

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**TUESDAY ,THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY TWO**

PRESENT

**HONOURABLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT APPEAL NO: 183 OF 2022

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the order dated 27.08.2012 passed in W.P.No.21241 of 2012. on the file of the High Court.

Between:

1. The Divisional Manager, SD APSRTC, Rathifile, Secunderabad, Hyderabad.
2. The Depot Manager, APSRTC, Hakimpet Bus Depot, Hyderabad.

...APPELLANTS

AND

G. Dharma Reddy, S/o. G. Laxma Reddy, Aged about 30 years, Contract Driver, (C-981658), APSRTC, Hakimpet Bus Depot, Hyderabad, A.P.

...RESPONDENT

I.A. NO: 1 OF 2013(WAMP. NO: 1972 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 281 days in filing the Writ Appeal against the Order in W.P.No.21241 of 2012 dated 27.08.2012 on the file of this Hon'ble Court.

Counsel for the Appellants:SRI. N.PRAVEEN REDDY, SC FOR TSRTC

Counsel for the Respondent: NONE APPEARED

The Court delivered the following:

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.183 of 2022

JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The appellants before this Court (hereafter referred to as, the employer) have filed the present writ appeal being aggrieved by the order dated 27.08.2012 passed by the learned Single Judge in W.P.No.21241 of 2012.

The facts of the case reveal that the respondent/writ petitioner (hereafter referred to as, the employee) was appointed as a contract driver in the services of the Andhra Pradesh State Road Transport Corporation and after holding a departmental enquiry for the charge of rash and negligent driving, his services were terminated by an order dated 09.05.2012. Thereafter, he preferred an appeal against the order of termination and the appellate authority, by an order dated 26.05.2012, has directed re-engagement of the employee as a contract driver. However, he was denied the continuity of service, attendant and consequential benefits, including regularisation. The

learned Single Judge has disposed of the writ petition directing the employer to extend the benefit of continuity of service to the employee from the date of termination till the date of his re-engagement except for the period during which he was absent. It was also observed that the said continuity of service shall be without monetary benefits and shall be counted only for the purpose of regularisation at a later date.

Learned counsel for the employer has drawn the attention of this Court towards the judgment delivered by the Hon'ble Supreme Court in the case of **Andhra Pradesh State Road Transport Corporation v. A.U.M.Rao and others**¹.

Paragraphs 2 and 7 to 14 of the aforesaid decision are reproduced as under:-

"2. The facts lie in a narrow compass. In February 2007, the respondent was appointed as a driver on contract, after undergoing a process of selection. He was working in Waltair Depot in the district of Visakhapatnam with the appellant.

7. Since the order of the learned Single Judge in the present case was exclusively based on the earlier decision dated 29-2-2012 [*Ch. S. Kumar v. A.P. SRTC*, 2012 SCC

¹ (2019) 14 SCC 663

OnLine AP 1142], 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 [*Ch. S. Kumar v. A.P. SRTC*, 2012 SCC OnLine AP 1142] in terms as agreed in that case: (*S. Kumar case* [*Ch. S. Kumar v. A.P. SRTC*, 2012 SCC OnLine AP 1142], SCC OnLine AP para 7)

"(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 for the purpose of regularisation 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 regularisation.

(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.

(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/revisional authorities shall entertain and dispose of those appeals/revisions in the light of the directions referred to above, preferably on or before 31-3-2012.

(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."

8. 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.

9. 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.

10. 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.

11. We may also note that the earlier order of the learned Single Judge dated 29-2-2012 [*Ch. S. Kumar v. A.P. SRTC*, 2012 SCC OnLine AP 1142] 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.

12. We find a considerable degree of merit in the submission of the 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.

13. For the above reasons, we allow this appeal and accordingly set aside the impugned judgment and order dated 25-4-2013 [*A.P. SRTC v. A.V.M. Rao*, 2013 SCC OnLine AP 1049] 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.

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

Meaning thereby, in similar circumstances, the benefit of past service has been denied by the Hon'ble Supreme Court.

In the light of the aforesaid decision, the order passed by the learned Single Judge, to the extent the benefit of past service has been granted for the purpose of regularisation, is set aside and the writ appeal stands allowed.

The miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//



SECTION OFFICER

To,

1. One CC to Sri. N Praveen Reddy, SC for TSRTC [OPUC]
2. Two CD Copies.
3. The Section Officer, Writ Filing Section, High Court of Judicature at Hyderabad
4. The Section Officer, Writ Posting (Service) Section, High Court of Judicature at Hyderabad
5. Two CD Copies.

PM
BS



HIGH COURT

DATED:15/03/2022



JUDGMENT

WA.No.183 of 2022

Allowing the WA
Without costs.

PRK
02/05 (1)