

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.33465 OF 2011

DATED:28-10-2015

Between:

The District Cooperative Central Bank Ltd.,
Kakinada,
Rep. by its Chief Executive Officer/General manager
Nagamallithota
Kakinada
East Godavari District ... Petitioner

And

In the Court of the Authority under
Section 48 of the Andhra Pradesh
Shops and Establishments Act, 1988, and
the Assistant Commissioner of Labour
Kakinada, East Godavari District
and another ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. K.V. Seshagiri Rao

COUNSEL FOR RESPONDENT NO.1: A.G.P. for Labour (AP)

COUNSEL FOR RESPONDENT NO.2: Mr. N. Siva Reddy

THE COURT MADE THE FOLLOWING:

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ORDER:

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This writ petition is filed for a mandamus to set aside order dt.28.11.2011 of respondent No.1 whereby he has condoned the delay of 1830 days in filing the appeal by respondent No.2 for setting aside the order of termination passed by the petitioner.

A perusal of the impugned order shows that while condoning the delay respondent No.1 has referred to the explanation of respondent No.2 that he was implicated in a criminal case and that because of his termination and involvement in the criminal case he was mentally and financially upset. It has also placed reliance on the judgment of the Supreme Court in *Collector, Land Acquisition v. Mst. Katiji & Others*^[1].

Ordinarily, condonation of delay by Court or statutory authority is a matter of discretion and once the discretion for condonation of delay is exercised, superior Courts will not interfere with such discretion unless the exercise of such discretion results in patent miscarriage of justice to the opposite party. In the instant case, if the case instituted by respondent No.2 is decided on merits and in the event of his success, the petitioner may be saddled with back wages for the period during which respondent No.2 was out of employment. Therefore, in order to obviate such eventuality, it is appropriate that in the event of respondent No.2 succeeding before respondent No.1, he shall not claim back wages for the period of delay in his approaching respondent No.1. In my opinion, if such a rider is added to the condonation of delay, balance of justice would be ensured.

Accordingly, the impugned order is modified by imposing condition that respondent No.2 will not be entitled to back wages for

the period of delay in the event of his success before respondent No.1.

The writ petition is accordingly disposed of.

As a sequel to disposal of the writ petition, interim order dt.23.12.2011 shall stand vacated and W.P.M.P. No.41617 of 2011 and W.V.M.P. No.240 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

28-10-2015

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[\[1\]](#) AIR 1987 SC 1353