other terminal benefits, methodology of meeting liabilities & payment procedure only.*

*Submissions on the prayer made in the petition:*

- (xv) *The Petitioner has prayed for necessary action against all Companies under Section 142 & 146 of the Electricity Act, 2003 for default in payment of Pension, DA & other Terminal Benefits. In this regard, it is submitted that no default has been committed by the Companies. As such the prayer be disallowed.*
- (xvi) *The Petitioner has prayed that Hon'ble Commission may direct the Companies & State Government to pay Dearness Allowances at par with the Central Government, along with interests on difference. In this regard, it is submitted that as there is no basis on which such claim, has been raised and as such the same is clearly untenable. Furthermore, such issues may not find redressal before this forum.*
- (xvii) *Regarding the prayer requesting necessary orders from the Hon'ble Commission to direct the M. P. Government to make permanent arrangement for the payment of Pension, DA at the rate par with Central Govt. & other terminal benefits in timely manner from State Govt. fund, it is submitted that under the provisions of Section 131 of the Electricity Act, 2003, the six successor companies were formed from unbundling of the erstwhile M P State Electricity Board. These Companies were formed under the Companies Act, 1956 and the Registrar of Companies issued the Certificate for commencement of business to these companies. Further, these Companies operate under their own separate Board of Directors. As such, it is submitted that the prayer rendered by the Petitioner for passing directions on the matter to the State Government is not only inappropriate but also may be beyond the jurisdiction of the Hon'ble Commission.*
- (xviii) *Apropos the above submission, it is tendered that the Petition is sans-merit and liable for dismissal.*
- (xix) *It is respectfully prayed that the Hon'ble Commission may be pleased to dismiss the Petition as not maintainable.*

8. At the hearing held on 04.07.2023, Ld. Counsels for respondents raised preliminary objections with regard to maintainability of petition under Section 142 of the Electricity Act, 2003 on following two grounds :

- a) Service matter related issues are raised which are akin to individual grievance which are violated by and thus cannot be raised by the Association in light of orders passed by the Hon'ble High Court, Principal bench, Jabalpur in the matter of Prabhat V/s Barkatulla University; and Writ Appeal 91/2022, whereby it is held that service matters are akin to individual grievance, and thus cannot be raised by an Association before the Court unless Association can satisfy the Court that if an adverse decision is given in that petition all the members of that association or "body of individuals" will be bound by the decision. It has also been held that if the same principle is not followed, immediately after adverse decision, any other member of said association may come before the Court in an

independent writ petition saying that he has not been heard and he has not authorized such association or office bearer or member to represent him in the litigation. Therefore, it is necessary such association must resolve that who authorized the Association to file such litigation. The resolution should also mention that the members will abide any decision rendered in such litigation.

- b) The petitioner has not pointed out any specific provisions of the said Act, Rules, Regulations and Orders passed by the Commission which are violated by the Respondents.

9. The Commission directed the respondents to provide the copy of additional submission to the Commission as well as serve it to the Petitioner within 7 days. The Petitioner was directed to file comprehensive rejoinder within 3 weeks thereafter.

10. At the hearing held on 22.08.2023, Petitioner sought two weeks' time to file the rejoinder which was granted by the Commission. Vide affidavit dated 04/09/2023, petitioner submitted rejoinder whereby following broad submission were made :-

