

(1989) 12 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18092 of 1989

Raj Kumar Hotel and Bar

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 28-12-1989

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 48(3)

Citation : (1995) 3 LLJ 331

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Advocate : Ravindranath, for the Appellant;

Final Decision : Dismissed

Judgement

Jagannadha Rao, J.—The petitioner is the employer. There were certain proceedings before the authority u/s 41 of the A.P. Shops & Establishments Act, 1966, hereinafter referred to as "the Act" for short, which were disposed of on 13.6.1989 by that authority in favour of the workman. The said authority held that the case was not one of abandonment of services by the workman but a case of oral termination. Accordingly the termination was set aside and the workman was directed to be reinstated into service with full back wages and with continuity of service and all other attendant benefits. Against the order the employer (writ petitioner) filed a Second Appeal, sometime after 13.6.1989 but within the period of 30 days, before the Labour Court at Hyderabad. That appeal was treated as unregistered Second Appeal No. 1/89, as a question arose as to the deposit of arrears of back wages u/s 48(3) of the A.P. Shops and Establishments Act, 1988, which has come into force with effect from 1.11.1988. According to the petitioner, the proviso to Section 48(3) of the 1988 Act requiring the appellant to deposit the entire amount of back wages as ordered by the appellant authority u/s 48(2), cannot be made applicable to the facts of the petitioner inasmuch as a second appellate authority has not been notified after the commencement of the new Act of 1988. Reliance is placed upon the

provisions of Section 48(3) of the A.P. Shops and Establishments Act, 1988 which reads as follows:-

"Against any decision of the authority under Sub-section (2) a second appeal shall lie to such authority as may be notified by the Government within 30 days from the date of communication of the decision....."

It may be noted that after 1.11.1988 when the new Act came into force, the Labour Court at Hyderabad has been entertaining second appeals even though there is no fresh notification by the Government constituting the said Court as a second appellate authority u/s 48(3) of the new Act. This was because of the special provision in Section 79 of the Act. That provision reads as follows:

"Repeal and saving:- With effect on and from the date on which this Act is brought into force in any area, the Andhra Pradesh Shops and Establishments Act, 1966 as in force in that area shall stand repealed.

Provided that-

(a) every appointment, order, rule, notification or notice made, issued or given under the provisions of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of This Act, unless and until superseded by any appointment, order, rule, notification or notice made, issued or given under this Act."

2. The above said provision was obviously intended by the Legislature to see that there is no hiatus between the date of repeal of the old Act and the date of issue of fresh appointments or orders or notifications or rules under the new Act. The intention is clear that all appointments, orders, rules, notifications or notices made, issued or given under the old Act are to be treated as issued under the new Act. I do not find anything inconsistent in the new Act with the provisions of the old Act. The second appellate power is not taken away but is still continuing. The question is only as to which authority has to entertain the second appeals. In view of the special provision in the proviso to Section 79, the Labour Court, which was the authority under the old Act, is clearly entitled not only to continue and dispose of the second appeals previously filed but also to entertain fresh appeals under the new Act, as provided u/s 48(3). This does not, however, mean, as contended by the learned counsel for the petitioner, that the provisions of the new Act relating to procedure for filing second appeals is not attracted or is not retrospective. In fact, the provision in the proviso to Section 48(3) requiring back wages to be deposited is a provision which deals with the procedure for filing a second appeal and it is clearly retrospective. It is well settled that whenever an amendment is made or a new law is made the procedural parts of the law are retrospective unless the statute itself specifically provides that they shall not be retrospective. Therefore, the proviso to Section 48 requiring deposit of the back wages is certainly attracted to all the appeals filed after 1.11.1988 even though the appeals might arise out of the first

appellate orders passed prior to 1.11.1988. The second appellate authority was, therefore, right in insisting upon the deposit of the back wages.

3. But the fact that the Act insists on a deposit does not mean that the amount should be straightaway distributed to the workman. It is open to the appellant before the second appellate authority to seek for stay of the distribution of the moneys deposited though the appellant cannot seek for any direction for exempting him from making such deposit. If any such deposit is made it will be for the second appellate authority to pass such reasonable order as it may deem fit with regard to the payment of the deposited money to the workman concerned upon such terms as it may deem fit.

4. Subject to the above said clarification, this writ petition is dismissed. As the matter has not yet been decided by this Court and the petitioner bona fide believed that he need not pay the amount, I am of the view that this is a fit case where the petitioner should be granted time for deposit of the money as a special case. Though the second appellate authority does not have the power to extend time for deposit, I am of the view that this Court can, in this particular case, grant time as the matter has not so far been decided by this Court. This does not also mean that the appellants, who propose to file second appeals, can, as a matter of right, approach this Court in each and every case hereinafter to seek extension of time. In this case as the matter has not yet been decided by this Court the petitioner is given one month's time from to-day to deposit the amount in the Labour Court.