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

% ***Date of decision: 14th February, 2023***

\+ W.P.(C) 9568/2018 & CM APPL. 37220/2018, 15529/2019

BRAHAM SINGH MAVI ..... Petitioner
Through: Mr. Sushil Kr. Jain and Ms. Archana Shahi, Advocates.

versus

BANK OF INDIA ..... Respondent
Through: Mr. Rajat Arora and Mr. Niraj Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition has been preferred by the Petitioner seeking directions for release of Provident Fund, Gratuity and other allowances with interest as well as compensation for the alleged harassment.

2. Factual score emerging from the writ petition and to the extent relevant is that Petitioner was appointed as a Driver with the Respondent on 17.03.1978. In the year 1994, a charge sheet was issued against the Petitioner and the departmental inquiry culminated into a penalty of 'removal from service' on 29.12.1995. It is the case of the Petitioner that despite passage of over 17 years, statutory dues such as Provident Fund and Gratuity have not been released to him. It is also the case of the Petitioner that on 26.04.2018, a Circular was issued by the Respondent Bank seeking options from the employees to join the Pension Scheme, 1995 and though the Petitioner opted to join the Scheme and even got the requisite medical tests done, his claim

was illegally rejected *vide* letter dated 03.07.2018. Representations made by the Petitioner for release of the aforesaid dues remained unactioned, compelling the Petitioner to file the present writ petition for his legitimate dues.

3. Before proceeding further, it would be pertinent to refer to certain facts/developments, post the filing of the writ petition. As the chronology goes, when the writ petition was first listed on 12.09.2018, notice was issued by the Court limited to prayers seeking release of Provident Fund and Gratuity, rendering a *prima facie* view that the claim for Pension could only be made by employees who had retired/ compulsorily retired and option for pension was not available to the Petitioner as he was 'removed' from service.

4. During the pendency of the petition, an application being CM No.15529/2019 was filed by the Petitioner for a direction to the Respondent to return the original documents pertaining to registration of the house of the Petitioner, mortgaged with the Respondent. It was claimed by the Petitioner that in the year 1988-89, he had taken a housing loan from the Respondent, mortgaging his immoveable property and since the entire loan stood repaid in instalments, by deductions from his salary, Respondent was bound to release the original documents. It was also stated that in the year 2004, Respondent had filed a recovery suit against the Petitioner before the Civil Court, Gurgaon, wherein a compromise decree was passed and Respondent received the outstanding amount Rs.90,000/- in full and final settlement and issued NOC for release of the Title Deeds to the Petitioner.

5. Along with the application, Petitioner filed a Bank statement as Annexure-2 thereto, given by the Respondent and wherein according to the Respondent there was a credit entry of an amount of

Rs.93,808.44/- in Account No. TLN 3002. In the application, the Petitioner stated that the statement of account was forged and fabricated and he had no knowledge of the same as he had never received the said amount and had never opened any such account in the Bank. Noting this position, the Court *vide* order dated 06.05.2019 directed the Respondent to produce details of the Account No. TLN 3002.

6. When the writ petition was listed on 29.05.2019, the Court, recording the rival stands of the parties wherein Petitioner claimed that he had not received the aforesaid amounts while Respondent stated that the amounts were credited in Account No. TLN 3002, and account was closed in the year 2000, directed the Deputy Commissioner of Police of the concerned area, to investigate the matter and submit a report, which was filed on 08.08.2019.

7. From the Report, it emerges that the Bank was unable to provide any document viz: vehicle loan application or account opening form in support of the stated Account No.3002, alleged to be in the name of the Petitioner. Respondent however, provided an extract of its policy for preservation of bank records, according to which loans, advances, cash credit registers are preserved for a period of not less than 08 years and application forms of closed loans for a period not less than 03 years. It is stated in the Report that Petitioner was also called for investigation and he denied having any such account in his name.

8. Counter affidavit has been filed on behalf of the Respondent. Preliminary objection is taken to the maintainability of the writ petition on the ground of delay and laches as the Petitioner was removed from service on 29.12.1995 and has approached the Court only in the year 2018. It is also stated that the Petitioner has not

approached the Court with clean hands and made a false statement that the Provident Fund and Gratuity dues have not been received by him while the position is to the contrary and all dues payable to the Petitioner stand paid. It is further averred that the option to apply under the Pension Scheme, 1995 was for employees who had not given their options earlier and secondly, Regulation 22 of the Pension Regulations clearly provides that once a person is removed from service, the entire service is forfeited and therefore, Petitioner was not entitled for Pension, having forfeited his service on account of the penalty of 'removal' from service, which he never assailed. It is also the stand of the Respondent that the amounts payable towards Provident Fund and Gratuity were, in fact, adjusted towards the housing loan/vehicle loan taken by the Petitioner and nothing is outstanding.

