

A THE DEPOT MANAGER, APSRTC

v.

M. MARUTHI

(Civil Appeal No. 12241 of 2018)

B DECEMBER 7, 2018

[DR. DHANANJAYA Y CHANDRACHUD AND

M. R. SHAH, JJ.]

Labour Laws – Termination – Respondent appointed as contract conductor – Departmental enquiry initiated against him – Found guilty – Dismissed from service – Appeal preferred by the respondent before the First Appellate Authority, rejected – Respondent raised Industrial Dispute – Industrial Tribunal rejected the reference and confirmed the order of termination – Writ Petition filed by respondent – Allowed by Single Judge relying upon an earlier judgment dtd. 29.02.2012 passed by the Single Judge in another Writ Petition No. 2786 of 2012 – Writ Appeal filed by the appellant, dismissed by Division Bench – Appellant filed review petition, which was dismissed – Held: Division Bench refused to review and recall the order passed in appeal solely on the ground that in the similar facts and circumstances the Division Bench has dismissed the appeals – However, the Division Bench did not at all consider the distinguishing facts in Writ Petition No.2786 of 2012 and the facts of the case on hand – When the attention of the Division Bench was drawn to the distinguishing facts in both the cases, the Division Bench ought to have reviewed and recalled its order, therefore, it erred in confirming the order passed by the Single Judge – Order passed by the Single Judge and the Division Bench quashed – Practice & Procedure.

Allowing the appeals, the Court

HELD: 1.1 The Division Bench refused to review and recall the order passed in appeal solely on the ground that in the similar facts and circumstances the Division Bench has dismissed the appeals. However, the Division Bench did not at all consider the distinguishing facts in Writ Petition No.2786 of 2012 and the facts of the case on hand. As such the Division Bench ought to have considered the facts of individual case. The Single Judge allowed the petition, holding that the matter was not *res integra* and was

covered by an earlier judgment of a Single Judge dated 29.02.2012 in Writ Petition No.2786 of 2012. Though on behalf of the Corporation an effort was made to distinguish the earlier decision on the ground that in the present case a full-fledged enquiry has been held, this distinction did not find acceptance by the Single Judge. [Para 6][1220-B-D]

1.2 In view of the aforesaid facts and circumstances and when the attention of the Division Bench was drawn to the facts of the case on hand and the distinguishing facts in both the cases, the Division Bench ought to have reviewed and recalled its order. However, unfortunately the Division Bench dismissed the review application and lost sight of the facts of the present case. The earlier order passed by the Single Judge dated 29.02.2012 in Writ Petition No.2786 of 2012 upon which the reliance was placed by Single Judge while allowing the petition, in the present case shall not be applicable at all. The Division Bench, therefore, erred in confirming the order passed by the Single Judge. Therefore, the order passed by the Single Judge and the Division Bench cannot be sustained and the same deserve to be quashed. [Paras 10, 11][1222-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12241 of 2018.

From the Judgment and Order dated 31.07.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Review Petition in W.A.M.P. No. 1858 of 2013 in W.A. No. 144 of 2013.

With

Civil Appeal No. 12240 of 2018.

Gourab Banerji, Sr. Adv., Sriharsha Peechara, Arjun Krishnan, Ashish Tiwari, Ms. Manisha Singh, Ms. Raka, C.S.N. Mohan Rao, Tanmaya Agarwal, A.N. Arora, Raj Kishor Choudhary, Advs. for the appearing parties.

The Judgment of the Court was delivered by

M. R. SHAH, J. 1. Leave granted.

2. Being aggrieved and dissatisfied with the judgment and order dated 31.07.2013 passed by the Division Bench of the High Court of judicature of Andhra Pradesh at Hyderabad passed in Review Petition in W.A.M.P. No.1858 of 2013 in Writ Appeal No.144 of 2013 by which the Division Bench has dismissed the said application and has refused to

A review and recall its judgment and order passed in Writ Appeal No.144 of 2013, original applicant in review application has preferred the present appeals, challenging the main order as well as the order passed in the review application.

3. The facts leading to the present appeals in nutshell are as under:

B a. That the respondent herein was appointed as a contract conductor and was working in Cantonment Depot, Hyderabad.

b. That a departmental enquiry was initiated against him.

C c. That in the departmental enquiry the respondent was found guilty. Based on the Enquiry Officer's report, the respondent was dismissed from service.

d. That the appeal preferred by the respondent before the First Appellate Authority came to be rejected on merits.

