

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+20738 OF 2008; 9875, 9876, 9877, 9878, 9879, 9880,
9881, 9882, 9883, 9884, 9885, 9886, 9887, 9888, 9889, 9890,
9891, 9892, 9893, 9894, 9895, 9896, 9898, 9899, 10016,
10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041,
10042, 10043, 10065, 10066, 10067, 10068, 10069 OF 2010;
4350 OF 2012; 27312, 27315, 30422, 30423, 30426, 30430,
30432, 32328 OF 2014:

%28.4.2017

A Sridhar S/o Mallaiah
Aged 38 years, HIG -II, Block-5
Flat No.12, Baghlingampally, Hyderabad and others

... Petitioner

Vs.

\$ The II Appellate Authority and Deputy Commissioner of Labour
(Twin cities), Anjaiah Bhavan, Hyderabad and others

.... Respondents

!Counsel for the petitioner : Sri A.K.Jayaprakash Rao,
Sri V.Mallik and
Sri Meher Chand Noori

Counsel for the Respondents : Government Pleader for Labour (TG)
Government Pleader for Cooperation

<Gist :

>Head Note:

? Cases referred:

1993 (2) ALT 661
1997 (1) ALD 623 (DB)
(2016) 1 SCC 444
AIR 1995 SC 2272
2015 (7) SCC 58
2015 (4) ALD 572
(1974) 2 SCC 133

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

HONOURABLE SRI JUSTICE P. NAVEEN RAO

**WRIT PETITION NOS.20738 OF 2008; 9875, 9876, 9877,
9878, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9887,
9888, 9889, 9890, 9891, 9892, 9893, 9894, 9895, 9896, 9898,
9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027,
10028, 10041, 10042, 10043, 10065, 10066, 10067, 10068,
10069 OF 2010; 4350 OF 2012; 27312, 27315, 30422, 30423,
30426, 30430, 30432, 32328 OF 2014:**

Between :

A.Sridhar S/o Mallaiah, Aged about 38 years,
HIG-II, Block-5, Flat No.12, Baghlingampally,
Hyderabad and others.

....Petitioners

And

The II Appellate Authority and Deputy Commissioner
of Labour (Twin Cities), Anjaiah Bhavan, Hyderabad
and others.

....Respondents

JUDGMENT PRONOUNCED ON : 28.4.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? : YES
2. Whether the copies of judgment may be marked :
To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to : YES
See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOS.20738 OF 2008; 9875, 9876, 9877, 9878, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9887, 9888, 9889, 9890, 9891, 9892, 9893, 9894, 9895, 9896, 9898, 9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041, 10042, 10043, 10065, 10066, 10067, 10068, 10069 OF 2010; 4350 OF 2012; 27312, 27315, 30422, 30423, 30426, 30430, 30432, 32328 OF 2014:

Date :28.04.2017

WP NO.20738 OF 2008:

Between :

A.Sridhar S/o Mallaiah, Aged about 38 years,
HIG-II, Block-5, Flat No.12, Baghlingampally,
Hyderabad and others.

....Petitioners

And

The II Appellate Authority and Deputy Commissioner
of Labour (Twin Cities), Anjaiah Bhavan, Hyderabad
and others.

....Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs.20738 OF 2008; 9875, 9876, 9877, 9878, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9887, 9888, 9889, 9890, 9891, 9892, 9893, 9894, 9895, 9896, 9898, 9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041, 10042, 10043, 10065, 10066, 10067, 10068, 10069 OF 2010; 4350 OF 2012; 27312, 27315, 30422, 30423, 30426, 30430, 30432, 32328 OF 2014:

COMMON ORDER:

Issue for consideration in these writ petitions is, whether the second appellate authority under the Andhra Pradesh Shops and Establishments Act, 1988 (for short, 'Act') is vested with power to condone delay in filing second appeals, entertain the second appeals filed after 30 days from the date of receipt of copies of the orders of first appellate authority by the bank and consider those second appeals on merits? As the core issue is common, all writ petitions are disposed of by this common order.

2. For convenience, the employees are referred to as petitioners and the Vasavi Co-operative Bank is referred to as respondent Bank.

3. This litigation has checkered history. The employees of the Vasavi Cooperative Bank are the victims of mismanagement of the affairs of their employer, the Vasavi Cooperative Bank (the Bank) by the persons in the helm of affairs of the Bank. Their services were terminated on the ground that the Bank sustained heavy losses and cannot afford to have large workforce, reduced to skeleton staff, later went into liquidation. They have mounted challenge against their termination, bravely fighting against

machinations and arm twisting tactics of the persons responsible to the affairs of the Bank.

4. The history of the litigation unfolds as under:

4.1. Vasavi Co-operative Bank was registered under the provisions of Cooperative Societies Act with the objective of undertaking Banking activities. Bank was flourishing. It had set up 18 branches and had huge work force. Later, Bank incurred losses. It appears, under the instructions of Reserve Bank of India, Government of Andhra Pradesh and the Commissioner of Cooperation and Registrar of Cooperative Societies have taken policy decision to down size the strength of employees by invoking Section 116-C of Andhra Pradesh Cooperative Societies Act (for short, 'APCS Act') and further to close down various branches of the Bank. In pursuance of the said decision, it appears, the Bank has drastically reduced the strength of its employees. Some of the employees were removed in April, 2003 and some of them in August, 2004. Many of the employees reconciled to the fate, accepted whatever was offered by the bank and kept quiet. Brave once, approached the authority under Section 48 of the Act, questioning their termination orders. In batch of first appeals, the first Appellate Authority under the Act set aside the order of termination (some first appeals are pending due to pendency of writ petitions in this Court). Aggrieved by the said order, the Bank filed W.P.No.15872 of 2006. In W.P.M.P.No.19791 of 2006, made on 04.08.2006, interim suspension of the order of the said authority was granted. However, after hearing both sides, this Court was pleased to dismiss the writ petition on the ground that

the Bank has an efficacious alternative remedy under Section 48(3) of the Act. After the dismissal of the writ petition, the Bank submitted an application to the Government under Section 73 of the Act seeking exemption from pre-depositing the amounts for preferring appeals as required under Section 48(3) of the Act.

