
(1997) 06 MAD CK 0022

In the Madras High Court

Case No : W.A. No. 627 of 1996 and C.M.P. No. 8781 of 1996

Management of Carborandum Universal Ltd.

APPELLANT

Vs

Presiding officer and Another

RESPONDENT

Date of Decision : 13-06-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (1997) 06 MAD CK 0022

Hon'ble Judges : S.M. Sidickk, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : V. Karthick, for the Appellant; Mrs. Anna Mathew, for the Respondent

Judgement

A.R. Lakshmanan, J.—Heard Mr. Karthick for the appellant and Mrs. Anna Mathew for the second respondent. The management is the

appellant in this writ appeal. Aggrieved against the order of the learned single Judge in W.P. No. 1493 of 1986, dated February 13, 1996,

ordering back-wages and continuity of service, the above writ appeal has been filed.

2. The second respondent was employed as a temporary workman on different spells between December, 1978, and July, 1980. On August 20,

1980, he was appointed as a probationer for one year with effect from August 29, 1980. Since the second respondent's performance was not

satisfactory the management by their letter dated January 20, 1982, extended his probation upto June 30, 1983. On January 24, 1982, at about 1

p.m., the second respondent abused his supervisor one K. K. Periasami. According to the management, the second respondent was not found in

the work spot and when the supervisor A. K. Kumar questioned against it he

again abused him and in respect of the above misconduct, the second respondent was given with two separate charge-sheets dated January 28, 1982. In respect of the charge-sheet relating to the incident as against the supervisor, K. Periasami, which was held to be proved in the domestic enquiry, the second respondent was awarded punishment of suspension for 15 days from July 2, 1982, to August 3, 1982. In respect of the second charge-sheet dated January 28, 1982, relating to the misconduct committed against the supervisor, A. K. Kumar, on March 27, 1982, the enquiry officer submitted his findings holding that the charges levelled against the second respondent were proved. Again, another charge-sheet was issued on April 2, 1982, to the second respondent. In respect of this charge-sheet also a domestic enquiry was held and the enquiry officer submitted his findings holding that the charges levelled against the second respondent were proved. Considering the poor performance and proved misconduct committed by the second respondent on August 24, 1982, the management passed orders terminating the probation of the second respondent with effect from September 30, 1982.

3. The second respondent raised an industrial dispute challenging the non-employment and the same was referred for adjudication before the first respondent in Industrial Disputes No. 481 of 1983. On a consideration of the materials placed before the first respondent, who passed this award dated July 8, 1985, holding that the charges levelled against the second respondent as per the charge-sheet dated January 28, 1982, were not proved and in respect of the charge-sheet dated April 2, 1982, the charges were held to be proved by invoking his power u/s 11-A of the Industrial Disputes Act directed reinstatement of the second respondent without back wages and without continuity of service. Thereafter, on September 1, 1985, the second respondent wrote to the management seeking implementation of the award. The management on September 26, 1985, sent a communication advising the second respondent to report for work on October 3, 1985. On that date he was reinstated in service in terms of the award of the first respondent dated July 8, 1985. The second respondent was also issued with an order dated October 4, 1985, appointing him on probation from October 3, 1985. After seeking implementation of the award, the second respondent after a period of six

months filed W.P. No. 1493 of 1986 challenging the award of the first respondent. Before the learned single Judge the appellant-management contended that once the second respondent has accepted the award and sought for its implementation, it would amount to acquiescence on that behalf and that he cannot challenge the award. They also contended that the second respondent was only a probationer and even during the probation his performance and conduct were not satisfactory and in a short period of two years he has been served with a memo for abusing his superiors and that the award did not suffer from any error of law which can be interfered with under Article 226 of the Constitution of India. The learned single Judge of this Court by his order dated February 13, 1996, held that in the past, the second respondent was not involved in any misconduct of committing offences involving forgery, cheating, misappropriation, etc., and that he did not hurt anybody and that he was only in the habit of abusing his superiors in harsh language and such a language depends upon the social status of the workman and that denial of back-wages and continuity of service will have far-reaching effect on the part of the second respondent including pension and family pension. In the above facts and circumstances, the learned single Judge has allowed the writ petition.

4. Aggrieved by the said order the management has preferred the above writ appeal. The writ appeal was admitted by the first Bench on July 15, 1996, and the order of the learned single Judge directing payment of back-wages was stayed in C.M.P. No. 8781 of 1996.

