IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.47144 OF 2018 (S-RES)

BETWEEN:

SMT. SHARADHA L.DODMANI
AGED ABOUT 35 YEARS
W/O SHANKAR, ACCOUNTANT
TOWN MUNICIPAL COUNCIL
BADAMI, BAGALKOT DISTRICT – 587 201.

... PETITIONER

(BY SRI VINAY S.KOUJALAGI, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
DEPARTMENT OF URBAN DEVELOPMENT
M.S.BUILDING, AMBEDKAR VEEDHI
BENGALURU – 560 001.
REPRESENTED BY PRINCIPAL SECRETARY

2 . TOWN MUNICIPALITY COUNCIL
BADAMI, BAGALKOT DISTRICT – 587 201.
REPRESENTED BY CHIEF OFFICER

3 . DEPUTY COMMISSIONER
DISTRICT TOWN MUNICIPAL CELL
BAGALKOT – 587 201.

... RESPONDENTS

(BY SRI V.S.KALASURMATH, HCGP FOR R1 AND R3;
SRI PRAKASH HOSAMANE, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER PASSED BY THE 2ND RESPONDENT DATED 27.07.2018 VIDE ANENXURE-A AND THEREBY REINSTATE THE PETITIONER TO HER DUTY AS ACCOUNTANT IN 3RD RESPONDENT.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.10.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question an order dated 27-07-2018 by which the services of the petitioner were terminated and as a consequential relief seeks a direction by issuance of a writ in the nature of mandamus to reinstate her into service as an Accountant in the 3rd respondent/District Town Municipal Cell, Bagalkot.

2. The facts, in brief, are as follows:-

The petitioner was appointed as an Accountant on temporary basis in the Town Municipal Cell, Bagalkot in terms of an appointment order dated 03-10-2008 issued by the 2nd respondent. It appears that the petitioner, without any break in service,

continued to work with the 3rd respondent. While so functioning the petitioner along with all other similarly situated employees approached this Court in Writ Petition No.103135 of 2016 and connected cases seeking regularization of their services and the writ petitions come to be disposed of by an order dated 20-02-2017 directing the respondents to consider the case of the petitioner along with others for regularization and till such consideration, the services of all those petitioners should not be disturbed.

3. After the said direction being issued, a show cause notice is issued to the petitioner on the score that she has remained unauthorisedly absent and her absence has caused a block to various projects initiated by the 2nd respondent/Town Municipal Council. On receipt of the show cause notice dated 04-06-2018, the petitioner submits her reply on 13-06-2018. Notwithstanding detailed reply, the petitioner comes to be terminated from service without holding any inquiry whatsoever, which has driven the petitioner to this Court in the subject petition.

4. The subject petition comes to be allowed by an order dated 15-09-2021 directing reinstatement of the petitioner with 50% of backwages. This order is called in question by the State in Writ Appeal No.100309 of 2022. The Division Bench by allowing the appeal, remits the matter back to the hands of the learned single Judge for re-consideration of rival claims afresh. It is, therefore, the petition is reconsidered for the second time after close to 5 years of its filing.

5. Heard Sri Vinay S.Koujalagi, learned counsel appearing for the petitioner, Sri V.S. Kalasurmath, learned High Court Government Pleader appearing for respondents 1 and 3 and Sri Prakash Hosamane, learned counsel appearing for respondent No.2.

6. The learned counsel appearing for the petitioner would vehemently contend that the order passed on 15-09-2021 did not call for any interference as it was an admitted fact that the services of the petitioner were terminated on issuance of show cause notice without holding any inquiry. Merely because the petitioner was a

temporary employee, it is no law that on allegations one can be terminated without holding any inquiry or affording reasonable opportunity of hearing. He would further contend that the State which chose not to file any statement of objections for close to three years, files an application in the writ appeal before the Division Bench contending that inquiry of some sort was conducted and the Division Bench has remitted the matter back forcing the petitioner back to what she was five years ago. He would seek allowing of the petition with exemplary costs.

7. The learned High Court Government Pleader appearing for the State would seek to refute the submissions to contend that the petitioner was a temporary employee and no inquiry need be conducted against a temporary employee even if the petitioner has been terminated on account of allegation against her. He would contend that statement of objections were not filed in the writ petition, but an application was filed before the Division Bench in the writ appeal. All that the State wanted is liberty to hold an inquiry and pass appropriate orders. Before the present bench also he would submit that there are no objections to file but what was

required was only moulding of relief to the extent of reserving liberty to the State to hold an inquiry and then pass appropriate orders in accordance with law, if need arises. Except this submission, the learned High Court Government Pleader would submit that he has no other grievance against the order passed on 15-09-2021.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The present hearing of the petition is a second innings. Therefore, I deem it appropriate to notice the order dated 15.09.2021 passed by a co-ordinate Bench allowing the subject petition to steer clear the facts. This Court holds as follows:

> *"…. …. ….*
>
> *2. Brief facts of the case that would be relevant for the purpose of disposal of this petition are that the petitioner was appointed as an Accountant on temporary basis by the 2nd respondent-Town Municipal Council vide appointment order dated 03.10.2008. There afterwards, the petitioner was continuously serving in the 2nd respondent without there being any interruption. The petitioner, along with other similarly situated employees had approached this Court in*

W.P. No.103135/2016 and connected writ petitions seeking regularization of her service and the said writ petitions was disposed of by this Court on 20.02.2017 directing the competent authority to consider the case of the petitioners therein for regularization and till such consideration, the services of the petitioners was directed not to be disturbed. There afterwards, the petitioner received a show cause notice alleging that the petitioner had remained absent and her absence had caused hindrance to various projects of the 2nd respondent. The petitioner on receipt of the show cause notice dated 04.05.2018 vide Annexure-C, has given a reply to the same on 13.06.2018 vide Annexure-D. There afterwards, the 3rd respondent without holding any enquiry has terminated the services of the petitioner. Being aggrieved by the same, the petitioner has approached this Court.

