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**(2017) 03 MAD CK 0074**

**In the Madras High Court**

**Case No : Writ Petition No.17122 of 2003**

Management Carborandum Universal

APPELLANT

Vs

Presiding Officer

RESPONDENT

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**Date of Decision : 03-03-2017**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2017) 2 LLN 235**

**Hon'ble Judges : Mr. P.N. Prakash, J.**

**Bench : Single Bench**

**Advocate :** Mr. M.R. Raghavan, Advocate, for the Petitioner; Labour Court, for the Respondents No. 1; Mr. Siva Shanmugam, Advocate, for the Respondent No. 2

**Final Decision : Allowed**

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## **Judgement**

Mr. P.N. Prakash, J. - Venkatesan (second respondent) was a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, in Carborandum Universal (writ petitioner), hereinafter referred to as the Management for brevity. He was issued with a charge memo dated 7.11.1996, in which the following accusations were made:-

(a) that on 18.6.1996 at 10.00 a.m., when Mr.Daniel Suresh, the Production Officer asked him to report to duty, he threw the coffee tumbler on the floor and shouted at the Production Officer;

(b) that on the same day, he had set up hirelings to assault Mr.M.A.Murugappan, one of the Production Managers; and

(c) that he instigated the labourers to go on illegal strike from 25.6.1996 on account of which, the factory had to be closed till 24.8.1996 and after the factory resumed production, he did not report to duty.

The workman denied the charges and one Mr. Arunachalam was appointed as

enquiry officer. On behalf of the management, four witnesses were examined and nine documents and one material object were marked. On behalf of the workman, the workman examined himself as a witness and marked two documents. The enquiry officer, by his report dated 20.11.1997, held that charge No.1 was not proved, but, charge Nos.2 and 3 were proved. The management furnished a copy of the enquiry report and thereafter, issued a second show cause notice dated 11.12.1997, calling upon the workman to show cause as to why he should not be dismissed from service. The workman submitted his explanation dated 16.12.1997. Not satisfied with the explanation, by order dated 6.3.1998, the workman was dismissed from service. The workman raised industrial dispute under Section 2A of the Industrial Disputes Act and on failure of the conciliation proceedings, the matter was referred to the Labour Court, Vellore, in I.D.No.220 of 1998, where the workman filed claim statement and the management filed their counter. The Labour Court framed the following preliminary issue:-

" Whether the domestic enquiry against the workman was properly conducted ?"

After perusal of all the records submitted by both the parties, the Labour Court came to the conclusion that the domestic enquiry has been properly conducted by the management and there is no infirmity in the same, warranting interference. The other issues that were framed by the Labour Court are as under:-

(a) Whether the findings arrived at by the enquiry officer are correct ?

(b) Has the workman been victimized ?

(c) Is the punishment given on the workman severe?

2. After finding that the domestic enquiry proceedings were properly conducted, the Labour Court proceeded to see whether the evidence adduced in the enquiry supported the conclusion of the enquiry officer ? Therefore, the Labour Court proceeded to find out whether there was sufficient evidence to prove the charges No.2 and 3. On behalf of the workman, it was submitted before the Labour Court that criminal prosecution was launched against the workman for assaulting Mr.M.A.Murugappan, but, he was acquitted by the criminal Court in C.C.No.18 of 1997 on 26.12.1997 and therefore, the said judgment is binding on the management. Similarly, the Labour Court also went into the materials to find out whether there was sufficient evidence to hold the workman guilty of the charge No.3. The Labour Court also went into the punishment aspect. Ultimately, the Labour Court passed the award in I.D.No.220 of 1998 on 31.3.2003 holding that the conclusions arrived at by the enquiry officer are supported by evidence, but, the Labour Court interfered with the punishment and directed the reinstatement of the workman with 50% back wages, challenging which, the management is before this Court. Pursuant to the interim order granted by this Court, the management deposited a sum of Rs.1,33,842/- towards back wages and the workman has also withdrawn 50% of the same. Apart from that, the

management has paid a sum of Rs.4,02,000/- as 17(B) wages till January, 2017.

3. Heard Mr. M.R. Raghavan, learned counsel appearing for the management and Mr.Siva Shanmugam, learned counsel appearing for the workman.

4. Mr. M.R. Raghavan, learned counsel appearing for the management submitted that unimpeachable evidence has been adduced before the enquiry officer to prove that the workman had set up hirelings to assault the Production Manager on 18.6.1996 and considering the fact that violence has been unleashed on the Production Manager, the Labour Court ought not to have interfered with the punishment of dismissal from service given by the management.

5. Per contra, Mr. Siva Shanmugam, learned counsel appearing for the workman submitted that in the second show cause notice dated 11.12.1997, the management has stated that if the workman admits the charges and gives written apology, the management will re-consider the proposed punishment of dismissal from service. Therefore, the workman, in his reply dated 16.12.1997, had accepted the charges and has asked for lenient punishment and that has weighed the Labour Court to interfere with the punishment of dismissal from service, which cannot be faulted. He reiterated his stand that the workman was acquitted by the criminal Court and therefore, the punishment of dismissal from service is grossly disproportionate.

6. This Court gave its anxious consideration to the rival submissions.

7. It is the consistent case of the management that the workman, who was a Union Leader, had set up hirelings to assault Mr. M.A. Murugappan on 18.6.1996, when Mr. Murugappan and Mr.Vasudevan left the factory to their house. It is also the case of Mr. M.A. Murugappan that he was assaulted by four unknown persons. Strangely, the police have filed final report only against Venkatesan (workman) as if it was Venkatesan, who had assaulted Mr. M.A. Murugappan. It was not the case of Mr. M.A. Murugappan that the workman (Venkatesan) had assaulted him, but, it was the case of Mr. M.A. Murugappan that the hirelings set up by the workman had assaulted him.

