

STATE OF U P THR. ITS SECRETARY & ORS

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v.

MERAJ AHMAD

(Civil Appeal No. 9335 of 2016)

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SEPTEMBER 07, 2017

**[DIPAK MISRA, CJI, A.M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

Service Law:

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Continuity of service – Claim for – Original appointment on temporary basis – Termination of service in view of FIR u/s. 302 IPC against the employee – On acquittal u/s. 302 IPC, employee sought appointment as a fresh candidate – Fresh appointment given subject to specific condition that he would not be entitled to the benefit of past service – Writ petition by employee – Single Judge of High Court granted benefit of continuity of service setting aside termination order – Division Bench upheld order of Single Judge – On appeal, held: High Court erred in terminating challenge to the termination order – Such challenge was not open to the employee once he had accepted his termination and sought fresh appointment by undertaking to give up any claim in connection with his past service – The direction to grant continuity of service from the date of termination order, set aside – Appeal disposed.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.9335 of 2016.

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From the final Judgment and Order dated 18.05.2016 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Special Appeal No.406 of 2014.

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Samir Ali Khan, Sohaib, Alam, Amit Singh, Advs. for the Appellants.

Mohd. Parvez Dabas, Shakil Ahmed Syed, Uzmi Jameel Hussain, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

DR. D.Y. CHANDRACHUD, J. 1. On 8 July, 1983, the respondent was appointed on a temporary basis as a Livestock Development Assistant by the Deputy Director, Livestock in the State of U P in the pay scale of Rs 400-10-450-12-474-xxxx-12-570-15-615/-

B . The order of appointment stipulated that the services of the respondent could be terminated with a notice of one month. On 2 April 1984 a First Information Report was registered against the respondent *inter alia* under Section 302 of the Penal Code. On 9 April 1984, the Deputy Director in the Animal Husbandry Department at Faizabad terminated the services of the respondent.

C 2. The respondent was tried on a charge of murder in the court of the Additional Sessions Judge, Sultanpur in Sessions Trial 102 of 1984. By a judgment dated 11 October 1985 the Additional Sessions Judge, Sultanpur acquitted the respondent and his co-accused by giving them the benefit of doubt. Following his acquittal, the respondent by a letter dated 7 February 1989 sought fresh appointment as a Livestock Development Assistant and stated that he shall make no claim in connection with his prior service. On 17 April 1989, the Deputy Director, Animal Husbandry, Faizabad appointed the respondent as Livestock Extension Inspector on the condition that he would not be entitled to the benefit of his prior service.

D 3. In the meantime, the respondent had filed a writ petition, W P 8550 of 1987 before the Lucknow Bench of the Allahabad High Court. On 4 September 1998 a Single Judge of the Allahabad High Court directed that the respondent shall be taken back in service if the only ground for termination was his being put up for trial on a charge of murder, provided there was no other impediment in allowing him to join service.

E 4. The respondent filed another writ petition (W P (s/s) 5499 of 1999) to seek the benefit of continuity in service. A counter affidavit was filed in response to the writ petition by the Veterinary Officer, District Sultanpur stating that the respondent had been appointed to the post of Livestock Extension Inspector on his own request, and that he had agreed to forego the benefit of his past employment. A learned Single Judge by a judgment dated 14 May 2013 allowed the writ petition by setting aside the order of termination dated 9 April 1984. The Single Judge directed, however, that the respondent would not be entitled to salary for the

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period for which he had not worked. The respondent was held to be entitled to continuity of service. The judgment of the Single Judge was upheld in a Special Appeal by a Division Bench of the High Court on 18 May 2016. A

5. The State of Uttar Pradesh is in appeal against the judgment. Leave was granted on 16 September 2016 and an interim suspension of the operation of the judgment of the High Court was ordered. An application for early hearing was filed on behalf of the respondent. With the consent of the learned counsel appearing on behalf of the appellants and the respondent, we have taken up the appeal for final hearing. B

6. The submission which has been urged on behalf of the appellants is that the Division Bench of the High Court has erroneously proceeded on the basis that the respondent had withdrawn his undertaking, agreeing to forego the benefit of his past services. It was urged that the respondent, by his unequivocal request dated 7 February 1989, sought appointment as a fresh candidate. Having been appointed on that basis, it was not open to the respondent to resile from the consequence which would emerge from the acceptance of his request. On the other hand, it was urged on behalf of the respondent that both the learned Single Judge and, in appeal, the Division Bench justifiably granted the benefit of his past service to the respondent. C D

7. The original appointment of the respondent as a Livestock Development Assistant was purely temporary in nature. His services were dispensed with on 9 April 1984, a week after an FIR was lodged against him on 2 April 1984 alleging his involvement in an offence under Section 302 of the Penal Code. In the Sessions trial, the respondent was given the benefit of doubt by the Additional Sessions Judge. After his acquittal on 11 October 1985, the respondent consciously sought appointment as a fresh candidate and stated that he would not make any claim in connection with his prior service. It was on that basis that by a communication dated 17 April 1989, he was appointed as a Livestock Extension Inspector subject to the specific condition that he would not be entitled to the benefit of past service. In a writ petition of 1987, the learned Single Judge directed on 4 September 1998 that if the only ground of termination was that the respondent had been tried on a charge of murder, he shall be taken back in service, provided there was no other impediment in allowing him to join service. The respondent filed another writ petition in 1989. The learned Single Judge was manifestly in error E F G H

A in entertaining a challenge to the order of termination dated 9 April 1984. Such a challenge was not open to the respondent and could not have been entertained once he had accepted his termination and sought fresh appointment on 7 February 1989 by undertaking to give up any claim in connection with his past service. In the face of the unequivocal undertaking of the respondent, the learned Single Judge erred in allowing the writ petition and in setting aside the order of termination. The Division Bench, in the special appeal, was in error in affirming the order of the Single Judge.

8. We accordingly allow the appeal and set aside the judgment of the Division Bench of the Allahabad High Court dated 18 May 2016. The direction to grant continuity of service to the respondent from the date of the order of termination dated 9 April 1984 shall accordingly stand set aside.

9. The appeal is disposed of in the above terms. There shall be no order as to costs.

Kalpana K. Tripathy

Appeal disposed of.