

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 12966 of 2020

Between:

Mrs Anita Hari

... Petitioner

And

The State of Telandana rep. by its
Principal Secretary and others

... Respondents

JUDGMENT PRONOUNCED ON: 06.12.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 12966 of 2020****% 06.12.2022****Between:**

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< **Gist:**> **Head Note:**

! Counsel for the Petitioner : Sri C.Vikram Chandra

^Counsel for the Respondent Nos 3 to 5: Mr P.Ravi Prasad

? Cases Referred:**AIR 1964 SCC 477**

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 12966 of 2020****ORDER:**

Heard learned counsel for the petitioners and learned counsel appearing for respondents 3 to 5.

2. This writ petition is filed to issue an appropriate writ, order or direction one in the nature of Writ of Certiorari calling for the entire records in S.E.I.A.No.28 of 2019 on the file of the 2nd respondent i.e. the Assistant Commissioner of Labour, Ranga Reddy District and set aside the order passed by the 2nd respondent i.e. the Assistant Commissioner of Labour, Ranga Reddy District in S.E.I.A.No.28 of 2019, dated 29.02.2020.

3) The case of the petitioner, in brief, is as follows:

a) The petitioner is employed with the 3rd respondent company on 16.05.2018 in the post of Manager-client-Servicing and his reporting Manager was the 5th respondent.

b) The petitioner filed application under Section 48(1) of the Telangana Shops and Establishment Act, 1988 before the 2nd respondent herein seeking a direction to respondents 3

and 4 to reinstate him into services with full back wages, continuity of service and all attendant benefits by declaring the action of respondents 3 and 4 in terminating his services w.e.f. 27.03.2019 as arbitrary and illegal.

c) As per terms and conditions of Clause 3 in Annexure B of appointment letter dated 16.05.2018, the petitioner's probation period expired as on 16.11.2018 and since then the petitioner is continuing to work with the 3rd respondent company as regular and permanent employee.

d) There were certain issues between the petitioner and the 5th respondent. The petitioner brought the same to the knowledge of the 4th respondent and a meeting was held to that effect. But there was no response from the 4th respondent.

e) The petitioner received appraisal letter on 29.01.2019 from the 3rd respondent company revising his salary.

f) All of sudden a meeting was called on 27.03.2019 by the 4th respondent and thereafter, the 4th respondent asked the petitioner to leave the company or relieve from service and that relieved the petitioner on 27.03.2019.

g) Thereafter, the petitioner issued legal notice on 02.05.2019 to respondents 3 to 5 to reinstate him into service, but was denied the same by reply notice dated 24.05.2019. The petitioner filed appeal before the 2nd respondent with condone delay petition and the same was dismissed. Hence, the present writ petition.

4. Respondent 3 to 5 filed counter affidavit, in brief, is as follows:

- a) The writ petition is liable to be dismissed in *limini* since there is efficacious alternative remedy to the petitioner by way of second appeal under Section 48(3) of the Telangana Shops and Establishments Act, 1988. The petitioner failed to satisfy any of the conditions for invoking the writ jurisdiction of this Court. The 2nd respondent has rightly dismissed the complaint filed by the petitioner that the petitioner does not even fall under the purview of 'employee' as defined under the Telangana Shops and Establishments Act, 1988.
- b) The respondents followed the due procedure and hence, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

5. The order impugned passed under Section 48(1) of the Telangana Shops and Establishments Act, 1988 passed by the 2nd Respondent dated 29.02.2020 in S.E.I.A. Case No.28/2019 reads as under :

This application has been filed U/s. 48(1) of Telangana Shops and Establishments Act, 1988 alleging unlawful termination and seeking reinstatement with full back wages with all attendant benefits and continuity of service. The averments made in the application are as below in brief :

The applicant was appointed as probationer on 15.05.2018 by the respondent management for the post of Manager-Client Servicing to handle a team of Social Media Customer Services, interacting and coordinating with clients and vendors to meet their daily requirements and to implement process improvement plan to enhance the process in coordination with her reporting manager. After probationary period of 6 months, the company served her an appraisal letter on 29.01.2018 revising her emoluments with effect from 01.09.2019. On 27.03.2019, the HR Manager informed her about his and his higher ups displeasure with her services. She was also alleged to have misbehaved with the higher officials as well as with the colleagues. Abruptly, she was relieved from the services of the respondent company without any reason. She sent a notice on 26.09.2019 requesting the respondent company to allow her to attend to her duties, but no positive result emerged. The applicant completed more than 90 days of service with the respondent company. The applicant requested full back wages with continuity of service with effect from 27.03.2019, In addition, she sought monetary compensation of Rs. 5,00,000/- with interest of 24% for the suffering of severe mental agony, harassment and defaming her reputation with false allegations. This application was filed on 06.09.2019.