4.2. After prolonged correspondence and persuasion, Government issued G.O.Ms.No.613, Labour, Employment, Training & Factories (Lab.II) Department, dated 19.03.2008 according exemption to the Bank from the proviso (1) of sub-section (3) of Section 48 of the Act, 1988 to enable the Bank to file second appeal before the next Second Appellate Authority i.e., the Deputy Commissioner of Labour, Hyderabad without pre-depositing the amount determined by the first appellate authority.

4.3. Consequent to exemption granted, the Bank took steps to file appeals under Section 48(3) of the Act. Since the appeals were not preferred within 30 days as prescribed in Section 48(3) of the Act, the Bank also filed M.P.Nos.1 to 40 of 2008 under Section 5 of the Limitation Act praying to condone the delay in filing the second appeals. Second appellate authority by order dated 19.03.2008 in M.P.Nos.1 to 40 of 2008 suspended the operation of the order dated 29.06.2006/30.06.2006 on the file of the Assistant Commissioner of Labour, Hyderabad in Case Nos.SE/5/2004 to SE/39/2004, SE/41 & 42/2004 and SE/14 to 16/2005 and entertained the appeals. However, it is appropriate to note that no order was passed condoning the delay. This decision of the second appellate authority is challenged in W.P.No.20738 of 2008.

4.4. Challenging the statutory provision vesting power in the Government to grant exemption from pre-deposit condition to file second appeal under Section 48(3) of the Act and G.O.Ms.No.613 dated 19.03.2008, some of the employees filed W.P.No.14438 of 2008. This Court granted interim suspension, made absolute by order dated 15.09.2008.

4.4. Aggrieved by the said order, the Bank filed S.L.P.No.25932 of 2008 before the Hon'ble Supreme Court of India. Hon'ble Supreme Court by order dated 10.11.2008 passed the following order:

“No coercive steps shall be taken against the 2nd respondent (the Bank) in the mean time.”

4.5. While so, the Joint Commissioner of Labour, Twin Cities, Hyderabad, passed final orders in the second appeals on 20.04.2010. The order reads as follows:

“Reinstatement with 50% of back wages should not be granted in an automatic manner, without understanding the circumstances of the case on hand. The Hon'ble Supreme Court settled the position of law that relief by way of reinstatement with back wages is not an automatic and may be wholly inappropriate in a given fact situation even though the termination of the employee is in contravention to the prescribed procedure, compensation instead of reinstatement has been held to meet the ends of justice.

In view of the facts and circumstances of this case and the principles laid down by the Hon'ble Apex Court, I am of the opinion that payment of 50% of the last drawn salary of the respondent per each completed year of service of the respondent towards compensation and in full and final settlement of the account of the respondent in addition to the amount already paid to the respondent by the appellate bank, in lieu of the relief of reinstatement, continuity of service attendance benefits and 50% of back wages etc. (as granted by the first appellate authority) would meet the ends of justice. Therefore, the appellate Bank is directed to pay the said

compensation to the respondent within 30 days from the date of receipt of this order.”

4.6. The SLP filed by the bank was disposed of by order dated 28.03.2011. The order reads as under:

“It is stated by Mr. Prallav Shishodia, learned senior counsel appearing for the 2nd respondent that the Deputy Commissioner of Labour, Hyderabad, on 20.04.2010 decided the second appeal NO.10/2008. The present SLP has become infructuous as the challenge was only on the validity of a Government order reducing the amount to be deposited before filing of second appeal.

Now the second appeal is decided on 20.04.2010 and another writ petition No.9881 of 2010 was filed, wherein the High Court on 28.04.2010 in WP No.9881 of 2010 stayed the proceedings of second appeal and the same is pending before the High Court. Hence, the Special Leave Petition is disposed of having become infructuous”.

4.7. Aggrieved by the orders dated 20.04.2010 passed by the Second Appellate Authority in batch of Second Appeals to the extent of directing the Bank to pay 50% of the last drawn salary per each completed year of service rendered by respective employees, the Bank filed W.P.Nos.9875 to 9896, 9898, 9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041 to 10043, 10065 to 10069 of 2010. This Court stayed the order of the Second Appellate Authority.

4.8. W.P.Nos.4350 of 2012; 27312, 27315, 30422, 30423, 30426, 30430, 30432 and 32328 of 2014 are filed by the employees challenging the order dated 20.04.2010 in respective Second Appeals.

4.9. It is also relevant to note that Contempt Case No.694 of 2010 was filed alleging non-implementation of the orders dated 18.07.2008 in W.P.M.P.No.18650 of 2008 in WP No.14438 of 2008. The Contempt Case was closed by order dated 16.06.2011.

4.10. Sri Ambu Naik and 12 others (retrenched employees of 2004 batch) filed W.P.No.15186 of 2010 aggrieved by rejection of their claim for last drawn wages. The said writ petition was disposed of by order dated 07.02.2012 directing to pay the last drawn wages within a period of 60 days from the date of receipt of a copy of the order. The Bank filed Review W.P.M.P.No.8314 of 2012 seeking review of the order made in W.P.No.15186 of 2010 and the same was dismissed on 17.12.2014. It appears bank has deposited 10,00,000.00 on 28.08.2013 and by order dated 24.10.2013 the court permitted to withdraw the amount. Aggrieved thereby Bank filed W.A.No.189 of 2015. The W.A. was disposed of by order dated 19.03.2015 directing the bank to deposit 10,00,000.00 in the criminal court and employees were permitted to withdraw 4,00,000.00 and employees have withdrawn the same.

