



W.A.No.1065 & 1066 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 03.07.2024

Order delivered on 12.08.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

and

THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.A.Nos.1065 & 1066 of 2023

K.P.Kishore Kumar
No.72, Old A.S.T.C. Audco,
Hosur - 635 109

....Appellant in both the Appeals

Vs

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

2. The Presiding Officer,
Labour Court, Salem.

..Respondents in both the Appeals

Prayer: Writ Appeals filed under Clause 15 of Letter Patent as against the order passed by this Court in W.P.Nos.43933 & 46858 of 2006 respectively dated 31.10.2022.



W.A.No.1065 & 1066 of 2023

For Appellant : Mr.K.K.Ram Siddhartha

For Respondents : Mrs.S.Indumathi Ravi
for R1
R2-Court

J U D G M E N T

(The judgment of this Court was delivered by J.Nisha Banu,J.)

These Writ Appeals have been filed challenging the common order made in W.P.Nos.43933 & 46858 of 2006, in which, 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/- as compensation to the appellant.

2. The brief facts of the case of the appellant are as follows:

The appellant joined the services of the 1st respondent Management on 01.06.1989 for a monthly wage of Rs.3,295/- and was working in the manufacturing unit. The 1st respondent Management, on a false and invented charge of assaulting the security guards, who had come from Chennai, terminated the service of the Appellant vide order dated 31.03.1996. No domestic enquiry was conducted. Aggrieved by the action of the Management,



W.A.No.1065 & 1066 of 2023

the Appellant filed I.D.No.475/1998 before the Labour Court, Salem and the Labour Court, vide award dated 24.04.2006, held that the charges levelled against the appellant were not proved and directed reinstatement with continuity of service but without backwages. Aggrieved over the denial of backwages, the appellant filed W.P.No.43933/2006 before this Court. Aggrieved by the direction to reinstate the appellant with continuity of service, the Management filed W.P.No.46858/2006. The Writ Court, vide common order dated 31.10.2022, modified the award of reinstatement with continuity of service without backwages to that of compensation of Rs.3 lakhs. Hence, the present appeals by the workman.

3.(i) Learned counsel for the appellant would state that the appellant was dismissed from service on 31.03.1996 without enquiry on the charge of having assaulted the security guards of the respondent Management. The Labour Court found that none of the persons who had given the complaints were examined. MW2-Mr.Fenolin Paul who was the security officer in the Management and who was the alleged solitary witness had stated in his cross examination that on receipt of the complaint, he had given his report dated 29.03.1996 (Ex.M7) at 5 p.m. on that day whereas all the security guards who



W.A.No.1065 & 1066 of 2023

were the complainants had stated that they had given complaints to MW2 only at 11. p.m. The Labour Court held that there was a difference in timings and in that view of the matter, held that the Management failed to prove the charges.

(ii) Learned counsel would further state that when the Labour Court held that no charge-sheet was issued and no enquiry was conducted and the charges were not established, the Labour Court ought to have ordered for reinstatement with full backwages.

(iii) Learned counsel relied on the judgment of the Hon'ble Supreme Court reported in (2013) 10 SCC 324 *Deepali Gundu Surwase*, wherein it has been held that when the charges are not proved, the normal relief of reinstatement with full backwages should be granted. Therefore, the learned counsel would state that only if the charges are proved and the punishment is disproportionate, the Labour Court can deny full backwages. In the present case, the learned Judge having agreed with the findings of the Labour court should have directed to reinstate the appellant with full backwages.

(iv) Learned counsel would further state that in a similar case, where the workman was dismissed without enquiry, the Industrial Tribunal held that the charge was not proved but granted compensation of Rs.1 lakh. On appeal, the



W.A.No.1065 & 1066 of 2023

learned single Judge of this Court vide order dated 24.01.2022 in W.P.No.11094/2017 granted reinstatement with continuity of service and full backwages to the workman. The First Division Bench confirmed the same vide judgment dated 27.04.2022 in W.A.No.1048/2022. The S.L.P.(C)No.13880/2022 filed by the Management was also dismissed.

(v) Learned counsel would further state that the award of the labour Court should be modified by granting reinstatement with full backwages and continuity of service. The appellant/workman has been without employment for more than 25 years and has undergone untold hardship having borrowed money to make ends meet. The appellant was unjustly deprived employment. Therefore, learned counsel prays to order reinstatement with continuity of service with full backwages.

4. (i) Per contra, learned counsel appearing for the 1st respondent would state that though the Management had the absolute prerogative to maintain discipline inside the factory premises, the Carborundum Universal Employees Union took it as a chance to instigate the workers to adopt extreme postures and disrupt the normal functioning of the factory. Suddenly, on 25.03.1996, the employees represented by the Union went on illegal strike



W.A.No.1065 & 1066 of 2023

inside the factory premises. The strike was without any notice and the same is in violation of the settlement under section 12(3) of the Industrial Disputes Act, 1947.

(ii) Learned counsel would further state that apart from going on illegal strike, some of the workmen also indulged in intimidatory tactics preventing rest of the workmen from reporting to work. On 29.03.1996 at around 4.30 p.m., the appellant along with Arularasan and other employees forcibly entered the rest room of the security staff and abused them in filthy language and simultaneously showered blows and assaulted J.Devamurthy, M.Kulothungan and S.Ramesh and other security guards of the company. The appellant along with Arularasan thereafter threw their belonging outside the gate and chased and threatened them of further violence and assault if they step into the company premises.

