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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 757/2023 & CM APPL. 60098-60099/2023**

K.L. BERWA

..... Appellant

Through: **Mr. Dushyant Kumar, Advocate with**
Appellant in person.
versus

BSES RAJDHANI POWER LIMITED (BSES) & ANR.

..... Respondents

Through: **None.**

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Date of Decision: 21st November, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present appeal has been filed challenging the Judgment dated 25th August, 2023 passed by the learned Single Judge in *W.P.(C) 11299/2023* whereby the appellant's writ petition was dismissed. The appellant had filed the aforesaid writ petition praying for directions to comply with the Judgment dated 15th December, 2017 passed in *W.P.(C) 1863/1997* and to release the remaining salary arrears and pension arrears to him. However, by the impugned Judgment, the learned Single Judge held that the appellant had failed to show any right or entitlement exists in his favour.

2. Facts of the case in brief are as follows:

2.1 The appellant joined the service in the erstwhile Delhi Vidyut Board



(“DVB”) as a meter reader. Upon unbundling of the erstwhile DVB, the appellant became an employee of BSES Rajdhani Power Limited.

2.2 The appellant was charged with giving undue benefits to a few customers by not recording their meter readings correctly by way of charge sheet dated 05th August, 1994. An enquiry was conducted against the appellant and by enquiry report dated 6th July, 1995, the charges against the appellant were found to be proved. Consequently, the Disciplinary Authority passed an order dated 23rd May, 1996 vide which the penalty of removal from service was imposed upon the appellant. The appeal filed by the appellant before the Appellate Authority was rejected vide order dated 31st January, 1997.

2.3 Being aggrieved by the order of his removal from services and rejection of his appeal, the appellant approached this Court by way of filing a writ petition, *W.P.(C) 1863/1997*. By Judgment dated 15th December, 2017, the aforesaid writ petition of the appellant was allowed thereby directing that the appellant be reinstated in service with 50% backwages with all consequential benefits, including pensionary benefits. The Court also directed the respondent no. 1 to make payment within 2 months, failing which interest @ 9% per annum was payable.

2.4 Against the Judgment dated 15th December, 2017 passed in *W.P.(C) 1863/1997*, the respondents filed an appeal being *LPA 122/2018*. However, the same was dismissed vide Judgment dated 7th May, 2019.

2.5 The appellant, in the interregnum, filed a contempt petition being *Civil Contempt Petition 951/2018* on the ground that the respondents failed to comply with the directions of this Court arising out of the Judgment dated 15th December, 2017 passed in *W.P.(C) 1863/1997*. Subsequently, the



respondent no. 1 made payment of Rs. 59,27,246/- to the appellant, out of which Rs. 29,62,781/- was paid towards pension arrears and the remaining amount was paid towards salary arrears. Consequently, the said contempt petition was disposed of vide order dated 11th October, 2022.

2.6 The appellant filed another contempt petition being *CONT. CAS(C) 1217/2022*. Subsequently, the respondents issued cheque of an amount of Rs. 14,36,533/- to the appellant on 17th November, 2022. The appellant also signed a Deed of Full and Final Settlement dated 17th November, 2022. Accordingly, the said contempt petition was dismissed as withdrawn vide order dated 22nd November, 2022.

2.7 Later on, the appellant filed another contempt petition being *CONT. CAS(C) 30/2023* on the ground that the respondents were not making payment of the remaining salary and the pension arrears to him. However, the said petition was dismissed vide order dated 11th January, 2023.

2.8 Thus, the appellant filed another writ petition being *W.P.(C) 11299/2023*, praying for directions to the respondents to comply with the directions passed by learned Single Judge vide Judgment dated 15th December, 2017 in *W.P.(C) 1863/1997*. The appellant prayed for directions to the respondents to release interest on the salary arrears w.e.f. 31st July, 2019 to the date of payment i.e. 17th November, 2022. The said writ petition was dismissed by the learned Single Judge by the impugned Judgment. Hence, the present appeal has been filed.

3. On behalf of the appellant, it is contended that the respondents have failed to pay interest on the salary arrears w.e.f. 31st July, 2019 to the date of payment, i.e. 17th November, 2022. Further, the remaining pensionary benefits are also due and payable to the appellant.



4. It is further submitted that it is only after the detailed calculation sheet was provided to the appellant along with the Settlement Agreement on 17th November, 2022 that the appellant studied the complete calculation sheet at his home and found that nothing had been paid towards interest on the salary arrears w.e.f. 31st July, 2019 to the date of payment i.e. 17th November, 2022 and the remaining pensionary benefits. It is submitted that legal right of the appellant could not be curtailed by an arbitrary and biased one-sided hand written note signed under duress and coercion. The calculation of arrears of respondent no. 1 was not in accordance with the final order/Judgment dated 15th December, 2017 passed by the learned Single Judge in *W.P.(C) 1863/1997*.

