

**\* HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

**HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU**

**AND**

**HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**I.A.Nos.1 and 2 of 2023**

**In**

**+ W.A. No.815 of 2023**

% 14.09.2023

# The State of Andhra Pradesh,  
Rep., by its Principal Secretary,  
Revenue (endowments) Department,  
Secretariat, Velagapudi,  
Amaravathi, Guntur District and 2 others

... Petitioners

Vs.

\$ Y.Ramakoteswara Rao, S/o Late Venkateswarlu,  
Aged 59 years, Occ: Junior Assistant,  
Sri Durga Malleswara swamy Vari Devasthanam,  
Indrakeeladri, Vijayawada.

... Respondents

! Counsel for the petitioners: Sri Kasa Jaganmohan Reddy

! Counsel for the Respondents : Sri Gangaih Naidu for Sri D.V.Sasidhar

< Gist:

> Head Note:

? Cases referred:

<sup>1</sup> (2023) 1 SCC 634

<sup>2</sup> 1995 Supp (4) SCC 465

<sup>3</sup> (1992) 4 SCC 167

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**AND**  
**HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**I.A.Nos.1 and 2 of 2023**

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**W.A.No.815 of 2023**

**ORDER:** *(per Hon'ble Sri Justice D.V.S.S.Somayajulu)*

I.A.No.1 of 2023 is filed to condone the delay of 76 days in filing the appeal.

2. I.A.No.2 of 2023 is filed to stay the operation of the order dated 20.04.2023 passed by the learned single Judge which is impugned in the writ appeal.

3. This Court has heard Sri Kasa Jaganmohan Reddy, learned counsel for the appellants and Sri Gangaih Naidu, learned senior counsel instructed by Sri D.V.Sasidhar.

4. After hearing the learned counsel, this Court is of the notices that after the interim order was granted on 20.04.2023, the respondents/appellants have filed an application to vacate the stay on 03.07.2023. Thereafter, the matter was not heard. Contempt application was also filed. Delay occurred in view of the

above in filing the appeal and so the application is filed to condone the delay in filing the appeal. Considering all of the above, this Court is of the opinion that there is sufficient cause in condoning the delay I.A.No.1 of 2023 is therefore allowed.

5. With regard to I.A.No.2 of 2023, the counsel for the appellants submits that the impugned order passed is contrary to law and has ignored certain important aspects. He points out that ordinance which is relied upon is not applicable to the temple employees and that the order in W.A.No.1033 of 2022 and batch also comes to the aid of the respondents. It is stated that the writ petitioners are not employed by the State and are not entitled to the benefits of the Act 23 of 1984. Therefore, he submits that this is a fit case to grant stay.

6. Sri Gangaih Naidu, learned senior counsel essentially argues that the writ appeal is not maintainable for two reasons, firstly, the petitioners/appellants have filed a vacate stay petition and they have to pursue the same to its logical conclusion. He submits that they cannot also file an appeal while the said application is pending. Secondly, he submits that an appeal is not maintainable because the impugned order is not a 'final' order and appeal only lies against an order having finality. He relies

upon a judgment reported in ***Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.***,<sup>1</sup>.

7. This Court after hearing learned senior counsel notices that the law is well settled and the ratio of case of ***Shyam Sel & Power Ltd.*** (1 supra) is not in doubt. In that case, the Court adjourned the matter for filing an affidavit in opposition. The said order was challenged. In those circumstances, the Hon'ble Supreme Court while discussing the character of 'finality' in an order has discussed the case law on the subject. However, if the impugned order in this case is seen, it virtually grants the relief that is claimed in the writ petition. The prayer in the writ petition is that the petitioners should be continued till they attain the age of 62 years. The interim order granted directed the respondents to continue the petitioners in service as the Court felt that the G.O. is applicable to all the employees. Therefore, this Court holds that an appeal is maintainable, as the order has the trappings of finality in this case.

8. However, on the second point namely, vacate stay versus appeal, the learned senior counsel is on a stronger ground. Once the vacate stay application has been filed, this Court is of the opinion that the appellant cannot also file a writ appeal. There

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<sup>1</sup> (2023) 1 SCC 634

can be conflicting orders in such cases. Only one of the two can be heard and decided.

9. Propriety however requires that when a vacate stay application is filed; the same should be taken up by the Judges in the shortest possible period of time. The Writ Proceedings Rules, 1977 mandate the hearing of a vacate stay petition within two weeks (Rule 9). The Rules also provide for a hearing of an interlocutory application within 14 days (Rule 46). This issue is also inter linked to the contempt application which is pending.

10. The law on the issue is also well settled. If a vacate stay application is filed and a contempt application is also pending, the contempt application should not be insisted upon by the learned single Judges. The Hon'ble Supreme Court in the case of an **Modern Food Industries (India) Ltd. v. Sachidanand Dass**<sup>2</sup>, has held that when a stay petition in an appeal and contempt both are pending, propriety would require that the stay application should be taken up for hearing. Because if a party is made to comply with the order under the threat of contempt, the vacate stay may in certain cases become infructuous. To a similar effect is the

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<sup>2</sup> 1995 Supp (4) SCC 465

judgment reported in ***State of J and K v. Mohd. Yaqoob Khan and others***<sup>3</sup>, where the following was held in para 7:

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt.  
.....

The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of court.

11. Therefore, if a vacate stay application is filed soon after the notices were served on the respondents and soon after passing of an ex parte order, the same should be taken up on a priority and disposed. If a vacate stay application is however filed, long after the interim order is passed or after a contempt application is moved for disobedience, it is left to the discretion of the learned Judge to decide if he would take up the vacate stay or the contempt first. The date of the order passed; the date of filing of the contempt application and the vacate stay application etc., should be considered by the learned Judge in deciding such matters. If there is a deliberate ploy to delay the compliance of the order passed and to oppose a contempt by filing a vacate stay,

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<sup>3</sup> (1992) 4 SCC 167

then the discretion is vested in the Judge to hear the matters as per his/her choice. Otherwise, if a vacate stay application is filed by the respondents soon after the order is granted and the contempt is also pending, it will be proper if the vacate stay application is taken up for hearing and disposed of first. Depending upon the said orders further orders can be passed in the other applications.

12. In case a stay application is moved before the appellate Court in line with the Judgment in ***Modern Food Industries (India) Ltd.***, (2 supra), the stay application must be heard first and on priority. The judicial consensus seems to be that both the original Court and appellate Court must first decide the stay of operation of order application or the application for vacating the stay before the contempt application is heard and decided. This is however subject to the caveat that if it appears that there is delay in complying the order passed and vacate stay is moved to avoid/delay the contempt. This Damocles sword should be allowed to hang till the stay/vacate stay is decided because at the end of the day-contempt involves the implementation of orders and the majesty of the Court.

13. The caveat entered about deliberate delay in enforcing the order or disobedience in following the order etc., must be decided on a case to case basis. Otherwise the vacate stay/stay applications must be disposed on a priority. In view of the large number of cases in which this issue is coming up; an attempt is made to answer this question in this order.

14. Therefore, I.A.No.2 of 2023 is disposed of with a direction to the learned single Judge to hear and dispose of the vacate stay application within a period of two weeks from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the disposal of the said I.A. Depending on the orders passed in the application, further orders can be passed in the matter.

With the above observations, I.A.No.1 of 2023 is allowed and I.A.No.2 of 2023 is disposed of.

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**D.V.S.S.SOMAYAJULU, J**

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**DUPPALA VENKATA RAMANA, J**

Date:14.09.2023

Note: L.R. copy be marked.

KLP