

M/s. Chembur Co-Op. Industrial Estate Ltd.

Vs

M. K. Chhatre and Another

Civil Appeal No. 1945 of 1972

(A. Alagiriswami, P. K. Goswami, N. L. Untawalia JJ)

22.07.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal against the judgment of the High Court of Bombay dismissing in limine Civil Application No. 2780 of 1971 filed by the appellant society under Article 227 of the Constitution of India against the award of the Presiding Officer, Third Labour Court, Bombay. The second respondent was appointed as an Accountant in the office of the appellant in August, 1965. On certain complaints against him the Managing Committee of the appellant society examined the second respondent at length on number of days and on August 21, 1966 suspended him from service. He was thereafter dismissed by a resolution of the Managing Committee on September 30, 1966. The dispute was referred to the Third Labour Court, Bombay for adjudication by the order of the Government of Maharashtra. The Labour Court concluded that there was no enquiry at all and held against the second respondent. Before the Labour Court the second respondent examined himself and on behalf of the appellant society, its Chairman and its Honorary Secretary as well as the Joint Secretary were examined. On a consideration of the evidence before in Labour Court came to the conclusion that none of the charges against the second respondent were proved and ordered him to be reinstated. As already stated the special civil application filed by the appellant society before the Bombay High Court was summarily rejected. This appeal filed in pursuance of the special leave granted by this Court is limited to the question whether the second respondent should be reinstated or compensation should be given.

2. Three charges were framed against the second respondent. The first was that the second respondent called himself as an office secretary though he had never been designated as such. The second charge was that he removed from the officer records, some documents. The third charge was that he substituted a letter dated May 12, 1966 and circulated a letter to the members of the society intimating them that a cheque of Mr. Bhambri, one of the members of the Managing Committee, was dishonoured. Though the second respondent had been examined at length before he was suspended on August 21, 1966 no enquiry was held thereafter. So clearly the order of dismissal could not be sustained on the basis of the pre-suspension enquiry held against him. The next question, therefore, is whether the evidence let in before the Labour Court proved the charges against the second respondent. The Labour Court has elaborately considered the evidence and come to the conclusion that none of the charges have been proved. The most important charge against the second respondent to our mind was the one relating to the allegation that he had removed the letter received from the architects had left the question of fees payable to them to the discretion of the Managing Committee of the society. It appears that in that letter the architects had left the question of fees payable to them to the discretion of the Managing Committee of the society. Because this

letter had been removed from the records of the society by the second respondent and kept with him the Managing Committee of the society had to go on approaching the architects for a reduction of their fees. This would clearly have involved pecuniary loss to the society. But before the Labour Court no evidence was let in on this point. An attempt was made to use the statement made by the second respondent before the Managing Committee in support of this charge. But it does not appear to have been shown to the second respondent nor he was questioned on that point before the Labour Court. In the circumstances it could not be said that either this charge or any of the other charges was proved against the second respondent.

3. However, the facts relating to the removal by the second respondent of a letter from the architects show that he had clearly forfeited the confidence of his employers. We do not therefore think that we would be justified in ordering reinstatement of the second respondent. It was also urged on behalf of the appellant society that it is not now discharging any function. But this question had not been raised in time nor did the second respondent have an opportunity to meet that point. We are therefore deciding this appeal without any reference to this representation. We must however refer to the fact that the second respondent was prepared to accept payment at the rate of Rs. 380 a month from the date of his suspension till the date of the award by the Tribunal. This would come to Rs. 22,800.

Mr. Datta appearing for the appellant society had first wanted to get the instructions of his clients to this proposal. But after the arguments were over he stated that he was accepting the offer. In the circumstances we think it would be enough if we order that compensation be paid to the second respondent as indicated above after deducting the amount of Rs. 7,32.98 already withdrawn by him. There will be no order as to costs.

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