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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 22.05.2018*

+ **W.P.(C) 682/2018**

SHRI RAKESH WADHWA Petitioner
Through: Mr. Rajiv Aggarwal and
Mr.Sachin Kumar, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.
..... Respondents
Through: Ms. Biji Rajesh and Mr. Diwankar
Sethi, Advs. for Mr. Gaurang Kanth,
Advocate for R1.
Mr. V.K. Bhatia, A.S.O in person.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (Oral)

1. The petitioner seeks quashing of the interim order dated 18.01.2018 passed by the learned Presiding Officer, Labour Court-XVI, Dwarka Courts, Delhi in LIR No.5680/2016.
2. The facts giving rise to filing the writ petition are that the Government of NCT of Delhi has made a reference dated 19.12.2011 to the Labour Court for adjudication as to whether the dismissal of the petitioner from service by respondent No.1/management vide order dated 18.12.2006 is illegal and/or

unjustified; and if yes, to what relief is he entitled and what directions are necessary in this respect.

3. Before removal of the petitioner from service the respondent No.1 has conducted a domestic enquiry. The Industrial Adjudicator framed the following issues on 08.05.2012:-

1. Whether the domestic enquiry conducted by the management was justified and fair?
2. As per the terms of reference.

4. Admittedly, the issue No.1 with regard to the fairness of the domestic enquiry by the Management was treated to be a preliminary issue and the parties have already adduced their respective evidence thereon.

5. Learned counsel for the petitioner submits that the Industrial Adjudicator intends to decide both the issues together, though in law, the preliminary issue No.1 with regard to the fairness of the domestic enquiry conducted by the management is to be decided first in view of the judgment of **Hon'ble Supreme Court in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, (1975) 2 SCC 661.**

6. *Per contra* learned counsel for the respondent No.1 submits that it is the learned counsel for the petitioner, who had requested the Industrial Adjudicator to address and conclude his arguments on all the issues.

7. I have heard the learned counsel for the parties.

8. It is relevant to refer to the impugned order dated 18.01.2018 which reads as under:-

“Record perused. On 05.01.2018, Sh.Rajeev Aggarwal had almost concluded his arguments. He seeks adjournment to conclude the arguments. He was given the date for concluding the arguments on 17.01.2018, however, on 17.01.2018 again proxy counsel sought adjournment stating that Sh. Rajeev Aggarwal was not available and matter was listed for today for arguments.

Today, he again had not concluded the arguments and submits that one more opportunity be given to him for arguing on the preliminary issue. However, he has requested to conclude the argument in whole in all the issue.

Put up for orders on 27.01.2018. Considering the facts that both the parties have already filed their written submissions, workman is at liberty to conclude the argument.”

9. The order of the Industrial Adjudicator indicates that Sh. Rajiv Aggarwal, the learned counsel for the petitioner had almost concluded his arguments on 05.01.2018 and on his request the case was adjourned to 17.01.2018 for concluding his arguments. However, again on 17.01.2018, a date was requested by learned proxy counsel on the ground that Sh. Rajeev Aggarwal, Advocate is not available. The matter was again taken up by the Industrial Adjudicator on 18.01.2018 and arguments were not concluded by learned counsel for the petitioner who sought one more opportunity to argue on the preliminary issue. In his next

breath, the learned counsel for the petitioner sought time to conclude his arguments on all the issues. However, since the parties had already filed the written submissions, the Industrial Adjudicator listed the matter for orders for 27.01.2018 with liberty to the petitioner/workman to conclude his arguments.

10. The impugned order nowhere indicates that the Industrial Adjudicator has at any point of time directed the parties to address and conclude the arguments on all the issues. The submissions of the learned counsel for the petitioner that the Industrial Adjudicator vide order dated 18.01.2018 intends to decide both the issues together, is devoid of any merit. The writ petition is misconceived and incomprehensible.
11. Since the arguments were addressed before the Industrial Adjudicator in the month of January, 2018, it would be in all fairness, if both the parties are granted one more opportunity to address and conclude their respective arguments on the preliminary issue before the Industrial Adjudicator on the next date of hearing before the Industrial Adjudicator positively.
12. The petition along with pending application being CM No.2918/2018 is disposed of accordingly.

(VINOD GOEL)
JUDGE

MAY 22, 2018
"sandeep"