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W.A. No. 2155 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No. 2155 of 2021

&

C.M.P. No. 13584 of 2021

The Management
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Mettupalayam Road,
Coimbatore – 641 043.

..Appellant

Vs.

M. Venkatachalam

..Respondent

Prayer: Writ Appeal as against the order dated 01.10.2020 passed in
W.P. No. 849 of 2019.



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For Appellant :: Mr.M. Arun
For Respondent :: Mr.V. Ajoy Khose

J U D G M E N T

S. VAIDYANATHAN,J.

AND

J. SATHYA NARAYANA PRASAD,J.

Challenging the unsuccessful order dated 01.10.2020 in W.P. No. 849 of 2019 confirming the order of the Labour Court dated 12.03.2018 passed in C.P. No. 164 of 2014, the present writ appeal has been filed.

2. The employee concerned/respondent herein, who was sponsored by the Employment Exchange, had joined the service of the appellant Transport Corporation as Driver on 20.12.2007. In terms of settlement under Section 12(3) of Industrial Disputes Act, 1947 (' the Act ' for short)entered into between the appellant Transport Corporation and



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Trade Unions of its workers, a workman is entitled to regularisation of service on completion of 240 days of service. Though the respondent herein ought to have been extended the benefit of regularisation with effect from 01.02.2009, the same was not done as the respondent/employee was facing a criminal case in C.C. No. 77 of 2011 before the Judicial Magistrate Court No.8, Coimbatore. Subsequently, on acquittal of the respondent in the criminal case by order dated 26.09.2012, his services were regularised, but the monetary benefits were extended to him with effect from 28.12.2012 only. Hence, the respondent made a representation on 20.06.2013 marked as Ex.W3 to the appellant Transport Corporation seeking monetary benefits due to him with effect from the date of his regularisation, namely, 01.02.2009 in terms of the settlement mentioned supra. The request of the respondent was rejected vide Ex.W4 dated 06.07.2013 and the respondent/employee had approached the Labour Court by means of a computation petition stating that in the light of the settlement under Section 12(3) of the Act, as the respondent/employee had completed 240 days of service in terms of the settlement, the difference of wages and other benefits



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from the date of regularisation i.e. 01.02.2009 have to be paid. Though the appellant Transport Corporation contested the petition on two grounds namely, that the petition is belated and that the benefits would be payable only from the date of order of regularisation i.e, from 28.12.2012, the Labour Court allowed the petition filed by the respondent/employee and directed the appellant Transport Corporation to pay the amount claimed in the petition along with interest @ 6% per annum from 20.06.2013. The operative portion of the order passed by the Labour Court is extracted hereunder:

"9. In the result, this Petition is allowed as follows:-

- 1. That the Respondent is directed to pay a sum of Rs.3,52,537/- (Rupees Three Lakhs Fifty two thousand Five hundred thirty seven only) to the Petitioner along with interest at the rate of 6% per annum from 20.06.2013;*
- 2. That the Respondent is directed to pay a sum of Rs.1000/- to the Petitioner as cost of this litigation; and*
- 3. That the Petitioner is not entitled to any other relief."*

3. The writ petition filed by the Transport Corporation assailing the order passed by the Labour Court was also dismissed by the learned



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Single Judge, which has necessitated the filing of this writ appeal.

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4. The order of the Labour Court, as confirmed by the learned Single Judge, is assailed primarily on the premise that as the respondent/employee, who was facing a criminal case, was acquitted only in the year 2012, he would be entitled to monetary benefits only from the date of order of regularisation i.e, 28.12.2012 and not from 01.02.2009, the date with effect from which his services were regularised, as contended by him. That apart, the Labour Court ought not to have entertained the computation petition under Section 33(C)(2) of the Act without adjudicating the liability. Finally, it is the submission on behalf of the appellant that when there is a rejection order Ex.W4 passed by the appellant Corporation, without questioning the same, the respondent/employee ought not to have approached the Labour Court seeking determination of the amount.

5. Heard both sides.

6. It is not in dispute that the respondent/employee joined the



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service of the appellant Transport Corporation in the year 2007; had worked for more than 240 days; was acquitted in the criminal case in C.C. No. 77 of 2011 on the file of Judicial Magistrate No.8, Coimbatore and that an order was passed by the appellant Transport Corporation dated 28.12.2012 granting regularisation to the respondent/employee with effect from 01.02.2009. The contention that there should be adjudication before determining the computation petition cannot be accepted in the case on hand as the employee seeks benefits under the settlement. Even going by the communication dated 28.12.2012, the employer had agreed to pay arrears. When the benefits accrue based on settlement, which has been accepted by the Management, the monetary benefits will have to be paid to the employee from the date of regularisation, i.e. with effect from 01.02.2009. The appellant employer has issued an order dated 28.12.2012 regularising the services of the respondent workman with effect from 01.02.2009 and therefore, the payment of monetary benefits, which the employee is otherwise entitled to, with effect from 01.01.2013 may not be correct,. Hence, there is no need for an industrial dispute to be raised, adjudicated and thereafter, the amount to be determined when the facts are not in



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dispute. The learned Single Judge, by referring to the judgments of the Hon'ble Apex Court rendered in *Central Bank of India V. P.S. Rajagopalan* reported in (AIR 1964 SC 743) and *Municipal Corporation of Delhi V. Ganesh Razak* reported in [(1995) 1 SCC 235)] has rightly held that whenever a workman is entitled to receive any money or any benefit which is capable of being computed in terms of money from his employer and is denied of such benefit, can approach the Labour Court by filing a petition under Section 33(C)(2) of the Act and there is no need for prior adjudication when the benefits flow from a settlement. Hence, we are of the view that the employee is entitled to the benefit, as claimed, with effect from 01.02.2009 and we are not inclined to interfere with the order of the learned Single Judge.

7. The writ appeal stands dismissed. No costs. Connected C.M.P. Is closed.

8. It is represented by the learned counsel for the appellant that a portion of the amount has already been deposited before the Labour Court.



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Therefore, the amount lying in deposit along with accrued interest before the Labour Court shall be disbursed to the respondent/employee by the Labour Court within a period of one month from the date of receipt of a copy of this order. The balance amount, if any, payable, shall be paid to the respondent within a period of four weeks thereafter.

nv

30.01.2023

(S.V.N.J.) (J.S.N.P.J.)

S. VAIDYANATHAN,J.

AND



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