

APSRTC REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR MUSHIRABAD AND OTHERS A

v.

A.U.M. RAO

(Civil Appeal No. 12011 of 2018 etc.) B

DECEMBER 07, 2018

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

Labour Laws:

Continuity of service – Grant of – Propriety – Termination of service of workman, after holding disciplinary proceedings – In departmental review order for re-engagement/re-employment of the workman – Thereafter workman filed writ petition before High Court seeking continuity of his service – Petition allowed by Single Judge of High Court directing continuity of service from the date of termination till the date of re-employment – Division Bench of High court affirmed the order of Single Judge – On appeal, held: Once fresh appointment was given and neither the termination order nor the fresh employment was challenged, grant of continuity of service by the High Court was manifestly misconceived – Seniority of the workman shall be counted with effect from the date of his fresh appointment. C
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Disposing of the appeals, the Court

HELD: 1. In the present case, the workman did not choose to assail either the termination of his services following the enquiry or the fresh appointment. Continuity can be granted when an order of termination is set aside, to ensure that there is no hiatus in service. 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. 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. [Para 10, 11][1221-B-D] F
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2. 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, H

A 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. The seniority of the respondent workman shall be counted with effect from the date of his fresh appointment in the service of the Corporation. [Paras 12 and 15][1221-D-F; 1222-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12011 of 2018.

C From the Judgment and Order dated 25.04.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 1665 of 2012

With

D Civil Appeal No. 12012 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.

E The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.

Civil Appeal No.12011 of 2018

Leave granted.

F 1. This appeal arises from a judgment and order dated 25 April 2013 of the Division Bench of the High Court of Judicature of Andhra Pradesh in Writ Appeal No.1665 of 2012.

2. By its judgment, the Division Bench affirmed the correctness of an order dated 04 September 2012 of a learned Single Judge.

G 3. The facts lie in a narrow compass.

4. In February, 2007, the respondent was appointed as a driver on contract, after undergoing a process of selection. He was working in the Waltair Depot in the district of Visakhapatnam with the appellant.

H 5. A disciplinary enquiry was held against the workman. Following the report of the Enquiry Officer, his services came to be terminated. After the dismissal of a departmental appeal, and in the course of a

departmental review, the Regional Manager issued an order for the re-engagement of the respondent on contract on 3 February 2012. 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. A

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

8. 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 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. F
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A 9. Since the order of the learned Single Judge in the present case,
was exclusively based on the earlier decision dated 29 February 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
B 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:

C “(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 the
D purpose of regularization at a future date.

E “(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.

F “(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 these employees who have
approached the appellate/revisional authorities or this Court within
three years from the date of termination.

G “(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.

H “(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. A

(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.” B

10. 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. C

11. 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. D

12. 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. E F

13. We may also note that the earlier order of the learned Single Judge dated 29 February 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. G H

- A 14. 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.
- B 15. For the above reasons, we allow this appeal and accordingly, set aside the impugned judgment and order dated 25 April 2013 of the Division Bench. 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 16. The appeal is, accordingly, disposed of in the above terms. No costs.

Civil Appeal No.12012 of 2018

Leave granted.

- D This appeal is also disposed of in terms of the directions in Civil Appeal No.12011 of 2018(@ SLP (CIVIL) NO.18047/2013).

Kalpana K. Tripathy

Appeals disposed of.