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APSRTC & ORS.

v.

G. KONDAL RAO

(Civil Appeal No. 12243 of 2018)

DECEMBER 07, 2018

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

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Service Law – Termination – Re-engagement and continuity in service – Respondent was appointed as a contract conductor and was working with the appellant-corporation – He was subjected to a departmental enquiry, after which he was terminated – Departmental appeal and Review petition preferred by him were rejected – Writ petition by the respondent – 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 re-engage the respondent in service and extend the benefit of continuity of service to him from the date of termination till the date of his re-engagement except for the period during which he was absent – Same was upheld by the Division Bench of the High Court – On appeal, held: Single Judge of the High Court without having regard to the facts of the case, mechanically issued directions exclusively relying on the earlier decision dated 29.02.2012 in Writ Petition No.2786 of 2012 – Both Single Judge and the Division Bench of the High Court erred in not appreciating the facts of the instant case – In the instant case, the workman was dismissed from service after the departmental enquiry and when the charges of misconduct were proved, that was not the case in Writ Petition No.2786 of 2012 – Furthermore, benefit of continuity of service ordered by the Single Judge was not sustainable unless the order of termination is set aside – Continuity is granted when the order of termination is set aside to ensure there is no hiatus in service – Thus, order of the Single Judge and the Division Bench of the High Court set aside.

Allowing the appeal, the Court

HELD: 1. The Single Judge of the High Court without having regard to the facts of the individual cases, mechanically

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issued the directions exclusively relying on the earlier decision dated 29.02.2012 in Writ Petition No.2786 of 2012. However, the Single Judge and the Division Bench of the High Court both have materially erred in not appreciating the facts that in the present case the workman was dismissed from service after holding the departmental enquiry and having all the charges of misconduct proved, that was not the case in Writ Petition No. 2786 of 2012. [Para 5][319-F-H]

2. 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 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 6][320-A-B]

3. Even otherwise such a direction cannot be issued by the Single Judge without the termination being set aside. The ground of continuity was not sustainable for the simple reason that unless the order of termination is set aside, as a matter of first principle, continuity cannot be granted. Continuity is granted when the order of termination is set aside to ensure there is no hiatus in service. [Para 7][320-C]

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][320-D-E]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12243 of 2018

From the Judgment and Order dated 26.04.2013 of the High Court of Judicature at Andhra Pradesh at Hyderabad in Writ Appeal No. 246 of 2013.

B 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

C **M. R. SHAH, J.**

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26.04.2013 passed by the Division Bench of the High Court of judicature of Andhra Pradesh at Hyderabad in Writ Appeal No.

D 246 of 2013 the original respondents–corporation–employer has preferred the present appeal.

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

a. That the respondent was appointed as a contract conductor and was working with the appellant corporation.

E b. That he was subjected to departmental enquiry.

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

d. That the departmental appeal also came to be rejected.

F e. Review petition before the Regional Manager also came to be rejected on merits.

G f. That thereafter straightway and without recourse to remedies available under the Industrial Disputes Act, the workman original writ petitioner approached the High Court invoking jurisdiction of the High Court under Article 226 of the Constitution of India by filing Writ Petition No.25970 of 2012.

H g. That the learned Single Judge allowed the petition holding that the matter was not res-integra and was covered by the earlier judgment of the 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 and solely considering the decision of the learned Single Judge in Writ Petition No.2786 of 2012 and without even considering the facts of the case, dispose of the writ petition by directing the original respondents to re-engage the petitioner in service and extend the benefit of continuity of service to him from the date of termination till the date of his re-engagement except for the period during which he was absent. This was, however, without monetary benefit and was directed to count only for regularization.

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

4. Mr. Gourab Banerji, learned Senior Counsel appearing on behalf of the appellants has submitted that the Division Bench has materially erred in affirming the order passed by the learned Single Judge and without even considering the facts of the individual case and that the Division Bench has not properly appreciated the fact that learned Single Judge has amicably and without proper application of the facts disposed of the writ petition solely relying upon the order passed by the learned Single Judge dated 29.02.2012 in Writ Petition No.2786 of 2012, which was not applicable at all. It is submitted in the present case as such the original writ petitioner was dismissed from service after holding departmental enquiry and after having held the charges and the misconduct proved in a departmental enquiry. It is submitted that the main judgment and order passed by the Division Bench affirming the order passed by the learned Single Judge cannot be sustained and required to be quashed and set aside.

5. Having heard the learned counsel appearing on behalf of the appellants herein and having considered the main judgment and order passed by the learned Division Bench as well as the order passed by the learned Single Judge, it appears that the learned Single Judge without having regard to the facts of the individual cases, mechanically issued the directions exclusively relying on the earlier decision dated 29.02.2012 in Writ Petition No.2786 of 2012. However, the learned Single Judge and the Division Bench both have materially erred in not appreciating the facts that in the present case the workman was dismissed from service after holding the departmental enquiry and having all the charges of misconduct proved, that was not the case in Writ Petition No.2786 of 2012

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A 6. 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
B 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.

C 7. Even otherwise such a direction cannot be issued by the learned
Single Judge without the termination being set aside. The ground of
continuity was not sustainable for the simple reason that unless the order
of termination is set aside, as a matter of first principle, continuity cannot
be granted. Continuity is granted when the order of termination is set
aside to ensure there is no hiatus in service.

D 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
E 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.

F 9. 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.

G 10. For the above reason, we allow the present appeal and
accordingly set aside the impugned judgment and order dated 26.04.2013
in Writ Appeal No.246 of 2013 as well as the judgment and order passed
by learned Single Judge in Writ Petition No.25970 of 2012. No costs.