



W.P.No.43933 & 46858 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2022

DELIVERED ON : 31.10.2022

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.P.Nos.43933 & 46858 of 2006

and W.M.P.No.1 of 2006

W.P.No.43933 of 2006

K.P.Kishore Kumar

... Petitioner

Vs

1.The Management,
Carborundum Universal
Industrial Estate,
Hosur – 635 126.

2.The Presiding Officer,
Labour Court, Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, to call for records and quash the Award dated 24.04.2006 made in I.D.No.475 of 1998 on the file of the 2nd respondent, Labour Court, Salem in refusing to grant backwages.

For Petitioner : Mr.Shiva Shanmugam
for Mr.Y.Jyothish Chander

For Respondents : Mr.S.Ravi for R1
for M/s.Gupta & Ravi

: R2 - Court



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W.P.No.46858 of 2006

M/s.Carborandum Universal Ltd.,
Plot No.48, SIPCOT Industrial Complex,
Hosur.
Represented by Senior Manager.

... Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.K.P.Kishore Kumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, to call for records and quash the Award dated 24.04.2006 in I.D.No.475 of 1998 on the file of the 1st respondent, Presiding Officer, Labour Court, Salem.

For Petitioner : Mr.S.Ravi
for M/s.Gupta & Ravi

For Respondents : R1 - Court

: Mr.Shiva Shanmugam for R2
for Mr.Y.Jyothish Chander

COMMON ORDER

These Writ Petitions have been filed at the instances of the workman and the Management respectively, challenging the Award of the Industrial Tribunal which had directed reinstatement with continuity of

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services but denied the backwages and other attendant benefits. The workman being aggrieved against the denial of backwages and other attendant benefits had preferred W.P.No.43933 of 2006 and the Management being aggrieved against the order of reinstatement with continuity of services had preferred W.P.No.46858 of 2006.

2. Heard Mr. Shiva Shanmugam, learned counsel appearing for the workman and Mr.S.Ravi for M/s.Gupta & Ravi, learned counsel appearing for the Management. The appearance of the 2nd respondent in W.P.No.43933 of 2006 and 1st respondent in W.P.No.46858 of 2006 is dispensed with as it is an adjudicating authority

3. The case of the workman is that he had joined the services of the Management on 01.06.1989 and was working in the Manufacturing Unit of the Management which was engaged in manufacturing of Grinding Wheels. There was an unrest on 25.03.1996 against the unfair labour practice and victimizing attitude of one of the official of the Management. The petitioner would further contend that on 31.03.1996, the petitioner and one Arularasan were terminated from service without any show cause notice and domestic enquiry on false and malicious charges. Aggrieved by



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the order of termination, he had sent a representation to the Management stating that he had not involved in the incident and therefore requested to reinstate him which was not responded to by the Management and hence, he had initiated an industrial dispute. As the Conciliation Proceedings ended in a failure report, he had filed I.D.No.475 of 1998 before the Labour Court, Salem. The Labour Court after considering the facts and circumstances of the case had directed reinstatement of the workman with continuity of services holding that the Management had not proved the acquisitions either by oral or documentary evidence but however, denied backwages and other attendant benefits.

4.Mr. Shiva Shanmugam, learned counsel for the workman would vehemently contend that having given a finding that the order of termination on the alleged grounds had been held to be proved to be bad for want of evidence, the Tribunal ought to have not denied the backwages and other attendant benefits in the absence of any evidence produced by the Management that the workman was gainfully employed elsewhere. He would further contend that the evidences placed by the Management also do not indicate the participation of the workman in the allegation leveled



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against him. The Tribunal had rightly held that the allegations against the workman had not been proved due to the contradictory evidences of the Management witnesses, where on one hand he says that he had traced the security guards who ran to take shelter due to the assault at the instigation of the workman only at 10.00 p.m. but, the complaint that was received by the Management from such security guards was at 4.30 p.m. That apart Mr.Shiva Shanmugam, learned counsel for the workman would vehemently contend that the reasonings assigned by the Tribunal for denying of backwages is without any basis. According to him, as stated supra, when the Tribunal has found that the order of termination has not been substantiated by the Management, then the workman would be automatically entitled to backwages from the date of his termination till the date of the reinstatement.

