

(2004) 01 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 13582 and 13607 of 2003

Hyderabad Co-operative Trading Society Limited

APPELLANT

Vs

Authority under A.P. Shops and Establishments Act, 1988 and
Assistant Commissioner of Labour-III and Another

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 48(1)

Andhra Pradesh Shops and Establishments Rules, 1990 — Rule 21, 21(1), 21(2)

Citation : (2004) 1 ALD 742 : (2004) 101 FLR 357

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : A.K. Jayaprakash Rao, for the Appellant; Government Pleader for Respondent No. 1 and M.R.S. Ravindranath, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Ramulu, J.—In these cases, a short but important question arises for consideration of this Court - whether, in the absence of any rule, filing of a separate petition for condoning the delay in filing the appeal under the Act and the Rules, is necessary ?

2. The 2nd respondent-employees filed appeals before the 1st respondent-authority under the Andhra Pradesh Shops and Establishments Act, 1988 (for short "the Act") against the orders of retrenchment from service passed by the petitioner herein. The said appeals were numbered as S.Es.38 and 39 of 1999 on the file of the 1st respondent. While so, the appeals were dismissed for default. The 2nd respondent filed I.A.Nos. 24 and 25 of 2002 with a request to restore the applications (appeals) and also to condone the delay in filing the said petitions to set aside the orders of default. The said applications were allowed on 14-5-2003 and the delay was condoned and the appeals were restored. Thereafter, the petitioner filed additional counter-affidavits and it was argued before the authority that the appeals themselves were filed with delay of about

one year and there was no prayer to condone the delay and, therefore, the appeals were not maintainable. Under those circumstances, the orders dated 7-7-2003 in S.E.Nos. 38 and 39 of 1999 were passed condoning the delay in filing the appeals and posting the matter for evidence. Challenging the same, the present writ petitions are filed. Though initially, the writ petitions are filed challenging the Orders dated 14-5-2003 in I.A.Nos. 24 and 25 of 2002 and the Orders dated 7-7-2003 passed in S.E.Nos. 38 and 39 of 1999, but a Memo dated 27-11-2003 is filed restricting the challenge only to the Orders dated 7-7-2003 passed in S.E.Nos. 38 and 39 of 1999, as both the reliefs cannot be sought for in one writ petition.

3. According to the petitioner, the memorandum of appeals in S.E.Nos. 38 and 39 of 1999 should have accompanied by separate petitions for condoning the delay in filing the appeals before the authority. Admittedly, the said petitions were not filed by the 2nd respondent herein and as such, the appeals themselves were liable to be rejected at the threshold. The authority below did not do so. On the other hand, when an objection was taken to this extent by filing additional counters, the 1st respondent-authority dealt with the same and passed the following order:

"It is true that there was no delay condonation petition accompanying the original application, which has already been numbered as SE/39/99. The Authority numbered it ignoring the delay. Further, in the memorandum of Appeal in Para No. 5, the applicant has sought to explain the delay and requested the Authority to condone the entire delay in filing. The opposite party has opposed the delay in the counter filed on 23-11-1999. Having gone through the record, I am of the opinion that this is a technical flaw, if any, of not filing a separate delay condonation petition, does not stand in the way of the applicant seeking relief for reinstatement. Therefore, I do not hesitate to condone the delay in filing the application at this stage. It is only a technical flaw which the applicant in some other form explained in the main application. In the result, the entire delay is condoned retaining the same number as SE/39/99. Therefore, the application is posted for evidence of the applicant on 15-7-2003 at 3.00 p.m., before the undersigned."

It is the case of the petitioner that their Counsel on 5-7-2003 brought to the notice of the 1st respondent that the main appeals filed by the 2nd respondent are barred by limitation and there are no separate petitions filed for condonation of delay. The services of the 2nd respondent herein were terminated consequent to the closure of the establishment on 31-7-1998 and they filed appeals after the expiry of statutory period of limitation without there being any applications for condonation of delay and the 1st respondent erroneously numbered the appeals contrary to law. Even though the said facts were brought to the notice of the 1st respondent, the impugned orders were passed condoning the delay without there being separate applications for the same. This is not only illegal, but also without jurisdiction.

