

APSRTC & ORS.

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v.

SRI K. SATHAIAH

(Civil Appeal No. 12242 of 2018)

DECEMBER 07, 2018

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Labour Laws:

Continuity of service – Grant of – Propriety – Termination of contract employee after holding disciplinary proceeding – In departmental review, he was re-engaged – Writ petition by employee seeking continuity of service with consequential benefits – Single Judge of High Court directed continuity of service from the date of termination till the date of re-employment – Order of Single Judge upheld by Division Bench of High Court – On appeal, held: Continuity of service can be granted only when order of termination is set aside, to ensure that there is no hiatus in service – In absence of challenge to termination order and to fresh appointment, grant of continuity was not sustainable – Seniority of the workman shall be counted w.e.f. the date of his fresh appointment.

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Allowing the appeal, the Court

HELD : 1. The workman did not choose to assail either the termination of his services following the enquiry or the fresh appointment. All that was sought was that he should have the benefit of continuity of service from the date of the earlier termination until re-engagement. The grant of continuity was not sustainable for the simple reason that unless the order of termination and of the fresh appointment were challenged and adjudicated upon, seniority would necessarily have to count with effect from the date of the fresh appointment. As a matter of first principle, continuity can be granted when an order of termination is set aside, to ensure that there is no hiatus in service. [Paras 8 and 9][279-E-G]

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2. There is another reason why the judgment of the High Court cannot be sustained. It is common ground that the appellant has recruited personnel like the present respondent on contract

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- A **after a regular process of selection. Eventually, the contract employees are to be regularised. Granting continuity of service to a person such as the respondent, who was found to have committed misconduct, would place him on the same footing as other contractual employees who have a record without blemish. Hence, once a fresh appointment was given to the**
- B **respondent and neither the termination nor the fresh engagement was placed in issue, the grant of continuity of service by the High Court was manifestly misconceived. The seniority of the respondent workman shall be counted with effect from the date of his fresh appointment in the service of the Corporation.**
- C **[Paras 10 and 14][279-G-H; 280-A-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12242 of 2018.

- D From the Judgment and Order dated 11.06.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 864 of 2013.

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.

- E The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Leave granted.

- F 2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.06.2013 passed by the Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No.864 of 2013 by which the Division Bench dismissed the same appeal and confirmed judgment passed by the learned Single Judge dated 18.07.2012 in Writ Petition No.17541 of 2012 directing the appellants herein—original respondents to extend the benefit of continuity of service to the workman from the date of termination till the date of re-engagement except for the period when he was absent and that would be without monetary benefit and that it would be granted only for the purpose of regularization at a later date, the original respondents- Corporation-employer have preferred the present appeal.

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3. The facts leading to the present appeal are as under : A

a. That the respondent herein-original writ petitioner was appointed as a contract driver and working with the appellat corporation.

b. That a departmental enquiry was initiated against him for remaining on unauthorized absence. B

c. Following the report of the Enquiry Officer, his services came to be terminated.

d. After the dismissal of the departmental appeal, and in the course of the departmental review, the Divisional Manager issued an order for the re-engagement of the respondent on contract on 06.07.2012. C

e. After the re-engagement, the respondent invoked the jurisdiction of the High Court under Article 226 of the Constitution of India and prayed for continuity of service together consequential service benefit. D

4. 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 after 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 extend the benefit of 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. E F G

5. 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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A 6. Mr. Gourab Banerji, learned senior counsel appearing on behalf
of the appellants submits that there was a manifest error on the part of
both the learned Single Judge and the Division Bench. In the present
case, a disciplinary enquiry was held against the workman after which
an initial decision was taken to terminate him from service. In a
B departmental review, he was granted fresh appointment. Neither the
termination nor the order granting him fresh appointment as a contract
driver were challenged. As a matter of fact, it has also been submitted
that in certain other cases, the workmen had taken recourse to
proceedings before the Industrial Court but in the present case that was
not done. Be that as it may, the learned Single Judge relied on the earlier
C decision and issued directions, to govern the entire batch of cases. This
direction was confirmed by the Division Bench without having regard to
the facts of individual cases.

D 7. 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
E in terms as agreed in that case:

F “(1) In cases where the appellate/revisonal 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.

G (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.

H (3) There are also cases where the orders of termination are
challenged, either before the appellate/revisonal 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/revisonal authorities or this Court within three years from the date of termination.

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(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 re-engagement 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.

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

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(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.”

8. In the present case, the workman did not choose to assail either the termination of his services following the enquiry or the fresh appointment. All that was sought was that he should have the benefit of continuity of service from the date of the earlier termination until re-engagement.

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9. Such a direction could not have been issued by the learned Single Judge without the termination being put into question. The grant of continuity was not sustainable for the simple reason that unless the order of termination and of the fresh appointment were challenged and adjudicated upon, seniority would necessarily have to count with effect from the date of the fresh appointment. As a matter of first principle, continuity can be granted when an order of termination is set aside, to ensure that there is no hiatus in service.

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10. There is another reason why the judgment of the High Court cannot be sustained. It is common ground that the appellant has recruited personnel like the present respondent on contract after a regular process

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- A of selection. Eventually, the contract employees are to be regularised. Granting continuity of service to a person such as the respondent, who was found to have committed misconduct, would place him on the same footing as other contractual employees who have a record without blemish. Hence, once a fresh appointment was given to the respondent and neither the termination nor the fresh engagement was placed in issue, the grant of continuity of service by the High Court was manifestly misconceived.
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11. We may also note that the earlier order of the learned Single Judge dated 29.02.2012 was in a batch of cases, where termination orders were issued without holding an enquiry in certain cases and after holding an enquiry in others, though in violation of the principles of natural justice. It was in that view of the matter that the direction contained in Clause 6 of the operative order provided that in cases where no enquiry was conducted, the Corporation would be at liberty to conduct an enquiry in accordance with law, on the allegations of misconduct.
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12. We find a considerable degree of merit in the submission of learned senior counsel appearing on behalf of the Corporation that in deciding the entire batch of cases by a common order, the learned Single Judge as well as the Division Bench unfortunately lost sight of the facts of each individual case.
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13. In view of the facts and circumstances of the case, we allow this appeal and accordingly set aside the impugned judgment and order dated 11.06.2013 of the Division Bench as well as the judgment and order dated 18.07.2012 passed by the learned Single Judge.
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14. The seniority of the respondent workman shall be counted with effect from the date of his fresh appointment in the service of the Corporation.
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15. The appeal is accordingly allowed to the aforesaid extent. No costs.