

(2000) 11 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30811 of 1998

Vice-President, M/s. Placer Pharma

APPELLANT

Vs

Subhash Road, Mumbai v. Assistant Commissioner of Labour,
Nellore, A.P. and another

RESPONDENT

Date of Decision : 18-11-2000

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 21(2), 48(4)
Andhra Pradesh Shops and Establishments Rules, 1990 — Rule 21
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2001) 2 ALD 185 : (2001) 1 ALT 277 : (2001) 2 LLJ 402

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. G. Vidyasagar, for the Appellant; Government Pleader for Labour Dept. and Mr. Ravinder Reddy, for the Respondent

Judgement

1. The writ petition is filed to impeach the order dated 10-10-1998 in IA No.1 of 1998 in SE No.1 of 1998 passed by the Assistant Commissioner of Labour, Nellore, the first respondent herein.

2. The second respondent joined the services of the petitioner-Company as a Sales Officer in 1996. He was transferred to Mumbai. He made a request to retain him at Nellore. Instead of considering his request the petitioner terminated his services with effect from 7-11-1997. Aggrieved by the termination, he approached the first respondent u/s 48(2) of the A.P. Shops and Establishments Act, 1988 ("the Act" for brevity). The first respondent passed an ex parte order dated 8-6-1998 taking a view that the matter was adjourned due to non-appearance of the petitioner on number of days. The petitioner herein filed two applications before the first respondent. One praying to set aside ex parte order under Rule 21 of the A.P. Shops and Establishments Rules, 1990 ("Rules" for brevity) and another application to condone the delay, if any, in filing the application seeking to set aside the ex parte order. By the impugned order the first respondent returned the application being IA No.1 of 1998 "since it is not

filed within the prescribed time". This order is assailed in this writ petition.

3. This Court admitted the writ petition on 9-11-1998 and also ordered interim direction suspending the order dated 8-6-1998 passed by the first respondent reinstating the second respondent.

4. The employee has now come forward with an application being WVMP No.1921 of 2000 praying this Court to vacate the interim order passed by this Court on 9-11-1998. At this stage, the matter is taken up for final hearing with the consent of the learned Counsel appearing for both sides.

5. Sri G. Vidyasagar, the learned Counsel for the petitioner relied on the judgment of the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, and the judgment of a Division Bench of this Court in Mahendra Kumar Goyal Vs. Ex-Officio Joint Secretary and Addl. Commissioner of Civil Supplies and Another, , and submits that though there is no specific provision applying Section 5 of the Limitation Act, 1963, the first respondent is competent to condone the delay in filing the applications under Rule 21(2)(c). In Mahendra Kumar Goyal's case (supra) the Division Bench of this Court followed Mukri Gopalan's case (supra) and held that in view of Section 29(2) of the Limitation Act Sections 4 - 24 of the said Act are applicable to the proceedings before all the authorities. In view of this an application u/s 5 of the Limitation Act filed by the petitioner is maintainable and the first respondent is bound to consider the said application with reference to the sufficient cause shown by the petitioner in approaching the authority with delay. The legal position is not seriously disputed by the other side.

6. Sri E.G. Ravindra Reddy, however, invites the attention of the Court to subsection (4) of Section 48 of the Act and submits that when an order/award of the appellate authority directing reinstatement is challenged by the employer in any Court of law, the latter shall pay the employee the full wages last drawn by the employee and therefore the petitioner is bound to comply with the provisions of sub-section (4) of Section 48 of the Act. I am afraid, I cannot agree with the same. In this case, the petitioner who admittedly suffered an ex parte order dated 8-6-1998 has not challenged the order before the appellate authority under sub-section (3) of Section 48 of the Act. He filed an application u/s 21(2) of the Act praying to set aside the ex parte order. When an employer who suffered an ex parte order approaches same authority seeking to set aside the ex parte order, in my considered view, sub-section (4) of Section 48 does not spring into action. The same will be applicable only when a final order passed by the appellate authority under sub-section (2) of Section 48 is challenged before any Court of law including the appropriate appellate authority under sub-section (3) of Section 48.

7. There is, however, justification in the statement made by the learned Counsel appearing for the employee that by approaching this Court the petitioner-company denied reinstatement of the employee as well as the benefits under

subsection (4) of Section 48 of the Act. Taking a comprehensive view of the matter, I deem it proper to set aside the impugned order dated 10-10-1998 in IA No.1 of 1998. Accordingly, the matter is remitted to the first respondent for fresh consideration in the light of the judgment of the Division Bench in Mahendra Kumar Goyal's case referred to above. It is open to the first respondent to impose any conditions including the condition as to the deposit of any amount from the date of termination while passing orders on the application to set aside the ex parte order dated 8-6-1998 as well as the application to condone the delay. It is also open to the petitioner to take all the pleas before the first respondent.

8. The writ petition is accordingly disposed of with the above directions. No costs.