D e. That thereafter the respondent raised an Industrial Dispute. The Industrial Tribunal rejected the reference and confirmed the order of termination.

f. That thereafter the original writ petitioner preferred the Writ Petition No.4317 of 2012 before the learned Single Judge invoking the jurisdiction of the High Court under Article 226 of the Constitution of India.

E g. By judgment and order dated 30.10.2012 the learned Single judge allowed the Writ Petition No.4317 of 2012 solely relying upon the earlier judgment and order passed by the learned Single Judge dated 29.02.2012 passed in Writ Petition No.2786 of 2012 directing the petitioner corporation to re-engage the respondent herein in service and extend the benefits of continuity of service from the date of termination till the date of his re-engagement, excepting during the period when he was absent and it would be without any monetary benefit and that it would be counted only for the purpose of regularization at a later date.

F h. Aggrieved by judgment and order of the learned Single Judge, the appellant herein preferred Writ Appeal No.144 of 2013. The Division Bench dismissed the said appeal without considering the distinguishing facts pointed out on behalf of the appellant.

G i. That thereafter the appellant herein filed the Review Petition before the Division Bench and requested to review and recall the order passed in Writ Appeal No.144 of 2013 submitting that the order passed by the learned Single Judge dated 29.02.2012 in Writ Petition No.2786

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of 2012 upon which the reliance was placed by the learned Single Judge while disposing of the main petition and which was affirmed by the Division Bench vide order dated 25.04.2013 in Writ Appeal No.144 of 2013, was not applicable on facts. A

4. It was specifically contended and pointed out that in the case before the learned Single Judge in Writ Petition No.2786 of 2012, it was found that the service was terminated without holding an enquiry. It was submitted that so far as the present case is concerned, the employee was dismissed from service after holding departmental enquiry and even the industrial dispute was dismissed despite the distinguishing facts pointed out to the Division Bench. By main order, the Division Bench has dismissed the review application and has refused to review and recall the order passed in Writ Appeal No.144 of 2013 by observing that in the similar set of facts and circumstances the appeals are dismissed by the Division Bench. The above order passed by the Division Bench in dismissing the writ appeal and review application are the subject matter of present appeals. B C D

5. Mr. Gourab Banerji, learned Senior Counsel appearing on behalf of the appellant has submitted that in the facts and circumstances of the case, both the learned Single judge as well as the Division Bench of the High Court have materially erred in relying upon the earlier decision of the learned Single Judge dated 29.02.2012 in Writ Petition No.2786 of 2012. It is submitted that in the present case, a departmental enquiry was held against the workman. Following the report of the Enquiry Officer, his service came to be terminated, against which a departmental appeal was preferred which also came to be dismissed and an industrial dispute raised by the workman came to be dismissed and the order of termination came to be confirmed. It is submitted that despite above, the learned Single Judge, without even considering the legality and validity of the judgment and award passed by the Labour Court/Industrial Tribunal, allowed the writ petition and directed the appellant to re-engage the workman with the continuity of service. It is submitted that the Division Bench mechanically confirmed the order passed by the learned Single Judge without even considering the distinguishing facts pointed out. It is submitted that thereafter when the review application was preferred specifically pointing out the true and correct facts and the distinguishing facts in the present case were pointed out, the Division Bench has dismissed the review application again without considering the facts of the case on hand and solely on the ground that in the similar facts and H

A circumstances the Division Bench has dismissed the other appeals. It is submitted that therefore the Division Bench ought to have allowed the review application and ought to have reviewed and recalled its earlier order and ought to have considered the distinguishing facts which were specifically pointed out, more particularly the fact that in the present case the workman was dismissed after holding a departmental enquiry and that his dismissal came to be confirmed by the Industrial Tribunal which facts were not there in Writ Petition No.2786 of 2012 upon which the reliance was placed by the learned Single Judge.

6. We have heard the learned counsel appearing for the respective parties. On perusal the main order passed by the Division Bench rejecting the review application, it appears that the Division Bench has refused to review and recall the order passed in appeal solely on the ground that in the similar facts and circumstances the Division Bench has dismissed the appeals. However, the Division Bench has not at all considered the distinguishing facts in Writ Petition No.2786 of 2012 and the facts of the case on hand. As such the Division Bench ought to have considered the facts of individual case.