Section 47(1) of Telangana Shops and Establishments Act, 1988 clearly reads as below:

Conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension :- (1) No employer shall, without a reasonable cause terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee at least one months notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for a period of not less than one year, a service compensation amounting to fifteen days average wages for each year of continuous employment.

The applicant clearly stated that she worked only for 90 days under the employment of the respondents.

In such case, the removal or termination of her services which is less than six months is justified and the Authority cannot interfere with such termination. Hence, the application is dismissed as not maintainable under the Act.

6. RELEVANT STATUTORY PROVISIONS OF ACT

NO.20 OF 1988 :

1. Section 47(1) of Telangana Shops and Establishments Act, 1988 clearly reads as below:

Conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension :- (1) No employer shall, without a reasonable cause terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee at least one months notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for a

period of not less than one year, a service compensation amounting to fifteen days average wages for each year of continuous employment.

2. 48(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 employees 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.

3. RULE 21 : THE TELANGANA SHOPS & ESTABLISHMENTS RULES, 1990 :

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 expiry of the period of 60 days where the Appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the Appeal within the stipulated period

4. Employment Agreement dt. 16.05.2018 entered between the Petitioner and the 3rd Respondent herein at Clause (3) refers to Term of Employment and Termination and the same reads as under :

3. TERM OF EMPLOYMENT & TERMINATION :
The term of employment shall commence on 16th May 2018 unless subject to a Security upon 90 days notice (the "Notice Period"), which notice shall be given in writing after. and/or the Board

of Directors of the company may elect to terminate the employment immediately benefits in force at that time shall be continued for 30 days from the said notice for confirmed employee of the company, in case the Employee fails to give 90 (Ninety) days notice relieving formalities shall not be initiated and certificates experience letters shall not be issued.

7. The Employee acknowledges and agrees that he is an employee at will, and that just as the Employee is free to resign at any time, subject to the 'Notice Period'. The, Employee acknowledges and agrees that no representative of the Company may verbally change the employment relationship between the Employee and the Company References to time periods in this Agreement shall not be construed or interpreted as promising or guaranteeing employment for an specific or until any specific date.

8. SECTION 5 OF LIMITATION ACT, 1963 reads as under :

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation:- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

9. Other Relevant Terms and Conditions which governed Petitioner's appointment i.e. Clause (3), (8) and (9) of the Employment Agreement dt. 16.05.2018 are extracted hereunder :

***Clause 3** : You shall be under probation for a period of six (6) months starting from your date of joining, after which you shall be confirmed in regular employment of the company. Company and/or the Board of Directors of the company may extend or reduce this, probationary period based on your performance. During this probation period, your services can be terminated any time with immediate effect. Termination during the probationary period shall not entitle you to any severance pay or benefits.*

***Clause 8** : Your services may be terminated by giving thirty days' notice provided that if you are on an assignment/s during the notice period, the same must be completed to the satisfaction of the employers before you are relieved from your services.*

***Clause 9** : In case you wish to voluntarily resign from your duties, a written notice has to be given 90 days in advance, subject to Project Manager Approval. To be eligible for relieving, you need to be in service for the complete period of 90 days excluding any leaves availed during this period, failing which your relieving formalities shall not be initiated and certificates, experience letters shall not be issued.*

10. Para 24 of the counter affidavit filed by the Respondents No.3 to 5 reads as under :

Para 24 : It is humbly submitted that the Petitioner has impugned the order of Respondent No.2 dt. 29.02.2020 before this Hon'ble Court, inter-alia, on the premise that the Respondent No.2 failed to consider the explanation and reasoning accompanied in the affidavit of condone delay application along with evidence justifying the delay of 102 days in filing the application before the Respondent No.2. It is humbly submitted that vide the impugned order of the Respondent No.2 dt. 29.02.2020, the main application filed by the Petitioner itself was dismissed as not maintainable. Consequently, no question of consideration of the condonation of delay application arose. The Respondent No.2 vide its impugned order dt. 29.02.2020 dismissed the application as not maintainable after it came to a conclusion that the Petitioner was not an 'employee' of the Respondent No.3 for the purpose of the Telangana Shops and Establishments Act, 1988. This is quite apart from the limited question of whether the Petitioner was in the employment of the Respondent No.3 company continuously for a period of not less than six months and thus, entitled to issue the impugned proceedings. Therefore, it is submitted that the grounds canvassed by the Petitioner in the petition are untenable both in law and on facts.

