

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

WRIT PETITION No.10396 of 2016

Between:

G.Limmu

..Petitioner

And

The State of Telangana,
represented by its Principal Secretary,
Home (Police) Department, Hyderabad and others

..Respondents

JUDGMENT PRONOUNCED ON: 01st April, 2016

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

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| 1. Whether Reporters of local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

+ WRIT PETITION No.10396 of 2016

% 01.04.2016

#G.Limmu

..Petitioner

Vs.

\$ The State of Telangana,
represented by its Principal Secretary,
Home (Police) Department, Hyderabad and others

..Respondents

! Counsel for the petitioner: Mr.K.Rama Subba Rao

Counsel for the respondents: Government Pleader for Services (TS)

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>Head Note:

? Cases referred:

1. 1967 SLR (SC) 228

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Counsel for the respondents: Government Pleader for Services (TS)

The Court made the following:

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ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *certiorari* to quash the order, dated 16.11.2015, in M.A.No.2589 of 2015 in O.A.(SR)No.12712 of 2015 on the

file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') – respondent No.4.

2. We have heard Mr.K.Rama Subba Rao, learned counsel for the petitioner, and the learned Government Pleader for Services (TS) appearing for the respondents.

3. While the petitioner was working as Home Guard at Nalgonda District, he was removed from service by respondent No.3, by order, dated 19.06.2009. Six years later, he approached the Tribunal by filing the aforesaid O.A. questioning his removal order. He filed the aforementioned M.A. along with the O.A. under Section 21 of the Administrative Tribunal Act, 1985 (for short 'the Act') for condonation of delay of five (5) years, four (4) months and twenty three (23) days in filing the O.A. Having considered the said application, the Tribunal has dismissed the same, by the impugned order. Feeling aggrieved thereby, the applicant before the Tribunal filed this writ petition.

4. Mr.K.Rama Subba Rao, learned counsel for the petitioner, has submitted that as the order of removal of the petitioner is *per se* invalid, the limitation for questioning the same has not been commenced and that therefore, the Tribunal ought not to have dismissed the application for condonation of delay. In support of his submission, he has placed reliance on the judgment of the Constitution Bench of the Supreme Court in **State of Madhya Pradesh vs. Syed Qamarali**^[1].

5. We have carefully considered the above submission of the learned counsel for the petitioner.

6. Before proceeding further, we need to mention the purported explanation offered by the petitioner for the delay. He stated that as his brother was suffering from serious kidney ailment in the month of June, 2009, he applied for leave, that as leave was declined, he left his duty in order to attend to his brother, that his brother died on 27.11.2011 and that he tried to contact respondent Nos.2 and 3 and explain the factual position, but he was not allowed to meet them. He further stated that since he was out of job and

has no source of income, he could not approach the Tribunal immediately.

7. As rightly observed by the Tribunal, the explanation offered by the petitioner is wholly unconvincing. From the explanation itself, it is evident that he left the duty without obtaining leave in the year 2009 and he has not reported back to the duty thereafter. Even if his brother's illness was the reason for the petitioner for not approaching the Tribunal earlier, on his own showing, his brother died on 27.11.2011. The only explanation offered by the petitioner for the subsequent delay was that he tried to approach respondent Nos.2 and 3 to explain the factual position, but he was not allowed to meet them. Except his *ipse dixit*, the petitioner has not produced any material, whatsoever, in support of his plea that he tried to approach respondent Nos.2 and 3 after the death of his brother. At any rate, such explanation hardly constitutes sufficient reason for his failure to avail the judicial remedy for four years after the death of his brother.

8. Be that it as may, according to the learned counsel for the petitioner, the limitation has not begun and therefore, the O.A. cannot be rejected on the ground of delay. Indeed, this is a self-contradictory plea, for if limitation has not begun, there is no reason for the petitioner to file an application for condonation of delay. As the petitioner himself filed the application, he cannot take a contrary plea that the limitation has not begun to run in view of the illegal nature of the removal order. The premise on which the learned counsel for the petitioner pleaded that the limitation has not commenced is that the removal order is invalid or nonest in the eye of law.