7. The learned Single Judge allowed the petition, holding that the matter was not *res integra* and was covered by an earlier judgment of a learned Single Judge dated 29.02.2012 in Writ Petition No.2786 of 2012. Though on behalf of the Corporation an effort was made to distinguish the earlier decision on the ground that in the present case a full-fledged enquiry has been held, this distinction did not find acceptance by the learned Single Judge. On the contrary, it was held that in the previous case, the learned Judge had found that the enquiry was not in keeping with the principles of natural justice. Moreover, in the view of the Single Judge, once the Corporation had granted a largesse in the form of a fresh employment, the workman should not be deprived of the benefit of continuity of service for the limited purpose of regularisation. Hence, in terms of the direction in the earlier decision, the petition was disposed of by directing the Corporation to re-engage the workman with continuity of service to the workman from the date of termination until the date of his re--engagement except for the period when he was absent. This was, however, without any monetary benefit and was directed to count only for regularisation.

8. It is the above order of the learned Single Judge which was affirmed by the Division Bench in a Writ Appeal.

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9. Since the order of the learned Single Judge in the present case, was exclusively based on the earlier decision dated 29.02.2012, a copy of that judgment has been placed on the record. The judgment of the Single Judge indicates that the earlier case also dealt with persons who were working as contract employees who were appointed after a regular selection. In some cases, termination orders were passed without an enquiry on allegations of misconduct while in other cases, an enquiry was conducted. The learned Single Judge, issued the following directions in terms as agreed in that case:

“(1) In cases where the appellate/revisional authority has directed re-engagement of the contract employees as fresh employees, such employees shall be entitled to benefit of continuity of service from the date of termination till the date of re-engagement, except for the period during which they were absent, and the said continuity of service granted to the employees shall be without any monetary benefit and shall be counted only for the purpose of regularization at a future date.

(2) The continuity of service so ordered in para (1) shall not, however, be counted for the purpose of seniority and shall not be allowed to affect the seniority of regularly working employees or for other benefits, but shall be counted only for the purpose of considering their cases for regularization.

(3) There are also cases where the orders of termination are challenged, either before the appellate/revisional authorities or before this Court, after six or seven years of date of termination. In all such cases the benefit of continuity of service without any monetary benefit and re-engagement so ordered in para (1) shall be available to only to such of those employees who have approached the appellate/revisional authorities or this Court within three years from the date of termination.

(4) In cases where appeals/revisions or writ petitions are filed after three years of the orders of termination, it is directed that the such petitioner/s shall be considered for reengagement as fresh contract employee/s, subject to medical fitness and other formalities, but he/they shall not be entitled to continuity of past service as under para-(1) above.

(5) In cases where contract employees have preferred appeals/revisions, but no orders have been passed therein, the appellate/

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A revisional authorities shall entertain and dispose of those appeals/ revisions in the light of the directions referred to above, preferably on or before 31st March, 2012.

(6) In cases where no enquiry was conducted, the respondent - Corporation shall be free to conduct enquiry as per law into the allegations of unauthorised absence of its employees from duty or other allegations of misconduct.”

10. In view of the aforesaid facts and circumstances and when the attention of the Division Bench was drawn to the facts of the case on hand and the distinguishing facts in both the cases, the Division Bench ought to have reviewed and recalled its order. However, unfortunately the Division Bench has dismissed the review application and unfortunately lost sight of the facts of the present case.

11. As observed herein above, the earlier order passed by the learned Single Judge dated 29.02.2012 in Writ Petition No.2786 of 2012 upon which the reliance was placed by learned Single Judge while allowing the petition, in the present case shall not be applicable at all. The Division Bench, therefore, erred in confirming the order passed by the learned Single Judge. That when the true and correct facts were specifically pointed out and it was pointed out that the decision which was relied upon by the learned Single Judge, shall not be applicable to the facts of the case on hand and, therefore, the Division Bench erred in confirming the order passed by learned Single Judge, the Division Bench ought to have reviewed and recalled its earlier order. As observed herein above, the decision in Writ Petition No.2786 of 2012 upon which the reliance was placed by learned Single Judge, shall not be applicable at all. Therefore, the order passed by the learned Single Judge and the Division Bench cannot be sustained and the same deserve to be quashed.

12. In view of the reasons stated above, we allow these appeals and accordingly set aside order dated 31.07.2013 passed in W.A.M.P. No.1858 of 2013 in Writ Appeal No.144 of 2013 and the order passed by the Division Bench in Writ Appeal No.144 of 2013 as well as the order passed by the learned Single Judge in Writ Petition No.4317 of 2012.

13. The present appeals are allowed to the aforesaid extent. No costs.