

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.8244 OF 2005

Between:

M. Rani Raju

.. Petitioner

and

The Dy. Commissioner of Labour &
Authority under Section 48(3) of the
A.P. Shops & Establishments Act, 1988
at Guntur and others

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 12th AUGUST, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.8244 OF 2005

ORDER

The petitioner challenges the order dated 23.09.2004 passed by the Deputy Commissioner of Labour & Authority under Section 48(3) of the Andhra Pradesh Shops and Establishment Act, 1988, Guntur, the first respondent, in S.A. Case No.1 of 2003 and the earlier order dated 22.02.2002 in A.P.S.E.M.P. Case No.2 of 2001 on the file of the Assistant Commissioner of Labour, Eluru, West Godavari District, the second respondent.

The petitioner was appointed as a Paid Secretary in Dippakayalapadu Primary Agricultural Co-operative Society, Dippakayalapadu, Koyyalagudem Mandal, West Godavari District, the third respondent, in 1977. He was suspended from service pursuant to disciplinary proceedings initiated against him and states that he was not even paid subsistence allowance. Thereafter, he was removed from service and aggrieved thereby, he filed an appeal before the second respondent in December, 1999. The same was returned with the endorsement dated 29.02.2000 stating that no order of removal was filed and therefore, the appeal was not maintainable under Section 48(1) of the Andhra Pradesh Shops and Establishment Act, 1988 (for brevity, 'the Act of 1988'). It is the case of the petitioner that he filed an application under Section 50 of the Act of 1988 for payment of salary and, by order dated 14.06.2001, the competent authority directed the third respondent to pay him salary from August, 1996 to January, 1997 and for the subsequent period. This was not accepted by the third respondent and it

was brought to the notice of the said authority that the petitioner was removed from service. He claims that only upon receipt of the said order, he came to know of his removal from service and states that he filed an appeal before the second respondent thereupon. As there was a delay in the filing of the appeal, he filed an application in A.P.S.E.M.P.No.2 of 2001 seeking condonation of such delay. However, by order dated 22.02.2002, the second respondent dismissed the said application. Aggrieved thereby, the petitioner filed an appeal before the first respondent. The first respondent confirmed the order of the second respondent by order dated 23.09.2004. Hence, the writ petition.

Perusal of the order dated 22.02.2002 passed by the second respondent reflects that the third respondent informed the said authority that the petitioner was removed from service with effect from 27.01.1997 and the same was subsequently informed to him under the reply legal notice dated 04.04.1997. This reply legal notice was issued by the third respondent in response to the petitioner's legal notice dated 22.03.1997. As the petitioner had failed to mention the issuance of his advocate's notice dated 22.03.1997 and the receipt of the third respondent's reply legal notice dated 04.04.1997, which disclosed the factum of his removal from service on 27.01.1997, the second respondent held that the petitioner had failed to show sufficient reason for the delay in preferring the appeal and accordingly dismissed the condone delay petition.

Before the first respondent, the same facts weighed in coming to the conclusion that the petitioner was aware of his removal from service in January, 1997, at least upon receipt of the reply legal notice in April, 1997. But as he did not choose to file an appeal for several years thereafter, the appellate authority confirmed the order under appeal, holding that the petitioner had invoked the statutory remedy with unclean hands and with abnormal delay.

Given the aforesaid facts, it is clear that the petitioner got issued legal notice dated 22.03.1997 and in response thereto, the third respondent issued reply notice dated 04.04.1997 through its advocate.

The said reply notice dated 04.04.1997 is placed on record and it is specifically mentioned in para 8 thereof as under:

‘.....and, consequently, your client was removed from service by the Managing Committee, on 27.1.1997, after giving an opportunity to your client for further explanation, if any.’

Having received the aforestated reply notice dated 04.04.1997, the petitioner addressed letter dated 11.04.1997 to the third respondent. Surprisingly, he chose to misunderstand his removal from service effected in January, 1997, as a proposed penalty. Such purported misunderstanding on his part was quite opposed to the clear language used in the reply notice dated 04.04.1997. Thus, the petitioner is deemed to have knowledge of his removal from service in January, 1997, at least from April, 1997. That being so, no explanation worth the name was offered by him to explain the delay on his part in filing the appeal against such removal under Section 48(1) of the Act of 1988 only in December, 1999. Further, the fact also remains that the petitioner chose not to disclose the exchange of correspondence between himself and the third respondent, which evidenced knowledge of his removal from service. This clearly demonstrated his lack of *bonafides*. On the above analysis, this Court finds no irregularity in the order passed by the first and second respondents holding to the said effect.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

12th AUGUST, 2015

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