

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.27239 of 2014

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the order passed by the first respondent vide Endt.No.E/ 30/ 2014, dated 25.07.2014, as illegal, void and contrary to the provisions of the Andhra Pradesh Shops and Establishments Act, 1988 (for short "the Act").

2) The facts in issue are as under:

The second respondent herein was working as an Area Manager of the petitioner at Warangal. He filed an application before the Assistant Commissioner of Labour, Warangal under Section 51 (1) of the Act against the petitioner vide S.E.No.1 of 2012. The averments in the affidavit filed in support of the writ petition would show that in the said case, the writ petitioner filed his counter on 11.02.2013. Thereafter, on 26.03.2013 chief affidavit of the second respondent herein came to be filed, but cross examination could not be done as the matter was getting adjourned on one pretext or the other. Thereafter, on 20.08.2013, the authority forfeited the right to cross-examine, which lead to filing of a writ petition before this Court, seeking to recall PW.1 and to cross examine him. However, in the absence of the petitioner the said authority passed an order in the main case on 18.10.2013. On coming to know about the order, the petitioner applied for a copy of the order and preferred an appeal

on 08.01.2014 with a delay of nine days. The same was returned as under:

“The appellant/respondent preferring an appeal against the lower authority order dated 18.10.2013 in S.E Case No.1 of 2012 which was served to appellant/respondent on 31.10.2013. The appellant/ respondent filed appeal on 08.01.2014 total 39 days was delay. The appeal petition is time barred. Hence, the appeal is returned to the appellant/ respondent.”

As per the order, since the appeal was filed with a delay of 39 days the same is rejected as time barred. Thereafter, the appeal was re-submitted with an application to condone the delay. The same was again returned on 28.05.2014 without passing any order on the delay application, as under:

“The appellant/respondent preferring an appeal against the lower authority order dated 18.10.2013 in S.E Case No.1 of 2012 which was served to appellant/respondent on 31.10.2013. The appellant/ respondent filed appeal on 08.01.2014 total 39 days was delay.”

Further it is to informed that the appeal under Section 53 sub-section (3) of the Section may be preferred before the authority to be notified by Government within thirty days of the date on which the order or direction was served on the applicant or the employer, as the case may.”

Again it was resubmitted on 24.06.2014 requesting the authority to condone the delay. The same was returned on 25.07.2014 with the following endorsement:

“The appellant/respondent filed appeal on 08.01.2014. Hence the total delay is 39 days.

Further it is to informed that the appeal under Section 53 sub-section (3) of the section may be preferred before the authority to be notified by Government within thirty days from the date on which the order or direction was served on the applicant or the employer, as the case may be.

In the above mentioned reasons the appeal petition could not be allowed. Hence, the appeal petition is returned on the above said reasons.”

Challenging the said endorsement, the present writ petition came to be filed.

3) Learned counsel for the petitioner submits that as per sub-rule 7 of Rule 25 of the Andhra Pradesh Shops and Establishments Rules, 1990 (for short “the Rules”), the authority shall be deemed to be a civil Court, as such it has got the power to condone the delay. Since the appeal was immediate, the authority ought to have considered the same on merits instead of rejecting it on technicalities.

4) By an order dated 17.10.2014, this Court while admitting the writ petition, passed the following interim order:

“The learned Government Pleader for Labour takes notice on behalf of 1st respondent.

The petitioner herein questions the impugned order dt. 25.07.2014 passed by the 1st respondent-Appellate Authority, rejecting the appeal filed by the petitioner under section 53 (3) of the A.P.Shops and Establishment Act, 1988 on the ground that the appeal is not presented within thirty (30) days from the date on which the impugned order in the appeal is passed or served on petitioner.

The counsel for petitioner submits that this Court in *Pulimeru Large Scale Co-operative Society Limited v. Authority appointed under Section 48 of the Andhra Pradesh Shops and Establishments Act, 1988*¹ has taken a view that provisions of Limitation Act are applicable to provisions under the A.P.Shops and Establishments Act, 1988. He also placed reliance on Section 29 of the Limitation Act, 1963, which makes the provisions of that Act applicable to the proceedings under any enactment, unless their application is specifically excluded.

The rejection of petitioner's appeal by 1st respondent-Appellate Authority, on the ground that the appeal is presented beyond the period of thirty (30) days as specified in Section 53 (3) of the Act without considering the petitioner's application for condonation of delay in filing the appeal, *prima facie*, appears to be wrong. The 1st respondent could not have rejected the appeal as barred by limitation without considering the application under Section 5 of Limitation Act, 1963.