4. The main contention of the learned Counsel for the petitioner is that Rule 21(1) of the A.P. Shops and Establishment Rules, 1990 (for short "the Rules") contemplates filing of an appeal within 60 days from the date of termination of service by the employer and if the same is not filed within the said period, the appellant shall satisfy the appellate authority that he had sufficient cause for preferring the appeal beyond the period of 60 days. Therefore, it must be deemed that whenever an appeal is preferred u/s 48(1) of the Act beyond 60 days, it should be accompanied by a separate petition for the purpose of condoning the delay and the authority is supposed to dispose of the said petition first by putting the other side on notice and inviting the counter to that effect. Admittedly, since, in these cases, no separate applications were filed along with the appeals, though they were presented beyond 60 days period, the very appeals themselves ought not to have been entertained by the 1st respondent-authority. The non-filing of, petitions for condoning the delay is a bar for entertaining the appeals. Learned Counsel further submitted that though Rule 21 does not contemplate filing of a separate petition for condonation of the delay along with the appeal, the purport of the rule and the proviso thereto implies that an application for condoning the delay must accompany the appeal filed u/s 48 of the Act once it is filed beyond the period of 60 days. In the impugned orders, the 1st respondent erroneously observed that it is only a technical flaw in not filing separate petitions for condonation of delay and it can be ignored, since the reasons for the delay have been stated in the main appeals. In this regard, learned Counsel for the petitioner relied upon the decision reported in Prem Narayan Amritlal Varma Vs. Divisional Traffic Manager Bhusawal, , which arose under the Payment of Wages Act, 1936 and drawn the attention of this Court to Paragraphs 3 and 4, which read as under:

"(3).....There can be no doubt that the order of condonation, which the Authority is authorized to make is an order under Sub-section (2) of Section 15 and not under Sub-section (3) of Section 15. Subsection (3) only comes into play when any application under Sub-section (2) is entertained, and an application under Sub-section (2) can only be entertained, if it is either within the statutory period of six months, in which case the employee has a statutory right to have his application heard, or if it is beyond the period of six months, it is admitted by the order of the Authority condoning the delay. The authority is not competent to entertain the application at all unless it has condoned the delay, if it is filed beyond six months.

(4)In my opinion, it would be erroneous and clearly erroneous on the part of the Authority to admit an application, which is beyond time by condoning delay without giving notice to the other side on the application made by the employee. If an application is beyond time, the employer has acquired a valuable right, and it is an elementary proposition of law that a Court cannot deprive a party of a valuable right without hearing him. Therefore, in my opinion, the proper procedure for the Authority to follow in every case where an application is filed beyond the period of six months is not to admit the application, but to keep

it pending and issue merely a notice upon the other side to show-cause why delay should not be condoned.

I am told by Mr. Baptista that in cases like this what the Authority does is that it calls upon the employee to file a written statement not only with regard to the question of limitation, but even on the question of merits. In my opinion, this procedure is not a correct procedure because till the application is admitted and till the Authority has made up its mind that the applicant had sufficient cause for not making the application within the statutory period, no question of considering the merits of the application can possibly arise, and, therefore, at that stage the notice within the statutory period, no question of considering the merits of the application can possibly arise, and, therefore, at that stage the notice should only be given with regard to the question of limitation. It is only after the application is admitted that the employer should be called upon to file his written statement on merits."

The said judgment which contemplates that the decision as to delay caused in filing the appeal should be taken first and then only the employer should be asked to file a written statement and the matter should be decided finally, does not bind this Court. Such a procedure need not be followed and it is not mandatory, since it obviates the very purpose and object of the Act of conducting the proceedings in a summary manner.

5. Learned Counsel for the petitioner also relied upon a decision in *Mansoor Ahmed v. Labour Court* 1975 LabIC 1113 (AP). It has no relevance to the facts of the case and, therefore, there is no necessity to delve upon the same.

6. Whereas, the learned Counsel appearing for the 2nd respondent submitted that the proceedings before the 1st respondent are summary in nature and there is no necessity of filing a separate petition for condoning the delay in filing the appeal. It is sufficient if the delay is explained and there is a prayer seeking for condonation of the same in the main appeal itself. A separate application is not contemplated under Rule 21(1) of the Rules. He relied upon the judgment reported in *K. Ramaswamy Doss Vs. A. Rama Pillai and Another*, and drawn attention of this Court to Paragraph-9, which reads as under:

"(9) Learned Counsel for the petitioners urged that the first respondent did not apply to the Tribunal to condone the delay and to extend to the first respondent the benefit of the second proviso. Neither the Act nor the rules framed thereunder prescribed that there should be any written application, to get the benefit of the second proviso. Rule 27 to which the learned Counsel for the petitioners drew my attention only refers to the application contemplated by Sub-clause (2) of Section 20. As pointed out by the Supreme Court, in *"Dinabandhu Sahu v. Jadumoni Mangaraj"* AIR 1954 SC 411(A), with reference to an analogous provision, there is not even a requirement in the Act itself or in the rules framed thereunder that notice should be issued to the opposite side. The authority can act suo motu. As the Supreme Court pointed out, it is a matter

between the Tribunal and the applicant whether delay should be excused. They pointed out the difference between a statutory requirement of the kind in the proviso their Lordships had to consider and Section 5 of the Limitation Act.

