

(2008) 07 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10616 of 2008

Pulimeru Large Scale Co-operative Society Ltd. and Another	APPELLANT
Vs	
Authority appointed under Section 48 of the A.P. Shops and Establishments Act 1988 and Assistant Commissioner of Labour and Another	RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 116C
Andhra Pradesh Shops and Establishments Act, 1988 — Section 48, 55
Andhra Pradesh Shops and Establishments Rules, 1968 — Rule 21, 21(2)
Limitation Act, 1963 — Section 29

Citation : (2008) 6 ALD 509 : (2009) 120 FLR 418

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N. Siva Reddy, for the Appellant; Government Pleader for Labour for Respondent No. 1 and K. Chidambaram, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The 2nd respondent was employed as a Clerk in Gorinta Primary Agricultural Co-operative Society. His services were terminated on 5.7.2004, as a measure to comply with the requirement u/s 116-C of the A.P. Cooperative Societies Act. One year thereafter, the said society was merged with the Pulimeru Large Scale Co-operative Society Limited (for short "the Society").

2. The 2nd respondent approached the authority, u/s 48 of the A.P. Shops and Establishments Act, 1988 (for short "the Act"), 1st respondent herein, with an appeal against the order of termination and the same was taken up as A.P.S.E. Case No. 7 of 2005. The 1st petitioner entered appearance, but did not participate in the proceedings throughout. The authority set the petitioner ex parte and ultimately, an ex parte order was passed on 25.8.2006, directing reinstatement of the 2nd respondent with full back wages.

3. The petitioners filed an application being A.P.S.E. Case No. 5 of 2007 before the authority, with a prayer to set aside the ex parte order. Since there was delay of 13 months, in filing the application, they made a prayer to condone the same. The application was resisted by the 2nd respondent. Through its order, dated 21.2.2008, the authority dismissed the application. Hence, this writ petition.

4. The 1st petitioner contends that it is not the original employer of the 2nd respondent and the 2nd respondent himself approached the authority, with a delay of 2 years. It is urged that soon after he received a notice, steps were taken to contest the matter, but on account of communication gap, he could not file the counter or place the relevant material before the authority. It is also urged that the delay is neither wilful nor wanton.

5. The 2nd respondent filed a counter-affidavit, denying the allegations of the petitioners. It is stated that though appearance was entered by the 1st respondent, he did not participate in the proceedings, at the crucial time, and the authority was left with no alternative, except to pass the order, dated 25.8.2006. An objection is raised as to the maintainability of the writ petition also.

6. Heard Sri N. Siva Reddy, learned Counsel for the petitioners and Sri K. Chidambaram, learned Counsel for the 2nd respondent.

7. A serious objection is raised as to the maintainability of the writ petition, alleging that the authority has no power to entertain any application to set aside an ex parte order, much less to condone the delay. It is no doubt true that Section 48 of the Act confers the powers upon the authority to decide the claims, but does not contain any provision in relation to setting aside ex parte orders or condonation of delay. Section 55 of the Act makes certain provisions of C.P.C. applicable in the limited context.

8. Rule 21 of the Rules framed under the Act removes the ambiguity, in this regard. Sub-rule (2)(b) thereof empowers the authority to determine an application ex parte and proviso to Sub-rule (2) not only confers power on the authority to set aside the ex parte order but also stipulates the period of limitation, within which such application must be filed viz., one month from the date of order. Both the Act and the Rules are silent as to the application of the provisions of the Limitation Act. However, Section 29 of the Limitation Act makes the provisions of that Act applicable to the proceedings under any enactment, unless their application is specifically excluded. Viewed in this context, the application filed by the petitioners, be it, for setting aside the ex parte order or for condonation of delay, cannot be said to be untenable. Then the matter would shift to the verification of merits.

9. It is not as if the petitioners remained oblivious, after receiving the notice from the authority. Appearance was entered and the 1st respondent was pursuing the matter. Obviously because the 2nd respondent was not their employee and they have inherited the obligation from another society, there was some lapse in the matter of pursuing the proceedings. The same resulted in an

ex parte order by the authority and delay in approaching that authority for setting aside the same.

10. The delay is, no doubt, more than one year, which may appear to be inordinate. However, in view of the fact that the 2nd respondent was not the employee of the petitioners and that there was some communication gap between the 1st petitioner and the Management, it cannot be said to be that prohibitory. It is a matter of common knowledge that the proceedings by, or on behalf of the statutory agencies are not pursued with the same amount of vigour, as are pursued by the individuals. This Court is of the view that the hardship, that may be caused to the 2nd respondent on account of setting aside the ex parte order, can be compensated by awarding costs and by requiring the authority to dispose of the matter afresh within the stipulated time.

11. Hence, the writ petition is allowed and the order under challenge is set aside.

12. Consequently, A.P.S.E. Case No. 5 of 2007 shall stand allowed, on condition that the petitioners deposit a sum of Rs. 5,000/- (Rupees five thousand only), payable to the 2nd respondent or their Counsel, within 15 days from today. On such deposit, the ex parte order, dated 25.8.2006, passed in A.P.S.E. Case No. 7 of 2005 shall stand set aside. The 1st respondent shall endeavour to dispose of the matter afresh, within two (2) months from the date of such deposit, after giving opportunity to both the parties.