

THE HON'BLE SRI JUSTICE A.V. SESA SAI

W.P.No.26880 of 2011

O R D E R:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order dated 21.08.2011 passed by the second appellate authority under the A.P. Shops and Establishments Act, 1988 and Deputy Commissioner of Labour, Vijayawada in APSEAMP.No.1 of 2010.

2. Heard Smt.Bobba Vijayalakshmi, learned counsel for the petitioner and Smt. Marie Desai, learned counsel for the first respondent.

3. Assailing the order of termination passed by the petitioner Society, the first respondent herein filed APSE No.2 of 2006 under Section 48 of the A.P. Shops and Establishments Act, 1988 (hereinafter called 'the Act'), on the file of the Assistant Commissioner of Labour, Machilipatnam. The said authority, by way of an order dated 20.01.2010 allowed the said application, directing the writ petitioner society to reinstate the first respondent herein into service and to pay back-wages from the date of termination till the date of reinstatement. Aggrieved by the said order passed by the primary authority, the petitioner society preferred a statutory appeal under Section 48 (3) of the Act before the third respondent authority on 20.05.2010. Along with the said appeal, the petitioner herein also filed an application vide APSEAMP.No.1 of 2010 praying condonation of delay of 52 days in filing the said appeal. The third respondent appellate authority, vide order dated 21.08.2011, dismissed the said condone delay application and as a consequence of the same, also dismissed the appeal filed by the petitioner. The said order passed by the appellate authority/third respondent herein is under challenge in the present writ petition.

4. It is contended by the learned counsel for the petitioner that the questioned order is highly illegal, arbitrary and opposed to the very spirit and object of the provisions of the Act. It is the further submission of the learned counsel that had the contents of the affidavit filed in support of the

delay application been considered by the appellate authority, the order impugned would not have emanated. It is also contended that the appellate authority grossly erred in dismissing the condone delay application without assigning any reasons whatsoever.

5. On the contrary, it is vehemently contended by the learned counsel for the first respondent that the order passed by the appellate authority/third respondent herein is in accordance with law and does not suffer from any infirmity, as such, the same is not amenable to judicial review under Article 226 of the Constitution of India. It is further submitted that the petitioner herein, despite the orders passed by the primary authority directing reinstatement, did not deposit the amount towards back-wages as directed by the primary authority. It is also the submission of the learned counsel that it is obligatory on the part of the petitioner society to adhere to the proviso to sub-section (3) of Section 48 of the Act.

6. In the above backdrop, now the issue that boils down for consideration of this Court is_ "Whether the order passed by the third respondent appellate authority is sustainable and tenable and whether the same requires any correction by this Court under Article 226 of the Constitution of India?"

7. The information available before this Court manifestly discloses that as against the order passed by the primary authority on 20.01.2010 in APSE.No.2 of 2006, directing reinstatement of the first respondent and payment of back-wages, the writ petitioner herein preferred a statutory appeal under the provisions of sub-Section (3) of Section 48 of the Act. Along with the said appeal, the petitioner herein filed an application vide APSEAMP.No.1 of 2010, seeking condonation of delay of 52 days in filing the appeal. The affidavit filed in support of the said condonation delay application is placed before this Court along with the writ petition as a material paper. The unnumbered second paragraph of the said affidavit reads as under:

"I am respectfully submitting that I am the president of the

appellant society and as such I know the facts of the case.

The 1st respondent was terminated after his admission of guilt and he preferred case before the authority under Sec.48 (1) of A.P.S.E act and that the authority passed the order in this on 20.01.2010, but it was served on the appellant staff in a late and after receiving it on 29.01.2010, the appellant intimated it to the financing bank and the cooperative officials as it is involved financial matters and as per their advice taken the legal opinion of the advocate at Hyderabad and advised to file appeal in this. As such the delay of 52 days caused in filing this appeal. There is no willful negligence in filing this appeal in delay. I have a strong case in this appeal.”

9. A perusal of the order impugned in the present writ petition candidly discloses that the appellate authority did not even advert to the averments in the affidavit filed in support of the condone delay application. As evident from a reading of the above extracted portion of the affidavit filed in support of the condone delay application, due to some procedural formalities, the delay of 52 days occurred in filing the appeal. In the considered opinion of this Court, the said delay is not exorbitant and having regard to the averments in the supporting affidavit, the appellate authority in fact ought to have condoned the delay and proceeded with adjudication of the main appeal.

10. It is also required to be noted, as pointed out by the learned counsel for the first respondent, that as per the proviso to Section 48 (3) of the Act, it is mandatory on the part of the employer to deposit the entire amount of back-wages.

11. For the aforesaid reasons and in the facts and circumstances of the case, the writ petition is allowed, setting aside the order dated 21.08.2011 passed by the third respondent in APSEAMP.No.1 of 2010 and the delay of 52 days in filing the appeal is condoned and consequently the appeal filed by the petitioner against the order in APSE No.2 of 2006, dated 20.01.2010, stands restored to file and the appellate authority/third respondent herein is directed to dispose of the main appeal filed by the petitioner as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order, subject to the appellant/writ petitioner herein complying with the provisions of Proviso to Section 48

(3) of the A.P. Shops and Establishments Act, within four weeks from the date of receipt of a copy of this order. However, it is made clear that in the event of the appellant/writ petitioner not complying with proviso to Section 48 (3) of the Act, this order would not enure to the benefit of the petitioner. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V. SESA SAI, J

Date:13.7.2016

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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Dated 13th July, 2016

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