9. For the sake of completeness, it may be noted that when the writ petition was listed on 16.11.2022, the Court once again, noting the contention of the counsel for the Petitioner that the outstanding amount towards the housing loan had been cleared by the Petitioner much earlier and thus the statutory dues could not be withheld, granted time to the Respondent to file an affidavit, after verifying from the records, as to whether the stand of the Petitioner that he had cleared the outstanding loan and an NOC was issued to him, was factually correct. Pursuant to the said order, an affidavit has been filed by the Respondent wherein the Bank has reiterated that the terminal dues of the Petitioner were adjusted towards his liabilities in respect of housing and vehicle loans availed by him. The amounts were first credited to Petitioner's vehicle loan account TLN 3002 for adjustment and after adjustment of Rs.35,624.34/-, the residual amount of Rs.58,184.10/- was credited/adjusted in the housing loan account on

14.10.2000 *vide* Credit Order No. 36007 dated 13.10.2000. The civil suit filed by the Respondent for recovery of balance of the loan accounts was compromised and settled and at that stage, none of these facts were disputed by the Petitioner. Moreover, if there were any outstanding payments towards the Petitioner or he had no loan liabilities, as is now sought to be contended, Petitioner would not have compromised/settled the matter.

10. I have heard the learned counsels for the parties and examined their rival contentions.

11. It bears repetition to state that notice was issued in the writ petition limited to release of Provident Fund and Gratuity and even during the course of arguments, parties have restricted their arguments only to release of the said dues and thus this Court is not delving into the issue of Pension under the Pension Scheme of the Respondent.

12. Having heard both sides, it is clear that Respondent is not disputing the entitlement of the Petitioner to Provident Fund/Gratuity and the opposition is primarily on the ground that the amounts payable to the Petitioner stand adjusted towards the loans availed by him. Objection on ground of delay and laches though taken in the counter affidavit, was not pressed during the arguments by the Respondent, save and except, for the purpose of canvassing that on account of a long passage of time most of the records have been destroyed as per the policy of the respondent for preserving the records.

13. The dispute between the parties lies in a narrow compass. Petitioner claims that a total sum of Rs.93,808.44/- is outstanding towards the statutory dues as: (a) he never opened or operated bank Account No. TLN 3002, as alleged by the Respondent and thus there could be no credit in the said account; (b) the dues were never paid in cash/cheque; and (c) no adjustments can be made against the housing

loan as the entire loan amount stood deducted from the salary of the Petitioner, while he was in service. Respondent, on the other hand, has taken a categorical stand that the amounts stand paid in the form of adjustments towards the loans availed by the Petitioner and in the suit filed by the Respondent for recovery of the outstanding dues, this position was not disputed by the Petitioner and the matter was compromised on 26.04.2005.

14. Major part of the controversy in the present petition revolves around the Bank account and the loans availed by the Petitioner and could have been easily resolved by bringing on record documents pertaining to loan applications, account opening forms etc., however, on account of the long passage of time, Respondent is unable to produce the records, and in their absence, even the Police has not come to any definite conclusion/finding in the enquiry conducted, pursuant to Court's directions. The only document that is available is the bank statement produced by the Respondent during the mediation proceedings and filed by the Petitioner in the present petition. The statement, on the face of it, pertains to account TLN 3002 and reflects payment of Rs.93,808.44/- in the said account, which coincidently and interestingly tallies with the amounts claimed by the Petitioner towards Provident Fund and Gratuity. In the absence of any material to the contrary produced by the Petitioner establishing that the bank statement is forged or fabricated, it is not possible for this Court in a writ jurisdiction to come to a conclusion that the statement of account is fabricated and/or that the amount was not credited to the account of the Petitioner.