If the authority can act suo motu in excusing the delay, there can be no question of any written application being required to satisfy the requirements of the second proviso to Section 20(2) of the Act. I am unable, therefore, to see any substance in the contention of the learned Counsel for the petitioner, that the Tribunal had no jurisdiction to excuse the delay in the absence of any written application from the first respondent."

and submitted that the authority can suo motu excuse the delay and there cannot be any separate application being required for condonation of the delay in filing the appeal.

7. The appeals in S.ENos. 38 and 39 of 1999 were filed by the 2nd respondent challenging their termination from service with effect from 31-7-1998. In the very Memorandums of the appeals (applications), at paragraph-5 it was stated as under:

"I have approached along with other employees the Government, Labour Dept., and eminent public representatives. In the negotiations, the respondent did not settle my claim. I am advised to move this Hon"ble Court. The delay in filing the present case is neither wilful nor wanton."

In the prayer portion, it was stated as under:

"(i) condone the delay in filing the present appeal; and

(ii) to set aside the order of termination dated 31-7-1998 duly directing the respondent to reinstate me with full back wages, continuity of service and all other attendant benefits including damages, costs, interest, compensation and penalties etc."

8. From the above, it is clear that in the memorandum of appeals, the 2nd respondent stated that they along with other employees approached the Government, Labour Department and eminent public representations for redressal of their grievances and the petitioner herein did not settle their claim and thereafter they were advised to approach the Court. Therefore, there was delay in filing the appeals, which is neither wilful nor wanton. In the prayer portion, they sought for condonation of delay and also to set aside the termination orders dated 31-7-1998.

9. From the impugned orders, as extracted above, it is clear that the authority below had considered the matter as to condoning the delay in filing the very applications (appeals) themselves and found that the non-filing of the separate petitions for condoning the delay is only a technical flaw. Since in some other form the delay was explained in the main applications, there was no necessity of filing separate petitions and the delay was condoned and the appeals were

directed to be posted for evidence.

10. The A.P. Shops and Establishments Act, 1988 is a beneficial legislation and made in consonance with Entry 22 of List III, Schedule VII of the Constitution of India. The scope of the Act is to regulate the conditions of work and employment in shops, commercial establishments, restaurants, theatres and other establishments and to provide for matters connected therewith, besides consolidating the law in force in Andhra and Telangana areas of the State. The scope is similar to that of the Factories Act, 1948, which was to consolidate and regulate the law relating to labour in factories. The conditions of work include the hours of work, safety, payment of wages and security of tenure, etc. The Act while creating certain rights to employees, prescribed procedure also. Thus, it is not merely a procedural legislation. It laid down positive conditions of employment and penalties for violation of provisions of the Act. Predominantly it is a beneficial legislation and must receive liberal interpretation. The Act is aimed at ameliorating economic position and improving the conditions of work of employees. To attain this objective, there are not only beneficial provisions, but also penal provisions to assume the compliance of the beneficial effect of this statute. Therefore, such statutes must be liberally construed.

11. It is relevant to extract Sub-rules (1) and (2) of Rule 21 of the Rules, which read

as under:

"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 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 satisfies 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 XIII shall be maintained by the Appellate Authority wherein the particulars of the appeal and summary of the final order shall be recorded.

(b) to (e)....."

12. The above Rule 21(2)(a) itself contemplates that the procedure to be followed by the appellate authority for hearing the appeal preferred before it u/s 48(1) shall be summary and it shall pass orders giving reasons therefor. The

word "summary" implies a short and quick procedure instead of or, as an alternative to, the more elaborate procedure ordinarily adopted or prescribed for deciding a case. The proceedings before a Court, Tribunal or an authority are called summary proceedings, if it is not required to follow the regular formal procedure, but is authorized to follow a short and quick procedure for expeditious disposal (see *Mohan Lal v. Kartar Singh* (1995 Sup (4) SCC 684). The meanings of "summary" and "summary proceeding" according to Black's Law Dictionary (sixth edition) are as follows:

"Summary. An abridgment, brief; compendium; digest; also a short application to a Court or Judge, without the formality of a full proceeding. Summary Proceeding. Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings; e.g., conciliation or small claims Court proceedings as contrasted with usual civil trial."

13. In *Fabril Gasosa Vs. Labour Commissioner and Others*, , the Apex Court while interpreting Section 33C of the Industrial Disputes Act, 1947 observed that the summary procedure is adopted to prevent harassment of the workmen by adopting laborious process of hearing the cases.

