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W.A.No.1_____

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1224 of 2023 and C.M.P.No.12387 of 2023

The Management of
Metropolitan Transport Corporation Ltd.
Anna Salai
Chennai 600 002

Appellant

v

D. Hari

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 01.10.2020 made in W.P.No.22039 of 2018.

For appellant Mr. C. Gauthamaraj
Standing Counsel

J U D G M E N T

This writ appeal is directed against the order 01.10.2020 passed by a Single Bench in W.P.No.22039 of 2018, in and by which, the order dated 13.04.2018 passed by the Labour Inspector-II, Nandanam, Chennai, in Case No.4224 of 2013 has been confirmed.



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2 For the sake of better understanding, the appellant and the respondent will be referred to as the Management and workman, respectively.

3 The workman who was sponsored through employment exchange, was engaged as Driver by the Management from 29.01.2011 onwards and he was given appointment as daily wage employee on 21.10.2013. In furtherance to a settlement dated 31.08.2005 entered into between the Management and its trade union representing its employees, under Section 12 (3) of the Industrial Disputes Act, 1947 (in short "the I.D.Act"), the Management confirmed the services of the workman with effect from 01.08.2014 for having completed 240 days of employment.

4 While so, the workman made an application under Section 3(1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (in short "the Permanent Status Act") before the Labour Inspector -II, Nanadanam, Chennai, claiming benefit of conferment of permanent status on having completed continuous service for a period of 480 days in 24 calendar months. The said authority, *vide* order dated 13.04.2018, granted permanent status to the workman with effect from 23.09.2012. Aggrieved, the Management filed a writ petition in



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W.P.No.22039 of 2018. The learned Single Judge, *vide* order dated 01.10.2020, dismissed the said writ petition, by confirming the order dated 13.04.2018 passed by the authority. The said order is under assail in this writ appeal.

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5 Mr.C.Gauthamaraj, learned Standing Counsel for the appellant Management submitted that there was a settlement entered into under Section 12(3) of the I.D.Act, between the employees and the union on 31.08.2005. He further submitted that though the services of the workman were confirmed on 01.08.2014, after he having completed 240 days of continuous service, as the said settlement is of the year 2005, the same would be applicable only to those employees who had joined services prior to the date of settlement.

6 In the case on hand, the workman joined the services of the appellant Corporation on 29.01.2011. Though, normally, a settlement entered into between the parties will bind all the persons, be it present or past, depending upon the clause contained in the settlement, the settlement which is of the year 2005 mentioned *supra* restricts confirmation of permanent status to the employees who have completed 240 of days service and those who have joined the service prior to the date of settlement. Hence, the benefits of the said settlement are not applicable to the case of the workman



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who had joined the appellant much after the settlement date. At this juncture, it is worth pointing out that no settlement or Government Order can run counter to the provisions of the Permanent Status Act. The authority, taking note of the provisions of the Permanent Status Act, has conferred permanent status on the workman, however, has granted monetary relief only from the date of filing of the application.

7 The workman has not filed any writ petition challenging the portion of the order of the authority depriving monetary benefits prior to the date of filing of the application. Merely because, no writ petition has been filed by the workman, it will not deprive him of claiming monetary benefits ordered by this Court in the writ petition filed by the Management.

8 We are of the view that no settlement can be entered into depriving a workman of the benefits of the Permanent Status Act. In the case on hand, as there is no settlement applicable to the workman as mentioned *supra*, the benefit of the settlement dated 31.08.2005 is applicable only to those employees who were appointed prior to the date of the settlement.



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As the Management has to settle the amount towards Provident Fund, we direct that the Provident Fund amount due to the employer and employee have to be deposited by the Management to the Provident Fund Trust within a period of four months from the date of receipt of a copy of this judgment, however, sans interest, as wages are going to be paid pursuant to the orders of this Court.

10 It is made clear that the employee's contribution can be deducted from the share of the employee's arrears and the contribution towards his share can be paid from that amount. It is further made clear that after the order of the authority conferring permanent status, if any employee enters into a settlement under the I.D. Act giving up certain or all benefits, then, the settlement will prevail.

With the above observation and direction, this writ appeal stands disposed of, sans costs. Connected Miscellaneous Petition is closed.

[S.V.N., J.] [K.R.S., J]
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S. VAIDYANATHAN,J.

and

K.RAJASEKAR, J.

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