
(2008) 01 AP CK 0030
In the Andhra Pradesh High Court
Case No : Writ Petition No. 22984 of 1998

K.S. Krishna

APPELLANT

Vs

Second Appellate Authority and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 47, 73(1)

Citation : (2008) 3 ALD 710

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : G. Vidyasagar, for the Appellant; Government Pleader for Labour for Respondent Nos. 1 and 2 and Y. Jagam Mohan, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Petitioner while working as a Resident Representative of the 3rd respondent Company at Hyderabad from 1978 onwards was promoted as a Senior Representative in 1983 and Sales Officer in the year 1987 and was designated as Marketing Officer with effect from 1.4.1990. Vide proceedings dated 20.8.1993, he was directed to report at Calcutta Branch of the 3rd respondent before 30.8.1993, but he without reporting at Calcutta had applied for leave on medical grounds and made a representation to the Managing Director of the 3rd respondent to continue him at Hyderabad and challenged the order of his transfer by filing O.S. No. 3264 of 1993 in the Court of 9th Assistant Judge, City Civil Court, Hyderabad. For the reason of the petitioner not reporting for duty that the Calcutta Office of the 3rd respondent terminated him from service vide proceedings dated 18.3.1994. So, petitioner filed a petition u/s 47 of the A.P. Shops and Establishments Act (the Act), claiming reinstatement and consequential benefits before the Competent Authority (2nd respondent), who directed the 3rd respondent to pay Rs. 70,000/- as compensation in view of the services rendered by the petitioner to it for 15 years. Questioning the said order of the 2nd respondent, 3rd respondent preferred an appeal and being aggrieved

by the 2nd respondent not granting the total relief sought by him, petitioner also filed an appeal before the Competent Authority (1st respondent), who, by the common order passed in both the appeals impugned in this petition, held that petitioner being a Marketing Officer drawing monthly salary of Rs. 1,500/- in addition to commission, he cannot claim benefits conferred by the Act in view of Section 73(1)(a) of the Act and in any view, as the petitioner was relieved from Hyderabad Office after he was transferred to Calcutta Branch on 30.8.1993, and was terminated from services by the Calcutta Branch, 2nd respondent has no jurisdiction to decide the issue raised before him by the petitioner and allowed the appeal preferred by the 3rd respondent and dismissed the petition of the petitioner. Questioning the same, petitioner filed this petition.

2. The contention of the learned Counsel for the petitioner is that the first respondent was in error in holding that the petitioner is covered by Section 73(1) (a) of the Act without keeping in view the fact that he was discharging the duties of a worker only and was not in a position of management having control over the affairs of the establishment. It is his contention that since the petitioner did not in fact get relieved from Hyderabad, the 1st respondent was in error in observing that 2nd respondent has no jurisdiction to entertain the application of the petitioner.

3. The contention of the learned Counsel for the 3rd respondent is that since the proceedings terminating the services of the petitioner were issued by the Calcutta Branch of the 3rd respondent to which place the petitioner was transferred, petitioner would be governed by the labour laws in force in West Bengal, but not the labour laws in force in Andhra Pradesh, and so, the authority constituted under the relevant Act in force in West Bengal only can entertain the proceedings initiated by the petitioner, and so, the fact that the petitioner did not get himself relieved from Hyderabad though he was asked to report at Calcutta Branch on or before 30.8.1993, would not clothe him with a right to initiate proceedings under the provisions of the Act and as the petitioner admittedly was drawing a salary of more than Rs. 1,500/- p.m. and was discharging the duties of a Marketing Officer, having control over the affairs in his office, the provisions of the Act would not apply to him in view of Section 73(1)(a) of the Act.

4. Proceedings terminating the services of the petitioner admittedly were issued by the Calcutta Branch of the 3rd respondent. The suit filed by the petitioner questioning his transfer to Calcutta admittedly was dismissed. Therefore, irrespective of the fact whether he got himself relieved from the office at Hyderabad or not, petitioner ceased to be an employee of the 3rd respondent at Hyderabad. The order of the Calcutta Branch terminating the petitioner from service became final. So, petitioner by the time of his termination from service should be deemed to be an employee in the office of the 3rd respondent at Calcutta only, but not at its office at Hyderabad. So, the finding of the 1st respondent that the 2nd respondent has no jurisdiction to try the petition of the petitioner cannot be said to be erroneous, because the Act does not apply to

persons employed in establishments at Calcutta.

5. In view of my above findings, I feel it unnecessary to go into the question whether petitioner falls under the exemption granted by the Act by Section 73(1) (a) of the Act or not, because any finding on this point would be redundant.

6. For the above reasons, I find no merit in the writ petition and hence, the writ petition is dismissed. No costs. The amount deposited by the 3rd respondent with the 1st respondent is entitled to refund of that amount.