

THE HON' BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON' BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT APPEAL Nos. 916, 917, 945, 1108, 1152, 1158, 1165, 1166,
1167, 1168, 1171, 1173, 1174, 1175, 1177, 1178, 1180, 1181,
1182, 1183, 1184, 1191, 1192, 1193, 1194, 1195, 1197, 1198,
1218, 1220, 1221, 1223, 1224, 1229, 1230, 1232, 1233, 1234,
1245, 1248, 1257, 1259, 1279, 1282, 1283, 1284, 1295, 1296,
1322 and 1375 of 2017

DATED:29-12-2017

W.A. No.916 of 2017

Between:

The Vasavi Cooperative Urban Bank Ltd.,
Hyderabad
Rep. by its Managing Director, Malakpet
Hyderabad ... Appellant

And

A. Sridhar
and others ... Respondents

COUNSEL FOR THE APPELLANT: Mr. A.K. Jayaprakash Rao

COUNSEL FOR RESPONDENT NOS.1 to 10: -

COUNSEL FOR RESPONDENT NOS.11 and 12: G.P. for Labour (TS)

THE COURT MADE THE FOLLOWING:

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AND
THE HON' BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

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COMMON JUDGMENT: (per GSP, J)

This batch of writ appeals arises out of the Common Order dated 28.04.2017 whereby the learned single Judge allowed the batch of writ petitions filed by the employees in W.P.No.20738 of 2008 & batch, and dismissed the batch of writ petitions filed by the Bank in W.P.No.9875 of 2010 & batch. For the sake of convenience, the facts in W.A.No.916 of 2017 are taken for discussion, which are as follows.

2. The petitioners in W.P.No.20738 of 2008 were employees of Vasavi Co-operative Urban Bank Ltd., (for short, 'the Bank'), and their services were terminated by the Bank vide proceedings dated 31.08.2004, under the provisions of A.P. Shops and Establishments Act, 1988, (for short, 'the APSE Act'). Aggrieved by the same, the employees approached the Assistant Commissioner of Labour (the first appellate authority), who is the 2nd respondent herein under Section 48(1) of the APSE Act. The first appellate authority has passed orders dated 29.06.2006 and 30.06.2006 directing the Bank to reinstate the employees with 50% backwages and with all attendant benefits. Aggrieved by the same, the Bank preferred appeal before the Deputy Commissioner of Labour (the second appellate authority) under Section 48(3) of the APSE Act, and as per the APSE Act,

the Bank has to deposit the backwages ordered by the first appellate authority before the second appellate authority to entertain the appeal. Therefore, the Bank approached the Government under Section 73(4) of the APSE Act, seeking exemption from depositing backwages granted by the first appellate authority. The Government has issued G.O.Rt.No.613, dated 19.03.2008, granting exemption from mandatory deposit by the Bank.

Some employees, namely; Swarupa and 12 others, filed W.P.No.14438 of 2008 before this Court questioning the exemption granted by the Government. This Court, by order dated 08.07.2008, suspended the exemption granted by the Government. Aggrieved by the orders, the Bank filed a Special Leave Petition before the Hon' ble Supreme Court in S.L.P.No. 25932 of 2008 and the Supreme Court has passed an order not to initiate coercive steps against the Bank.

Having been granted exemption by the Government, the Bank filed second appeals before the second appellate authority along with applications under Section 5 of the Limitation Act seeking to condone the delay in preferring the appeals, as there was a delay beyond 30 days from the date of receipt of orders of the first appellate authority, in filing the second appeals.

The second appellate authority entertained the second appeals and granted stay of the order passed by the first appellate authority.

Thereafter, another batch of employees, namely; Sridhar and 9 others, filed W.P.No.20738 of 2008 before this Court questioning the order of stay passed by the second appellate authority. This Court, by order dated 24.09.2008 suspended the stay granted by the second appellate authority.

Meanwhile, the second appellate authority has allowed the second appeals on 20.04.2010 modifying the orders passed by the first appellate authority, by directing the Bank to pay 50% of the last drawn salary to the employees for each completed year of service towards compensation, in full and final settlement of the account in lieu of reinstatement with 50% of back wages, continuity of services and attendant benefits. In view of the disposal of the second appeals by the second appellate authority, the pending Special Leave Petition, i.e., S.L.P.No.25932 of 2008 before the Supreme Court was dismissed as infructuous on 20.03.2011.

Some employees, namely; Ambu Naik and others, filed W.P.No.15186 of 2010, questioning the denial of last drawn salary by the second appellate authority.

Questioning the order passed by the second appellate authority granting 50% of last drawn salary to the employees for each completed year of service in lieu of reinstatement with 50% back wages, continuity of service and attendant benefits, the Bank filed W.P.No.9875 of 2010 and batch before this Court.

Subsequently, W.P.No.15186 of 2010 filed by the employees was allowed by this Court. The Review Petition filed by the Bank against the order in W.P.No.15186 of 2010 was dismissed by order dated 17.12.2014. Aggrieved by the dismissal of review petition, the Bank filed writ appeal in W.A.No.189 of 2015 and a Division Bench of this Court disposed of the writ appeal by directing the Bank to deposit Rs.10 lakhs before the Criminal Court and the employees were permitted to withdraw Rs.4.00 lakhs, and directed the Registry to post all the cases together for hearing and common disposal. As directed by the Division Bench of this Court, the Registry posted all the cases together.

