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APSRTC & ORS.

v.

SRI A. SANJEEV REDDY

(Civil Appeal No. 12247 of 2018)

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DECEMBER 07, 2018

[DR. DHANANJAYA Y CHANDRACHUD AND

M. R. SHAH, JJ.]

Service Law – Termination – Plea of continuity of service with consequential benefits – Respondent was appointed as a contract conductor in the appellant-corporation – He was subjected to a departmental enquiry, after which he was terminated – Respondent preferred departmental appeal, which was dismissed – However in departmental review, order for the re-engagement of the respondent on contract was issued – After his re-engagement, respondent filed writ petition and pleaded for continuity of service with consequential service benefits – Single Judge of the High Court considering the earlier decision dated 29.02.2012 in Writ Petition No.2786 of 2012, disposed of the writ petition filed by the respondent and directed the appellant to extend the benefit of continuity of service to him from the date of termination until the date of his re-engagement except for the period during which he was absent – Direction was confirmed by the Division Bench of the High Court – On appeal, held: In instant case, respondent did not assail either the termination of his services following the enquiry or the fresh appointment – He only sought benefit of continuity of service from the date of the earlier termination until the date of his re-engagement – Grant of continuity by the Single Judge was not sustainable unless the order of termination and/or 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 principle, continuity can be granted when an order of termination is set aside, to ensure that there is no hiatus in service – Thus, grant of continuity of service by the High Court was manifestly misconceived.

Disposing of the appeal, the Court

HELD: 1. The order of the Single Judge of the High Court in the present case, was exclusively based on the earlier decision

dated 29.02.2012 in writ petition no.2786 of 2012, 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. [Para 5] [618-C-D]

2. 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. [Para 6] [619-E]

3. Such a direction could not have been issued by the 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/or 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. [Para 7] [619-F]

4. 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 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. [Para 8] [619-G-H; 620-A]

5. The earlier order of the 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

A 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. [Para 9] [620-B-C]

B 6. There is a considerable degree of merit in the submission of the Corporation that in deciding the entire batch of cases by a common order, the Single Judge as well as the Division Bench of the High Court unfortunately lost sight of the facts of each individual case. [Para 10] [620-D-E]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12247 of 2018.

From the Judgment and Order dated 25.04.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 169 of 2013.

D 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.

E 2. Feeling aggrieved and dissatisfied with the judgment and order dated 25.04.2013 passed by the Division Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No.169 of 2013 by which Division Bench has affirmed the judgment and order passed by the learned Single Judge passed in Writ Petition No.27412 of 2012 by which the learned Single Judge solely relied upon the directions issued by the learned Single Judge in the order dated 29.02.2012 in Writ petition No.2786 of 2012 and directed the appellant-corporation to extend the benefit of continuity of service from the date of termination till the date of his re-engagement except for the period during which he was absent, however, without any monetary benefit and shall be counted only for regularization, the original respondents-employer-corporation has preferred the present appeal.

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

H a. The respondent was appointed as a contract conductor and was working in Kamareddy Depot, Nizamabad District of the appellant corporation.

b. That a departmental enquiry was initiated against him by the appellant herein. A

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

d. That the respondent herein preferred a departmental appeal against the order of termination. B

e. That the Departmental appeal came to be dismissed. However, in the course of the departmental review the Regional Manager issued an order for the re-engagement of the respondent on contract on 21.02.2011.

f. After his 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 with consequential service benefits. C

g. 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 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. D
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h. The above order of the learned Single Judge was affirmed by the Division Bench in a Writ Appeal.

4. 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 H

A case, a disciplinary enquiry was held against the workman after which an initial decision was taken to terminate him from service. In a 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 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.

C 5. 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:

E “(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.

F (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.

G (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

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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. A

(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. B

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

(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.” D

6. 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. E

7. 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/or 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. F

8. 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 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 H

A 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.

B 9. 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
C in accordance with law, on the allegations of misconduct.

D 10. 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.

E 11. For the above reasons, we allow this appeal and accordingly, set aside the impugned judgment and order dated 25.04.2013 in Writ Appeal No.169 of 2013 passed by the Division Bench as well as the judgment and order passed by the learned Single Judge in Writ Petition No.27412 of 2012. The seniority of the respondent workman shall be counted with effect from the date of his fresh appointment in the service of the Corporation.

12. The appeal is, accordingly, disposed of in the above terms. No costs.

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