



2023:DHC:6921



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

% **Date of order: 25th August, 2023**

+ **W.P.(C) 11299/2023 & CM APPL. 43936/2023**

K.L. BERWA

..... Petitioner

Through: **Mr. Dushyant Kumar, Advocate along
with petitioner in person**

versus

BSES RAJDHANI POWER LIMITED (BSES), THROUGH ITS

CHIEF EXECUTIVE OFFICER & ANR. Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

"1. Issue Writ of Mandamus and any other appropriate Writ/order/directions to the Respondents to comply with directions passed by the Hon'ble Court in its final order/judgment dated 15.12.2017 passed in W.P.(C) 1863/1997 titled "K.L. Berwa Vs DPCL and others".

2. Issue Writ of Mandamus and any other appropriate Writ/order/directions to the Respondents to release interest on the Salary arrears with effect from 31.07.2019 to the date of payment i.e. 17.11.2022

3. Issue Writ of Mandamus and any other appropriate Writ/order/directions to the Respondents to release remaining

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pensionary benefits (after re-fixation/new salary) along with interest.

4. Issue Writ of Mandamus and any other appropriate Writ/order/directions to the Respondents to pay to the Petitioner Future pension every month...."

2. A brief background of the instant petition is discussed hereinafter:

a. The petitioner joined as a Meter Reader at erstwhile Delhi Vidyut Board, which subsequently unbundled into six companies, including BSES Rajdhani Power Limited, respondent no. 1, which the petitioner thereafter joined.

b. During the course of his employment, the petitioner was alleged of giving undue benefits to few customers by not recording their meter readings correctly.

c. Due to the said allegations levelled against the petitioner, an enquiry was conducted by the Enquiry Officer to examine the charges against him. The Enquiry Officer upon conclusion of the enquiry made a Report dated 6th July, 1995. Subsequently, the Disciplinary Authority passed an order dated 23rd May, 1996, vide which the penalty of removal from service was imposed upon the petitioner.

d. The petitioner being, aggrieved of the order of removal from services, approached the Appellate Authority which passed the order dated 31st January 1997 rejecting the appeal preferred by the petitioner.



e. Against the aforesaid order, imposing penalties and rejecting the appeal of the petitioner, the petitioner filed a Writ Petition bearing W.P. (C) No.1863/1997 before the Coordinate Bench of this Court challenging the order dated 23rd May, 1996 whereby the Court, vide its final order dated 15th December, 2017, allowed the petition and directed that the petitioner be reinstated on service with 50% back wages with all consequential benefits including pensionary benefits. The Court also directed the respondent no. 1 to make payment within 2 months, otherwise 9% interest would become applicable. The respondents, aggrieved of the said order of the Coordinate Bench, moved a Letters Patent Appeal before the Division bench of this Court bearing LPA No. 122/2018, which was dismissed, vide order dated 7th May 2019.

f. The petitioner, in the *interregnum*, had also filed two contempt petitions on different occasions against the respondents on the ground that they failed to comply with the directions of this Court arising out of the order dated 15th December 2017. The said contempt proceedings were disposed of one after another with the respondents having made some part of the payment due and accruable to the petitioner. In the meanwhile, the respondent made payments of Rs. 59,27,246/-, and Rs. 14,36,533/- to the petitioner towards pension and salary arrears.

g. The petitioner then sought initiation of another contempt



proceeding against the respondent on the ground that the respondents were not making payment of the remaining salary and pension arrears to the petitioner. However, the said petition was dismissed vide order dated 6th December 2022.

h. The petitioner is now before this Court seeking the aforesaid prayers while pressing the grounds that the respondents have not taken appropriate action in pursuance of the directions of the Coordinate Bench of this Court, for which he seeks that directions may be given by this Court to the respondents.

3. The learned counsel appearing on behalf of the petitioner submitted the respondents were directed to pay the 50% back wages to the petitioner along with other consequential benefits, however, the respondents have deliberately been holding the legitimate dues of the petitioner.

4. It is submitted that the petitioner had filed Cont. Cas. (C) 30/2023 against the respondents since they were not taking any action in pursuance of the order of the Coordinate Bench of this Court, however, the same was erroneously dismissed without appreciating that the respondents were to required to provide a detailed calculation on the basis of the bills and notes shown by the petitioner but instead the respondents made their own calculations without any basis.

5. It is further submitted that even after providing a detailed calculation, nothing was provided by the respondents to the petitioner since there was no



provision under the calculation and the Settlement Agreement entered into between parties dated 17th November 2022 towards the interest on salary arrears.

6. The learned counsel for the petitioner submitted that the inaction on the part of the respondents is causing grave loss and injustice to the petitioner since even after getting directions from the Court he is not able to secure his arrears and the interest thereto.

7. Heard the learned counsel for the petitioner and perused the record.

8. The petitioner before this Court is seeking directions to the respondents to comply with the directions as passed by the Coordinate Bench of this Court vide order dated 15th December 2017 and by extension is seeking payment of his arrears of salary and pensionary benefits along with interest.

9. The concerned department where the petitioner was appointed had terminated his services, however, the Coordinate Bench of this Court vide its order dated 15th December 2017 passed in W.P. (C) 1863/1997 had made the following observations and order thereto on the challenge sought by the petitioner to the termination orders:

“22. Hence, in that view of the matter and my conclusion above is that the finding of the enquiry officer is perverse, the judgment to that extent is applicable. Consequently, the orders dated May 23, 1996 and January 31, 1997 are set aside. The petitioner is entitled to reinstatement, if not attained the age of superannuation with 50% back wages with all consequential



benefits. If he has attained the age of superannuation, he shall be entitled to 50% back wages till the date of superannuation and thereafter shall be entitled to full pensionary benefits in accordance with Rules. The payment be made within two months, otherwise the petitioner shall be entitled to 9% interest on the amounts. Petition stands disposed of. No costs."

