

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.2609-2610 OF 2009

(Arising out of SLP(C)9455-9456/2009 CC 4405)

**The Secretary, Seethalakshmi Aachi Women's .. Appellant(s)
College & Anr.**

Versus

C Jaishankar & Ors. .. Respondent(s)

ORDER

Delay condoned.

Leave granted.

Challenge in this appeal is to the final judgment and order dated 28th August, 2008 passed by the Madurai Bench of the Madras High Court in Writ Appeal (MD) No. 281 of 2008. By the impugned order, the appellate Bench has reversed the order passed by the learned Single Judge on 21st June, 2007 in Writ Petition (MD) No. 3744 of 2004 whereby the writ petition filed by the respondent-workman was dismissed and the order of his removal from the post of Watchman was upheld. The Learned Judge had come to the conclusion that the respondent-employee had himself abandoned the work.

Since the issue involved is short, with the consent of learned counsel for the respondents, who is on caveat, we proceed to dispose of the matter at this stage itself.

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Learned counsel for the appellants submits that the Appellate Bench has erred in allowing the appeal without finding any infirmity in the order passed by the Learned Single Judge. The Division Bench has merely directed that the employee should be reinstated within a period of two weeks from the date of receipt of the copy of the order. It is thus, urged that being a non-speaking order, it deserves to be set aside. Learned counsel for the respondents, on the other hand, has supported the view taken by the appellate Bench.

Having perused the impugned order, we are of the opinion, that it cannot be sustained. It needs little emphasis that in an intra-Court appeal, the Division Bench does not normally differ from the finding of fact arrived at by the Single Judge, unless cogent reasons exist. In other words, if the Division Bench disagrees with the views of the Single Judge, it must record its reasons therefor.

In the instant case, the operative part of the order passed by the Appellate Bench reads as under :

"Considering the facts and circumstances of the case and upon having gone through the order passed by the learned Single Judge, we deem it appropriate to set aside the order passed by the
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learned Single Judge and in our opinion a direction to the respondent to reinstate the appellant within a period of two weeks from the date of receipt of a copy of this order, will serve the ends of

justice."

From the order we are unable to decipher any ground or reason which weighed with the Division Bench in reversing the decision of the learned Single Judge. The Single Judge, recorded a finding that since the respondent had himself stopped attending to the work, no relief could be granted to him in the writ petition. It is manifest from the impugned order, that except for the observation that in the interest of justice, the order passed by the learned Single Judge deserves to be reversed, there is no finding on the question of abandonment of job by the employee. We are convinced that such a non-speaking order by an Appellate Bench cannot be upheld.

For the foregoing reasons, the impugned judgment cannot be sustained. Accordingly, the appeals are allowed; the impugned orders passed by the Appellate Bench, including order dated 4th March, 2009 passed in MP(MD) No. 2 of 2008, are set aside and the matter is remitted back to the

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Appellate Bench for fresh consideration of the appeal in accordance with law. It goes without saying that we have not expressed any opinion on the merits of the case. However, there will be no order as to costs.

.....J.

[D.K. JAIN]

.....J.

[R.M.

LODHA]

NEW DELHI,
APRIL 13, 2009.