

SUPREME COURT
CASE BRIEF

Ismail Masood v HDFC [2014/SC-A/27]
HDFC v Ismail Masood [2014/SC-A/30]

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Premier Chambers LLP (Reg. No. P-0270/1995)

DATE OF DECISION: 2 June 2020

- BENCH:**
- Justice Honourable Uz. Husnu Al Suood (Presiding Justice)
 - Justice Honourable Uza. Aisha Shujune Muhammad
 - Justice Honourable Uz. Mahaz Ali Zahir

FACTS:

- Ismail Masood was employed by Housing Development Finance Corporation Limited (“**HDFC**”) as the Manager of its Information Technology Section and was initially suspended from employment for a period of 14 days. Prior to his dismissal, Ismail Masood filed a claim against HDFC claiming that HDFC’s actions were in contravention of the laws and regulations, as well as the contract of employment. He also claimed for MVR 50,000/- as compensation for the psychological damage and financial losses he claims to have suffered due to this and had requested to be reinstated in employment. He was dismissed without notice while the case was ongoing at the Employment Tribunal.
- The Employment Tribunal ruled that Ismail Masood had been dismissed in contravention of the Employment Act, ordered that Ismail Masood be reinstated in employment and ordered HDFC to pay him salary and allowances from the date of termination of employment until the date of reinstatement. In deciding this case, the Employment Tribunal highlighted that HDFC had not submitted sufficient evidence to prove that substantive and procedural fairness had been established as required, when terminating an employee under Section 23 of Law No. 2/2008 (the “**Employment Act**”).
- The High Court overturned the decision of the Employment Tribunal and decided that HDFC had established substantive fairness in dismissing Ismail Masood but had failed to establish procedural fairness.
- Both Ismail Masood and HDFC appealed the decision of the High Court on different grounds.

ISSUES:

- The issues raised by Ismail Masood were: -

- whether HDFC had been able to prove on the balance of probabilities that Ismail Masood was dismissed with reasonable cause and whether the High Court's application of Section 23 of the Employment Act was correct; and
 - whether HDFC had established procedural fairness in dismissing Ismail Masood.
- The issue raised by HDFC was that awarding any financial compensation to Ismail Masood was against the principles of justice, as Ismail Masood had not come to court with clean hands, as he had committed wilful gross misconduct which led to his dismissal.

DECISION AND RATIONALE:

- The Supreme Court affirmed the decision of the High Court and decided that:
- HDFC's decision to dismiss Ismail Masood without notice was lawful and that HDFC had failed to establish procedural fairness;
 - HDFC could not be ordered to reinstate Ismail Masood in employment;
 - as HDFC had failed to establish procedural fairness, only such financial compensation as decided by the Employment Tribunal could be awarded to Ismail Masood; and
 - the amount of compensation to be awarded where substantive fairness has been established but procedural fairness has not been established perfectly should be less than the amount of compensation awarded where substantive fairness has not been established.
- In rendering its judgment, the Supreme Court highlighted that an employee can only be dismissed without notice under Section 23 (a) and (b) of the Employment Act, where either the employee's actions amount to gross misconduct or deceit, and declared that the following actions amount to gross misconduct:
- any action which contravenes a fundamental condition of the contract of employment;
 - any action which causes the essential relationship of trust and confidence between an employer and an employee to be severed;
 - any action which is fundamentally or directly against the obligations of the employee.
- The Supreme Court also noted that where the mutual relationship of trust between the employer and the employee has been severed because of an employee's actions amounting to gross misconduct, and it is no longer possible for the employee to fulfil their obligations with integrity, the employer may dismiss the employee without notice, at their discretion.
- The rationale for deciding that HDFC's decision to dismiss Ismail Masood without notice was lawful, is as follows:
- Ismail Masood had admitted to having met with and recorded conversations between members of HDFC's senior management, in his statement submitted to the Employment Tribunal.

- Ismail Masood had stated in the claim form submitted to the Employment Tribunal that he had accessed emails of HDFC's employees and senior officials and had read through their conversations. The Supreme Court decided that this was outside Ismail Masood's scope of work as an employee.
 - In his statement submitted to the Employment Tribunal, Ismail Masood has also admitted to having met with one of HDFC's Directors after his dismissal, to discuss actions amounting to corruption which he believed were happening within HDFC. In this statement, he had admitted to having met with HDFC's attorney to discuss the same as well.
 - HDFC had alleged that Ismail Masood had contacted HDFC's Managing Director and threatened to deport him from the Maldives and that he had also threatened to cause damage to HDFC by accessing its IT networks. Even though Ismail Masood had rejected these allegations, the Supreme Court found that in his statement submitted to the Employment Tribunal, Ismail Masood had admitted to having conversed with HDFC's Managing Director in such a manner.
- In deciding that HDFC had failed to establish procedural fairness, the Supreme Court highlighted that HDFC had admitted to not having given Ismail Masood the opportunity to respond to the allegations made against him.

PRECEDENT SET:

- The Supreme Court set a precedent by deciding that the amount of compensation to be awarded in cases where substantive fairness has been established but procedural fairness has not been established at dismissal, should be less than the amount of compensation awarded where substantive fairness has not been established. It was declared that this compensation is to be paid by the employer as a penalty for failing to establish procedural fairness as required by law.

ANALYSIS:

- As highlighted by the Supreme Court in this case, courts and tribunals have not applied a consistent approach in awarding compensation in cases where substantive fairness has been established but procedural fairness has not been established at the time of dismissal of an employee, because the Employment Act does not provide guidance on deciding the amount of compensation to be awarded to an employee in such instances.
- Following this decision, lower courts and tribunals are now provided with some guidance that will allow them to award compensation to unfairly dismissed employees, in a consistent manner.

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