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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27.04.2018

LPA 86/2018, C.M. Nos. 8590/2018 & 8591/2018

THE KANGRA CO OPERATIVE BANK LTD Appellant
versus

SEEMA SHARMA Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Rajat Arora, Advocate

For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Letters Patent Appeal under Clause 10 of the Letters Patent Act assails the judgment and order dated 17.01.2018 passed by a learned Single Judge of this Court in W.P. (C) No.10740/2017 titled as "*The Kangra Co-operative Bank Ltd. vs. Ms. Seema Sharma*", whereby the petition instituted on behalf of the appellant (hereinafter referred to as 'management') was dismissed, whilst holding that they

failed to prove that a fair and proper enquiry was conducted against the respondent (hereinafter referred to as 'workman').

2. The facts as are necessary for the adjudication of the present appeal are briefly adumbrated as follows:
 - a. The workman is alleged to have misconducted herself by indulging in financial irregularities leading to the issuance of a charge sheet dated 03.01.2007.
 - b. Upon an enquiry being conducted into the alleged misconduct and on the basis of the findings arrived at by the Enquiry Officer, which were accepted by the Disciplinary Authority, the respondent's services were terminated on 25.02.2009.
 - c. The workman raised an industrial dispute which was referred for adjudication to the Industrial Adjudicator, *inter alia*, on the issue whether the management had conducted a fair and proper enquiry against the workman?
 - d. The Industrial Adjudicator treated the above-stated issue as a preliminary issue and after having perused the record and hearing the counsel for the parties, determined the same in the following manner:

“In the present matter from the enquiry proceedings it becomes very much clear that MW1 Sh. H.R. Thakur, has been the presenting officer during the enquiry proceeding. The person who has been representing the management during the enquiry against the workman and has been appearing as a witness in the court against the workman to prove the enquiry in the court, he cannot be stated to be an independent

witness and he must be a bias witness as he had been a representative of the management during the enquiry against the workman and as he is the representative of the management during the enquiry, he must be interested in the success of the enquiry during the enquiry proceedings. As such he cannot be said to be a witness free from bias which is a clear cut violation of principle of natural justice. It is just like a case where Public Prosecutor is appearing in a case as a witness in a criminal matter against the accused. The person who has been representing the management before the enquiry officer has been appearing as a witness against, the workman in the present matter. Accordingly, without going into further legalities and illegalities of the enquiry proceedings, I am of the considered opinion that the enquiry proceedings are liable to be set aside and only this ground is sufficient for setting aside the enquiry that the witness being a representative of the management during the enquiry is not a competent witness to appear in the court and prove the enquiry against the workman for the reasons stated above. Accordingly, management has miserably failed to prove the enquiry and enquiry report against the workman. Consequently, the enquiry proceedings and enquiry report is set aside. The enquiry issue i.e. issue no. 1 is decided against the management and in favour of the workman and it is held that enquiry was not fair and proper and is not in compliance of principle of natural justice.”

- e. Having concluded that the enquiry proceedings were not conducted in a fair and proper manner, the Industrial Adjudicator gave the management an opportunity to prove the charges against the workman in Court.

- f. Aggrieved thereby, the management instituted the said writ petition, which has culminated in the passing of the impugned order, upholding the decision of the Industrial Adjudicator.
3. The issue that arises for consideration is, whether mere production of a Presenting Officer, as a solitary witness, to prove the enquiry including report, conducted by the management against the workman, can be said to be violative of the principles of natural justice and renders the entire enquiry proceedings unfair and improper.
4. Mr. Rajat Arora, learned counsel appearing on behalf of the appellant has strenuously urged that the management has the right to present its case as a witness against the delinquent employee before an Industrial Adjudicator in a challenge to its propriety and fairness in conducting the enquiry proceedings and; therefore, the determination made in the impugned order to the effect that the Presenting Officer was not an independent witness to so appear and prove the enquiry proceedings is erroneous.
5. In order to buttress his submissions, Mr. Rajat Arora, learned counsel has placed strong reliance on the decisions in '*Management of Glaxo India vs. Presiding Officer*' reported as (1993) ILLJ 626 (AP) and *SVS Marwari Hospital vs. State of West Bengal*' reported as AIR 2015 Cal 82.
6. A perusal of the above-mentioned decisions would reveal that the decision in *Management of Glaxo India* (supra) is distinguishable, inasmuch as, in that case the Presiding Officer had appeared as

witness on behalf of the appellant before the Enquiry Officer which is not the situation in the present case. In the instant proceeding, the Presenting Officer was produced as a sole witness, to prove that the enquiry including report conducted against the workman, was fair and proper, before the Industrial Adjudicator.

7. Furthermore, the said decision has distinguished a decision of the Calcutta High Court reported as *Anil Kumar Ghosh vs. Union of India*, reported as *1990 CLR Cal 299*, wherein it was categorically held that “a witness cannot be a Presenting Officer”. Therefore, this decision does not come to the aid of the management.
8. In *SVS Marwari Hospital (supra)*, a full Bench of the Calcutta High Court considered the following question of law: “Whether mere participation of the Presenting Officer as a witness in the domestic enquiry is contrary to the principles of natural justice and renders the enquiry and the entire proceedings ineffective and without jurisdiction even in the absence of proof of prejudice to the employee concerned?”
9. Having considered the views of some other High Courts, the Calcutta High Court came to the conclusion that “the fact that the complainant acted as the Presenting Officer by itself will not vitiate a domestic enquiry if no other question of prejudice is there. There is no principle of natural justice which requires that a person who had lodged a complaint cannot be a Presenting Officer and a prosecutor in a domestic enquiry”. It further went on to observe that “In a domestic enquiry the management has the right to present its case against the delinquent employee. This is done through the Presenting Officer.