5. Having heard learned counsel for the appellant and having perused the documents on record, it is apparent that the appellant settled his disputes pertaining to his entitlement in terms of the Judgment dated 15th December, 2017 in *W.P.(C) 1863/1997* by way of Settlement Agreement dated 17th November, 2022. The said Settlement Agreement categorically recorded that the parties mutually agreed upon the payments to be made in favour of the appellant and the manner in which they were to be made. Thus, the Settlement Agreement dated 17th November, 2022 between the parties recorded as under:

“NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In full and final settlement of all the issues/claims/ disputes of the parties, Second Party has agreed that in case the First Party pays Rs. 14,36,533/- (Rupees Fourteen Lakhs Thirty Six Thousand Five Hundred & Thirty Three Only) towards salary arrears, compliance with respect to the First Party with respect to Judgments dated 15.12.2017 and 11.10.2022 passed by the Hon'ble Delhi High Court in W.P.(C) No. 1863 of 1997 and Cont. Cas (C) No. 951 of 2018 will stand complied and nothing would remain due, outstanding or



payable by either of the Parties to the Settlement.

2. *After the payment of Rs. 14,36,533 (Rupees Fourteen Lakhs Six Thousand Five Hundred and Thirty Three Only) to the Second Party towards arrears to the Salary, the First Party shall forward the Second Party's Pension File to the Pension Trust for payment of arrears to the Pension, Leave encashment, Gratuity and GPA which is payable by the Pension Trust to the Second Party.*

3. *Further, the Second Party acting upon the covenants contained in this Deed of Full and Final Settlement had satisfied himself as to the correctness of the calculation and computation shared with him by the First Party and has further agreed that any excess amount paid to the Second Party by the First Party shall be recovered/reconciled from the Pension Trust by the First Party.*

4. *Upon execution of this Settlement Deed, as mentioned above, the Parties to this Settlement Deed shall stand fully discharged of all or any obligations or liabilities that may have already arisen, or may arise in future, in relation to the claim for salary arrears or the benefits that were to be paid by the first party in compliance with the Judgment dated 15.12.2017 in W.P.(C) No. 1863 of 1997 and Order dated 11.10.2022 in Cont. Cas (C) No. 951 of 2018.*

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8. *That the Parties hereby irrevocably agree and undertake that they shall not be entitled to initiate any further or other proceedings against each other or any of their employees/officials, past or present, in respect of any transactions/dealings whatsoever in respect of the dispute and subject matter of the Writ Petition (C) No. 1863 of 1997, LPA No. 122/2018, Contempt Petition (C) No. 951 of 2018, or any subsequent or other proposed proceedings before the Hon'ble High Court of Delhi or any other competent Court of law.*

9. *The Parties hereto agree that these presents constitute full and final settlement of their all inter-se claims, contentions and disputes.*

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14. *All the claims made by the Second Party in W.P.(C) No. 1863 of 1997 and decided vide Order and Judgment dated 15.12.2017 passed by the Ld. Single Judge as affirmed in LPA No. 122 of 2018 vide Order dated 07.05.2019 and also the Order dated 11.10.2022 in Cont. Cas (C) No. 951 of 2018, shall hereby be deemed to be settled/satisfied completely. However, the present settlement deed is without prejudice to the rights and contentions of the First Party or Second Party against any third Party.*

15. *The parties hereto, hereby agree and undertake to fully abide by the terms of this Deed of Full and Final Settlement in letter and spirit.*



16. *Without generality of or prejudice to above Clauses, the Second Party shall hereby relinquish/waive all his rights and/or claims against the First Party arising in relation to or in connection with the payment of salary arrears liability has arisen any time before or after signing of this Settlement Deed.*

17. *Upon execution of this Settlement Deed as mentioned in the above Clauses, all the claims of the Second Party against the First Party, and likewise all or any of the claims of the First Party against the Second Party, shall stand discharged and either of the Parties shall not raise any claim(s) arising in relation to the payment of pension and terminal benefits to the Second Party.*
XXX XXX XXX”

6. Perusal of the aforesaid Settlement Agreement dated 17th November, 2022 clearly shows that the parties settled all their *inter-se* claims, contentions and disputes fully and finally by way of the said Settlement Agreement dated 17th November, 2022. Thus, all the claims made by the appellant stood settled and satisfied completely by virtue of the aforesaid Settlement Agreement.

7. The contention raised on behalf of the appellant before the learned Single Judge that the aforesaid Settlement Agreement had not been entered by him with his free will and volition, was rejected by the learned Single Judge. It was observed that the appellant had not challenged the aforesaid Settlement Agreement. Thus, the learned Single Judge has held as under:

“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.”

8. Therefore, once having accepted the payments made by the respondents in pursuance of the Settlement Agreement without any protest or objection, the appellant cannot seek to raise any dispute against the respondents.

9. This Court also notes that there is a categorical finding against the appellant that he did not raise any allegation regarding any coercion or duress in signing the Settlement Agreement dated 17th November, 2022 in the second contempt petition being *CONT. CAS(C) 1271/2022* when the same was listed for hearing on 22nd November, 2022. Thus, vide order dated 11th January, 2023 in *CONT. CAS(C) 30/2023*, while dismissing the third contempt petition filed on behalf of the appellant, the learned Single Judge has held as follows:

“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.”

10. In view of the aforesaid detailed discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed along with pending applications.

THE ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 21, 2023

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