WRIT PETITION NOS.20738 of 2008; 4350 of 2012; 27312, 27315, 30422, 30423, 30426, 30430, 30432 and 32328 of 2014 :

5. In these writ petitions, common issue for consideration is whether the decision of second appellate authority to entertain second appeals filed after limitation prescribed and to pass interlocutory and final orders is valid ?

6.1. Learned counsel for petitioners Sri V.Mallik contended that under Section 48(3) of the Act, 1988, second appeals are not

maintainable against the decision of the first appellate authority if they are not filed within 30 days from the date of communication of the order of first appellate authority. As such appeals were not preferred within 30 days, the appeals were not maintainable. There is no power to condone the delay and, therefore, second appellate authority is not competent to entertain application to condone the delay and to condone the delay. He would therefore submit that the order of second appellate authority condoning the delay is *ex facie* illegal, without jurisdiction and competence and on that ground alone the orders of second appellate authority are liable to be set aside.

6.2. He submitted that the Act is welfare legislation intending to grant statutory safeguards against illegal actions of the employers. Act intends to give expeditious redress of grievances of employees against employer and finality to the decisions of authorities exercising quasi-judicial powers under the Act. Section 48(2) of the Act, 1988 read with Rules made there under envisage summary trial and expeditious disposal, preferably within a period of three months. Once order was passed by the first appellate authority, it attains finality subject of course to preferring second appeal to the second appellate authority within a period of 30 days only. Section 48(3) and the Rules made under the Act do not envisage power to condone delay in filing second appeal and the objective is clearly discernible from the provisions of the Act. Therefore, the contrary to the intendment of the statute, delay is condoned and appeals are entertained.

6.3. It is further contended that order of the second appellate authority entertaining the appeals is also liable to be set aside on the sole ground that the same was passed without affording due opportunity to the employees, who succeeded before the first appellate authority.

6.4. He would further submit that Full Bench of this Court in **'The Nalgonda Co-operative Marketing Society Limited, rep. by its Secretary, Sri S.Narahari vs. Labour Court, Hyderabad, rep.by its Presiding Officer, Hyderabad and others'**¹, dealing with identical provisions in the A.P. Shops and Establishments Act, 1966 and Rules, 1968, held that Limitation Act has no application to the second appeal under the Act and second appellate authority has no power to condone the delay. The present Act made in supersession of the said Act and the Rules under the new Act contain analogous provisions.

7.1. In response, learned counsel Sri Rajeswar Rao, Sri A.K.Jaya Prakash Rao and Sri Mehar Chand Nori stoutly defend the decisions of the second appellate authority in condoning the delay. According to the learned counsel, power to condone the delay is inherent in any adjudicating authority, subject to satisfaction of the reasons for such delay and, therefore, no error was committed by the second appellate authority in condoning the delay.

7.2. It is further contended that second appeals were finally disposed of on 20.04.2010 and, therefore, the W.P.No.20738 of 2008 is not maintainable challenging the interlocutory decision when once final orders are already passed.

¹ 1993 (2) ALT 661

7.3. It is further contended that in matters of condoning delay, adjudicating authority should adopt liberal approach and, therefore, decision of the second appellate authority in condoning the delay, entertaining the second appeals and finally disposing, having regard to the facts of the case, cannot be faulted. Bank could not prefer appeals as it did not have funds to comply with mandate of Section 48(3) of the Act. Bank filed W.P.No.15872 of 2006. Though initially stay was granted, by order dated 20.12.2006 Writ Petition was disposed of to avail remedy of second appeal. At that stage Official Liquidator had to request Government to grant exemption and after great persuasion government granted exemption. Then only second appeals could be filed. In those peculiar circumstances only there was delay in filling second appeals. The delay was neither intentional nor deliberate. They would submit that implementation of the orders of the first appellate authority would have serious financial implications and bank cannot afford to bear them.

7.4. It is submitted that due procedure was followed before terminating the services of the employees. The bank suffered huge losses and as the business of the bank affected, Bank had to close its branches and also to terminate the services of the employees as it was causing huge financial liability on the bank. The bank went into liquidation and there are no funds available with the Bank. On the contrary, Bank has huge debts to be paid. Having regard to these peculiar facts, which were placed before the second appellate authority, second appellate authority has condoned the delay.

7.5. In support of their contentions, learned counsel placed reliance on the following decisions:

- i) **Mahendra Kumar Goyal v. Ex.Officio, Joint Secretary and Additional Commissioner (C.S.) Hyderabad and another**²;
- ii) **Baleshwar Dayal Jaiswal v. Bak of India and others**³

8. Before dealing with the respective submissions, it is appropriate to note the following facts. Learned counsel appearing for respective parties submitted that the Bank filed M.P.Nos.1 to 40 of 2008 in individual appeals praying to condone the delay in filing appeals. They have not filed applications to stay the order of first appellate authority. Strangely, the second appellate authority did not pass any orders to condone delay, but granted stay of first appellate authority order as if stay application was filed. He then proceeded to hear second appeals as if delay was condoned.

8.1. To appreciate the respective contentions, brief but formidable on their respective points of view, it is necessary to look into the relevant provisions of the Act and the Rules made there under and analyze the scope of the provisions.

8.2. Section 47 of the Act vests power in the employer to take action against his employee including placing him under suspension and to terminate his services. The employee, who is aggrieved by such termination, is provided legal remedy in the form of appeal to the designated authority under Section 48 of the Act, 1988. As per Section 48(1), the Chief Inspector has to notify authority to act as the first appellate authority to decide appeals arising out of termination of service of employee under Section 47 of the Act.