3. Learned counsel for the petitioner submits that the petitioner has not absented herself as alleged in the show cause notice. He submits that only after this Court had disposed of petitioner's writ petition seeking regularisaton of service, the present action has been taken to terminate the services of the petitioner. He submits that the present action is a camouflage and the only intention of the 2nd respondent was to terminate the services of the petitioner. He submits that though a reply was given to the show cause notice, the same has not been considered and no enquiry has been held prior to passing of the order impugned. He submits that in the show cause notice issued to the petitioner even the period of absenteeism has not been mentioned and in spite of all these defects, the Deputy Commissioner has passed the order impugned terminating the services of the petitioner. He submits that the order impugned is not a termination simplicitor and therefore, the Deputy Commissioner could not have passed an order without holding any enquiry. Accordingly, he prays to allow the writ petition.

4. Per contra, the learned Additional Government Advocate appearing for respondent Nos.1 & 3 and Sri Prakash Hosamane, learned counsel appearing for respondent No.2 argued in support of the impugned order contending that even if the reply given by the petitioner is

perused, there is no satisfactory explanation for her absenteeism. They also submit that since the petitioner's appointment was on contract basis, no enquiry is required to be held for terminating her services as the order impugned is nothing but a termination simplicitor and it will not carry any stigma on the petitioner.

5. I have carefully considered the arguments addressed on both sides and also perused the material on record.

6. The petitioner, admittedly, was appointed as an Accountant on temporary basis by the 2nd respondent on 03.10.2008. The petitioner has been continuously serving in the 2nd respondent and she had also made representations to regularize her services and there afterwards she had approached this Court along with other similarly situated employees in W.P.No.103135/2016 and other connected writ petitions and this Court disposed of the said writ petitions vide order dated 20.02.2017 directing the competent authorities to consider the case of the petitioners therein for regularization of their services and it was also observed by this Court that till such consideration, the services of the petitioners should not be disturbed. There afterwards, the petitioner has received the show cause notice alleging that she was unauthorisedly absent for her duty. A perusal of the show cause notice dated 04.05.2018, which is available at Annexure-C would go to show that in the said show cause notice, the 3rd respondent has not stated the period of absenteeism by the petitioner. Material on record would also go to show that the petitioner has given a reply to the said show cause notice denying the allegations in the show cause notice and, in fact, she has even taken a contention that she has through out attended duty diligently. In spite of such a reply given by the petitioner, the Deputy Commissioner has not held any enquiry prior to passing the order impugned terminating the services of the petitioner. A perusal of the termination order would go to show that even in the said order the period of unauthorized absence alleged against the

petitioner is not mentioned. However, though a reference is made to the reply statement given by the petitioner, the contents of such a reply have not been reproduced or appreciated. The Deputy Commissioner appears to have passed the order impugned solely on the basis of a report which is submitted by the Chief Officer of the 2nd respondent. There is nothing on record to show that the petitioner was heard by the Chief Officer of the 2nd respondent before submitting such a report to the Deputy Commissioner. The petitioner has contended before this Court that the order of termination has been passed after this Court had directed the respondent to consider the case of the petitioners for regularization and till such consideration not to disturb the services of the petitioner.

7. The Hon'ble Supreme Court in the case of Anoop Jaiswal Vs. Government of India, has held that, "Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employees".

8. Similarly in Nelap Singh Vs. State of U.P. reported in (1985) 1 SCC 56, it has been held that, "Where allegations of misconduct are leveled against a government servant, and it is a case where the provisions of Article 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order. The court will view with great disfavour any attempt to circumvent the 8

constitutional provision of Article 311(2) in a case where that provision comes into play".

9. Referring to the above two decisions, the Hon'ble Supreme Court in the case of Om Prakash Goel Vs. Himachal Pradesh Tourism Development Corportion Ltd., Shimla and another reported in (1991)3 SCC 291 has held that "...it is well settled that, in a case of an order of termination even that of a temporary employee the court has to see whether the order was made on the ground of misconduct if such a complaint was made and in that process the court would examine the real circumstances was well as the basis and foundation of the order complained of and if the court is satisfied that the termination of services is not so innocuous as claimed to be and if the circumstances further disclose that it is only a camouflage with a view to avoid an enquiry as warranted by Article 311(2) of the Constitution, then such a termination is liable to be quashed."