9. Section 21 of the Act prescribes limitation for the Tribunal to admit the applications. Under clause (a) of Sub-Section (1) thereof, in a case where a final order such as is mentioned in clause (a) of Sub-Section (2) of Section 20 of the Act has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made, the Tribunal shall not admit an application. Under clause (a) of Sub-Section (2) of Section 20 of the Act, a final order is referable to an order made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the

grievance.

10. The learned counsel for the petitioner has not disputed that the order which was sought to be questioned in the O.A. was the final order referable to Section 21 (1) (a) read with Section 20 (2) (a) of the Act. As noted above, it is his contention that as the final (removal) order is invalid as the same was passed without following proper procedure, the limitation has not been commenced. This submission is based on the judgment of the Supreme Court in **Syed Qamarali** (supra). We have carefully considered the said judgment of the Supreme Court. That was a case where the Sub Inspector of Police in the Central Province Police Force was initially removed from service and the appellate authority has enhanced the punishment to that of dismissal. The employee was also subjected to prosecution on the same ground on which he was dismissed from service and he was acquitted in the criminal trial. Seven years after his dismissal, the dismissed employee filed a suit for recovery of pay and allowances. An objection was raised to the maintainability of the suit on the ground that the claim was barred by limitation as the same was filed seven years after his dismissal. The trial Court as well as the appellate Court upheld the objection of the defendants and rejected relief. However, the High Court reversed the judgments of both the Courts below and decreed the suit. The Supreme Court, while confirming the judgment of the High Court, held that the High Court was right in holding that the employee has been punished for the same charge in respect of which he was acquitted and that the dismissal order was in clear contravention of the provisions of para 241 of the Police Regulations, under which if an employee is acquitted by the criminal Court, he must as a rule be reinstated. The Supreme Court further held that the order of dismissal having been made in breach of a mandatory provision of the Rules, such an order had no legal existence and therefore, the employee had a right to recover pay and allowances regardless of the dismissal order.

11. In our opinion, the judgment of the Supreme Court has no application to the facts of the present case, because that was a case where the suit was filed, wherein the Courts had occasion to deal with the legality or otherwise of the dismissal order, while examining the plea of limitation. But, the present

case arises under a specific statutory provision, viz., Section 21 of the Act, which bars the Tribunal from admitting an application beyond a period of one year from date of passing of a final order. In a case, where an application is filed beyond the period of one year, the Tribunal will not embark upon the merits of the case in order to find out whether the order challenged before it was legal or valid or the same is nonest in the eye of law. All that the Tribunal was concerned with while considering an application for condonation of delay was whether a final order as referable to under Section 21 (1) (a) of the Act was passed and the applicant filed the application within one year from the date of such final order and if not whether there was sufficient explanation for not filing such application within the period of limitation. In other words, the consideration of the application for condonation of delay is an exercise undertaken at the threshold without going into the merits of the case or legality or otherwise of the order impugned before the Tribunal unlike in a suit as dealt with by the Supreme Court in **Syed Qamarali** (supra). The words “final order” in Section 21 (1) (a) of the Act are not qualified with the word “valid” preceding the said words. Whether an order which was challenged before the Tribunal is valid or invalid, the applicant is bound to file the application within one year in order to question the same and if not, he shall offer proper explanation for condonation of the delay. As the petitioner failed to offer any semblance of reasonable explanation for condonation of the delay of more than five years, the Tribunal has rightly dismissed the application. Hence, we do not find any merit in this writ petition.

12. The Writ Petition is, accordingly, dismissed.

13. As a sequel to dismissal of the writ petition, W.P.M.P.No.13091 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

01st April, 2016

Note: L.R.copies to be marked.

(B/o)
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[\[1\]](#) 1967 SLR (SC) 228