DISCUSSION AND CONCLUSION :

11. A bare perusal of the material papers filed along with the present writ petition clearly indicate that the Petitioner filed SEIA Case No.28/2019, an application filed under Section 48(1) of the Telangana Shops & Establishments Act, 1988 against the Respondents No.3 to 5 herein in the present writ petition before the Authority appointed under Section 50 of the Telangana

State Shops and Establishments Act,1988 and Assistant Commissioner of Labour, Ranga Reddy at Hyderabad i.e., the 2nd Respondent herein with prayer as follows :

Prayer :

It is therefore prayed that the in view of the above facts and circumstances, this Hon'ble Court may be pleased to :

1. Direct the Respondents to reinstate the applicant into service with full back wages, continuity of service and all other attendant benefits, w.e.f. 27.03.2019 till the disposal of the case.

2. Direct the Respondents to pay a monetary compensation to the applicant for the sufferings of severe mental agony, harassment and defaming her reputation with false allegation of misbehavior and unfriendly conduct as inflicted by all Respondents.

3. Declare the action of the Respondents herein, in terminating the services of the applicant with effect from 27.03.2019 without giving any valid reasons for her termination as illegal, unfair labour practice, arbitrary and unjust.

4. Consequently pass an award in favour of Applicant and against the Respondents under the circumstances of the case and in the interest of justice.

12. The said application of the petitioner also is accompanied with a petition filed under Section 148 of CPC read with Section 151 of CPC, praying the Court to condone the delay of 102 days in filing the said application.

13. The prayer in the condone delay petition is as follows :

It is therefore, prayed that this Hon'ble Court may be pleased to condone the delay of 102 days caused in filing the above case otherwise the applicant will be put to irreparable loss which cannot be compensated later and be pleased to do the needful justice in accordance with law.

14. A bare perusal of the order impugned dt. 29.02.2020 of the Respondent No.2, extracted above, clearly indicates that the prayer of the Petitioner seeking condonation of delay in filing the application under Section 48(1) of the Telangana Shops and Establishments Act,1988 was not considered at all by the 2nd Respondent herein and no order has been passed on merits in deciding the condone delay application and instead the appeal itself is dismissed straight away holding that the Petitioner stated that she worked only 90 days under the employment of the Respondents and in such case the removal or termination of her services which is less than six months is justified and the Authority cannot interfere with such termination. This finding itself is a clear error

apparent on the face of record and is contrary to the record.

15. A bare perusal of the letter of offer dated 16.05.2018 which is an employment agreement which is entered into between the Petitioner and Respondent No.3 herein in particular Clause 3 of the said agreement extracted above clearly indicates that the term of employment of the Petitioner commenced on 16.05.2018 and the Petitioner completed the period of probation on 16.11.2018 itself since the period of probation is for a period of 6 months and during the said period the Petitioner services could be terminated with immediate effect without issuing any notice. The termination of the services of the Petitioner unilaterally, illegally on 27.03.2019 by the 4th Respondent by handing over a relieving letter without citing a single reason when the Petitioner admittedly as borne on record has completed the period of probation on 16.11.2018 itself and is a permanent employee w.e.f. 16.11.2018 since the period of probation of the petitioner had not been extended by the respondents

and the petitioner admittedly, had not placed any resignation for serving any notice period as stipulated under Clause 9 of Annexure-B of the other Terms and Conditions of Employment Agreement dated 16.05.2018 and the said action being challenged by the Petitioner before the 2nd Respondent Authority was an order of termination without conducting any Departmental Enquiry, without following principles of natural justice and in fact an unilateral termination.

16. The specific case of the Petitioner infact is that the Petitioner received an appraisal letter on 29.01.2019 from the Respondent No.3 company revising Petitioner's salary and also appreciating Petitioner's work performance and a bare perusal of the contents of the said letter indicates as follows :

"We take this opportunity to acknowledge and thank you for your valuable contributions and efforts made towards the performance of Penny Wise Solutions Private Limited, during the year 2018.

Please note your revised emoluments with effect from 01st Jan, 2019 as per Annexure-A.

We firmly believe that you will continue to augment your valuable impact on the Company's growth with your expertise and commitments.

Your compensation package is strictly confidential and in case of any clarification you are encouraged to discuss with our Lead or HRD Team”.