5.Mr.S.Ravi, learned counsel appearing for the Management would contend that the Tribunal has wholly erred in holding that the Management had failed to substantiate the charges. He would further contend that the workman had not examined any witnesses to prove that he was not involved in the assault of the security guards. He further



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submitted that the workman had admitted that he was very active in the union and that he was also present at the time of the incident. He had not disputed that such an incident had not taken place. The allegation against the workman was that he along with one Arularasan has instigated the workman to assault the security guard and had led the assault. He would further plead that the said Arularasan had admitted to the instigation by himself and the workman herein and he has accepted the order of termination and had not raised any dispute. The workman in the present case had not denied his presence but had denied any participation in the assault. He would further contend that the Management witnesses who had deposed on behalf of the Management, had in clear and categorical terms deposed before the Labour Court as to the involvement of the workman in the assault of the security guards. The complaint made by the security guards were produced as exhibits before the Labour Court. He further contend that it is not the case of the workman that the complaints were false. But, it is his case that none of the complaints indicated that he had assaulted the security guards. The allegation against the workman is that he instigated the assault and therefore he was the prime person who is responsible for the assault. Without considering this aspect, the Labour



court has given a finding that he had not actually assaulted the security guards. Therefore, he contended that the Award directing the reinstatement of continuity of services is without any basis and therefore, the order of reinstatement is liable to be interfered with.

6.I have heard the submissions made by the learned counsels appearing on either side and perused the material documents filed along with these Writ Petitions.

7.The Award of the Labour Court had dealt with the issue in detail. The Labour Court had given a finding that the Management had failed to substantiate the charges that the workman was involved in the assault of the security guards by any oral or documentary evidences. The Labour Court had also concluded that there has been difference in timings of the complaints. According to the Labour Court, the complaint to the Management was at 4.30 p.m. and as per the evidences of the Management witnesses, the security guards who ran for shelter from the alleged assault were traced at 10.00 p.m. and complaints were received from them. In such circumstances, I am of the view that the Management



had failed to prove beyond doubt, its claim of alleged incident of assault.

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8. But, however, considering the fact that the workman had also not disputed any such incident. He had, in spite of availing leave on the date of incident, admits to have been present at the time of the incident. He has also admitted that he takes active participation in the union activities. He had not denied the statement of him being an instigator of such incident.

9. In view of the aforesaid reasonings, I am of the view, the Award passed by the Labour Court in I.D.No.475 of 1998 require no interference. Hence, both the Writ Petitions fails and are liable to be dismissed confirming the Award made by the Labour Court.

10. However, considering the fact that the Management has been serious in contending that the workman has involved himself in instigation of assault of its security guards which have not been substantiated beyond doubt and in view of the fact, as admitted by the workman himself, he actively participates in union activities, the allegation of his instigation in the assault could not be easily brushed aside. It is seen from the record



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that the workman at the time of filing the Writ Petition in the year 2006 was aged 39 years and his present age would be 55 years. He has been out of employment for more than 26 years and much technological advancements have taken place in an industry carrying manufacturing activities.

11. When this Writ Petition was admitted, an interim order of stay was granted subject to the Management paying 17B wages, which has been paid to him till date. The said fact is not disputed by the workman. Considering the same, I am of the view that instead of ordering reinstatement of the workman, the workman could be compensated by directing the Management to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) in lieu of reinstatement and other attendant benefits.

12. In view of the above, the Award passed by the Labour Court in I.D.No.475 of 1998 dated 24.04.2006 is modified to the extent that in lieu of reinstatement, continuity of services and other attendant benefits, the Management is directed to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only). In other aspects the Award is confirmed and both the Writ



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Petitions are disposed of accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.10.2022

Index: Yes/no
Speaking/non-speaking
gba
To
The Presiding Officer,
Labour Court, Salem.

K. KUMARESH BABU, J.

gba

A Pre-delivery order in
W.P.No.43933 & 46858 of 2006
and
W.M.P.No.1 of 2006



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31.10.2022