10. A co-ordinate Bench of this Court in W.P. No.103472/1991, disposed of on 18.10.2019, in almost identical circumstances, after referring to the above judgments of the Hon'ble Supreme Court, has observed in para 6 as follows:

> *"6. In the light of the above said decisions, when we look at the show cause notice issued by the Deputy Commissioner, it is clear that the allegations of serious misconduct was made against the petitioner. The petitioner has given a reply to the said show case notice denying the allegations made against the petitioner. However, the Deputy Commissioner proceeds to pass the impugned order terminating the services of the petitioner, without conducting a disciplinary enquiry and offering an opportunity to the petitioner to defend himself. What is noticeable is that, even in the preamble of the impugned order of termination, the very same allegations as was made in the show cause notice has been reiterated. Therefore, it is quite evident that, the order of termination is not*

> *a simplicitor order of termination, but an order of punishment which leaves a stigma on the petitioner."*
>
> ***11. Having regard to the above referred pronouncements, I am of the considered view that the order impugned passed by the Deputy Commissioner without holding an enquiry and without properly considering the reply given by the petitioner to the show cause notice is unsustainable and accordingly the same is liable to be quashed."***
>
> *(Emphasis supplied)*

It is an admitted fact that the State did not file its statement of objections in the writ petition despite it being pending for close to three years. A writ appeal is preferred against the afore-quoted order, in Writ Appeal No.100309 of 2022. In the writ appeal an application is filed in I.A.No.5 of 2022 producing certain additional documents. On the score that some additional documents are filed, the Division Bench sets aside the order passed by the co-ordinate Bench and remits the matter back to the hands of the learned single Judge for consideration afresh. The order of the Division Bench reads as follows:

> *"…. …. ….*
>
> *2. Heard learned Additional Advocate General for the appellants-State and the learned counsel for the respondents.*

3. The material on record discloses that the writ petitioner, claiming to be serving as an Accountant, preferred the aforesaid writ petition challenging the order dated 27.07.2018 passed by the Deputy Commissioner, whereby he was terminated from service. Before the learned Single Judge, it was specifically contended that though he was a temporary/contractual employee, the order impugned in the writ petition terminating his service was passed in violation of principles of natural justice inasmuch as neither any enquiry was held nor the reply given by the petitioner was considered by the Deputy Commissioner and consequently, the impugned order of termination was vitiated and deserved to be set aside.

4. A perusal of the impugned order passed by the learned Single Judge will indicate that the appellant-State did not file statement of objections to the writ petition, and based on the material on record, the learned Single Judge came to the conclusion that, in the absence of necessary enquiry and consideration of the reply submitted by the writ petitioner, the impugned order of termination was illegal and violative of principles of natural justice and as such, the learned Single Judge proceeded to pass the impugned order allowing the petition. Aggrieved by the impugned order passed by the learned Single Judge, the State is before this Court by way of the present appeal.

5. In addition to reiterating the various contentions urged in the memorandum of appeal and referring to the material on record, the learned Additional Advocate General invited our attention to the application – I.A. No.5/2022 filed by the appellant-State along with which additional documents have been produced by the appellants-State in order to contend that an opportunity was provided by the Deputy Commissioner prior to passing the order of termination. It is also contended that the order of termination was in conformity with the undertaking given by the writ petitioner.

6. The said applications filed by the appellants-State are vehemently opposed by the learned counsel for the first respondent-writ petitioner who contends that the appellants-State had not exercised due diligence and had not produced

the said documents at the time of the impugned order being passed by the learned Single Judge and consequently, no indulgence can now be shown in favour of the appellants-State by permitting production of the said documents.

7. We have given our anxious consideration to the rival submission and perused the material on record.

8. Though several contentions have been urged by both side with regard to production of said additional documents, having regard to the fact that the said additional documents produced along with I.A. No.5/2022 are with reference to the subject matter of the writ petition and the present appeal, without expressing any opinion on the merits/demerits of the rival contentions, we deem it just and proper to allow said I.A. No.5/2022 and permit production of the said additional documents and receive the same on record.

9. Pursuant to allowing I.A. No.5/2022, it would also be necessary to set aside the impugned order and remit the matter to the learned Single Judge for reconsideration of the rival claims afresh in accordance with law.

10. In the result, the following:

ORDER

i) The appeal is hereby allowed.

ii) The impugned order is hereby set aside and the W.P.No.47144/2018 is restored to the file of the learned Single Judge.

iii) I.A. No.5/2022 stands allowed and the documents produced along with the application are received on record.

iv) The matter is remitted back to the learned single Judge for reconsideration of the matter afresh in accordance with law. All contentions

> ***on all aspects of the matter including the additional documents produced along with I.A. No.5/2022 are kept open and no opinion is expressed on the same.***
>
> ***Pending I.A. No.4/2022 does not survive for consideration and the same is disposed of accordingly."***
>
> *(Emphasis supplied)*

The order of the co-ordinate Bench was passed on merits of the matter. Once having passed the order on merits of the matter, the Division Bench has to consider the matter on its merits. The application filed in I.A.No.5 of 2022 also could have merited consideration at the hands of the Division Bench. The order is set aside and sent back for consideration afresh. All that the State has submitted before this Court is that it wanted moulding of relief and it has no objections to file.