The learned single Judge, on an elaborate consideration of relevant provisions of the APSE Act, and also the pleas raised, and in the light of the judgment of the Full Bench of this Court in *The Nalgonda Cooperative Marketing Society Limited, rep. by its Secretary, Sri S. Narahari v. Labour Court, Hyderabad, rep. by its Presiding Officer, Hyderabad and others*¹, and the judgment of the Hon' ble Supreme Court in *M.P. Steel Corporation*, allowed the writ petitions filed by the employees, and dismissed the writ petitions filed by the Bank, by holding that the second appellate authority has no jurisdiction and competence to entertain the second appeals filed beyond the statutory period of 30 days.

Aggrieved by the order passed by the learned single Judge, the Bank filed the present batch of writ appeals.

3. On 02.08.2017, when W.A.Nos.916, 917 and 945 of 2017 came up for hearing, Sri V. Mallik, learned counsel for respondents-employees submitted that his clients would be satisfied if the appellant-Bank pays the same amount as was paid to similarly situated employees who approached this Court by way of writ petitions. Sri A.K. Jaya Prakash Rao and Sri N. Rajeswara Rao, learned counsels appearing for the appellant-Bank, requested for time to place before the Court the calculations with regard to the payments made to similar employees. Though the matter was adjourned, no consensus could be reached between the parties. Therefore, the matter was heard for disposal on merits.

¹ 1993 (2) ALT 661

4. We have heard the arguments of learned Additional Advocate General Sri A.K. Jaya Prakash Rao appearing for Sri N. Rajeshwara Rao, learned counsel for the appellant-Bank; Sri V. Mallik, learned counsel representing respondents-employees; learned Government Pleader for Labour, and learned Government Pleader for Cooperation, representing respondents 11 and 12.

5. The points arising for consideration is (i) whether there is any delay and laches on the part of the appellant-Bank in preferring the second appeals before the second appellate authority, and (ii) whether the second appellate authority is within its jurisdiction and competence to entertain the second appeals and pass orders by granting stay.

6. Learned counsel for the respondents-employees contended that there is a specific provision under Section 48(3) of the APSE Act which only speaks about the time period within which a second appeal can be filed before the second appellate authority and there is no provision in the APSE Act which empowers the second appellate authority to condone the delay in filing second appeals. It is further contended that the provisions contained in the Limitation Act cannot be extended and made applicable to the APSE Act and, therefore, the second appellate authority has no jurisdiction and competence to entertain a second appeal filed beyond the statutory period of 30 days.

7. Learned counsel representing the appellant-Bank submitted that the Bank has closed its Banking operations in the year 2003 and the services of the employees were terminated in the year 2004 by paying retrenchment benefits as per law and, therefore, interference of the Court with the order of the second appellate authority on technical grounds of

delay after seven years of closure of Bank does not serve any purpose. It is further submitted that the appellant-Bank went into liquidation in July 2014 and at present the Bank does not have any finances to comply with the order passed by the first appellate authority. It is contended that the implementation of order of the first appellate authority insofar as reinstatement of employees is concerned, is practically not possible in view of the Bank's liquidation. It is further contended that the learned single Judge relied on a mere technicality regarding power of condonation of delay by the second appellate authority under Section 48(3) of APSE Act, without taking into consideration the factual aspects.

8. Learned counsel for the appellant further submitted that since the Bank went into liquidation of its assets, the properties of the Bank were handed over to the person in-charge and the properties might have to be sold for making payments to the employees. It is further submitted that the Bank has got cash of about Rs.7,00,000/- whereas the amounts payable to the employees is very huge. It is further submitted that even if the matter is compromised between the Bank and the contesting employees, the Bank is not in a position to make the payments immediately until its assets are disposed of by way of sale and that the Bank is taking steps for disposal of its assets by auction and the proceedings are in progress and, therefore, the Bank has no finances to pay to the employees at this state. It is also submitted that the priorities of payments are not yet decided and if any amount is realized after sale of assets, the sale proceeds would have to be ratably distributed among the employees who have succeeded in the writ petitions.

9. Learned counsel for the respondents-employees submitted that the learned single Judge has passed appropriate orders by allowing the writ petitions of the employees and the same do not require interference. Learned counsel also submitted that the employees are not willing to compromise the matter with the Bank by agreeing for meager amounts proposed to be offered by the Bank and therefore requested to dismiss the appeals.

10. On consideration of arguments advanced by both the parties, and on perusal of the order passed by the learned single Judge, we are of the considered view that the learned single Judge has passed a well reasoned order with regard to competence and jurisdiction of the second appellate authority in entertaining the second appeals by condoning the delay. Paragraph 22 of the order passed by the learned single Judge reads as under:

“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.”

11. It is appropriate to refer to Section 48(3) of the APSE Act, which reads as under:

48. Appointment of authority to hear and decide appeals arising out of termination of services:-

(1) - - -

(2) - - -

(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.

12. The learned single Judge has elaborately discussed the applicability of the provisions of the Limitation Act to the proceedings before a Labour Court exercising jurisdiction under APSE Act. He has referred to the decision of the Hon' ble Supreme Court in M.P. Steel Corporation, and also to the decision rendered by the Full Bench of this Court in The Nalgonda Cooperative Marketing Society (1 supra) wherein the Full Bench of this Court in paragraphs 16, 24 and 33 of the said judgment held as under:

“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. Somaiah²

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.

13. In *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur*³, the Apex Court dealing with a similar issue held:

“The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal

² AIR 1964 SC 227

³ (2008) 3 SCC 70

within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

14. Section 48(3) of the APSE Act extracted above, as well as the case law referred above would make it clear that the second appellate authority exercising jurisdiction under APSE Act, cannot function as a Civil Court and take recourse to the provisions under the Limitation Act for entertaining a second appeal by condoning the delay in filing second appeals beyond 30 days from the date of the impugned orders passed by the first appellate authority therein. Therefore, the order passed by the learned single Judge does not require any interference.

15. In the result, the writ appeals are dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

29.12.2017
KSM/BNR