In this view of the matter, there shall be interim stay as prayed for."

5) A vacate stay petition came to be filed by the second respondent. The affidavit filed in support of vacate stay petition would show that the second respondent who was working as Area Manager, attended his duties till 05.06.2010. Due to unavoidable circumstances, he resigned the job with effect from 06.06.2010, by giving one month notice. At the time of his resignation, the petitioner was due an amount of Rs.26,264/- . Subsequently, the petitioner paid Rs.10,395/- and failed to pay the remaining balance amount of Rs.15,869/- in spite of representations made by him. As such, he filed a complaint before the Assistant Commissioner of Labour under Section 50 of the Act. The said

¹ 2008 (6) ALD 509

authority allowed the claim and directed the petitioner to deposit Rs. 15,869/- plus two times the compensation under Section 51 (2) (1) of the Act ie. total Rs. 47,607/- within 30 days from the date of receipt of the order. Challenging the same the petitioner filed an appeal under Section 53 of the Act with a delay petition. The second respondent returned the said appeal. Aggrieved by the same, the present writ petition came to be filed.

6) The main ground urged by the learned counsel for the second respondent is that there is no provision to condone the delay in the Act as such applying the provisions of Limitation Act would not arise.

7) The short question that arises for consideration is whether the authorities were justified in rejecting the request of the petitioner to condone the delay of (39) days in filing the appeal.

8) Section 53 of the Act reads as under:

“53. Appeal: (1) An appeal against an order dismissing either wholly or in part an application made under sub-section (1) of Section 51 or against a direction made under sub-section (2) or sub-section (3) of that section may be preferred before the authority to be notified by Government within thirty days of the date on which the order or direction was served on the applicant or the employer, as the case may be.

a) by the employer, if the total sum directed to be paid by way of wages, service compensation and compensation exceeds three hundred rupees; or

(b) by the person who had applied under sub-section (1) of Section 51 if the total amount of wages or service

compensation claimed to have been withheld from the employee or from the unpaid group to which he belonged exceeds fifty rupees; or

(c) by any person directed to pay a penalty under sub-section (3) of Section 51.

(2) Save as provided in sub-section (1) any order dismissing either wholly or in part an application made under sub-section (1) of Section 51 or a direction made under sub-section (2) or sub-section (3) of that section shall be final.”

9) As per the said provision, an appeal has to be filed within 30 days from the date on which the order or direction was served on the appellant/ employer as the case may be. The Act or the Rules does not anywhere indicate, condonation of delay, in case the appeal is filed beyond the period of limitation.

10) It is true that the delay in filing the appeal was not abnormal. But the question is whether the delay can be condoned in the absence of any provision in the Act. Though the learned counsel for the petitioner relied upon the judgment of the learned Single Judge of this Court in *Pulimeru Large Scale Co-operative Society Limited, Pulimeru (1 supra)* but the said judgment was dealing with Section 48 of the Act. Though Section 48 of the Act is silent as to the time limit in filing the appeals and also as to the condonation of delay if the appeals are filed with delay or where an *exparte* order was passed, but Rule 21 of the Rules takes care of the said situation. Proviso to sub-rule (2) not only confers power on the authority to set aside the *exparte* order but also stipulates the period of limitation, within which such application

has to be filed and if not filed within the stipulated time, refers to condonation of delay if sufficient cause is shown.

11) Situation on hand is different. In the instant case, the appeal came to be filed under Section 53 of the Act. Neither Section 53 of the Act nor any Rule takes care of the situation where an appeal is preferred with a delay. In A.Sridhar and others case ie. W.P.No.20738 of 2008 and batch, dated 28.04.2017, a learned Single Judge of this Court while dealing with filing of Second Appeals under Section 48 of the Act, with a delay, held that if Second Appeal is not filed within 30 days, the said authority shall become *functuous officio* and has no power or authority to deal with the Second Appeals. Situation on hand appear to be some what identical to the cases referred to above. As stated earlier, Section 53 of the Act and the Rules made thereunder are silent as to condonation of delay. Such being the position, the appellate authority, who is denuded of power to entertain appeals filed after 30 days has rightly passed the impugned order.

12) Hence, I see no merit in the writ petition and the same is accordingly dismissed. There shall be no order as to costs.

13) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.07.2017
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