10. The learned High Court Government Pleader has also admitted what was necessary was liberty to hold an inquiry. Therefore, all that the State wanted was moulding of relief insofar as holding of inquiry is concerned. This Court is of the respectful view that the Division Bench could have moulded the relief itself

and not remitted the matter back to the learned single Judge. This view of mine is fortified by the judgment of the Apex Court in the case of ***ROMA SONKAR v. MADHYA PRADESH STATE PUBLIC SERVICE COMMISSIOIN***[1]. The Apex Court holds that the Division Bench cannot remit the matter back to the single Judge in exercise of its jurisdiction under Article 226 of the Constitution of India. The Division Bench, in an intra-Court appeal has to either allow it or dismiss it except in cases where the aggrieved is not heard, apart from which, the Apex Court holds, that the Division Bench has no jurisdiction to remand. The Apex Court holds as follows:

> ***"2.*** *That was challenged by Respondent 1/State Public Service Commission before the Division Bench. In the impugned judgment(s) [M.P. State Public Service Commission v. Roma Sonkar, 2017 SCC OnLine MP 1873]' [Roma Sonkar v. State of M.P., 2017 SCC OnLine MP 1872], though the Division Bench, in principle, agreed with the process, the Division Bench was not quite happy with the relief moulded by the learned Single Judge, hence the matter was remitted to the learned Single Judge in the matter of moulding the relief.*
>
> ***3. We have very serious reservations whether the Division Bench in an intra-court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening***

[1] ***(2018) 17 SCC 106***

> ***by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra-court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge."***
>
> *(Emphasis supplied)*

11. Long before the Apex Court holding as afore-quoted, a question arose before the Full Bench of this Court in ***TOWN HOUSE BUILDING CO-OPERATIVE SOCIETY LIMITED v. SPECIAL DEPUTY COMMISSIONER***[2] regarding interpretation of Section 4 of the Karnataka High Court Act, 1961 and the question was whether the Division Bench could remit the matter back to the hands of the learned single Judge when the learned single Judge has decided the issue on its merits. The reference made to the Full Bench reads as follows:

> ***"Whether a Division Bench hearing Writ Appeal against an order of single Judge has power to remand the case to the single Judge concerned or not?"***

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[2] ***1988 (2) KLJ 510***

The answer to the said reference by the Full Bench is as follows:-

"…. …. ….

3. *Earlier in this Court a question had arisen regarding the power of the Division Bench to remand the case to the single Judge in Ninganna v. Narayana Gowda [1983 (1) Kar. L.J. 241.] . Explaining the appellate jurisdiction of High Court under Section 4 of the Karnataka High Court Act, 1961 and the concept of power exercisable by the learned single Judge and the Division Bench in appeal white exercising the jurisdiction under Article 226 of the Constitution, it has been observed thus:*

When an appeal is preferred under Section 4 of that Act against an order of a single Judge to a Division Bench, the jurisdiction which the latter exercises is also the very same jurisdiction under Article 226 of the Constitution. On this aspect, a Full Bench of this Court in State of Karnataka v. H. Krishnappa (I.L.R. 1975 (Kar) P. 1015 at 1049) stated as follows:

> *"….When a Division Bench entertains an appeal from a decision of a single Judge in exercise of powers under Article 226, the Division Bench, in deciding such appeal, exercises the same power under that Article, whether it (the Division Bench) affirms, reverses or modifies the decision of the single Judge…."*
>
> *"When the Division Bench, which hear and decide appeals from the decisions of single Judge, are also a part of the High Court and exercise the same powers under Article 226, while deciding such appeals…."*

The writ appeal jurisdiction, therefore, cannot be compared and is not akin to, an appellate jurisdiction as ordinarily understood, which presupposes the existence of a superior Court and an inferior Court. (See Shan Kar Ramachandra Abhyankar v. Krishnaji Dattatreya - (1969) 2 SCC 74 : A.I.R. 1970 S.C. p. 1)

and no such relationship exists between a single Judge and a Division Bench as both exercise the jurisdiction vested in the High Court. There is no difference between a Writ Petition referred to a Division Bench or a Writ Petition which comes up before a Division Bench through a writ appeal, in the matter of exercise of the jurisdiction and powers of this Court under Article 226 of the Constitution. Therefore, in our view in cases where a Division Bench hearing a writ appeal against an order of single Judge rejecting a Writ Petition at preliminary hearing without notice to the respondents or in a case of this type where the Writ Petition was heard and decided without impleading necessary parties as a result of which defect, the order in the Writ Petition is liable to be set aside, the writ matter have come up before the Division Bench, the most appropriate course for the Division Bench is to decide the Writ Petition itself."

Finding that in view of the aforesaid judgment, the Bench had no jurisdiction to remand the case for the decision by the learned single Judge, the matter was referred to a Division Bench to re-hear the Writ Appeal 35 of 1976. On reference by the learned single Judge the appeal was put up for hearing before the Bench. Before full-dressed arguments could be advanced by the learned Counsel for the parties, an unreported Judgment of this Court in J.R. Venkategowda and Javare Gowda v. Hassan D.C.C. Bank [W.A. Nos. 133 and 134/87 DD 26-6-1987.] was brought to the notice of the Bench wherein with regard to the power of remand the Bench has observed thus:

"During the discussion yet another aspect was presented. It was mentioned that in view of the circumstances that the jurisdiction of the Appellate Bench under Section 4 of the Karnataka High Court Act is not strictly an Appellate jurisdiction in the sense generally understood, as there is, and could be, no relationship as between a superior Court and an inferior Court and that Appellate jurisdiction being necessarily a mere second look at the matter by the same Court, the Appellate Bench cannot

remand a matter to the single Judge but should itself finally dispose of the Writ Petitions. This proposition might, perhaps, have to be considered in the light of the observations made by the Supreme Court in Umaji Keshao Meshram v. Smt. Radhikabai (1986 Supp SCC 401 : AIR 1986 SC 1272)".

(underlininq is ours)

In view of the aforesaid observation in the unreported Judgment, the Bench thought it proper to refer the question stated above for decision by a Full Bench. That is how we are seized of the matter.