17. The conclusion and finding arrived at and recorded in the order impugned in the present writ petition of the 2nd Respondent in SEIA Case No.28/2019, an application filed under Section 48(1) of the Telangana Shops & Establishments Act, 1988, dated 29.02.2020, is totally contrary to record and the 2nd Respondent without deciding the condone delay petition filed by the Petitioner on merits by applying the relevant provisions of law which provide exception for condonation of delay by applying Section 5 of Limitation Act read with Rule 21 of Shops & Establishment Rules, 1990 and without examining if circumstances exists to condone the delay in filing the said application, if sufficient cause with good and genuine reasoning is made out by the applicant, and further thereafter the 2nd Respondent instead of deciding the application filed by the Petitioner under Section 48(1) of the Telangana Shops and Establishments Act, 1988 on merits, in the present case

curiously, however, dismissed the main application filed by the Petitioner itself holding and concluding erroneously that the petitioner stated that she worked only for 90 days under the employment of the Respondent and in such case the removal or termination of Petitioner's termination which is less than 6 months is justified and the Authority cannot interfere with such termination, hence the application is dismissed as not maintainable under the Act.

18. Admittedly, as borne on record the terms of employment of the petitioner commenced on 16.05.2018 and the petitioner completed more than six months since the petitioner had been terminated w.e.f. 27.03.2019 and therefore, the finding arrived at by the 2nd respondent that the petitioner worked only for 90 days is totally false and contrary to record and admittedly an error apparent on the face of record itself.

19. The pleas raised by Respondents No.3 to 5 in the counter affidavit filed at para 24 and also the

judgements referred to and relied upon in the said counter affidavit have no relevance to the facts of the present case and the said pleas cannot be sustained. Further the plea of the Respondents No.3 to 5 that Petitioner has an efficacious alternative remedy by way of Second Appeal U/s.48(3) of the Act also is not a valid plea in view of the simple fact that the petitioner is deprived of the Petitioner's Fundamental Right of Appeal since the impugned order passed by the Appellate Authority is not an order on merits and is an order passed mechanically, unilaterally, without application of mind and the same is an error apparent on the face of record which needs to be corrected.

20. Law is well settled that while exercising the statutory power, the High Court can only correct the error of jurisdiction committed by inferior Courts or tribunals, that is, where it appears that the order passed by inferior Courts or tribunals is without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ of certiorari can be issued where in exercise of jurisdiction conferred on it,

the Court or tribunal acts illegally or improperly like, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted is opposed to principles of natural justice and equity. The jurisdiction of the High Court to sue a writ of certiorari is a supervisory jurisdiction and the Court while exercising such jurisdiction is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal after appreciation of evidence and materials cannot be reopened or questioned in a writ proceeding. An error of law 'which is apparent on the facts of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be with regard to the finding of fact recorded by the Tribunal, a writ certiorari can be issued only if it is shown that while recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding fact is based on

no evidence, it would amount to an error of law which can be corrected by a writ of certiorari. (AIR 1964 Supreme Court 477 – Syed Yakoob v. K.S. Radha Krishnan and others).

21. This Court opines that the unilateral conclusion arrived at by the 2nd Respondent is totally erroneous and there exists a clear error apparent on the face of record as explained at para 12 above, which is in total non-application of mind. Taking into consideration all the above referred facts and circumstances and the law laid down by the Apex court in the judgment referred to and extracted above, the writ petition is allowed and the impugned order dated 29.02.2020 in S.E.I.A. Case No.28/2019 on the file of the 2nd Respondent is quashed and the 2nd Respondent is directed to decide S.E.I.A. Case No.28/2019 on merits by giving reasonable opportunity to all concerned, in accordance to law, by passing appropriate orders on merits on the condone delay petition first and later decide the main application filed by the petitioner under Section 48(1)(a) of Telangana Shops & Establishments Act,

1988 aggrieved by the unilateral termination of the service of the petitioner on 27.03.2019, without issuing any prior notice to the petitioner, in clear violation of principles of natural justice, within a period of four weeks from the date of receipt of the copy of the order.

22. This Court, however, is not inclined to go into the merits of the action impugned of the respondents herein before the 2nd respondent authority in SEIA No.28 of 2019 filed by the petitioner herein against the respondents, and leave it open to the 2nd respondent authority to decide the same in accordance to law by affording reasonable opportunity to all concerned in conformity with principles of natural justice. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 06.12.2022

Note: L.R. copy to be marked

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