* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

\+ **LPA 436/2023 & CM APPL. 25706/2023**

BRAHAM SINGH MAVI ..... Appellant

Through: Mr. Sushil Kumar Jain, Advocate

versus

BANK OF INDIA ..... Respondent

Through: Mr. Rajat Arora, Mr. Niraj Kumar, Advocates

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**SUBRAMONIUM PRASAD, J**

1. The Appellant seeks to challenge the Order dated 14.02.2023, passed by the learned Single Judge in W.P.(C) No.9568/2018, dismissing the Writ Petition filed by the Appellant herein.

2. Facts of the case reveal that the Appellant herein was appointed as a Driver with the Respondent herein in 1978. It is stated that in 1994, a charge sheet was issued against the Appellant herein and the Departmental Inquiry culminated into a penalty of his 'removal from service' in 1995. It is stated that the Appellant was removed from service in 1995, i.e., after 17 years. It is stated that the statutory dues such as Provident Fund and Gratuity have not been released to him. It is stated that a circular was issued by the Respondent herein on 26.04.2018 seeking options from the employees to join the Pension Scheme, 1995. The Petitioner opted to join the Scheme and even got the requisite medical tests done, however his claim was rejected by

the Respondent *vide* letter dated 03.07.2018. Challenging the said rejection letter and non-payment of Gratuity and Provident Fund, the Appellant herein approached this Court by filing W.P.(C) No.9568/2018.

3. *Vide* the Judgment impugned herein, the learned Single Judge has dismissed the said Writ Petition. A reading of the Judgment impugned herein shows that the Appellant had restricted his claim only to release of his Provident Fund and gratuity and had not pressed his claim for pension. The learned Single Judge held:-

a) That during the mediation proceedings the Respondent had produced a bank statement and the same has been filed by the Appellant in the Writ Petition showing that a sum of Rs.93,808.44/- was credited in the Account No.TLN 3002 which coincides with the amount claimed by the Appellant herein towards Provident Fund and Gratuity. The learned Single Judge has held that the Appellant herein has not been able to establish that the bank statement produced by the Respondent is forged or fabricated.

b) That a civil Suit, being 723/2002, was filed by the Respondent in the Court of Civil Judge (Senior Division), Gurgaon in 2002 for recovery of Rs.1,54,414/- with interest against the Appellant herein wherein it is stated that the Appellant herein had availed a housing loan of Rs.75,000/- and an additional housing loan of Rs.25,000/- from the Respondent. The said loan was availed by the Appellant herein on the basis of personal guarantee of his wife and mortgage of his immovable property by deposit of its title deeds to secure repayment of the loan. The learned Single Judge has observed that in the plaint, it is stated that the Appellant had agreed to repay the loan with simple interest on reducing balance and that the Authorities have appropriated a sum of Rs.93,826.44/-, which was lying in the Provident Fund/Gratuity Fund of the Appellant, towards adjustment of the outstanding dues of the Appellant. The learned Single Judge further held that as per the plaint, after adjustment, a further sum of Rs.1,54,414/- became due and payable to the Bank. It is further held that the matter was compromised between the parties and a compromise deed dated 02.04.2005 was entered into between the parties under which it was agreed that the Appellant herein would pay a sum of Rs.90,000/- to the Bank by 30.04.2005.

4. On the basis of the above two grounds the learned Single Judge held that no material has been placed to the contrary by the Appellant herein and, therefore, the Writ Petition was dismissed.

5. In the present Appeal, the Appellant has once again raised the issue of non-payment of pension. The Appellant has also chosen to challenge the bank statement produced by the Respondent herein in the Mediation proceeding by stating that it was forged and fabricated. It is stated that the Bank has not produced any document regarding the housing loan transactions and the vehicle loan and, therefore, the Bank had not discharged its onus to show that any amount was payable by the Appellant herein. It is also stated that pursuant to the compromise, the Bank had not released the title deeds of the immovable property of the Appellant herein which ought to have been released had the matter been settled.