5. Mr. Karthick, learned counsel for the appellant, submitted that by allowing the writ petition, the learned single Judge has allowed the second respondent to go without punishment in respect of the proved misconduct as held by the first respondent. Moreover, in view of the order of the learned single Judge, the second respondent will seek implementation of the order. It is also further urged by learned counsel for the appellant that when the first respondent has in exercise of his jurisdiction u/s 11-A of the Industrial Disputes Act found that deprived of back wages would be an adequate punishment, it was beyond the jurisdiction of this Court to interfere with the exercise of the said power. It is also contended that the learned single Judge has failed to see that the first respondent was fully conscious of the scope of his jurisdiction and power u/s 11-A of the

Industrial Disputes Act in taking the view that the punishment of termination was liable to be interfered with and substituted by a punishment of

deprivation of back wages. It is also urged that the order of reinstatement without back wages the first respondent has not committed any error of law

or jurisdiction and, therefore, the impugned award of the first respondent was not liable to be interfered with.

6. Per contra, Ms. Anna Mathew, learned counsel of the second respondent contended that the management without any proper notice set him ex

parte on August 9, 1982, the date on which the second respondent was on medical leave and was taking treatment in the Employees' State

Insurance dispensary and that though the management was in receipt of leave certificate they did not inform the enquiry officer about the same and

got his ex parte finding dated September 22, 1982, which is nearly 1-1/2 months from the date the second respondent was set ex parte. It is also

urged by her that the management has hurriedly passed a final order of dismissal dated September 24, 1982. We have considered the rival

submissions raised by counsel appearing on either side.

7. The Labour Court, on a consideration of the enquiry materials placed before it has clearly found that the second respondent has been terminated

from service on a proved charge which is not in doubt. However, the Labour Court was of the view that it is a fit case in which the Labour Court

should exercise its power u/s 11-A of the Industrial Disputes Act in awarding a lesser punishment to the second respondent. The Labour Court,

therefore, held on the point that the termination of service of the second respondent was not justified and that the writ petitioner, who is entitled to

an order of reinstatement, should forgo all his claims for back wages and continuity of service by way of punishment on the proved misconduct. In

the result an award was passed holding that the non employment of the second respondent was not justified and directing the management to

reinstate the second respondent without any back wages and without continuity of services. As already noticed, this order was challenged by way

of writ petition by the second respondent in this Court. The learned single Judge of this Court, for the reasons stated in the earlier part of this order,

has allowed the writ petition with back wages and continuity of service. Learned counsel for the appellant in support of his contention that when the

first respondent has in the exercise of his jurisdiction u/s 11-A of the Industrial Disputes Act found that deprival of back wages be an adequate

punishment it was beyond the jurisdiction of this Court to interfere with the exercise of the said power cited a decision of a Division Bench of this

Court in TAFE v. R. Venkataraman 1990 II CLR 189, wherein this Court held that :

Once the Labour Court in exercise of its powers u/s 11-A of the Industrial Disputes Act, evaluates the gravity of misconduct for the purpose of

punishment to be imposed on a workman and exercises its discretion, High Court exercising jurisdiction under Article 226 of the Constitution of

India in the absence of any important legal principle should not undertake to re-examine the question of adequacy or inadequacy of the material

for interference by the Labour Court".

8. It is not in dispute that the Labour Court in the instant case, for the proved misconduct and for the facts and circumstances of the case and the

gravity of the misconduct for the purpose of punishment has set aside the order of termination only without back wages and continuity of service,

which was interfered with by the learned single Judge in his order impugned in this writ appeal. As pointed out by the learned single Judge, the only

charge against the workman was that he was in the habit of abusing the superiors in intemperate and harsh language. In our opinion, the order of

the learned Judge awarding back wages and continuity of service in addition to the order of reinstatement ordered by the Labour Court is

unwarranted. It is not in dispute that the management has not filed any writ petition against the order of the Labour Court. Likewise, the workman

has also not filed any writ appeal though several points were urged at the time of hearing of the writ appeal challenging the findings of the learned

single Judge. However, we are of the view that the workman having been reinstated in service pursuant to the award of the Labour Court he would

be legally entitled to the continuity of service though not the back wages for the period from September 30, 1982, to July 8, 1985. The punishment

of back wages cut for the period from September 30, 1982, to July 8, 1985, would be a sufficient punishment warranting in the facts and

circumstances of the case. However, we are not inclined to countenance the request made by learned counsel for the second respondent that the

workman also would be entitled to the back wages for the period of question.

Therefore, the order of the Labour Court and the order of the learned single Judge are modified as follows :

9. The workman has already been reinstated in service on October 4, 1985. The workman will not be entitled to any salary or emoluments for the period from September 30, 1982, to July 8, 1985. However, he will be entitled to continuity of service. The continuity of service will be taken into account for the purpose of computing all the statutory benefits. The writ appeal is ordered accordingly. No costs. Consequently C.M.P. No. 8781 of 1996 is dismissed.