- i. *The petitioner has contested the Respondent's submission that State Government has already made enabling provisions regarding payment of pension and terminal benefits. Despite the MPERC (Terms and Conditions for allowing Pension and Terminal Benefits Liabilities of Personnel of the Board and Successor entities) Regulations 2012 , being effective vide Gazette Notification dated 13.04.2012, funds, were not deposited in the Terminal Benefits Trust till the year 2018 and that no authentic assessment has been done as to how much adequate funds are actually required in this Trust. The actual quantum of funds required in the Terminal Benefits Trust has not yet been made public. Labor organizations are not represented in the Trust. Proper information about the Trust is not available on the website or on any portal. There is no centralized cell to redress the grievances of pensioners. There was a default in pension payment for the month of September 2022 due to lack of funds. Other retirement facilities like medical facilities are not provided and there is excessive delay in payment of retirement benefits. Incidents like these show that the State Government has failed to adequately manage the responsibilities of the pensioners.*
- ii. *The petitioner has contested the Respondent's submission that Sections 24(2A) and 24(2C) of the Electricity Reforms Act 2000 and Sections 8, 10 and 11 of the Madhya Pradesh Electricity Refurbishment First Transfer Scheme Rules 2003 have not been violated by the respondents and there has been no default in payment of pension. It is also contested that the subject of dearness relief at the rate of the Central Government is not covered by the above rules and regulations, nor does it come under the purview of the Commission. The petitioner submitted that in erstwhile MPSEB (Madhya Pradesh State Electricity Board) dearness allowance/relief were used to be at the rate of Central Government, which were subsequently made inferior by the successor power companies, through linking it with State Govt approved DA , thus leading financial loss to pensioners.*

- iii. *The petitioner has contested the respondent's argument that issue of payment of Dearness Allowance by the Central Government, is a policy matter and therefore, such issues are beyond the jurisdiction of the Hon'ble Commission. In the matter, the petitioner has made a reference of Regulation 2 (f) of MPERC (Terms and Conditions for Allowing Pension and Terminal Benefits Liabilities of Personnel of the Board and Successor Entities) Regulations, 2012, which provides that "Terminal benefits shall mean the gratuity, pension, dearness relief and other applicable relief, medical benefit and other applicable benefits including the right to have the appropriate revisions in the above benefits consistent with the practice that were prevalent in the Board" .*
- iv. *The petitioner has also contested respondent's submission that there has been no default by the companies in payment of pension liability. Referring to the incident of default, it is informed that monthly pension for September 2022 has been paid till October 7, 2022 and even three-four days thereafter. It is submitted that as per the rules, monthly pension should be paid on the last day of the same month or the first day of the next month, but the pension is paid from the first day of the next month till the next three-four days.*

11. At the hearing held on 12.09.2023, Petitioner as well as Respondents completed their arguments. Petitioner in its oral submission has urged the Commission that they are not insisting any harsh or punitive action against Respondent under section 142 of the Electricity Act, 2003. As such being ex-employee of the Respondents, all they want is directions from the Commission to the Respondents to make suitable and permanent arrangement for the payment of pension, DR at the rate as & when declared by Central Govt., to its employees (without waiting for State govt. order as before) & other terminal benefits in timely manner from Govt. fund.

**The Commission's observations and finding:**

12. The Commission perused the submissions and heard the arguments of parties. The petitioner filed the subject petition against respondents under section 142 of the Electricity Act 2003 on non-compliance of directions of the Commission on account of default in payment of pension, D.R. and other terminal benefits to pensioners by the Respondents. Petitioner sought following relief :
- i. Issue necessary orders to Electricity Companies and MP Govt. to pay difference of D.R. actually paid and was required to be paid at the rate and from the date declared by Central Govt. to its employees, to the pensioners as per their service terms & conditions with erstwhile MPEB/MPSEB
  - ii. Issue necessary order to MP Govt. to make permanent arrangement for the payment of pension, D.R. at the rate and from the date declared by Central Govt. to its employees, without waiting for State Govt. order as before & other terminal benefits in timely manner from Govt. fund.
13. The petitioner in its submission stated that despite the Commission's Regulations viz. MPERC (Terms and Conditions for allowing Pension and Terminal Benefits Liabilities of Personnel of the

Board and Successor entities) Regulations 2012 in place, funds, were not deposited in the Terminal Benefits Trust till the year 2018 and that no authentic assessment has been done as to how much adequate funds are actually required in this Trust. There is no centralized cell to redress the grievances of pensioners. There was a default in pension payment for the month of September 2022 due to lack of funds. Other retirement facilities like medical facilities are not provided and there is excessive delay in payment of retirement benefits. Incidents like these show that the State Government has failed to adequately manage the responsibilities of the pensioners.