² 1997 (1) ALD 623 (DB)

³ (2016) 1 SCC 444

8.3. To the extent relevant Section 48 reads as under:

“Section 48 - Appointment of authority to hear and decide appeals arising out of termination of services

(1) (a) The Chief Inspector may, by notification, appoint for any area as may be specified therein, any authority to hear and decide appeals arising out of the termination of service of employee under Section 47;

Provided that the Chief Inspector may on administrative grounds transfer any appeal arising in the territorial jurisdiction of any authority to the file of another authority for disposal, and such authority to whom the appeal is transferred by the Chief Inspector shall dispose of the appeal so transferred.

(b) Any employee whose services have been terminated may appeal to the authority concerned ***within such time and in such manner as may be prescribed.***

(2) The appellate authority may, after inquiry in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case;

Provided that the authority concerned ***shall, without delay, hear such appeal and pass such orders within a period of three months*** from the date of receipt of such appeal;

Provided further that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing extend such period by such further period as it may think fit;

Provided also that no proceedings before such authority shall lapse merely on the grounds that any period specified in this subsection had expired without such proceedings being completed.

(3) Against any decision of the authority under sub-section (2), a second appeal **shall lie** to such authority as may be notified by the Government **within thirty days from the date of communication of the decision** and the decision of such authority on such appeal shall be final and binding on both the employer and the employee and shall be given effect to within such time as may be specified in the order of that Authority:

Provided that the **second appeal shall not be entertained unless the employer deposits the entire amount of back wages as ordered by the appellate authority** under sub-section (2) or the amount of compensation ordered as the case may be:

Provided further that if the second appeal is against the order of reinstatement given by the appellate authority under sub-section (2), the employee shall be entitled to wages last drawn by him during the pendency of the proceedings before the appellate authority.”

(emphasis supplied)

8.4. Section 71 of the Act vests power in the Government to make Rules. In exercise of said power, Government formulated the Rules, called **‘A.P.Shops and Establishments Rules 1990’** (Rules), notified vide G.O.Ms.No.169, Women Development, Child Welfare and Labour (Labour.II) Department, dated 28.10.1991. Rule 20 prescribes the procedure for terminating the services of the employee by the employer. Rule 21 deals with appeals.

8.5. Rule 21 reads as under:

“Rule 21. Appeals: (1) An appeal under sub-section (1) of Section 48 shall be preferred to the Appellate Authority by the employee within 60 days from the date of service of the order terminating his services with the employer, such service shall be deemed to be effective, if carried out either personally if that is not practicable, by prepaid registered post to his last known address, when the date of such service shall be deemed

to be the date when the letter would arrive in ordinary course of post:

Provided that the appellate authority may admit an appeal after the expiration of the period of sixty days where the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the stipulated period of sixty days.

xxxx

(3) The second Appellate Authority shall follow the same procedure as enumerated in sub-rule (2) above. He shall also maintain a Register of Second Appeals in Form XV. ”

8.6. As can be noted from the extracted provisions, Section 48 deals with two distinct legal proceedings. Section 48(1) & (2) deal with first appeal against termination by the employer; Section 48(3) deals with second appeal against the decision of the first appellate authority under section 48(1)(b). In Section 48(1)(b), no time limit is prescribed, but left it to the discretion of the Government to prescribe the time limit. Accordingly, Rule 21(1) prescribes 60 days for preferring an appeal. Proviso appended to Rule 21(1) vests discretion in the first appellate authority to condone the delay even if first appeal is filed beyond 60 days. In contrast, Section 48(3) prescribes limitation of 30 days to prefer second appeal. It does not concede discretion to the rule making authority to prescribe any additional time or to vest power in the second appellate authority to condone delay. Section 48(3) does not envisage entertainment of appeal, if appeal was not preferred within 30 days. Further conditions imposed in this sub-section are, if employer seeks to prefer second appeal, he has to deposit the entire amount of back-wages ordered by the appellate authority; and if the second appeal is preferred against the order of

reinstatement, the employee is entitled to wages last drawn by him during the pendency of the second appeal. Unless first two conditions are fulfilled, the second appeal is not maintainable and even if second appeal is entertained on compliance of first two conditions, second appeal is liable to be dismissed if the third condition is not fulfilled. Having regard to the specific provision in Section 48(3), Rule making Authority has not incorporated any provision to condone delay in preferring second appeal.

8.7. Sub-rule (2) of Rule 21 prescribes procedure before the first appellate authority. Sub-rule (3) envisages that whenever second appeal is entertained, the second appellate authority should follow the same procedure of adjudication as indicated in Sub-rule (2).

8.8. Thus, on plain reading of the relevant provisions of the Act and the Rules, there is no ambiguity in the intendment of the legislature. The second appellate authority is not conferred with discretion to condone the delay if second appeal is not preferred within 30 days and entertain the second appeal. It is also appropriate to note that there is no extension of Limitation Act expressly or impliedly to the matters under the Act. In other words, if appeals are not preferred within 30 days of receipt of copies of orders passed by first appellate authority, second appeals are not maintainable. Second appellate authority is denuded of power to entertain second appeals and consider them. It is not in dispute that second appeals are not filed within 30 days as required under Section 48(3) of the Act.

8.9. It is also appropriate to note at this stage that Act is a self contained code dealing with all aspects of employment in Shops

and Establishments, to which the Act applies. The Rules give effect to the object of the enactment. Significant change that is brought out by the Act, 1988 as against the previous enactment is in the authority, who can deal with second appeals. Act, 1966 vested jurisdiction in the Labour Court to adjudicate second appeal arising out of the decision of the first appellate authority under the Act, whereas the power of adjudication of second appeal is removed from the Labour Court and power to designate the second appellate authority is vested in the Government. The Deputy Commissioner of Labour/Joint Commissioner of Labour is designated as second appellate authority.

