

THE DEPOT MANAGER & ORS.

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v.

SRI S. KRISHNA

(Civil Appeal No.12244 of 2018)

DECEMBER 07, 2018

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

Labour Laws:

Termination of service – Of contract employee Pursuant to holding departmental enquiry – Departmental appeal as well as review dismissed – Industrial dispute dismissed – Writ petition allowed by Single Judge of High Court relying on its earlier judgment and directed the employer to re-engage the employee and extend benefit of continuity of service from the date of termination till the date of his re-engagement – The order of Single Judge was affirmed by Division Bench of High Court – On appeal, held: High Court mechanically issued directions without having regard to the facts of individual case – The facts of the earlier case on which the High Court had relied was distinct – Grant of continuity of service by the High Court was misconceived.

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Allowing the appeal, the Court

HELD: 1. Single Judge of High Court without having regard to the facts of the individual cases, mechanically issued the directions exclusively relying on the earlier decision. The 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. The earlier decision was passed on the ground of violation of the principles of natural justice as therein termination order was passed without holding an enquiry. [Paras 5 and 6][1266-C-F]

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2. 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

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A **the order of termination is set aside, 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][1266-F-H]**

3. The appellant had 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] [1267-A-C]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12244 of 2018.

From the Judgment and Order dated 24.07.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Appeal No. 1344 of 2013.

E 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.

F 1. Leave granted.

G 2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.07.2013 passed by the Division Bench of the High Court of judicature of Andhra Pradesh at Hyderabad in Writ Appeal No.1344 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 driver and was working with the appellant corporation.

H b. That he was subjected to departmental enquiry.

- c. That following the report of the Enquiry Officer, his service came to be terminated. A
- d. That the departmental appeal also came to be rejected.
- e. Review petition before the Regional Manager also came to be rejected on merits. B
- f. Thereafter the original writ petitioner raised the industrial dispute and the same came to be dismissed by the Presiding Officer, Labour Court I, Hyderabad vide judgment and order in Industrial Dispute No.93 of 2010.
- g. Thereafter 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.5632 of 2012. C
- h. 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. D
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- i. The above order of the learned Single Judge was affirmed by the Division Bench in Writ Appeal. G

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 H

A 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.

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C 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
D 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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F 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 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 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.

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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 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.

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.

10. For the above reason, we allow the present appeal and accordingly set aside the impugned judgment and order dated 24.07.2013 in Writ Appeal No.1344 of 2013 as well as the judgment and order passed by learned Single Judge in Writ Petition No.5632 of 2012. No costs.