

(2002) 01 BOM CK 0030
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 1425 of 1997

Madura Coats Limited

APPELLANT

Vs

P.C. Rathod and Another

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 BomCR 619 : (2002) 94 FLR 296 : (2002) 3 LLJ 507

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.M. Naik and Shailesh More, for the Appellant; K.P. Anilkumar and Ashish Oveleker, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The petitioner has challenged the award of the Labour Court granting respondent No. 2 reinstatement with continuity of service and 50% back-wages from July 15, 1987.

It is the case of the petitioner that respondent No. 2 workman was employed as Accounts Assistant in the petitioner's Sales Office on a monthly salary. The respondent-workman was required to perform various duties including clerical work. He was expected to make vouchers for daily expenses, receive cheques, cash, drafts from customers and to deposit the same into the petitioner's account with the bank. The workman was also required to prepare a statement of account, collect bank statement and send them to the company's Head Office at Ambsamudram. The petitioner alleged that on March 7, 1987, the Sales Manager Chatterji learnt that there was a heavy debit amount of Rs. 26 lacs on account of dishonouring of cheques issued by their regular customer Indu Exports of India. The Sales Manager as the superior officer of the workman questioned him and the workman assured him that such debit is not correct and that he had reconciled the transaction.

2. The Sales Manager, Chatterjee, learned about the heavy debt of Rs. 26 lakhs payable by Indu Exports of India and questioned the workman. On March 3, 1987 the Sales Manager not being satisfied with the explanation of the workman, went to the bank alongwith the workman and one Dorai Subramaniam, who was senior sub-manager and who was also one of the superiors of the workman. The officers of the petitioner handed over four cheques of different values totalling to Rs. 26,12,377.42 which had been deposited on February 28, 1987 and which were dishonoured. A cheque of the same company deposited on February 11, 1987 for a sum of Rs. 1,27,215 which was also dishonoured was given alongwith these cheques. It is the case of the petitioner that the workman knew that the cheques had been dishonoured but had adopted a practice whereby the company would be kept in the dark about the fact that the cheques issued by Indu Exports India Ltd. had been dishonoured. The petitioner's case is that the modus operandi used by the respondent-workman was that he would draw up a cheque for an amount for which Indu Exports had been supplied material and would deposit the same in the petitioner's account, knowing fully well that the said cheque would be dishonoured. At the end of the month after the cheque was dishonoured, the respondent- workman would issue a fresh cheque for new material which might have been purchased by Indu Exports and include the amount of the earlier dishonoured cheque. At the end of the month, the statement which the workman would reconcile would show that there was no balance amount pending from Indu Exports. The amount of the dishonoured cheque would not be shown. The further allegation of the petitioner is that when confronted with this, the workman admitted his guilt and wrote out a confession on March 3, 1987 in the presence of the two other officers from another department as well as an advocate. Another letter was issued by the workman on March 4, 1987 returning certain blank cheques of Indu Exports India Ltd. which were allegedly in the custody of the workman. The petitioner terminated the services of the workman without holding enquiry although the charge-sheet was issued to him on March 20, 1987.

3. The respondent-workman replied to the charge-sheet and filed a complaint before the Industrial Court seeking representation by a lawyer at the enquiry proceedings. This application of the workman was granted by the Industrial Court. However, the petitioner instead of proceeding with the enquiry, abruptly terminated the services of the respondent-workman on May 15, 1987 for loss of confidence by giving him one month's pay in lieu of notice. The workman raised an industrial dispute for reinstatement with continuity of service and full back-wages. This dispute was referred for adjudication before the Labour Court. Pleadings were filed before the Labour Court. The workman examined himself, and the Sales Manager Chatterjee and the senior Sub-Manager D. Subramaniam deposed on behalf of the petitioner. By an Award of June 30, 1997, the Labour Court directed the petitioner to reinstate the workman with 50% back-wages. This is the Award that has been impugned in the present petition.