4. *At the outset it may be observed that challenge to Section 4 of the Karnataka High Court Act 1961, has been negatived by a Full Bench of this Court in State of Karnataka v. H. Krishnappa [ILR 1975 Kar 1015.] and the provision for the writ petitions to be heard and decided by a single Judge has been upheld. The question that the conferment of the appellate jurisdiction on the High Court over the decision of a single Judge of the High Court would amount to alteration of organisation of the High Court or re-organisation of the High Court and the question that the State Legislature had no competence to make such a law touching the organisation of the High Court have also been decided and the contentions advanced in support thereof have been negatived. The passages out of the Judgment of the Full Bench which considered and brought out the scope of the appellate jurisdiction read as under:*

"Division Benches of a High Court hearing appeals from decisions of single Judges of that High Court, is nothing new to High Courts. Such a system has been prevailing for over a hundred years in the High Courts in the erstwhile British India and their successor High Courts."

As pointed out by the Supreme Court in Ladli Prasad v. Kamal Distillery (AIR 1963 S.C. 1279 at p. 1285), where an appeal lies to a Division Bench of the High Court against a Judgment of a Single Judge of the High Court exercising original or appellate jurisdiction, the decision of the single

Judge should be regarded as a decision of the Court immediately below the Division Bench which hears the appeal, but the single Judge of the High Court cannot be regarded as a Court subordinate to the High Court. The single Judge being regarded as a Court below the Division Bench which hears the appeal from his decision, is a necessary incident of the concept of the appellate jurisdiction which consists of powers to examine the correctness of the decision appealed against and to reverse, modify or affirm it, just as a Full Bench of the High Court has power to examine the correctness of a ruling of a Division Bench of a single Judge of the same High Court and to overrule such ruling."

Judges of the High Court while exercising different jurisdictions, have different powers. The appellate jurisdiction of the High Court over the original jurisdiction exercised by single Judges of the High Court and the power of the Full Bench to overrule the rulings of Division Benches or single Judges of the same High Court, do not imply the existence of any watertight compartments among the Judges of the High Court or any hierarchical tiers or strata of Judges in the High Court. A Judge exercising the original jurisdiction in one case, may sit in a Division Bench exercising appellate jurisdiction in another case and may sit in a Full Bench in yet another case. Thus, the appellate jurisdiction conferred by Section 4 of the High Court Act 1961 does not bring about any alteration in the constitution or organisation of the High Court."

"As stated earlier, when Article 226 of the Constitution confers powers on the High Court, such powers become capable of being exercised in accordance with any general right of appeal from the decisions of the High Court and there is nothing in Article 226 which requires that the powers thereunder must be exercised once and for all. In theory, an appeal is a continuation of hearing of the suit or other original proceeding and ordinarily the appellate Court has all the powers which the Court of first instance can exercise. When a Division Bench entertains an appeal from a decision of a single Judge in exercise of powers under Article 226, the

Division Bench, in deciding such appeal, exercise the same power under that Article, whether it (the Division Bench) affirms, reverses or modifies the decision of the single Judge. The nature and content of the power conferred by Article 226 cannot be said to have been interfered with by a mere provision for an appeal, without anything more, to a Division Bench from a decision of a single Judge in exercise of powers under that Article. The provision for an appeal, as in the present cases, merely regulates the exercise of that power by the High Court."

But, the Full Bench Judgment referred to above has not gone into the amplitude of the appellate power nor has the same been decided as it did not arise for consideration. Thus, the question has to be gone into keeping in view the observations of the Bench in Ninganna's case and the doubt cast by the latter Division Bench and commending reconsideration of the said view in the light of the Judgment of the Supreme Court in Umaji Keshao Meshram v. Smt. Radhikabai [1986 Supp SCC 401 : AIR 1986 SC 1272.] .

***5.** As the question posed before us is of considerable importance, we thought it proper to request Shri R.N. Narasimha Murthy, Senior Advocate to assist us. Shri H.K. Vasudeva Reddy, learned Counsel, who intervened with our permission, has also given assistance by making submissions with regard to the relevant points necessary for deciding the question posed for decision.*

6. Before finding out an answer to the question, it may be observed at the outset that a learned single Judge of the High Court cannot be regarded as a Court subordinate to the High Court, that an appeal has been provided under a statute validly enacted by the Legislature, that the appellate jurisdiction conferred by Section 4 of the Karnataka High Court Act 1981 does not being any ??? in the constitution or organisation of the High Court and that provision for ??? of that power by the High Court. As we find, Section 41 of the Karnataka High Court Act does not define the scope of the appellate power. Again, there are no relevant rules in this respect. Normally, when a

power of appeal in conferred, it implies ??? ancillary powers necessary to effectuate the grant of specific power. Further, such an express power, if not specifically hedged by any limitation, inheres within it, all qualities and attributes implied in the nature of such a power. Mr. Narasimha Murthy, learned senior Advocate, had drawn our attention to Rule 39 of the Writ Proceedings Rules which reads:

"39. Application of the High Court of Karnataka Rules, etc. The provisions of the High Court of Karnataka Rules, 1959, the rules made by the High Court of Karnataka under the Karnataka Court Fees and Suits Valuation Act, 1958, and the provisions of the Code of Civil Procedure, 1908, shall apply, as far as may be, to proceedings under Article 226 (and/or Article 227) and writ appeals in respect of matters for which no specific provision is made in these rules."

