

(1995) 11 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 677 of 1992

Gopalakrishna Kalamandir

APPELLANT

Vs

The Assistant Commissioner of Labour, Khammam and
Another

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 48, 48(1)
Andhra Pradesh Shops and Establishments Rules, 1990 — Rule 21, 21(1)

Citation : (1996) 1 ALD 839 : (1996) 2 LLJ 89

Hon'ble Judges : G. Bikshapathi, J

Bench : Single Bench

Judgement

Bikshapathy, J.—The petitioner is the cinema theatre. The 2nd Respondent is the workman/employee in the petitioner-theatre. The services of the 2nd Respondent were terminated by the petitioner-management on July 10, 1991. Aggrieved by the said action of the Management in terminating the services, the 2nd respondent filed an appeal before the 1st respondent i.e., Assistant Commissioner of Labour, Khammam u/s 48 of the Andhra Pradesh Shops and Establishments Act, 1988. Evidence was adduced before the 1st respondent, but the petitioner-management did not appear on September 6, 1991. Therefore, the management was set ex parte and ex parte order was passed setting aside the order of termination and directing the management to reinstate the 2nd respondent herein into service. It appears that the proprietor of the petitioner-theatre was out of station on account of certain treatment of his wife at Delhi and after his return from Delhi, he filed an application before the 1st respondent on December 2, 1991 seeking to set aside the ex parte order passed by the authority on September 6, 1991. He also sought for condonation of delay of 56 days in filing an application for setting aside the ex parte order. The 1st respondent authority by orders, dated December 20, 1991 dismissed the said application on the ground that the application was not filed within thirty days from the date of ex parte order. The said order of the 1st Respondent is assailed

in this writ petition before this Court.

2. The learned counsel for the petitioner submits that under Rule 21 of the Rules framed under Andhra Pradesh Shops and Establishments Act, 1988, the appellate authority is empowered to entertain application for setting aside the ex parte order. He has also ancillary power in condoning the delay in filing the application to set aside the ex parte order. In this regard, it is necessary to extract Rule 21 of the A.P. Shops and establishments Rules, 1990 and the same is extracted below :-

"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 or if that is not practicable, by pre-paid 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 satisfied the Appellate Authority that he had sufficient cause for not preferring the appeal within the stipulated period of sixty days.

(2)(a) The procedure to be followed by the Appellate Authority for hearing appeals preferred to it under Sub-section (1) of Section 48 shall be summary. It shall pass orders giving its reasons therefor. A Register of Appeals in Form XII shall be maintained by the Appellate Authority wherein the particulars of the appeal and summary of the final order shall be recorded.

(b) If the employer fails to appear on the specified date, the Authority may proceed to hear and determine the application ex parte.

(c) If the applicant fails to appear on two successive dates of hearing, the Authority may dismiss the application :

Provided that an order passed under clause (b) or clause (c) above may be set aside and the application re-heard, if any good cause being shown by the defaulting party within one month from the date of the said order, after service of notice to opposite party".

A reading of the above said Rule indicates that the appellate authority is empowered to entertain the application beyond sixty days provided sufficient cause is shown by the appellant/workman. Even in respect of ex parte orders, it is open for the parties, who are set ex parte, to file an application for setting aside the ex parte order within one month from the date of the said order after service of notice to the opposite party. Therefore, a reading of the said provision makes it clear that even in respect of ex parte orders, the application to set aside ex parte order can be entertained by the authority provided the said application is filed within one month from the date of the order. But there is no provision

similar to the provision under Rule 21(1) of the aforesaid Rules where the appellate authority could admit the application even after expiration of one month. In the absence of such a provision, the learned counsel for the petitioner submits that it shall be construed that the appellate authority gets the same power as an authority considering the appeal in the same manner as when the ex parte orders were also being considered. Thus, the learned counsel for the petitioner submits that even though there is no such provision, the rule has to be so construed as to enable the appellate authority to receive the application beyond the period of thirty days as in the case of the appeals under Rule 21(1) of the aforesaid rules. I am afraid, I cannot accept this contention. When once the power has been given to the appellate authority to entertain the appeal beyond sixty days, a specific provision has been made in Rule 21(1) but the same provision has not been made while entertaining the applications for setting aside the ex parte orders. Therefore, in the absence of such a rule it cannot be construed that the power is available for the authority for condoning the delay in filing such applications. Full Bench of this Court in Nalgonda Co-operative Marketing Society Ltd. v. Labour Court, Hyderabad, & Ors. 1993 2 C.L.R. 928, held that the provision of the Limitation Act are not applicable to the authorities constituted under the statutes unless there is a specific mention either in the Act or the rules framed under the said Act. The rules under the Andhra Pradesh Shops and Establishments Act, 1966 were under consideration by the Full Bench. Therefore, in view of the pronouncement of the Full Bench of this Court, I am not inclined to accept the contentions of the learned counsel for the petitioner. Under these circumstances, I see no ground to entertain this writ petition.

3. Writ petition is accordingly dismissed. No costs.