14. In *Bhaiji Vs. Sub Divisional Officer, Thandla and Others*, , the Supreme Court while interpreting the Tenancy and Land laws opined that literal construction and plain meaning should be given effect to, unless it leads to patent injustice, anomaly, absurdity or invalidation of the law. Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the Legislature in drafting a statute and excluding from its operation such transactions which it plainly covers.

15. In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, , the Apex Court while dealing with the aims and objects, held at Paragraphs-10 and 11 as under:

"10. The Objects and Reasons give an insight into the background why this section was introduced. Though Objects and Reasons cannot be the ultimate guide in interpretation of statutes, it oftentimes aids in finding out what really persuaded the Legislature to enact a particular provision. The Objects and Reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the

workmen the benefits of this section simply because the award was passed, for example just a day before the section came into force? In our view it would be not only defeating the rights of the workmen but going against the spirit of the enactment. A rigid interpretation of this section as is attempted by the learned Counsel for the respondents would be rendering the workman worse off after the coming into force of this section. This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the management. This section, in other words, gives a mandate to the Courts to award wages if the conditions in the section are satisfied.

11. In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the section alone but have attempted to make the object of the enactment effective and to render its benefits into the person in whose favour it is made. The Legislators are entrusted with the task of only making laws. Interpretation has to come from the Courts. Section 17-B on its terms does not say that it would bind awards passed before the date when it came into force. The respondents' contention is that a section which imposes an obligation for the first time, cannot be made retrospective. Such sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this section has been enacted. It is here that the Court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the Legislature is not clear from the words or where two constructions are possible, it is the Court's duty to discern the intention in the context of the background in which a particular section is enacted. Once such an intention is ascertained the Courts have necessarily to give the statute a purposeful or a functional, interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the have-nots and the underdog and which would leave to injustice should always be avoided. This section was intended to benefit the workmen in certain cases. It would be doing injustice to the section if we were to say that it would not apply to awards passed a day or two before it came into force.

From the above, it is clear that the beneficial legislation needs to be given a purposeful interpretation, since the concept of purposeful interpretation had found acceptance whenever a progressive social beneficial legislation is under review. The intention of the Legislature should be discern from the context and background of a particular section enacted.

16. Sub-rules (1) and (2) of Rule 21 of the Rules read together categorically show that the procedure to be adopted by the authority - 1st respondent is a summary procedure and the cumbersome procedure in dealing the proceedings is not contemplated. The strict rules of evidence and the procedure as contemplated under the CPC is not applicable. Therefore, the Legislature has taken care of not filing a separate application for the purpose of condoning the delay in filing the appeal u/s 48(1) of the Act read with Rule 21(1) of the Rules. This is only to avoid a cumbersome procedure of filing separate application for condoning the delay and inviting a counter for the same from the employer and deciding the matter initially. Almost under similar circumstances, the Madras High Court in Ramaswamy's case (supra) has held that there is no necessity of any application being filed separately for the purpose of condoning the delay when the appeal is presented after the statutory period of limitation. The Act or the Rules do not provide for a separate application for condonation of delay. The 1st respondent-authority can act suo motu and condone the delay, if the appellant shows sufficient cause. It is well settled that the condonation of delay is a matter between the Tribunal/Court/Authority and the applicant and if plausible reasons are stated, the same can be excused.

17. It is curious to note that in these cases, as seen above, the very objective for not filing separate application for condoning the delay was raised only after the applications in I.A. Nos. 24 and 25 of 2002 in S.E.Nos. 28 and 29 of 1999 dated 14-5-2003 were ordered by the 2nd respondent. That was considered by the 1st respondent-authority and passed the impugned orders. In fact, there was no necessity of considering such an objection, which was taken by the petitioner. The authority ought to have considered both the aspects together to avoid the delay in disposal of the case. However, the authority had already considered the objections raised by the petitioner as to non-filing of separate application and rejected the same in the impugned order. There is no illegality or irregularity committed by the 1st respondent in passing such an order holding that there was no necessity of filing a separate petition for condoning the delay in filing the appeal before it

18. Therefore, from the facts of the case and in view of Rule 21 of the Rules, there is no necessity of filing separate affidavit and petition for the purpose of condoning the delay in filing the application (appeal) before the authority challenging the order of termination, which is nothing but again dragging the employee/workman into the elaborate procedure of deciding the lis, which may result not only in time consuming but also harassment of the employees.

19. For all the above reasons, the writ petitions are devoid of merits and liable to be dismissed. Accordingly, the writ petitions are dismissed. No order as to costs.