On the strength of the aforesaid rule, it was sought to be argued by the learned Counsel that the provisions of Section 107 and the provisions of Order 41 flutes 23 to 26A which confer power of remand on the appellate Court would apply to writ appeals. It was also submitted by the learned Counsel that the Supreme Court in Umaji's case has held that Letters Patent Appeals lie to a two Judge Bench of the High Court against a decision rendered by a single Judge exercising even the constitutional jurisdiction vested in the High Court under Article 226 and that once an appeal lay, the power of remand was incidental to the powers exercisable by the Division Bench as an appellate Court.

....

10. *There can be no gainsaying that a learned single Judge while exercising the power of deciding a Writ Petition (by virtue of allocation of work) does not sit as a subordinate Court or Judge subordinate to those who constitute a Division Bench as the question of subordination does not arise at all. Resultantly the applicability of the provisions of Order 41, Rules 23 to 26A is not attracted. But a power or a jurisdiction entrusted to a particular Judge as part of the function of the High Court may involve the exercise of a*

power or jurisdiction which is subject to a superior power like an appellate power. Exercise of power by a single Judge of the High Court depends upon the allocation of work by the Chief Justice. Each one exercises the power/jurisdiction of the High Court. The decision of the learned single Judge, by virtue of a specific statutory provision, is subject to review in appeal by the Division Bench. In Ladli Prasad v. Kamal Distillery [AIR 1963 SC 1279.] the Supreme Court has observed:—

"Where an appeal lies to a Division Bench of the High Court against a judgment of a single Judge of the High Court, exercising original or appellate jurisdiction, the decision of the single Judge should be regarded as a decision of the Court immediately below the Division Bench which hears the appeal, but the single Judge of the High Court cannot be regarded as a Court subordinate to the High Court."

(Underlining by us)

When a judgment of a learned single Judge is appealed against, the single Judge does not become subordinate to the appellate Bench though as observed by the Supreme Court above, the decision of the single Judge should be regarded as a decision of the Court immediately below the Division Bench which hears the appeal. Nature of the appellate power exercised by the Division Bench is not curtailed in any way merely for the reason that the writ appeal is an intra-Court appeal. The Bench while dealing with the appeal may be faced with various problems, e.g. the learned single Judge may allow a Writ Petition and issue a writ on a pure question of law without going into the other questions. *The Division Bench in appeal may disagree with the interpretation of law which would result in the reversal of the order of the single Judge. Resultantly, the other questions would survive for consideration. In such a situation the Bench may choose to decide the other questions itself. But there will be nothing wrong for the Bench to remand the case for consideration by the learned single Judge, of the other questions to be*

decided on merits. The appeal is against the decision of a learned single Judge. The Bench should have the benefit of the opinion of the learned single Judge on all points. If the Bench does not have the opinion and findings of the learned single Judge, will it not be handicapped to some extent while deciding the other questions by itself? Ordinarily, the Bench in appeal does not interfere with the findings arrived at by a learned single Judge on facts. In such a case it would be more appropriate to obtain the benefit of the opinion of the learned single Judge.

…. …. …. ….

13. *The power of appeal, as earlier observed, cannot be hedged by any limitation, as conferring such power implies in it all incidental and ancillary powers necessary to effectuate the grant of specified power. In Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi [AIR 1839 SC 430.] question arose whether an Appellate Authority has a power to stay the operation of the order appealed against, in the absence of a specific provision and Supreme Court said that such a power was implicit in the conferment of the appellate power. In this connection the Supreme Court referred to many instances of the scope of an appellate power and referred to a Full Bench decision of Kerala High Court reported in Dharmadas v. State Transport Appellate Tribunal [AIR 1963 Korala 73.] (apparently with approval) and observed at p. 434:*

"…The Full Bench decision in Dharmadas v. State Transport Appellate Tribunal, 1962 Ker LJ 1133 : (AIR 1963 Ker 73) (FB) related to the question whether a remand could be ordered in exercise of appellate jurisdiction under Section 64 of the Motor Vehicles Act in the absence of any express power to that effect existing in the statute. It was held that the power to remand was incidental to and implicit in the appellate jurisdiction created by Section 64."

Almost an identical question arose before the Division Bench of Calcutta High Court in Mahadeo Prosad Saraf v. S.K. Srivastava [AIR 1963 Calcutta 152.] . Para-16, from the order of Bose, C.J. may be quoted here usefully:

"With regard to the question whether the appellate Court's power is limited only to the consideration of the question whether a Rule Nisi should issue or not and to remit the case to the lower Court in the event of its coming to the conclusion that a case for a Rule Nisi had been made out, it is to be observed that such limitation or restriction on the power of the appellate Court is not warranted. There may be cases in which the appellate Court may consider it desirable and proper to dispose of the proceeding under Article 226 of the Constitution finally at the appellate stage without sending the case back for disposal by the trial Court. To take an example if an application under Article 226 is made for challenging the legality of an act on the ground that the provisions of a statute pursuant to which the action is taken are ultra vires and that is the sole ground on which the application is based and the trial Court after hearing the petitioner on the question dismisses the application in limine and refuses to issue a Rule Nisi and the petitioner prefers an appeal against the order of dismissal, can it be said that the appellate Court is bound to remand the case to the trial Court if it is satisfied that there is substance in the contention of the appellant? The answer, in my view, must be in the negative. No investigation into any question of fact is necessary in such a case and no filing of affidavit setting out any fact may be called for in such a case. The only question for determination before the appellate Court in such a case is a question of law and there is therefore no reason why the appellate Court cannot dispose of the proceeding under Article 226 finally instead of sending the case back for disposal by the trial Court and driving the parties to incurring of further unnecessary costs. It is true that when questions of facts are to be gone into and it is necessary to give an opportunity to the respondents to meet the allegations contained in the petition, the Court may think it fit to remit the case to the trial Court with directions for giving an opportunity to the respondents and for filing of affidavits but I do not think any hard and fast rule can be laid down that in each and every case of an appeal from an order summarily rejecting an application under Article 226, the appellate Court is bound to remit the case for disposal by the trial Court."