6. Heard the Counsel for the parties and perused the material on record.

7. Apart from stating the contentions raised in the Memo of Appeal, Learned Counsel appearing for the Appellant also draws the attention of this Court to an Order dated 29.05.2019, passed by the learned Single Judge wherein the learned Single Judge had directed the Deputy Commissioner of Police to investigate the matter and submit a report before the Court. He states that as per the report, the Bank has not produced any documents in support of the claim that Loan Account No.TLN3002, which had been claimed by the Bank as vehicle loan account of the Appellant herein, was in the name of the Appellant herein and the Bank officials also could not provide the details of the vehicle for which the loan was sanctioned. He, therefore, states that since the Bank was not able to produce any document to prove that the loan was not repaid, the learned Single Judge ought to have allowed the Writ Petition and ought to have directed for release of Gratuity and Provident Fund amount of the Appellant.

8. A perusal of the material on record shows that as per the Bank's policy, the loans, advances, cash credit registers are preserved for a period of 8 years and application forms of closed loans are preserved for 3 years. Since the policy of the Bank requires it to preserve the documents only for a period of eight years, the Bank cannot be faulted for not producing the documents. It was the duty of the Appellant to prove the contrary and the failure on the part of the Appellant herein to provide any document to the contrary is fatal to the case.

9. The Appellant was removed from the service in 1995. He has not chosen to file any petition claiming Provident Fund and Gratuity till 2018. The Writ Petition was filed only in the year 2018. The memo of appeal is silent as to whether the finding of the learned Single Judge that the Appellant has restricted his arguments only towards release of gratuity and

provident fund is wrong. If it is the contention of the Appellant that the said finding is incorrect then it was for the Appellant to file a review petition before the learned Single Judge. This Court is, therefore, not inclined to go into the question as to whether the Appellant was entitled to the Pension or not. In any event, the Appellant had been removed from the service on 29.12.1995 and there is no explanation on behalf of the Appellant for the delay in approaching the Court after 23 years.

10. Other than making an averment that the statement of account which was produced by the Bank during the Mediation proceedings, showing that a sum of Rs.93,808.44/- was credited in the Account No.TLN 3002, is false and fabricated, no material has been placed on record by the Appellant to prove the same. If it is the contention of the Appellant that the Bank statement is false and fabricated, then Writ is not the remedy and the Appellant has to file a Suit and lead evidence to show that the said statement is wrong.

11. The inference arrived at by the learned Single Judge on the settlement arrived at between the parties, also cannot be found fault with. Even though the relevant portion of the compromise deed has been quoted by the learned Single Judge, the same is once again been reproduced herein and the same reads as under:

> *"Suit of the Plaintiff may be decreed as prayed for against Defendant No. 1. If Defendant No. 1 pays Rs.90,000/- by 30-04-2005, the Decree would be deemed to have been satisfied for which Defendant No.1 has paid Rs.20,000/- to Plaintiff today and given a cheque Dated 30-04-2005 for Rs.70,000/- on Bank of India bearing No. 594111 to Plaintiff. If the cheque is dishonoured, Plaintiff will be entitled to recover the total decree amount from Defendant No. l and, mortgage property detailed in para 11 [f] of Plaint. Court fee may be refunded to Plaintiff."*

12. The above compromise deed shows that there was no claim that was left and there is nothing to show that the amount which was due and payable to the Bank has been paid by the Appellant. In fact, the Appellant has also not produced any material to show that he has paid a sum of Rs.90,000/- to the Bank as per the compromise deed or that the sum has not been adjusted against the amount which was due and payable to the Bank by the Appellant. This Court, therefore, does not find any infirmity in the Order of the learned Single Judge.

13. However, since disputed question of facts arose regarding payment of money, it is always open for the Appellant to approach the Civil Court to establish that the sum of Rs.90,000/- was paid by the Appellant to the Bank and despite payment of money, Gratuity amount has not been released to him and in case such a suit is filed, it is open for the Trial Court to entertain the said Suit provided it is within limitation and since the parties would have to prove their case on evidence that is produced in the suit, it is needless to state that the observations made by the learned Single Judge in the Writ Petition would not come in the way of the Trial Court in considering the evidence produced before it.

14. With these observations, the Appeal is dismissed, along with the pending applications, if any.

**SATISH CHANDRA SHARMA, C.J.**

**SUBRAMONIUM PRASAD, J**

**JULY 03, 2023**
*Rahul*