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

Date of Decision:- 02.05.2023

+ W.P.(C) 5700/2023 & CM APPL. 22333/2023 -Stay., CM APPL. 22334/2023 -Ex.

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms.Aditi Gupta, Adv.

versus

SH ASHOK KUMAR Respondent

Through: Ms.Rashmi Priya, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition preferred by the Delhi Transport Corporation/the employer seeks to assail the order dated 10.05.2022 passed by the learned Controlling Authority under the Payment of Gratuity Act (the Act). The petitioner also assails the order dated 21.11.2022 vide which its appeal has been rejected by the Appellate Authority under the Act.

2. Vide the impugned orders, the petitioner has been directed to release the differential amount of gratuity of the respondent/workman for the period between 22.07.1987 and 05.03.1997.

3. The sole submission of learned counsel for the petitioner is that the petitioner was removed from service on 22.07.1987 and was thereafter reinstated in service on 05.03.1997, only pursuant to a settlement entered into between the parties on 05.03.1997, wherein the respondent had

categorically undertaken not to claim any backwages or allowances for the period between 22.07.1987 and 05.03.1997. She, therefore, contends that this period was rightly not counted for any purpose including for computing the gratuity of the petitioner.

4. On the other hand, learned counsel for the respondent, who appears on advance notice submits that merely because the petitioner had agreed to give up his claim for backwages and allowances for the aforesaid period, would not deprive the petitioner of all his other benefits for the said period specially when as per the terms of the settlement, he was to be granted continuity of service. She, therefore, contends that the appellate authority was justified in holding that the respondent was entitled to gratuity for this period between 22.07.1987 and 05.03.1997.

5. From the rival submissions of the parties, it is evident that both sides seek to rely on the terms of the settlement entered into between the parties, with the petitioner urging that no gratuity was payable to the respondent for the period between 22.07.1987 and 05.03.1997 when he was not in service and the respondent contending that having been granted continuity of service, he cannot be deprived of gratuity for the said period. It would therefore be apposite to at the outset note the relevant terms of the settlement, which reads as under:-

“2. He will be considered for reinstatement in services on the same position on the pay drawn by him at the time of removal.

3. That the period of absence from duty of Shri Ashok Kumar from the date of removal to till he reports for duty will be treated as leave without pay.

4. That the workman would not be entitled to any monetary benefits and payment of any pay and allowances for the intervening period i.e. from the date of removal to the date he joins duty.

*5. That the workman, will however, **be entitled to continuity of the service and will retain his seniority in the cadre of Conductor** but the intervening period will not be taken into account for the purpose of earning increments, leave benefits, bonus and other ancillary benefits.”*
(emphasis supplied)

6. A perusal of the clauses 4 and 5 of the aforesaid settlement clearly shows that though the petitioner was not to be granted any monetary benefits for the aforesaid period between 22.07.1987 and 05.03.1997, it was specifically agreed between the parties that the respondent will be granted continuity of service even for the period between 22.07.1987 and 05.03.1997. I, therefore, find merit in the respondent's plea that merely because the respondent had agreed to give up his claim for any back wages for the said period of almost ten years, the same would not imply that this period will be washed away even for the purpose of determining his other statutory benefits, including gratuity. The gratuity payable to the respondent at the time of his superannuation of service has to be computed by taking into account his entire service. Once the period between 22.07.1987 and 05.03.1997 was to be counted as service, the same had to be necessarily taken into account for determining his gratuity.

7. For the aforesaid reasons, I find absolutely no infirmity in the directions issued by the learned Controlling Authority as also the Appellate Authority to pay gratuity, along with interest, to the respondent for the period between 22.07.1987 and 05.03.1997.

8. The writ petition being meritless is dismissed along with all pending applications.

(REKHA PALLI)
JUDGE

MAY 2, 2023

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