

SUPREME COURT OF INDIA

Carborandum Universal Ltd.

Vs.

R. Balasubramanian

C.A.No.1537 of 1975

(Y. V. Chandrachud, V. R. Krishna Iyer and N. L. Untwalia, JJ.)

08.04.1976

ORDER

1. The order passed by the appellants on November 28, 1972 dismissing the respondents 1 to 3 viz., R. Balasubramanian, S. S. Kar and J. J. Tanna, will stand withdrawn.
2. The appellants shall be at liberty to hold a fresh enquiry against respondents 1 to 3 on the basis of the charges which formed the subject-matter of the earlier enquiry. Evidence already recorded in the earlier enquiry may be taken into consideration in the fresh enquiry. The appellants and respondents 1 to 3 shall be at liberty to adduce fresh evidence in the enquiry which may be held hereafter.
3. The appellants shall dispose of the fresh enquiry on the basis of the evidence which is already on record and such evidence which may hereafter be taken on record as stated in Cl. (2) above. Respondents 1 to 3 will be at liberty to cross-examine the witnesses examined by the appellants in the earlier enquiry. The appellants shall be liable to offer only those witnesses for cross-examination by respondents 1 to 3 as are still in the appellants' employment.

4. The enquiry shall be held by the appellants on the basis that respondents 1 to 3 were not and shall not be deemed to be protected workmen at the time when the enquiry was and will be held or at the time when any action in pursuance of that enquiry was or will be taken.

5. The appellants shall pay to respondents 1 to 3 back wages and such allowances as may be payable, as if they were in service all along with effect from November 28, 1972 until the disposal of the enquiry by the Enquiry Officer. The amounts thus due to respondents 1 to 3 shall be paid by the appellants in two equal monthly instalments the first of such instalments being payable on or before the 7th May, 1976 and the other on or before 7th June, 1976.

6. Respondents 1 to 3 will remain suspended till the disposal of the enquiry by the Enquiry Officer.

7. Respondents 1 to 3 agree to co-operate with the enquiry and shall not ask for any unnecessary adjournments.

8. It will be open to respondents 1 to 3 to pursue their remedies according the law against the order which may be passed in the enquiry.

P. O.:

9. Since the order of dismissal dated November 28, 1972 stands withdrawn and since that order forms the basis of the prosecution instituted against the appellants under Section 31 (1) of the Industrial Disputes Act, the prosecution shall be dropped. The learned Judicial Magistrate, First Class, Dwaraka, who is seized of the prosecution (Case No. 404 of 1973) will pass appropriate orders terminating the prosecution.

10. Reference No. 80 of 1973 pending in the Labour Court, Ahmedabad, in so far as it relates to respondents 1 to 3 shall also stand terminated. The learned Judge of the Labour Court will pass appropriate orders in that behalf.

11. Consequently the application filed by the appellants under the proviso to S. 33 (2) (b) for approval of the order of dismissal passed by them shall stand disposed of in so far as it relates to respondents 1 to 3.

12. Further proceedings in the application filed by respondents under S. 33-A of the Industrial Disputes Act will be dropped.

13. The appellants will pay a sum of Rs. 2,000/- to the respondents in full and final settlement of costs of the present proceedings. Respondents 1 to 3 may recover the amount by withdrawing the sum of Rs. 2000/- deposited by the appellants in the Court by way of security for costs.

Order accordingly.