8. This Court perused the deposition of Mr. M.A. Murugappan, who was examined as M.W.2 before the domestic enquiry, wherein, he has deposed that four persons attacked him, whereas, the charge which was framed by the criminal Court was only against Venkatesan (workman). Thus, it is obvious to the Court that the police had played mischief in this case by filing charge sheet against the workman as if he alone had assaulted Mr. M.A. Murugappan. Only in those circumstances, when the evidence of Mr. M.A. Murugappan was found to be contrary to the charges under Sections 341 and 323 I.P.C., the workman (Venkatesan) was acquitted. But, in the departmental proceedings, an important material object was marked viz., an audio cassette. According to management witnesses Annamalai-M.W.3 and John Devadasan-M.W.4, on 12.6.1996 while Venkatesan was consuming liquor with four of his friends, he told them to just intimidate Mr. M.A. Murugappan, but, instead, they had assaulted Mr. M.A.

Murugappan grievously. This admission came from the Horse's mouth namely the workman himself during a conversation in the factory with Annamalai-M.W.3 and John Devadasan-M.W.4 and the same has been recorded in a cassette recorder. The audio cassette recorder was marked as M.O.1 by the management in the domestic enquiry and Annamalai and John Devadasan were examined. The audio cassette was played by the Enquiry Officer in the presence of the "workman" and sufficient opportunity was given for the workman to dispute the same. On the strength of this unimpeachable evidence, the enquiry officer came to the conclusion that it was the workman who had set up hirelings to assault Mr. M.A. Murugappan.

9. When the management sought to mark all the documents relating to the enquiry proceedings before the Labour Court, the counsel for the workman objected to the marking of the audio cassette containing the conversation. This has been specifically recorded by the Labour Court in the award. However, the audio cassette forms part and parcel of the Labour Court records, which this Court summoned and examined. The conduct of the workman in strongly objecting to the very marking of the audio cassette would itself show that he is not free from reproach. The Labour Court has also noted that in the domestic enquiry, the audio cassette was played and the enquiry officer has noted that the conversation was recorded in the factory as the sounds of machines is also available in the background. Similarly, the Labour Court has also noted that the management had adduced sufficient evidence to prove charge No.3 before the enquiry officer inasmuch as the management witnesses have deposed that it was the workman who exhorted the workers to go on strike by saying that if they do not go on strike, they would also suffer the same fate as Mr. M.A. Murugappan suffered.

10. After having held so, the reason given by the Labour Court to interfere with the punishment was that the management itself was prepared to give a lesser penalty. In the second show cause notice dated 11.12.1997, the management itself has stated that they are willing to impose lesser penalty if the workman admits the offence. It may be necessary to extract the relevant portion from the second show cause notice dated 11.12.1997, which reads as under:-

" Taking into consideration the above and in the light of the seriousness of the acts of misconduct indulged in by you, referred to in our charge sheet dated 7.11.96, which were proved against you the management proposes to dismiss you from the service of the company.

This proposed penalty has been arrived at after considering the fact that you have arranged and instigated four local persons to beat our officer Mr. Murugappan on 18.6.96, which you have confessed to the undersigned and Mr. Antony, Production Officer on 30.8.96.

However in case if you admit the charges and give a written apology for the same, the management may reconsider the punishment already proposed

against you and award a lesser punishment."

In response to this, the workman had submitted his explanation letter dated 16.12.1997, wherein he has very cleverly stated that "if the management is of the opinion that he has committed the alleged offence, then, he regrets for the same". In the considered opinion of this Court, it was not at all necessary for the management to have given such a long rope for the workman in the second show cause notice. However, had the workman grabbed the opportunity and given an apology, then the situation would have been different. Be that as it may, in a case of this nature, where the workman had assaulted an officer by setting up goondas, no sympathy can be shown. Any leniency in punishment would amount to misplaced sympathy. The following passage from the judgment of the Supreme Court in *L & T Komatsu Ltd. v. N. Udayakumar* [(2008) 1 SCC 224] expounds the law on the subject very succinctly:

"11. ... It may also be noticed that in *Orissa Cement Ltd. v. Adikanda Sahu*, (1960) 1 LLJ 518 (SC)] and in *New Shorrock Mills v. Maheshbhai T. Rao*, (1996) 6 SCC 590 : 1996 SCC (L&S) 1484] held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Muriadih Colliery of Bharat Coking Coal Ltd. v. Bihar Colliery Kamgar Union* [(2005) 3 SCC 331 : 2005 SCC (L&S) 412] this Court after referring to and quoting the relevant passages from *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh* [(2004) 8 SCC 200 : 2004 SCC (L&S) 1067] and *Tournamulla Estate v. Workmen* [(1973) 2 SCC 502 : 1973 SCC (L&S) 510] held: (SCC p. 336, para 17)

"The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal." "

(emphasis supplied)

In view of the above, this Court is of the view that the Labour Court ought not to have interfered with the penalty of dismissal from service.

11. In the result, the writ petition is allowed and the award in I.D.No.220 of 1998 dated 31.3.2003 passed by the Labour Court is hereby set aside and the order of dismissal from service passed by the management against the workman is restored. However, the workman will be entitled to withdraw the amount deposited by the management in the Labour Court with accrued interest, as solatium. No costs.