4. Mr. Naik, learned counsel for the petitioner, submits that once the respondent

No. 2-workman had admitted his guilt in the confessional statement made on March 3, 1987, there was no need for the petitioner to hold an enquiry at all. In fact, there was no need for the petitioner to prove the charge against the workman contained in the charge-sheet dated March 20, 1987. He further submits that the Labour Court has erred in reinstating respondent No. 2 in service, with continuity and 50% back wages when there was a serious charge levelled against him of dishonesty in connection with the business of the employer. He further submits that the petitioner had provided ample proof to the Labour Court by producing various documents on record showing that the respondent No. 2 workman had in collusion with Indu Exports defrauded the company to the tune of Rs. 26 lakhs. The learned counsel for the petitioner assails the finding of the Labour Court that there were no documents such as daily finance statement and the monthly statement of deposit for the period February 1986 to February 1987 in order to draw the conclusion that the workman had in fact defrauded the company. He also urges that the punishment of merely depriving the workman of 50% wages is not a sufficient deterrent for the respondent No. 2 workman who would be reinstated in service despite having committed such gross misconduct.

5. In contrast, Mr. Anilkumar, learned advocate for the respondent No. 2 workman, submits that the Labour Court has rightly come to the conclusion that the documents produced before it were not for the relevant period nor were they legible. Merely xerox copies of some documents have been produced and samples of some statements were produced before the Labour Court. He submits that the Labour Court has rightly drawn the conclusion that the original documents such as daily finance statement, monthly statement of accounts of deposit with bank reconciliation and bank statement of February 1986 to February 1987 which were extremely relevant, have not been proved. He submits that the Labour Court has rightly disbelieved the evidence of the petitioner and has come to the conclusion that the superiors of respondent No. 2 workman were responsible for the loss accrued to the petitioner and that the respondent No. 2 workman was in no way responsible for that. He urges that this being the finding of fact of the Labour Court, no interference is called for under Article 226 of the Constitution of India. He places reliance on the judgment of this Court in the case of S.K. Awasthy Vs. M.R. Bhope, Presiding Officer, 1st Labour Court and Others, .

6. I have gone through the Award of the Labour Court as well as the evidence in great detail with the help of the learned counsel on both sides. The finding of the Labour Court cannot be faulted when he has held that the documents produced before him do not prove the misconduct against the respondent No. 2-workman. The finding of the Labour Court is that the workman was working on instructions from his superiors, the Sales Manager Chatterjee and Sub-Manager Doraiswamy. The evidence on record also supports the workman as he has been able to establish that it was under the directions of his superiors that he had filled in the cheques of Indu Exports. He has also established that although the accounts

section was aware of the dishonoured cheques, no action was taken to stop sale of goods to Indu Exports. In fact, immediately on receipt of the cheques, a lorry receipt would be prepared and goods used to be delivered to Indu Exports against the cheque without verifying as to whether cheque had been honoured or not.

7. In my view, it is not possible to assail the finding of the Labour Court that the petitioner has not established the guilt of the respondent No. 2 workman as only xerox copies, some of which were illegible, had been produced before him. The relevant statements of bank reconciliation have not been produced at all. In my view, the Labour Court has rightly come to the conclusion that the petitioner has not been able to prove its case against the workman. There was no internal audit in the office during the period February 1986 to February 1987 nor has the petitioner maintained a dishonoured cheque register. The allegation of the petitioner that it was for the respondent No. 2 workman to maintain this register has been disbelieved by the Labour Court and I see no reason to differ from this finding of the Labour Court. Indeed, if the internal audit had been conducted, if at all the workman had committed any misconduct, it would have been noticed much earlier. It has come on record that the sub-Manager Doraiswamy Subramaniam used to countersign the daily finance statement and it is surprising that he had not noticed that cheques issued by Indu Exports during the period February 1986 to February 1987 had been dishonoured. It is impossible to accept the version of the petitioner that the company was not aware of the fact that the workman was issuing fresh cheques in the name of Indu Exports against dishonoured cheques of Indu Exports for over a period of one year.

8. The Labour Court has accepted the version of the respondent No. 2 workman and has granted him reinstatement with continuity of service. As regards back wages, the Labour Court has found that since the case was pending for about nine years, neither party should suffer the consequences of the delays in Court. I see no reason to differ with the finding of the fact of the Labour Court. The Award of the Labour Court is well reasoned and, therefore, must be upheld.

9. In the circumstances of the case, writ petition, is dismissed. Rule discharged with no order as to costs.

10. The amount of back wages deposited by the petitioner in this Court may be withdrawn by the respondent No. 2-workman.

11. Issuance of certified copy expedited.

12. Parties to act on an ordinary copy of this order duly authenticated by Personal Secretary of this Court.