

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).18047/2013

(Arising out of impugned final judgment and order dated 25-04-2013 in WA No. 1665/2012 passed by the High Court Of A.P. At Hyderabad)

APSRTC REP. BY ITS CHAIRMAN
AND MANAGING DIRECTOR MUSHIRABAD & ORS.

Petitioner(s)

VERSUS

A.U.M.RAO & ORS.

Respondent(s)

WITH

S.L.P.(C)...CC No. 17547/2013 (XII-A)
(FOR CONDONATION OF DELAY IN FILING/REFILING SLP ON IA 1/2013)

SLP(C) No. 18053/2013 (XII-A)
(IA NO.1/2013 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 27122/2013 (XII-A)
(IA NO.1/2013 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 26347/2013 (XII-A)
(IA NO.1/2013 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

S.L.P.(C)...CC No. 16871/2013 (XII-A)
(IA NO.1/2013 - CONDONATION OF DELAY IN FILING SLP)

S.L.P.(C)...CC No. 16938/2013 (XII-A)
(IA NO.1/2013 - CONDONATION OF DELAY IN FILING SLP)

S.L.P.(C)...CC No. 16651/2013 (XII-A)
(IA NO.1/2013 - CONDONATION OF DELAY IN FILING SLP)

SLP(C) No. 29640/2013 (XII-A)
(IA NO.1/2013 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 29648/2013 (XII-A)
(IA NO.1/2013 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 7807/2014 (XII-A)

SLP(C) No. 7810/2014 (XII-A)

SLP(C) No. 7809/2014 (XII-A)

SLP(C) No. 7811/2014 (XII-A)

SLP(C) No. 7812/2014 (XII-A)

SLP(C) No. 36235/2014 (XII-A)

Date : 07-12-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Gourab Banerji, Sr. Adv.
Sriharsha Peechara, Av.
Mr. Arjun Krishnan, AOR
Mr. Ashish Tiwari, Adv.
Ms. Manisha Singh, Adv.
Ms. Raka, Adv.
Mr. C. S. N. Mohan Rao, AOR

For Respondent(s) Mr. Tanmaya Agarwal, AOR
Mr. A. N. Arora, AOR
Mr. Raj Kishor Choudhary, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP (Civil) No.18047/2013 and SLP (Civil) No.29640/2013

Leave granted.

The Appeals are disposed of in terms of the Signed Reportable Judgment.

SLP (CIVIL) NO.18053/2013, SLP (CIVIL) NO.29648/2013,
SLP (CIVIL) NOS.7807/2014, 7809/2014, 7810/2014, 7811/2014,
7812/2014 AND 36235/2014

Leave granted.

The Appeals are allowed/disposed of in terms of the Reasoned Signed Reportable Judgment.

Pending applications, if any, stand disposed of.

SLP (Civil) CC No.17547/2013, SLP (Civil) No.27122/2013,
SLP (CIVIL) NO.26347/2013, SLP (CIVIL) CC NO.16871/2013,
SLP (CIVIL) CC NO.16938/2013, SLP (CIVIL) CC NO.16651/2013

Delay condoned.

Issue notice returnable within four weeks.

Dasti, in addition, is permitted.

In the meantime, the judgment of the High Court shall remain stayed.

(GEETA AHUJA)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Reasoned Signed Reportable Judgments in Civil Appeal
Nos.12242 of 2018, 12247 of 2018, 12243 of 2018, 12244 of 2018,
12245 of 2018, 12246 of 2018, 12241 of 2018 and 12240 of 2018
are placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12011 OF 2018
(ARISING OUT OF SLP (CIVIL) NO.18047 OF 2013)

AND

CIVIL APPEAL NO.12012 OF 2018
(ARISING OUT OF SLP (CIVIL) NO.29640 OF 2013)

APSRTC REP. BY ITS CHAIRMAN AND MANAGING .. Appellant(s)
DIRECTOR MUSHIRABAD AND OTHERS

Versus

A.U.M. RAO .. Respondent(s)

J U D G M E N T

DR. DHANANJAYA Y. CHANDRACHUD, J.

Civil Appeal No.12011 of 2018

Leave granted.

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.

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.

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.

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.

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.

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 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:

"(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 purpose of regularization at a future date.

(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.

(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 only to such of these employees who have approached the appellate/revisonal authorities or this Court within three years from the date of termination.

(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.

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

(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."

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.

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.

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.

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.

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.

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.

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

Civil Appeal No.12012 of 2018

Leave granted.

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

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(M.R. SHAH)

New Delhi,
Dated: December 07, 2018.

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SLP(C) No. 36235/2014 (XII-A)

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For Respondent(s) Mr. Tanmaya Agarwal, AOR
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SLP (CIVIL) NOS.7807/2014, 7809/2014, 7810/2014, 7811/2014,
7812/2014 AND 36235/2014

Leave granted.

The Appeals are disposed of.

Reasoned Judgment/Order will follow.

SLP (Civil) CC No.17547/2013, SLP (Civil) No.27122/2013,
SLP (CIVIL) NO.26347/2013, SLP (CIVIL) CC NO.16871/2013,
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Delay condoned.

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In the meantime, the judgment of the High Court shall remain stayed.

(GEETA AHUJA)
COURT MASTER (SH)

(Signed Reportable Judgment in Civil Appeal Nos.12011 and 12012 of 2018 is placed on the file)

(SAROJ KUMARI GAUR)
BRANCH OFFICER