9.1. In **the Nalgonda Co-operative Marketing Society Limited**, same issue has fallen for consideration before the Full Bench. The Full Bench was required to answer the reference by the Division Bench. The reference reads as under:

“It is evident from the foregoing that the decisions of the Supreme Court, nor of this Court are uniform on this very important question. We are of the opinion that it is necessary that the controversy relating to the application of Section 5 of the Limitation Act read with Section 29(2) of the Limitation Act to proceedings before a Labour Court constituted under Section 7 of the Industrial Disputes Act has to be decided by a Full Bench of this court. One other question which incidentally arises is as to whether Section 29(2) of the Limitation Act read with Article 137 makes Section 5 applicable only to Civil and Criminal Courts on which jurisdiction is conferred by the virtue of the provisions of special or local Act.”

9.2. Facts on record noted by the Full Bench would disclose that employer preferred appeal after 30 days limitation prescribed. Employer filed I.A., to condone the delay of 7 days in filing the

second appeal. The Presiding Officer of the Labour Court dismissed the application holding that there is no provision to condone the delay. On a challenge, the said decision was affirmed by the learned single Judge in Writ Petition No.4087 of 1986. Aggrieved thereby, writ appeal was preferred, which was referred to larger bench.

9.3. The Full Bench considered the relevant provisions of the Act, 1966. Section 41 of the Act, 1966 is analogous to Section 48 of the Act, 1988. The only difference is, according to sub-section (3) therein, the second appeal would lie to the Labour Court, whereas, as per the new Act, second appeal would lie before the Deputy Commissioner/Joint Commissioner. It appears, under the old Act, there was no mandate to pre-deposit the amount to prefer second appeal. Rule 21 of 1966 Rules is also analogous to Rule 21 of 1990 Rules.

9.4. On elaborate consideration of the rival contentions and precedent decisions on the issue of interpretation of relevant provisions of the Act, the full bench has categorically held that unless it is specifically provided, provisions of the Limitation Act are not attracted to the second appeal under the A.P.Shops and Establishments Act, 1966 and second appellate authority has no power to condone the delay in filing second appeal and entertain the appeal. The full bench held that the Labour Court is not the court to extend the provisions of the Limitation Act.

9.5. As the issue considered by the Full Bench is directly on the point, it is necessary and expedient to extract few of the observations and findings of the Full Bench as under:

“5. From the provisions referred to above, it is manifest that a first appeal is provided against an order of termination, to an authority appointed by the State Government for that purpose. The period of limitation and the manner in which it has to be filed are left to the rule-making authority to prescribe. The State Government, which is the rule-making authority, prescribed in Rule 21 limitation of sixty days for preferring the first appeal and conferred power on the appellate authority to admit an appeal after the expiration of the period of sixty days, where the appellant satisfied the authority that he had sufficient cause for not preferring the appeal within the prescribed period. But, so far as the second appeal is concerned, the Legislature itself has designated the appellate authority, viz., the Labour Court constituted under Section 7 of the Industrial Disputes Act, 1947 and also prescribed the period of limitation of thirty days for the second appeal. It is pertinent to note that the Legislature has not conferred power on the second appellate authority to condone the delay in preferring an appeal after the expiration of the period of limitation. In view of the aforesaid provisions, the Labour Court as well as the learned single Judge had taken the view that a second appeal preferred beyond the period of limitation of thirty days could not be entertained.

XXXX

16. It is manifest from the dicta in the aforesaid decisions that a Labour Court is not a court within the meaning of the Indian Limitation Act. Another principle which has been clearly enunciated is that the Limitation Act is applicable only to the applications made to a court either under the Civil Procedure Code or any other Act. In view of those decisions, it is not at all necessary to consider any further whether the Labour Court is a court within the meaning of the Indian Limitation Act or not.

24. The Limitation Act cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication, as pointed out by the Supreme Court in A.S.K. Krishnappa v. S.V.V. Somiah, [AIR 1964 SC 227]:xxx

27. The Andhra Pradesh Shops and Establishments Act, 1966 is a labour welfare legislation containing all the relevant provisions relating to the conditions of service including disciplinary proceedings against the employees working in the shops and establishments. The Legislature itself has left it to the State Government to prescribe the period of limitation and the manner of disposal of the first appeal. In the exercise of rule-making power, the State Government made Rule 21 of the Andhra Pradesh Shops and Establishments Rules prescribing the period of sixty days as limitation for preferring a first appeal and specifically conferred the power on the first appellate authority to admit an appeal presented after the expiration of the period of limitation if it was satisfied that there was sufficient cause for condoning the delay. The disposal of the first appeal is summary in nature. The Labour Court constituted under Section 7 of the Industrial Disputes Act

is designated as the second appellate authority by the Legislature itself. Under Section 41(3) of the Act, the Legislature itself has prescribed the period of limitation of thirty days for filing the second appeal but has not considered it necessary to confer the power on the second appellate authority to admit an appeal preferred after the expiration of the period of thirty days. So far as the termination of services of the employees working in the shops and establishments is concerned, the provisions of the Act and the Rules made thereunder prescribe as to what acts and omissions constitute misconduct. The procedure to be followed in taking disciplinary action is also prescribed thereunder. Against an order of termination, right of first appeal and second appeal is provided. Finality is attached to an order passed by the second appellate authority and it shall be given effect within such time as may be specified in the order of the authority. Any amount directed to be paid to a party can be recovered as if it were a fine by a Magistrate. ***It may be that keeping in view the beneficial nature of the legislation and the need to obviate indefinite prolongation of proceedings, the Legislature did not intend to confer the power on the second appellate authority to admit an appeal which was presented after the prescribed period of limitation had expired. If the intention of the State Legislature is to achieve finality of the proceedings expeditiously without giving scope to the parties to protract the litigation, such intention cannot be defeated by extending the application of the provisions of the Limitation Act to the proceedings under the Act. In labour welfare legislation, it is not uncommon for the Legislature, to prescribe certain limitations in the filing of appeals. For example, under the provisions of the Workmen's Compensation Act, even a first appeal preferred under Section 30 of that Act to the High Court against an order of the Commissioner of Workmen's Compensation cannot be entertained unless a substantial question of law is involved. Thus, it appears to us that the Andhra Pradesh Shops and Establishments Act constitutes a self-contained code so far as the conditions of service of the employees working in the shops and establishments including the disciplinary proceedings if any initiated against them and the right of appeal provided in respect of such proceedings, are concerned. Therefore, having regard to the scheme and the nature of remedies provided under the Shops and Establishments Act and the rules made thereunder, it has to be held that the application of the provisions of Section 5 of the Limitation Act to the filing of appeals under the Act and the rules has by necessary implication been excluded.***