14. The Respondents submitted that the State Government has already made the enabling provisions regarding payment of pension and terminal benefits of personnel of the Board retired or transferred to the Successor Companies. Consequent upon the State Govt. Rules, the Commission has notified MPERC (Terms & Condition for allowing pension and terminal liabilities of personnel of the Board and Successor Entities) Regulations, 2012. As per these Rules/ Regulations, the fund for pension and other terminal benefits in respect of personnel of the Board already retired or transferred to the successor entities shall be allowed in the manner provided in these regulations through tariff to be determined by the Commission for the successor entities from time-to-time. It was submitted that aforesaid MPERC Regulations, 2012, does not specifically deals with delays, if any, and neither does classify such delays to be an offence and treat it as liable for any penalty. With regard to prayer requesting necessary orders from the Hon'ble Commission to direct the M. P. Government to make permanent arrangement for the payment of Pension, DA at the rate par with Central Govt. & other terminal benefits in timely manner from State Govt. fund, Respondent submitted that under the provisions of Section 131 of the Electricity Act, 2003, the six successor companies were formed from unbundling of the erstwhile M P State Electricity Board. These Companies were formed under the Companies Act, 1956 and the Registrar of Companies issued the Certificate for commencement of business to these companies. Further, these Companies operate under their own separate Board of Directors. As such, the prayer rendered by the Petitioner for passing directions on the matter to the State Government is not only inappropriate but also may be beyond the jurisdiction of the Hon'ble Commission. The issue of Dearness Allowance to be paid at the rate and from the date in parity with that being paid by the Central Government is a policy matter, thereby, such issues to be raised are beyond the jurisdiction / domain of the Hon'ble Commission and as such the same may be treated as not tenable. Respondents further raised issue of maintainability of the petition in light of orders passed by the Hon'ble High Court, Principal bench, Jabalpur in the matter of Prabhat V/s Barkatulla University; and Writ Appeal 91/2022.
15. Going through the arguments put forth by the respondents in regard to maintainability of petition, the Commission observed that grounds raised by the Respondents are not tenable in light of provisions under section 142 of the Electricity Act 2003. As per this provision any person can file complaint before the Commission. The Commission thus overruled the objections of the Respondents on the issue of maintainability of the petition on the basis of provision of Section 142 of Electricity Act, 2003, which is reproduced below:-

**“ In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction”.**

16. The Commission has placed reliance on Respondent’s reply that the role of the State Government is limited to the policy matters and framing appropriate Rules for implementing Transfer Schemes under the Electricity Act 2003 and accordingly, State Govt. has made enabling provisions for discharge of pension and terminal benefits liabilities of personnel of MPSEB transferred to the successor Companies. In light of above Rules, the Commission has also notified MPERC (Terms & Condition for allowing pension and terminal liabilities of personnel of the Board and Successor Entities) Regulation, 2012. As per provisions of State Govt. Rules and MPERC Regulations, one of the statutory functions of the Respondents was to fund the Terminal Benefit Trust fund in the manner prescribed by the State Govt. and directed by the Commission through tariff orders.
17. It is pertinent to note that the Commission vide order dated 15/02/12 in Petition no 03/12 filed by the successor entities of MPSEB (in the matter of funding of pension and other terminal benefit liabilities of the pensioners/ employees working in the successor entities of MPSEB), had decided to delink issue of pension payment and related matters from Tariff Regulations and frame a separate Regulation for this purpose. Accordingly, the Commission had notified Regulations namely MPERC (Terms & Conditions for allowing Pension and Terminal benefits liabilities of Personnel of the Board and Successor Entities) Regulations 2012 on 20.04.2012 in pursuance to provisions under amended Transfer Scheme Rules 2003, Madhya Pradesh Vidyut Sudhar Adhinyam 2000 and the Electricity Act 2003. These Regulations are binding on the successor entities of MPSEB.
18. By way of the said Regulations, there are comprehensive provisions for funding of pension and the terminal benefits in respect of personnel including existing pensioners of the board and the pensioners of its successor entities. The Regulations provide provisions for contribution to the fund through a charge on the revenue of the transferee companies.
19. Further, the Commission vide order dated 11/05/21 in Petition No. 13/2018 filed by M.P. Vidyut Mandal Abhiyanta Sangh and M.P. Vidyut Mandal Pensioners Association (Intervener) against Respondents viz MPPMCL, East/West/Central Discom/ MP Transco/ State Govt. had observed (at para 18 of said order) that Pension and terminal benefits are the succor for the post-retirement period and it is not a bounty payable at will, but a social welfare measure as a post retirement