10. The respondents were directed to make payments in favour of the petitioner in the aforesaid terms. The petitioner sought to initiate contempt proceedings against the respondents by way of invoking contempt jurisdiction of this Court by filing two separate contempt petitions. In the first contempt petition, the Coordinate Bench of this Court, while disposing of the same vide order dated 11th October 2022, observed that the parties will work out the entitlement of the petitioner within a period of four weeks, ending on 8th November 2022, after which the amount so arrived shall be paid to the petitioner.

11. Thereafter, the petitioner and the respondents settled the disputes between them pertaining to the entitlement of the petitioner for which they entered into a Settlement Agreement dated 17th November 2022. The said Settlement Agreement is appended to the petition as Annexure P/7 and has been perused by this Court.

12. The contents of the said Settlement Agreement show that the parties had mutually agreed upon the payments to be made in favour of the petitioner and the manner in which they were to be made. At this stage, during the course of the arguments and even in the pleadings, it is submitted on behalf of the petitioner that the said Settlement Agreement had not



entered into by the petitioner with his free will and volition and neither was he aware of the complete terms and conditions of the said settlement. It is pertinent to clarify here that neither a challenge to the Settlement Agreement is before this Court, nor this Court in its writ jurisdiction can enter into the test of veracity of the Settlement Agreement or otherwise its existence. Moreover, there was no contention raised on behalf of the petitioner to the effect that the Settlement Agreement was entered into by the petitioner under coercion before the Contempt Court. The objection to the Settlement Agreement, hence, stands no ground at this juncture before this Court.

13. Further, admittedly the petitioner has also accepted the payment made by the respondents in pursuance of the Settlement Agreement without any protest or objections thereto. The details have been furnished by the petitioner himself in his pleadings and the cheque and demand drafts have also been appended to the petition.

14. The aforesaid being said, once the petitioner had settled the terms of payment with the respondents and the payment thereto has also been made by the respondents, which has not been disputed by the petitioner, there is nothing further that is left for this Court to decide. There have been several rounds of litigation between the parties pertaining to the same issues and as such at this point when the full and final settlement had been made between the parties, contempt proceedings have been sought to be initiated, which stands dismissed, payment has been made in pursuance of the agreement between the parties, the petitioner cannot now again move the Court to say



that he is not satisfied of the payment decided to be made in his favour.

15. The petitioner after all of the above again sought to initiate contempt proceedings against the respondent by way of filing Cont. Cas. (C) 30/2023, however, the same came to be dismissed by the Coordinate Bench of this Court vide order dated 11th January 2023, considering the undisputed factum of the Settlement Agreement dated 17th November 2022. The relevant portion of the order dated 11th January 2023 is reproduced hereunder:

“11. A perusal of the record shows that the second CONT. CAS(C) 1271/2022 was listed before this Court on 22.11.2022. No allegation was made before this Court on the said date alleging any such coercion or duress. Petitioner sought to contend that the submission of duress and coercion was raised though it was not recorded by the Court. It is trite law that a party cannot make oral submissions to contradict the record of the Court. [State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463]

12. Notwithstanding the aforesaid, even if its assumed that a submission of coercion or duress was made on 22.11.2022, this Court finds that proceedings for contempt are not maintainable in view of the admitted execution of the Settlement deed and receipt of payment thereunder by the Petitioner. The plea of coercion and duress sought to be agitated in this petition at paragraph 10 raises disputed questions of fact, which cannot be decided by this Court in its summary jurisdiction. This Court, therefore, finds no merits in the present petition.”

16. Undeniably, a challenge to the aforesaid order in no manner lies before this Court. Certainly, the Coordinate Bench of this Court was also in



alignment with the view that the Settlement Agreement and the receipt of payment thereto was admitted by the petitioner and hence, the question of coercion or duress does not arise at a belated stage, specially before a writ court.

17. Accordingly, considering the entirety of the matter, the facts, circumstances, contentions raised in the petition as well as the arguments made on behalf of the petitioner before this Court, it is found that there is nothing in the record or in the arguments advanced on behalf of the petitioner to show that directions are warranted from this Court against the respondents.

18. The quintessential elements for issuing a writ of mandamus are *firstly*, that the party claiming relief by invoking such writ has a legal right, *secondly*, the authority against whom the writ is sought to be enforced has a legal duty towards such party and has refused to grant relief in his favour, *thirdly*, such relief is claimed with a bona fide intent and *fourthly*, the party has no alternative remedy.

19. The Court has to be hyper vigilant while issuing a writ of mandamus since the writ of mandamus is an extraordinary remedy to be invoked only in special and exceptional circumstances. It is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of mandamus is an invincible weapon in cases where there is a failure of justice or exercise of power in an illegal way or



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arbitrary manner.

20. In the matter at hand, the petitioner has failed to show that any right or entitlement exists in his favour. As stated in the foregoing paragraphs, the petitioner cannot agitate the challenge to the Settlement Agreement dated 17th November 2023 at this stage and can certainly not keep hunting forums to seek what is not due or accruable to him. There is nothing that this Court is inclined to grant in favour of the petitioner since the petitioner has failed to satisfy this Court that there exists any right in his favour for which directions are required to be issued to the respondents.

21. Accordingly, in view of the observations in the foregoing paragraphs, the instant petition stands dismissed, along with pending applications, if any.

22. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 25, 2023
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Click here to check corrigendum, if any

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