(iii) Learned counsel would further state that since the violent acts of threatening, abusing and assaulting the security who were required for providing security to the plant and premises of the company is an act of gross and serious misconduct and in view of this extraordinary situation prevailing in the factory, the respondent was left with no other alternative than to dismiss the appellant along with Arularasan from the service of the company by order



W.A.No.1065 & 1066 of 2023

dated 31.03.1996.

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(iv) Learned counsel would further state that the complaints given by the security guards were marked as M1 to M7. The complaints were given to MW1. The labour Court had found in para 11 of the Award that from the evidence of MW2, it is clear that MW2 was present during the time when the alleged incidents happened on 29.03.1996. However, at para 13 of the award, it is stated that though it is alleged by MW2 that the appellant and Arularasan played a leading role on the incident happened on 29.03.1996, it has not been specifically alleged that the appellant had threatened the security guards or abused or assaulted them.

(v) Learned counsel would further state that the learned Judge in para 8 and 10 of the order in writ petition clearly found that the appellant had instigated the mob which was responsible for the assault and considering the fact that he has reached the age of 55, modified the award and ordered payment of a lumpsum compensation of Rs.3 lakhs in lieu of reinstatement. He would further state that the Labour Court as well as the learned Judge have no dispute with regard to the alleged incident but however only in view of the fact that MW2 did not specifically say that the appellant assaulted or abused the security guards, the Labour Court chose to interfere with the order of



W.A.No.1065 & 1066 of 2023

punishment and passed an order of reinstatement, continuity of service but without backwages. Hence, order passed by the learned Judge, in granting compensation in lieu of reinstatement, need not be interfered with. Hence, he prayed to dismiss these appeals.

5. Heard the learned counsel for the appellant, the learned counsel appearing for the contesting 1st respondent and perused the materials available on record.

6. The workman, being aggrieved by the denial of backwages, had filed a writ petition in W.P.No.43933 of 2006, challenging the award dated 24.04.2006 made in I.D.No.475 of 1998 on the file of the 2nd respondent. Similarly, the Management, being aggrieved by the said award, granting reinstatement with continuity of service, had filed a writ petition in W.P.No.46858 of 2006. A common order was passed in the above said W.P.Nos.43933 & 46858 of 2006, in which, the award passed by the Labour Court was modified to the extent that in lieu of reinstatement, continuity of services and other attendant benefits, the Management was directed to pay a sum of Rs.3,00,000/- as compensation to the appellant. The workman,



W.A.No.1065 & 1066 of 2023

aggrieved by the said common order, has preferred these writ appeals.

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7. It is not in dispute that the appellant was working in the manufacturing unit under the Management from 01.06.1989. On 25.03.1996, the employees represented by the Union went on strike inside the factory premises. It is the contention of the Management that the appellant and one Arularasan forcibly entered into the rest room of the security staff and abused them in filthy language and assaulted J.Devamurthy, M.Kulothungan and S.Ramesh and other security guards of the company and threw their belongings outside the gate and chased and threatened them of assault if they step into the factory premises. It is the further contention of the Management that they instigated the other workers to go on strike and disrupted the normal functioning of the factory.

8. It is pertinent to point out that none of the aforesaid persons who were alleged to have been assaulted by the appellant or the complainants who made complaints against the appellant were examined but only MW2-Security Officer of the Management was examined and he has also given contradictory statement in his cross examination. Even the findings of the



W.A.No.1065 & 1066 of 2023

Labour Court would reveal that the complaints to the Management was given at 4.30 p.m. but as per the evidences of the management witness, the security guards who ran for shelter from the alleged assault were traced at 10.00 p.m. and the complaints were received from them. Thus, the Management had failed to prove their case beyond doubt.

9. Further, the Labour Court, only after considering the evidences adduced on either side, had come to a conclusion that the appellant was present at the time of incident. However, the Labour Court had given a finding that the Management had failed to substantiate the charge against the appellant that he was involved in assaulting the security guards and that there was difference in the timings of the complaint given by the complainants. Since the appellant is an active member of the Employees Union, he cannot be victimized for the alleged incident that had taken place on 29.03.1996 without substantiating the charges levelled against him.

10. The appellant was terminated from service without any show cause notice and no enquiry was conducted for the charges levelled against him. The reason stated by the Management that the atmosphere in the factory was not



W.A.No.1065 & 1066 of 2023

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conducive and feasible to conduct an enquiry and therefore, they had dismissed the appellant straight away, cannot be countenanced.

11. The Writ Court, without taking into account that the charges levelled against the appellant have not been proved beyond doubt, had interfered with the award passed by the Labour Court and ordered for compensation of Rs.3,00,000/-, instead of reinstatement with continuity of service without backwages, which is not sustainable.

12. It is brought to notice by the learned counsel appearing for the Management that the workman has been paid wages under section 17B of the Industrial Disputes Act, 1947.

13. In the light of the reasoning stated above, we are of the view that the learned single Judge ought not to have interfered with the award of the Labour Court. Therefore, the common order passed in W.P.Nos.43933 & 46858 of 2006 is set aside. The award passed by the Labour Court is restored. The respondent Management is directed to reinstate the appellant with continuity of service without backwages and other attendant benefits within a period of



W.A.No.1065 & 1066 of 2023

eight weeks from the date of receipt of a copy of this judgment. Accordingly,
the Writ Appeals are allowed. No costs.

(J.N.B.,J.) (P.D.B.,J.)
12.08.2024

vsi

Index : Yes / No

Internet : Yes / No

To

The Presiding Officer,
Labour Court,
Salem.



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W.A.No.1065 & 1066 of 2023

J. NISHA BANU, J.
and
P.DHANABAL,J.

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Pre-delivery order in
W.A.Nos.1065 & 1066 of 2023

12.08. 2024