33. ***From the foregoing discussion, it is clear that a Labour Court which has been designated as a second appellate authority under the A.P. Shops and Establishments Act, is not a Civil Court. The appeal preferred to it is under a special Act and not under the provisions of the Civil Procedure Code. Therefore, the provisions of the Limitation Act are not applicable to an application filed for condonation of delay in filing the appeal.***

42. In view of the foregoing discussions, we hold as follows:

(1) The provisions of Section 5 read with Section 29(2) of the Limitation Act, 1963 are not applicable to an appeal or an application filed before the Labour Court constituted under Section 7 of the Industrial Disputes Act, 1947 and designated as the second appellate authority under Section 41(3) of the A.P. Shops and Establishments Act, 1966.

(2) The provisions of Section 29(2) of the Limitation Act, 1963 read with Article 137 in the Schedule to the Act, make Section 5 of the Act applicable to an appeal or application filed under any special or local law in a Civil or Criminal Court in so far as and to the extent to which Section 5 is not expressly excluded and they have no application to an appeal or application filed under any special or local law before a Tribunal which is not such a Court.”
(emphasis supplied)

10. Except for the numerical change in the relevant provision, the provision is same and the principle laid down by the Full Bench applies in all fours to the facts of this case. In fact, the provision in Section 48 of new Act is more stringent. Unlike the provision in Section 41 of the old Act, this Section mandates the employer to deposit the amount quantified by the first appellate authority before seeking to file second appeal and further mandates payment of last pay drawn pending appeal if direction was issued by the first appellate authority to reinstate the employee.

11. Suffice to note from the above judgment of the Full Bench that the Full Bench declined to extend the provisions of the Limitation Act to Labour Court. By no stretch of imagination, interpreting the analogous provisions, the Limitation Act can be extended to an authority who is an executive authority of the State vested with power to adjudicate second appeal arising out of the Act, 1988.

12. Though, the issue is settled by the said decision of the Full Bench, learned counsel representing the respondent Bank vehemently contended that the provisions of the Limitation Act are applicable to second appeal under the Act on the ground that it is not expressly excluded and, therefore, by necessary implications provisions of the Limitation Act are attracted, by placing heavy reliance on the decision of Division Bench of this court in **Mahendra Kumar Goyal**. They emphasized that decision is rendered by the Division Bench in **Mahendra Kumar Goyal** after considering the decision of Full Bench and has taken a different view following the law laid down by Supreme Court in subsequent decisions and the decision of Division Bench being later in point of time, same is binding on the learned single Judge.

13. In **Mahendra Kumar Goyal**, issue for consideration was when an appeal filed under the Essential Commodities Act, 1955, can be entertained by condoning the delay in filing appeal. Interpreting the relevant provisions of the Act and following the principle laid down by the Supreme Court in **Mukri Gopalan v C.P.Aboobacker**⁴, Division Bench held that the provisions of the Limitation Act are applicable to the appeals under the Essential Commodities Act and power to condone the delay is available to the appellate authority.

14.1. In **M.P.Steel Corporation v. Commissioner of Central Excise**⁵, on review of precedent decisions, Supreme Court held that **Mukri Gopalan** case is no longer good law.

⁴ AIR 1995 SC 2272

⁵ 2015 (7) SCC 58

14.2. Supreme Court held as under:

“22. A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies. Thus, in *Town Municipal Council, Athani v. Presiding Officer* [(1969) 1 SCC 873 : (1970) 1 SCR 51] , a question arose as to what applications are covered under Article 137 of the Schedule to the Limitation Act. It was argued that an application made under the Industrial Disputes Act to a Labour Court was covered by the said article. This Court negated the said plea ”.

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28. Two other judgments of this Court need to be dealt with at this stage. In *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker* [(1995) 5 SCC 5] , a two-Judge Bench of this Court held that the Limitation Act would apply to the appellate authority constituted under Section 13 of the Kerala Buildings (Lease and Rent Control) Act, 1965. This was done by applying the provision of Section 29(2) of the Limitation Act. Despite referring to various earlier judgments of this Court which held that the Limitation Act applies only to courts and not to tribunals, this Court in this case held to the contrary. In distinguishing the *Parson Tools case* [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] , **which is a three-Judge Bench binding on the Court** that decided *Mukri Gopalan case* [(1995) 5 SCC 5] , the Court held: (*Mukri Gopalan case* [(1995) 5 SCC 5] , SCC p. 23, para 18)

18. “... If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act would apply to proceedings before him. But so far as this Court is concerned it did not go into the question whether Section 29(2) would not get attracted because the U.P. Sales Tax Act Judge (Revisions) was not a court but it took the view that because of the express provision in Section 10(3-B) applicability of Section 14(2) of the Sales Tax Act was ruled out. Implicit in this reasoning is the assumption that but for such an express conflict or contrary intention emanating from Section 10(3-B) of the U.P. Sales Tax Act which was a special law, Section 29(2) would have brought in Section 14(2) of the Limitation Act even for governing period of limitation for such revision applications. In any case, the scope of Section 29(2) was not considered by the aforesaid decision of the three learned Judges and consequently it cannot be held to be an authority for the proposition that in revisional proceedings before the Sales Tax Authorities functioning under the U.P. Sales Tax Act Section 29(2) cannot apply as Mr Nariman would like to have it.”