15. In the peculiar circumstances, that are arising in the present case, which are largely attributable to the Petitioner since he has chosen to approach the Court in 2018 *albeit* he was removed from

service in 1995, the matter will have to be seen and tested from the prism of the pleadings/affidavits/documents filed before this Court. It is not disputed by the Petitioner that the Respondent had filed a civil suit being 723/2002 in the Court of Civil Judge (Senior Division), Gurgaon in 2002 for recovery of Rs.1,54,414/- together with interest against the Petitioner. Plaint has been filed by the Respondent along with the affidavit filed in terms of the order dated 16.11.2022. In the said plaint, it is averred that Petitioner had availed a housing loan of Rs.75,000/- and an additional housing loan of Rs.25,000/- from the Respondent. Besides a personal guarantee of his wife, Petitioner had mortgaged his immovable property by deposit of Title Deeds to secure repayment of the loans. Reference is made to a loan application dated 06.09.1989 with respect to housing loan of Rs.75,000/- and the Petitioner also agreed that the loan shall be repayable with simple interest on reducing balance in 188 plus 112 monthly instalments. It is further averred that on 09.02.1991, on the request of the Petitioner by a loan application dated 05.02.1991, Respondent agreed to grant an additional housing loan of Rs.25,000/- for additional construction in the concerned premises and a supplemental Term Loan Agreement was also executed. Relying on the letters of the Authority dated 06.10.1989 and 13.02.1991 issued by the Petitioner, the amount of Rs.93,826.44/- lying in the PF/Gratuity Fund was appropriated by the Respondent towards adjustment of the outstanding dues i.e. Rs.43,466.50/- towards the housing loan of Rs.75,000/- and Rs.14,717.60/- in respect of loan of Rs.25,000/- with the remaining amount towards the vehicle loan. Since after adjustment of the said amounts, further sum of Rs.1,54,414/- became due and payable to the Bank, the suit was filed by the Respondent, as in the meantime, the Petitioner had ceased to be in the service of the Respondent. It is averred in the plaint that notice dated 04.09.2002 was sent to the Petitioner calling upon him to pay and liquidate the outstanding amounts to the Respondent. Therefore, it is clear that in 2002 itself when the Respondent had filed a suit for recovery, a categorical position was taken with respect to the loans availed by the Petitioner and their part adjustments by the dues payable to the Petitioner towards Provident Fund and Gratuity.

16. It is equally undisputed that the matter was compromised between the parties and a Compromise Deed was drawn up on 02.04.2005. Relevant part of the compromise deed is as follows:

> *"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."*

17. On the basis of the Compromise Deed, the suit was decreed by the Court on 26.04.2005 and significantly as per the said Compromise Deed, it is the Petitioner who had agreed to pay certain amounts to the Respondent and had also issued a cheque in that regard. Therefore, there is substance in the contention of the Respondent that if the dues towards Provident Fund and Gratuity were outstanding towards the Petitioner and no adjustments were to made towards the loans availed by him, Petitioner would have contested the suit instead of entering into a settlement and that too agreeing to pay the outstanding amounts to the Respondent, which is clearly reflected from the order dated 26.04.2005, which is extracted herein for ready reference:-

> *"Parties have compromised the matter in the Lok Adalat. Defendant No. 1 has made statement that he has paid Rs.20000/- to the plaintiff bank and would pay Rs.70000/- by 30.4.2005 and he has issued a cheque dated 30.4.2005 no. 594111 of bank of India*

> *and if the cheque is dishonoured then the plaintiff bank would be entitled to recover the entire amount and the bank will be entitled to realise the amount by auctioning his mortgaged property. Sh. GL Malik, Adv. has given up defendant no. 2 vide his statement and stated that suit of the plaintiff be decreed as per statement of defendant no. 1 and court fee be refunded to the plaintiff. Compromise Ex.C1 has been placed on file. Accordingly, suit stands decreed in terms of the compromise Ex.C1 which shall form part of the decree.*
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> *Court fee be refunded to the plaintiff as provided u/s 21 of Legal Service Authority Act. Decree sheet be drawn accordingly and file be consigned to record room after due compliance."*

18. In these circumstances it is difficult to believe that the Petitioner has not been paid the dues towards Provident Fund and Gratuity and accordingly the reliefs sought cannot be granted. Even during the course of arguments, counsel for the Petitioner has been unable to dispute the aforesaid facts pertaining to the suit for recovery filed by the Respondent or the compromise entered into between the parties and has not placed any contrary material on record which would enable this Court to come to a different conclusion, save and except, making bald allegations that the Petitioner has been harassed and not paid his dues.

19. The writ petition is accordingly dismissed being devoid of merits, along with all pending applications.

JYOTI SINGH, J

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