

A MUKHIYA KARYAPALAK ADHIKARI, U. P. KHADI TATHA
GRAMODYOG BOARD KARMIT ANUBHAG, LUCKNOW &
ANR.

v.

B SANTOSH KUMAR
(Civil Appeal No.7756 of 2011)

SEPTEMBER 08, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

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Service Law – Termination – Respondent was working on contract basis as a Peon – His service was terminated by the appellant – Respondent filed writ petition praying for quashing the termination order – Single Judge of the High Court dismissed the writ petition – Appeal before Division Bench of High Court – Division Bench admitted the appeal but while doing so, it stayed the termination order and also specifically ordered that the respondent be allowed to continue to work – Held: The Division Bench of High Court while admitting the appeal, ought not to have passed an order so as to allow the appeal itself even at that interim stage – Order passed by the Division Bench was illegal, without jurisdiction and was passed without any application of mind – Matter remitted back to Division Bench of the High Court.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7756 of 2011.

From the Judgment & Order dated 09.08.2010 of the High Court of Judicature at Allahabad, in Special Appeal No. 1066
G of 2004.

R.D. Upadhyay, Dr. Madan Sharma, J.P. Tripathy, Ashay Upadhyay for the Appellants.

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A.S. Pundir, Anurag Tiwari, Amardeep Dhaka, Irshad Ahmad for the Respondent. A

The following order of the Court was delivered

O R D E R

1. Leave granted. B

2. We have heard the learned counsel appearing for the parties on this appeal who have taken us through the records. The respondent was engaged on contract basis as a Peon on a lumpsum salary of Rs. 2,500/-on 1.4.2003. Subsequently, an order came to be passed against the respondent on 26.6.2004. By the aforesaid order, the contract service of the respondent was terminated w.e.f. 5.7.2004. C

3. The respondent being aggrieved by the aforesaid order of termination filed a writ petition in the Allahabad High Court which was registered as 28789 of 2004. In the said writ petition filed by the respondent, a prayer was made for quashing the order dated 26.6.2004 terminating the service of the respondent. The learned Single Judge who heard the writ petition passed an order on 28.7.2004 dismissing the said writ petition holding that the engagement of the respondent on contract basis did not vest on him any legal right to regular appointment. D E

4. The High Court passed an order in the said appeal which was filed in 2004 which was registered as Special Appeal No. 1066 of 2004. The appeal was listed before the Division Bench nearly six years of passing of the order of the learned Single Judge and the Division Bench passed the order for admitting the appeal. But peculiarly enough the High Court passed an order that the order dated 26.6.2004 passed by the appellant terminating the service would remain stayed. It was also made specific in that order that the respondent should be allowed to continue to work. F G

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A 5. We fail to understand as to how the Division Bench while admitting an appeal could pass such an order so as to allow the appeal itself even at that interim stage. The respondent was not working when the suit was filed and his writ petition was dismissed. Despite the said fact not only the Division bench
B stayed the operation of the order after six years of filing the appeal, but directed for allowing the respondent to continue to work despite the fact that he was not working on that date.

C 6. Therefore, the aforesaid order passed by the Division Bench is illegal, without jurisdiction and was passed without any application of mind. We set aside the said order and remit back the matter to the Division Bench of the High Court for disposal of the appeal as expeditiously as possible. The order dated 9.8.2010 passed by the Division Bench staying the order dated 26.6.2004 and directing the appellant to allow the respondent
D to continue to work stand quashed and would not operate in any manner till the disposal of the appeal.

7. The appeal is allowed to the aforesaid extent in terms of the aforesaid order.

E B.B.B. Appeal allowed.