It then went on to follow the judgment in *CST v. Madan Lal Das & Sons* [(1976) 4 SCC 464 : 1977 SCC (Tax) 27] , which, as has been pointed out earlier, is not an authority for the proposition that the Limitation Act would apply to tribunals. ***In fact, Mukri Gopalan case [(1995) 5 SCC 5] was distinguished in Om Prakash v. Ashwani Kumar Bassi [(2010) 9 SCC 183.***

29. Quite apart from Mukri Gopalan case [(1995) 5 SCC 5] being out of step with at least five earlier binding judgments of this Court, it does not square also with the subsequent judgment in Consolidated Engg. Enterprises v. Irrigation Deptt. [(2008) 7 SCC 169].

32. Obviously, the ratio of Mukri Gopalan [(1995) 5 SCC 5] does not square with the observations of the three-Judge Bench in Consolidated Engg. Enterprises [(2008) 7 SCC 169]. In the latter case, this Court has unequivocally held that Parson Tools [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or tribunals. To the extent that Mukri Gopalan [(1995) 5 SCC 5] is in conflict with the judgment in Consolidated Engg. Enterprises case [(2008) 7 SCC 169] , it is no longer good law.

33. The sheet anchor in *Mukri Gopalan* [(1995) 5 SCC 5] was Section 29(2) of the Limitation Act.

..... A bare reading of this section would show that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule. This would necessarily mean that such special or local law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the Schedule. We have already held that such suits, appeals or applications as are referred to in the Schedule are only to courts and not to quasi-judicial bodies or tribunals. ***It is clear, therefore, that only when a suit, appeal or application of the description in the Schedule is to be filed in a court under a special or local law that the provision gets attracted. This is made even clearer by a reading of Section 29(3).*** xxxx
(emphasis supplied)

15. In view of the law laid down by the Supreme Court in **M.P.Steel Corporation**, the decision of the Division Bench in **Mahendra Kumar Goyal** does not come to the aid of the counsels appearing for Bank.

16.1. Similar issue has come up for consideration in **D.Uma Rani v. District Collector, Karimnagar and others**⁶. In the said case scope of application of the Limitation Act to authorities exercising jurisdiction to adjudicate matters under Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 was considered. In the batch of writ petitions, the decision of the Revisional Authority rejecting the revision petition filed under Section 4B of the Act, 1977 on the ground that the revisions were filed beyond the period of 90 days prescribed in the Act was challenged as erroneous. It was contended that the provisions of Limitation Act are attracted to the proceedings under the Act, 1977 and, therefore, the revisional authority erred in dismissing the revision and not condoning the revision. This Court considered the several pronouncements of Supreme Court starting from **Hukumdev Narain Yadav v. Lalit Narain Mishra**⁷ and culled out principles for extension of provisions of the Limitation Act to adjudicating authorities under special statutes.

16.2. This Court held as under:

"23. In **GOPAL SARDAR v. KARUNA SARDAR**, (2004) 4 SCC 252, the issue for consideration was whether Limitation Act applies to matters arising out of the West Bengal Land Reforms Act, 1955. Supreme Court held:

"14. The decision of that case turned upon the facts of that case in criminal appeals by comparison of the provision of the old Limitation Act to the provision of the new Limitation Act. Further, the decision in **Hukumdev Narain Yadav** (cited supra) was not brought to the notice of this Court when **Mangu Ram** case (cited supra) was decided. In the light of the three-Judge Bench decision of this Court in **Hukumdev Narain Yadav** we do not find any good reason to take a different view."

⁶ 2015 (4) ALD 572

⁷ (1974) 2 SCC 133

24. In FAIRGROWTH INVESTMENTS LIMITED v. CUSTODIAN, (2004) 11 SCC 472, the question for consideration was whether the Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 has power to condone the delay in filing a petition under Section 4(2) of the Act. On review of precedents on the subject, Supreme Court held:

"12. If the power to condone delay were implicit in every statutory provision providing for a period of limitation in respect of proceedings before courts, Section 29(2) of the Limitation Act, 1963 would be rendered redundant. (emphasis supplied)

19. But in this case apart from the mandatory and compulsive provisions of sub-section (2) of Section 4 of the Act, there are in addition two provisions of the Act which show that the provisions of Section 5 of the Limitation Act, 1963 cannot be invoked. These are: an express provision for condonation of delay under Section 10(3) and the non obstante provision in Section 13 of the Act. (emphasis supplied).

25. In COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, Supreme Court held:

"35. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

36. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

26. In VEERAPPA, Division Bench of this Court considered similar provisions obtaining in A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 wherein District Collector, Chittoor filed appeal on 24.5.1994 under Section 7 (2) of the Act assailing the orders granting Ryotwari Pattas on 6.1.1985 and 7.3.1986. By order dated 7.6.1994 appeal was entertained and stay was granted. On a challenge in W.P. No. 11598 of 1994, writ was disposed of by order dated 14.12.2000 directing the Revenue Divisional Officer to dispose of appeal after affording reasonable opportunity. The same was challenged in writ appeal. The Division Bench held:

"8. The Revenue Divisional Officer is a creature of statute and whatever power he exercises under the statute should be strictly within the parameters of power granted to him. Since the statute does not confer any power on

him to condone the delay, the Revenue Divisional Officer condoning delay of 2555 days would not arise... Secondly, it is quite startling to notice that the Revenue Divisional Officer straight away, without notice to the writ petitioner and completely ignoring natural justice and fair-play in action, ex parte condoned the enormous delay of 2555 days."

27. In G.NARASIMHA RAO, Full bench of this Court considered whether Andhra Pradesh Administrative Tribunal has power to condone the delay in filing review. Administrative Tribunals Act, 1985 and rules made there under have not made provision condone the delay. Full Bench held:

"13. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the premise that Limitation Act is made applicable in view of Sub-section (2) of Section 29 of the Limitation Act."