This was concurred by Debabrata Mookerjee, J. at paras 39 and 40 of the judgment, which are as follows:

"The Court's power to order a remand in a writ appeal has been considered in several cases. In the case of AIR 1954 Cal. 60 the Court was called upon to decide whether an order of summary dismissal of a Writ Petition had been properly made. It was a decision rendered by G.N. Das, J. with whom I had the privilege of being associated. It was held that where the contentions raised involve an enquiry into questions of fact and of law the proper course would be to call upon the respondents to show cause why the order complained of should not be set aside. Accordingly, the case was remanded with a direction to issue notice requiring the respondents to appear and show cause. The parties were directed to be given opportunity to file affidavits before the trial Court. A similar course was adopted in AIR 1958 Cal. 559 where it was held by Chakravarti. C.J. that if the application under Article 226 did not deserve to be thrown out at sight and there was matter to enquire into and investigate, the appellate Court would interfere by setting aside the summary order of dismissal. A rule was accordingly directed to issue requiring the respondents in that case to certify to the Court the record of the proceedings in which the order complained of had been made and to show cause why the said order should not be quashed or such order or further order made as might seem to the trial Court fit and proper. The Rule thus issued was made returnable before the learned Judge then taking applications under Article 226 of the Constitution. Indeed, the Supreme Court took the same course in (S) AIR 1957 SC 354. That was a case of industrial dispute between the management of a certain mill and its workers. The High Court had dismissed the petition in limine without giving an opportunity to contest the allegation of mala fides on the part of the Government. The order of summary dismissal was set aside and the matter remanded to the High Court with the direction to determine it after giving notice to the respondents."

"In my view the powers of the appellate Court in dealing with a writ appeal are in no way circumscribed by the writ rules. These rules are purely procedural; they do not have

the effect of limiting or enlarging the Court's power to dealing with and disposing of appeals. That power is defined elsewhere; it is to be found in the Code which by Section 107 gives the appellate Court the power, inter alia, to determine a case finally or to remand it for further consideration. It is always for the appellate Court to decide what form the interference will take in a given case. In my opinion, there is nothing to prevent the appellate Court from determining finally an appeal from an order of summary rejection of a Writ Petition if no further investigation is called for. I do not think, however, the present appeal fulfils that test particularly in view of the custom's contention that the documents exhibited by the appellant himself suggest that even the importation of the 15 tonnes of Dunnage Wood had not been lawfully made. That raised questions of fact which I think can best be investigated upon the case being remitted to the trial Court."

As we look at the whole issue the existence of power is one thing, while its exercise is another. Great care and caution guides the exercise of all judicial powers. So is the case with the exercise of an appellate power. Justice of the situation is always a guiding factor and even when an order of a single Judge is based on a wrong premise, the appellate Bench may not interfere, if the order appealed against has fructified the just result, as observed by a Division Bench of this Court in State of Karnataka v. G. Lakshman [ILR 1987 Kar 2223.] :

"We are sitting in appeal against the decision of the learned single Judge of this Court. Unless the said decision is established to be 'clearly wrong', we cannot interfere with the said decision just because it is shown to be 'not right'. In Smt. Padma Uppal etc. v. State of Punjab ((1977) 1 SCC 330 : AIR 1977 SC 580) it is observed that a Court of appeal interferes not when the judgment under attack is not right, but only when it is shown to be wrong."

14. *Therefore by conceding power in the appellate Bench of this Court to remand a case for further determination by the single Judge, the entity of this Court as an integrated institution will not suffer. Such a recourse is incidental to the internal management of the judicial*

functions of this Court. ***However, the power of remand, which inhers in the appellate power, has to be, no doubt, exercised sparingly and under rare circumstances.***

Coming to the case of this Court in Ninganna v. Narayana Gowda [1983 (1) Kar. L.J. 241.] cited for the proposition that there is no power of remand, I find that case does not decide the proposition which has been canvassed before us. In the context of the propriety of the remand order to be made, it was held that it was not 'appropriate' to make an order of remand having regard to the facts of the case. The relevant passage at page 120 reads thus:

"…. Therefore, in our view in cases where a Division Bench hearing a writ appeal against an order of a single Judge rejecting a Writ Petition at preliminary hearing without notice to the respondents or in a case of this type where the Writ Petition was heard and decided without impleading necessary parties as a result of which defect the order in the Writ Petition is liable to be set aside, the writ matter having come up before the Division Bench, the most appropriate course for the Division Bench is to decide the Writ Petition itself. Therefore, we are unable to agree that we have no jurisdiction to hear the Writ Petition but must remit it to the learned single Judge. In this view of the matter, we have heard the Writ Petition on merits and are making this final order in it."