His job is to adduce evidence in support of the charges. Generally, he is not a witness. But if he also appears as a witness on behalf of the management, he has to be offered for cross-examination by the delinquent employee. The enquiry will stand vitiated if the delinquent is not allowed to cross-examine him.”

10. A plain reading of the above findings, clearly and unequivocally indicate that, in the opinion of the full Bench of the Calcutta High Court, there is no bar in law for a Presenting Officer to appear as a witness on behalf of the management in the domestic enquiry. However, the said dictum of the Calcutta High Court does not come to the aid of the management, inasmuch as, in the present case the Presenting Officer was produced as a solitary witness before the Industrial Adjudicator, in order to prove the enquiry including report. Upon a further reading of paragraph 17 of the decision in *SVS Marwari Hospital (supra)* itself it is clearly reflected that the relevant finding of the Full Bench in relation to the factual matrix of the present case was that “While the Enquiry Officer himself must necessarily be completely impartial and unbiased, the same cannot be expected of a Presenting Officer. He is after all, the management’s representative and his job is to advance the Management’s case.”

11. In view of the foregoing, reliance placed on behalf of the management, on the above decisions, does not advance its case and if we may say so, on the contrary, it can be inferred that the production of a Presenting Officer before an Industrial Adjudicator to prove the Enquiry Report is impermissible, in view of the circumstance that the

Enquiry Officer's job is to advance the Management's case which would make him an interested witness in the outcome.

12. In this behalf, we must further observe that it is not the bias attached to the Presenting Officer, as much as, the likelihood of the bias on account of his being a representative of the Management which is a determining factor.

13. In the present case, the learned Single Judge vide impugned order dated 17.01.2018, in W.P. (C) No.10740/2017 titled as "*The Kangra Co-operative Bank Ltd. vs. Ms. Seema Sharma*", held as follows:

"6. However, issue No.1 was treated as preliminary issue and parties were asked to adduce their respective evidence on the preliminary issue. After hearing the parties the Industrial Adjudicator found that MW1- H.R. Thakur who has been Presenting Officer during the enquiry proceedings and represented the petitioner during the enquiry proceedings against the respondent, has appeared as a witness in the Court against the respondent to prove the enquiry. The Industrial Adjudicator held that since he has been Presenting Officer and represented the petitioner, he cannot be an independent witness and must be interested in the success of the enquiry during the enquiry proceedings. The Industrial Adjudicator further observed that he cannot be said to be a witness free from bias which is in violation of principles of natural justice and it is just like a case where Public Prosecutor appears as a witness in a criminal case against the accused. The Industrial Adjudicator found that enquiry proceedings and enquiry report against the respondent have not been proved and

decided the preliminary issue No.1 against the petitioner.

7. Learned counsel for the petitioner submits that it was for the petitioner to decide which witness to be examined by them and which is an important and proper witness. He submits that the enquiry proceedings and report have been proved by MW1 and there was no occasion to reject his deposition.

8. It is admitted by learned counsel for the petitioner that MW1- Mr. H.R. Thakur has been the Presenting Officer and represented the petitioner throughout during the enquiry proceedings against the respondent.

9. The petitioner has not examined the Enquiry Officer or any of its employee as a witness in the Court to prove the enquiry proceedings and report and only chose to examine MW1 H.R. Thakur, Presenting Officer to prove the same. Mr. H.R. Thakur, MW1 was not an independent witness to appear in the Court and to prove the enquiry proceedings against the respondent. The Presiding Officer is not expected to become a persecutor. He is a biased witness. Therefore, the Industrial Adjudicator has rightly adjudicated the issue that the petitioner has failed to prove the enquiry proceedings and Enquiry Report against the respondent.”

14. A plain reading of the above-extracted paragraphs clearly and unequivocally indicates that; it was held by the learned Single Judge that the Enquiry Officer was not examined as a witness nor were other employees; the Presenting Officer was not an independent witness to appear in Court to prove the enquiry proceedings against the

workman. It was further held that the Presenting Officer is not expected to become a prosecutor and that he is a biased witness.

15. In the facts and circumstances elaborated hereinabove, we do not find any error with the conclusion arrived at by the learned Single Judge in the impugned order dated 17.01.2018. The issue is accordingly decided against the management in the facts and circumstances of the case.
16. In this behalf, it is also observed that in the present case, the Enquiry Officer was not cited as a witness on behalf of the Management before the Industrial Adjudicator. Furthermore, there was no attempt made to produce the Enquiry Officer in order to prove the enquiry proceedings against the workman. What was done was to present the Presenting Officer as the sole witness to prove the said report.
17. It is in this view of the matter that, the Industrial Adjudicator as well as the learned Single Judge of this Court arrived at a conclusion that the management had failed to prove that a fair and proper enquiry was conducted against the workman. We see no reason to interfere with the findings arrived at in the impugned order.
18. The appeal is accordingly dismissed. Pending applications also stand disposed of.
19. Before we part with the matter, it would be pertinent to point out that, no prejudice is occasioned to the management by the impugned order and the findings of the Industrial Adjudicator on the said issue, inasmuch as, they will have an opportunity to prove the charges

against the workman by producing cogent evidence before the Court of competent jurisdiction.

**SIDDHARTH MRIDUL
(JUDGE)**

APRIL 27, 2018

as

**V. KAMESWAR RAO
(JUDGE)**



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