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W.A.No.1087 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM:

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

W.A.No.1087 of 2023 and
C.M.P.No.11011 of 2023

The Management, Metropolitan
Transport Corporation, Anna Salai,
Chennai-600002.

.. Appellant

-VS-

Thiru.I.Vellaisamy

.. 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.22037 of 2018 and allow the Writ Appeal.

For Appellant	: Mr.R.Ramanlaal Additional Advocate General for Mr.C.Gauthamaraj
For Respondent	: Mr.Ajay Khose



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J U D G M E N T

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This Writ Appeal has been preferred against the order of the learned Single Judge dated 01.10.2020 made in W.P.No.22037 of 2018, in dismissing the Writ Petition filed by the Appellant herein, by confirming the order of the Authority dated 13.04.2018, passed in Case No.5184 of 2013.

2. The Respondent/Workman, who was sponsored through employment exchange, was engaged as a driver by the Appellant from 26.12.2008 onwards and was given appointment as daily wage employee on 21.11.2013 on temporary basis. In furtherance to a settlement dated 31.08.2005 entered into between the Appellant and its Trade Union representing its employees under Section 12 (3) of the Industrial Disputes Act, 1947 (in short "the I.D.Act"), the Appellant confirmed the services of the Respondent/Workman on 01.05.2016 for having completed 240 days of employment.

3. While so, the Respondent/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 in the



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Industrial Establishment of the Appellant. The said authority, vide order dated 13.04.2018, granted permanent status to the Workman with effect from 10.09.2011.

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Being aggrieved, the Appellant/Management filed a Writ Petition before this Court in W.P. No.22037 of 2018. The learned Single Judge, vide order dated 01.10.2020, dismissed the said Writ Petition, by confirming the order dated 10.09.2011 passed by the authority. The said order is under challenge in this Intra Court Appeal.

4. Mr.R.Ramanlaal, learned Additional Advocate General appearing for the Appellant 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 01.05.2016, after 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 have joined services prior to the date of settlement.

5. In the case on hand, the Respondent/Workman joined the services of the Appellant/Management on 26.12.2008. Though, normally, 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



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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 Respondent/Workman. 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 granted conferment of permanent status to the Workman, however, granted monetary relief only from the date of filing of the application.

6. Mr.Ajay Khose, learned counsel for the Respondent/Workman submitted that the Employee would be entitled to all the benefits on and from the date of completion of 480 days of service, within a period of 24 calendar months, in the light of the deeming provisions of the Permanent Status Act.

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



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8. Mr.Ajay Khose, learned counsel appearing for the Workman, across the bar, fairly submitted that he will not claim monetary benefits from the date of filing application, however, the Workman is willing to pay his contribution to the Provident Fund on or from the date of completion of 480 days of service as per the orders of the authority and that the employer may also be directed to contribute their P.F. contribution. He further submitted that the employee would be entitled to arrears from the date of application as per the orders of the authority and the amount payable towards Provident Fund can be adjusted from the said amount.

9. We are of the view that no settlement can be signed depriving the benefits of the Permanent Status Act. In the case of hand, as there was no settlement applicable to the respondent/workman as mentioned supra, the benefit of the said settlement is applicable only to those employees who were appointed prior to the date of settlement. As the Transport Corporation has to settle the amount towards provident fund, as per the aforesaid discussions, we direct that the Provident Fund amount due to the employer and employee has to be deposited to the Provident Fund Trust within a period of four months from the date of receipt of a copy of this judgment, however, without any interest, as wages are going to be paid pursuant to the orders of this Court.



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10. It is needful to reiterate 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. After the order of the Authority conferring permanent status, if any employee enters into a settlement under the Industrial Disputes Act, 1947 giving up certain or all benefits, then the settlement will prevail.

With the above observation and direction, this Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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