As a result of the aforesaid discussion, the answers to the questions referred to us may be stated as follows:—

(i) That there is an inherent power in the Division Bench hearing writ appeal against an order of a learned Single Judge, to remand the case to be decided afresh by a learned single Judge;

(ii) That a remand order may be passed in cases where a Writ Petition has been dismissed for non-prosecution or in limine or on the ground of delay or maintainability or on some question of law without going into merits, etc. However, it is best in these matters to be neither dogmatic nor exhaustive,

> *yet the aforesaid categories are the ones in which the Appellate Bench may exercise its power of remand; and*
>
> ***(iii) That where a Writ Petition has been disposed of on merits by an order made by a learned single Judge, a Division Bench on Appeal would have no jurisdiction to remand such a case to a learned single Judge for fresh decision on merits and the appeal has to be disposed of on merits by the Division Bench itself."***
>
> *(Emphasis supplied)*

The Full Bench *(supra)* holds that once the learned single Judge decides the matter on its merits, the Division Bench has no jurisdiction to remit the matter back to the learned single Judge in an intra-court appeal under Section 4 of the Karnataka High Court Act, 1961. If the order passed by the Division Bench is considered on the principles so laid down by the Apex Court and that of the Full Bench of this Court, the unmistakable inference that can be respectfully drawn is that the Division Bench itself could have granted the prayer of moulding of the relief. It is the emphatic submission of the State, it only wanted moulding of relief at the hands of the Division Bench.

12. Even here, that is the only relief that is sought by the State, the State could have urged the same before the Division Bench and not sought a remand to the single Judge bench which is not a Court subordinate to the Division Bench, under Article 226 of the Constitution of India. Remand, in the normal circumstances, except those considered by the Full Bench, even when the issue is decided on merit, is to a Court subordinate which the learned single Judge is not. Notwithstanding the aforesaid law declared by the Apex Court or by a Full Bench of this Court, since the matter is placed before this Bench, I deem it appropriate to consider the same and pass orders on the merit of the matter, yet again.

13. The petitioner was appointed as Accountant in the year 2008 *albeit*, on a temporary basis. She had completed more than 10 years of service at the time when she was issued a show cause notice. Therefore, though she was not a permanent employee, she had acquired a *quasi* permanent status and termination of her service is on the score that she has been unauthorisedly absent and such absence has hindered functioning of the Council. Therefore, it is on allegations. If termination is on allegations, even to a

temporary employee, an inquiry in the least will have to be conducted, failure of which, would become violative of the principles of natural justice, as the employer is terminating an employee on account of allegations without affording a reasonable opportunity of hearing. It would be apposite to refer to the judgment of the Apex Court in the case of ***NAR SINGH PAL v. UNION OF INDIA***[3] wherein the Apex Cout has held as follows:

> ***"6. The appellant, no doubt, was a casual labour but as observed by the Tribunal, he had acquired temporary status with effect from 1-10-1989. Once an employee attains the "temporary" status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other articles dealing with services under the Union of India. A perusal of the impugned order by which the services of the appellant were terminated indicates that since the appellant had beaten one Mahender Singh with an iron rod and had also bitten him with his teeth on 20-4-1992 at 8.00 p.m. while the said Mahender Singh was on duty as Gateman, Tax Bhawan, Agra, therefore, his services were terminated with immediate effect. Thus the services were terminated on account of the allegation of assault made against the appellant. This Court on 24-1-2000 passed the following order:***
>
> ***"Learned counsel appearing for the respondents is granted six weeks' time to seek instructions whether regular departmental proceedings were taken in this matter or not."***
>
> ***8.*** *The documents which have been placed before us pertain to the preliminary inquiry made against the appellant*

[3] *(2000)3 SCC 588*

> *in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20-5-1992. The order having been passed on the basis of a preliminary inquiry and not on the basis of a regular departmental enquiry without issuing a charge-sheet or giving an opportunity of hearing to the appellant, cannot be sustained.*
>
> ***10. Applying the above principles, the order in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular departmental enquiry, cannot be sustained."***
>
> *(Emphasis supplied)*

The Apex Court considers an order of retrenchment of a temporary employee and holds that if it is on account of allegations even against a temporary employee, enquiry was a must. The Apex Court so directs on the score that a temporary employee being in the said status of employment for a long time acquires quasi permanent status and therefore, punitive action cannot be without compliance with principles of natural justice.

14. If the content of the order of termination is stigmatic, such stigma to be effaced and the employee must have the opportunity to defend such action. It is an admitted fact in the case

at hand that no inquiry is conducted. All that the State is seeking before this bench is liberty to hold an inquiry. The submission merits acceptance, as it is in tune with the law laid down by the Apex Court in plethora of judgments.

15. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed in part.

(ii) The petitioner shall be reinstated into service, if not already reinstated with 50% backwages, if not already paid on reinstatement.

(iii) In the event the petitioner has been reinstated, *status quo* with regard to the service conditions be maintained till the conclusion of the enquiry, if any instituted.

(iv) The respondent-State is reserved liberty to hold an enquiry on the aforesaid allegation, in accordance with law, after affording opportunity to the petitioner and pass appropriate orders, again in accordance with law.

(v) The enquiry shall be held only if a need for it still subsists.

(vi) All consequential benefits shall be determined to be sequential of the result of the enquiry.

Sd/-
JUDGE

bkp
CT:SS