entitlement to maintain the dignity of employees. As regard to legal position on obligation of Respondents to pay pension and other terminal benefits, the Commission, having referred to various pronouncements of Hon'ble Supreme court of India, (at para 20 – 23 of said order) observed that the contention of Respondents that due to scarcity of funds, they were unable to deposit the requisite amount in the terminal benefits Trust fund, is not at all sustainable and not a valid, legal and reasonable ground. The Commission through the said order issued several directions to Respondents and imposed penalty on Respondents viz. MPPMCL/East, West and Central Discoms, on non-compliance of provisions of said Regulations and directives issued by it in Retail supply tariff orders time to time.

20. It is apparent from the records that the Commission allowed total Rs 1170 Crore till now, to the Respondents in ARR and Retail Supply Tariff Orders for funding the terminal benefit Trust. Moreover, the funding of pension and other terminal benefits is allowed through tariff as a pass through in the manner provided for in MPERC (Terms and conditions for allowing Pension and Terminal Benefits liabilities of Personnel of the Board and successor entities) Regulations, 2012. During the FY 2022-23, the Commission allowed all pension expenses including DA hike of 6%. The expenditure on pension payments was part of ARR approved by the Commission and the Distribution Companies were recovering these expenses in the form of retail tariff from end consumers. As per submission of the Petitioner there was a default in pension payment for month of September 2022. It is also brought to notice of the Commission that so far, no authentic assessment has been done by Respondents as to how much adequate funds are actually required in this Trust. It is noteworthy that the Commission vide its order dated 11.05.2021 in P.No 13 of 2018 in the matter has given specific directions to Respondent MP Power Transmission Company Ltd.. The same are reproduced below :-

- a. **Within three months of the date of issue of this order, MP Power Transmission Company Limited shall order for an actuarial valuation to determine size of the fund required to make the Terminal Benefit Trust self- sufficient for discharging the Pension and Terminal benefit liabilities in order to secure future of the employees as provided in the Transfer Scheme Rules.**
- b. **Till such time that actuarial valuation is done, the Commission will continue to provide for a fixed amount towards creating a corpus for meeting pension and terminal benefits related liabilities as was done in the past through the Retail Supply Tariff Orders. However, henceforth the amount that is going to be allowed by the Commission for the aforesaid purpose in Retail Supply Tariff Orders, shall be deposited into an Escrow Account which shall be opened in the name of MP Transco and it shall be the responsibility of MP Transco to transfer such amount in the Terminal Benefit Trust Fund account immediately.**

21. The Commission has observed that the petition is filed under Section 142 and 146 of the Electricity Act, 2003 and yet the Petitioner in the final hearing has not insisted on penalizing the respondent companies for non-compliance of the provisions of Act/Rules/Regulations or directions issued by the Commission. As such, the Commission has restrained itself from imposing any punishment in the matter.
22. Before parting with the case the Commission observes that there are reasons to believe that directions given in order dated 11.05.2021 in P. No 13 of 2018 have been violated by Respondent MP Power Transmission Company Ltd. with regard to carrying out actuarial valuation to determine the size of the fund required to make the Terminal Benefit Trust fund within stipulated time. The Commission therefore, directs the Respondent MP Power Transmission Company Ltd. to file the compliance report within three months and explain causes for delay in implementation of its order. Commission also directs the successor companies of M.P.SEB to utilize the amounts allowed in ARR towards pension and terminal benefits in proper heads by devising a fool proof mechanism to ensure timely payment of pension and other terminal benefits. In case the respondent companies fail to comply with these directions, they will have to explain to the Commission as to why not the default be treated as misappropriation of funds. With the above directions, this petition is disposed of.

**(Prashant Chaturvedi)**  
**Member**

**(Gopal Srivastava)**  
**Member (Law)**

**(S.P.S. Parihar)**  
**Chairman**