

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.33918 of 2013

The Management,
Carborandum Universal Ltd.,
Industrial Ceramics Division,
47, SIPCOT Industrial Complex,
Hosur 635 126.

... Petitioner

vs.

1. The Presiding Officer,
Labour Court, Salem.

2. R.Kamaraj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records connected with I.D.No.406 of 1998 on the file of the 1st Respondent and to quash the Award dated 03.06.2013 passed therein by the 1st Respondent, i.e. the Presiding Officer, Labour Court, Salem.

For Petitioner : Mr.Sanjay Mohan

for M/s.Ramasubramaniam Associates

For 2nd Respondent : Mr.R.MD.Nazrullah

for Mr.K.V.Shanmuganathan

ORDER

Challenging the Award dated 03.06.2013 passed by the 1st Respondent/Labour Court in I.D.No.406 of 1998, the Management has come up with the present Writ Petition.

2. According to the Petitioner/Management, the 2nd Respondent joined their services as a temporary workman on 08.11.1980 and his services were confirmed with effect from 01.09.1983. As the 2nd Respondent/workman failed to report at the transferred place and did not communicate his extended absence, pursuant to his transfer order, a warning letter dated 29.09.1995 was issued to him, by the General Manager, Personnel of the Petitioner/Management, asking him to report at the Corporate Office on 09.10.1995. In response to the said letter, the 2nd Respondent sent a letter that he would meet the General Manager, Personnel on 30.10.1995, and also attached a copy of the Medical Certificate along with the letter. Further, another letter was issued to the 2nd Respondent/workman, advising him to

report to the Corporate Office on 30.10.1995, failing which, strict action would be taken against him.

3. Thereafter, the 2nd Respondent/workman reported to the General Manager, Personnel, and expressed his inability to relocate to Thiruvottiyur, Chennai. Pursuant thereto, the General Manager, Personnel, sent a termination letter dated 21.11.1995 for refusing to report to duty at Thiruvottiyur, Chennai, after accepting the transfer letter dated 08.08.1995. It is the case of the Petitioner/Management that in connection with his transfer, the 2nd Respondent/workman also took an advance of Rs.5,000/- for reporting at the transferred place. The 2nd Respondent/workman, vide letter dated 21.12.1995, wrote to the Corporate Office, requesting the Petitioner/Management to re-consider his termination order, to which, the Petitioner/Management, vide letter dated 19.01.1996, replied that their decision was final, and it cannot be re-considered.

4. Aggrieved by the termination order, the 2nd Respondent/workman raised an Industrial Dispute in I.D.No.406 of 1998. The Labour Court, after analyzing the evidence, and taking note of the fact that no enquiry was conducted, and that the 2nd Respondent/workman was not gainfully employed elsewhere, came to the conclusion that terminating the 2nd Respondent/workman from service is a capital punishment for the misconduct of absence from service, and allowed the workman's claim of reinstatement into service, however, with only 25% backwages.

5. It is seen that the 2nd Respondent/workman, in his claim statement, has stated that he is unable to seek employment elsewhere after being terminated from the services of the Petitioner/Management. But, Mr.Sanjay Mohan, learned counsel for the Petitioner/Management produced certain documents before this Court, to establish that the 2nd Respondent/workman is running his own business, in the name and style of "ALFATECH ENGINEERING INDUSTRIES" at Hosur, and that he himself is now an employer.

6. Though the learned counsel appearing for the 2nd Respondent/workman initially submitted that, the 2nd Respondent is without employment, after ascertaining from the 2nd Respondent, he fairly submitted before this Court that the 2nd Respondent/workman had commenced the said business in the year 2002, and that he was without employment prior to that period.

7. In reply, Mr. Sanjay Mohan, learned counsel, vehemently contended that it is very difficult for an employer to establish the gainful employment of an employee who had been terminated from service. In the present case on hand, as the gainful employment of the 2nd Respondent is proved, he would not be entitled to any relief, as he was rendering his services as a Supervisor, coming under the definition of an 'employee' and not a 'workman' under the provisions of the Industrial Disputes Act, 1947.

8. The said issue had already been dealt with by the Labour Court and it came to the conclusion that, the 2nd Respondent had never rendered any supervisory work and that he is a 'workman'. In a similar issue, which arose before the Apex Court long ago in the case of Ananda Bazar Patrika (P) Ltd. vs. The Workmen reported in (1969) II LLJ 670 SC, it was held as under:

"4. The question as to whether a person is employed in a supervisory capacity or on clerical work, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity.

....

This principle finds support from the decisions of this Court in South Indian Bank Ltd. vs. A.R.Chacko, 1964 (I) LLJ 19 and May & Baker (India) Ltd. vs. their Workmen, 1961 (II) LLJ 94."

9. In the case on hand, merely because, one or two activities of the 2nd Respondent herein under the services of the Petitioner/Management, were supervisory in nature, he cannot be termed as a 'non-workman', and this Court is of the view that he is a 'workman' coming under the provisions of the Industrial Disputes Act, 1947, more particularly, when the Labour Court has rendered a finding, based on the materials available before it. The Apex Court has held that an error of fact need not be interfered with, and the said ratio has been applied by the Kerala High Court in the case of Instrumentation Employees' Union vs. Labour Court, Kozhikode, reported in 1993 (1) LLN 75 (Kerala).

10. As the learned counsel appearing for the 2nd Respondent/workman, on instructions, submitted that the 2nd Respondent is not interested in joining the services of the Petitioner/Management, as, he himself is running a business from the year 2002, this Court is of the view that the 2nd Respondent/workman would be entitled to backwages from the date of his legal termination with the Petitioner/Management, till the date of commencement of his business.

11. At this juncture, Mr.Sanjay Mohan, learned counsel for the Petitioner/Management submitted that arrears of wages payable to the 2nd Respondent/workman from the date of legal termination of his service till the date of commencement of his business in the year 2002, would come to Rs.4,00,000/-, and if 25% of the said sum is calculated, only a sum of Rs.1,00,000/- would be payable to him.

12. Though the 2nd Respondent/workman would be entitled to a sum of Rs.1,00,000/- as backwages, as he has approached this Court with unclean hands and has made incorrect averments before this Court, the backwages payable to him, is reduced to Rs.50,000/- (Rupees Fifty Thousand only) and the same shall be payable by the Petitioner/Management in favour of "THAKKAR BAPA VIDHYALAYA", No.58, Venkatanarayana Road, Opp. Vijaya Bank, C.I.T. Nagar East, T.Nagar, Chennai 600 017, within a period of four (4) weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed in part, with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1.The Presiding Officer, Labour Court, Salem.

2.The Management, Carborandum Universal Ltd.,
Industrial Ceramics Division,

47, SIPCOT Industrial Complex, Hosur 635 126.

+1 cc to M/s.S.Ramasubramaniam Associates, SR.No.72854

AKM/08.11.19/4P- 4C /

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