32. The principles deducible from precedents are: (1) that Special Act/Local Act should provide a period of limitation different from period of limitation prescribed in Limitation Act; (2) Special Act/Local Act has not expressly excluded application of Limitation Act; (3) Such exclusion can be by necessary implication, such as incorporating power to condone delay in some Sections and not providing in other Sections of the Special Act; (4) Even if Special Act is silent on exclusion of application of Limitation Act, it is not automatic that Limitation Act would apply to Special Act; the Court ought to examine the nature of the subject and scheme of special law to ascertain whether legislature intend to exclude the operation of Limitation Act; (5) Power to condone delay cannot be implicit; (6) If the statute does not confer power to condone delay, statutory authority cannot condone the delay; (7) If Special Act incorporates non-obstante clause no other law including Limitation Act would apply; and (8) If the Act is a self-contained code, provisions of Limitation Act cannot be imported, more particularly when express provision of adoption is not made."

17. The principles culled out in **D.Uma Rani** would equally apply to the cases on hand.

18. I am of the considered opinion that the law laid down by the Full Bench is binding on single judge, more particularly as the Full Bench interpreted the analogous provisions of the earlier Act, which is superseded by the present Act.

19. The case on hand is worse than the issue considered by the Full Bench in **The Nalgonda Cooperative Marketing Society Limited**. In the instant case, as informed by all learned counsel, no orders were passed on the condone delay applications filed by the respondent-Bank. While the respondent-Bank filed applications for condonation of delay in filing second appeals under Section 5 of Limitation Act, no prayer was sought in the said applications for granting interim stay of the order of the first appellate authority, but second appellate authority proceeds to stay the order of first appellate order and there is no whisper in the entire order on condoning the delay in filing the appeals. Further, prior to entertaining the IAs and passing orders, albeit defective, no notice was caused on the respondents before the second appellate authority. These two aspects are sufficient to nullify the entire exercise undertaken by the second appellate authority.

20. Thus, in view of the law laid down by the Full Bench of this Court directly on the point and also in view of the judgment of the Supreme Court in **M.P.Steel Corporation**, I am of the considered opinion that a second appeal is not maintainable unless the same is filed within 30 days from the date of receipt of copies of orders of first appellate authority. If no second appeal is filed within 30 days, the second appellate authority is denuded of power to entertain the second appeals and becomes *functus officio*. Thus, even assuming second appellate authority has considered the delay in filing second appeals, as second appeals are not maintainable if they are not filed within 30 days, it would have no power and jurisdiction to decide the second appeals. Therefore,

the second appellate authority erred in entertaining the second appeals filed by the respondent Bank after 30 days and disposing them on merits. The decisions made by second appellate authority are perverse. Thus, the orders of the second appellate authority made in M.P.Nos.1 to 40 of 2008 and final orders in S.A.Nos.10, 12, 28, 29, 30, 32, 33, 35, 40 of 2008, impugned herein are liable to be set aside. They are accordingly set aside. The writ petitions are allowed with costs of 2,000.00 to be paid to each of the petitioners.

WRIT PETITION NOs.9875, 9876, 9877, 9878, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9887, 9888, 9889, 9890, 9891, 9892, 9893, 9894, 9895, 9896, 9898, 9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041, 10042, 10043, 10065, 10066, 10067, 10068 and 10069 of 2010 :

21. Bank filed batch of appeals before the second appellate authority challenging the orders passed by the first appellate authority on the first appeals filed by the employees of the Bank challenging their termination. Bank filed appeals seeking condonation of delay and having entertained the appeals filed after 30 days from the date of receipt of copies of the orders, set aside the order of the first appellate authority and modified the same. The second appellate authority directed payment of 50% of the last drawn salary of the respondent employees for each completed year of service towards compensation as full and final settlement of the account in addition to the amount already paid to the respondent employees in lieu of relief of reinstatement, continuity of services, attendant benefits and 50% of the back wages. Bank challenges

this portion of the order passed by the second appellate authority in these writ petitions.

22. On elaborate consideration of scope of jurisdiction of second appellate authority in entertaining appeals filed beyond 30 days from the date of receipt of copies of the orders of first appellate authority by the second appellant, this Court held in the earlier paragraphs that the second appellate authority has no competence to entertain the appeals filed beyond the time prescribed in Section 48(3) of the Act and has no power to condone the delay in filing the appeals after time prescribed in Section 48(3) expired. The writ petitions filed by the employees are allowed.

23. In view of the finding recorded above and since the very act of entertaining second appeals and passing orders thereon held as without jurisdiction and competence, no relief as sought for by the petitioner-Bank can be granted in these writ petitions. Writ petitions are accordingly dismissed.

CONCLUSION:

24.1. Accordingly, Writ Petition Nos.20738 of 2008; 4350 of 2012; 27312, 27315, 30422, 30423, 30426, 30430, 30432 and 32328 of 2014 are allowed with costs;

24.2. Writ Petition Nos.9875, 9876, 9877, 9878, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9887, 9888, 9889, 9890, 9891, 9892, 9893, 9894, 9895, 9896, 9898, 9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041, 10042,

10043, 10065, 10066, 10067, 10068 and 10069 of 2010 are dismissed without costs.

Miscellaneous petitions if any pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 28.04.2017
kkm



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION NOs.20738 OF 2008; 9875, 9876, 9877, 9878, 9879, 9880, 9881, 9882, 9883, 9884, 9885, 9886, 9887, 9888, 9889, 9890, 9891, 9892, 9893, 9894, 9895, 9896, 9898, 9899, 10016, 10017, 10019, 10020, 10023, 10024, 10027, 10028, 10041, 10042, 10043, 10065, 10066, 10067, 10068, 10069 OF 2010; 4350 OF 2012; 27312, 27315, 30422, 30423, 30426, 30430, 30432, 32328 OF 2014;

Date :28.04.2017

kkm