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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 17.01.2018

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W.P. (C) 10740/2017 & CM Nos.43996-97/2017

THE KANGRA CO-OPERATIVE BANK LTD..... Petitioner

Through: Mr. Jagat Arora & Mr. Rajat
Arora, Advs.

versus

MS. SEEMA SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. Feeling aggrieved by the decision of the learned Presiding Officer, Labour Court-X Karkardooma Courts, Delhi (hereinafter referred to as "Industrial Adjudicator") deciding the preliminary issue "whether management had conducted a fair and proper inquiry against the workman?" against them, the petitioner has invoked the writ jurisdiction of this Court under Article 226/227 of the Constitution of India for issuance of a writ of certiorari for setting aside/quashing the order dated 05.08.2017.
2. The respondent was appointed as an Office Assistant with the petitioner bank vide office memorandum dated 16.04.1996 and

later on she was posted as Senior Assistant at Govindpuri Branch of the petitioner-bank. On 03.01.2007 a charge sheet was issued against her to the effect that she had misused her ID and wrongfully fed four entries in the month of July and August, 2006 in the bank computer. The respondent was suspended on 08.10.2006. Thereafter, one B.M. Malhotra was appointed as an Enquiry Officer to enquire into the charges levelled against the respondent. Since the enquiry was conducted in total violation of principles of natural justice and no procedure of domestic enquiry was explained to the workman at the start of enquiry and the Enquiry Officer behaved rudely and used indecent language against the workman, a representation was given by the respondent on 28.04.2007 to the General Manager of the petitioner. She also sent a reminder dated 27.08.2007. Vide letter dated 16.10.2007 Mr. Amrit Pal Singh was appointed as new Enquiry Officer in place of Mr. B.M. Malhotra. The respondent was issued another charge sheet on 10.12.2007 after 14 months of her suspension. The respondent replied to the charge-sheet on 19.01.2008 denying the charges. On 05.12.2008, the said Enquiry Officer gave his findings holding the respondent guilty of charges levelled against her. On 25.02.2009, Disciplinary Authority of the petitioner-bank had imposed the punishment of her dismissal from service.

3. Grieved of the dismissal order, the respondent approached the Industrial Adjudicator and filed her claim.
4. The petitioner filed its written statement denying each and every allegations of the respondent before the Industrial Adjudicator. The respondent filed rejoinder to the written statement of the petitioner and controverted the allegations mentioned therein and reaffirmed the allegations mentioned in her statement of claim.
5. On the pleadings of the parties, on 19.07.2010 the Industrial Adjudicator had framed the following issues:-
 - (i). Whether the management had conducted a fair and proper enquiry against the workman?
 - (ii). Whether the workman is terminated illegally or unjustifiably by the management?
 - (iii). Relief.
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.

10. Moreover, the petitioner is not to be prejudiced by the finding of the Industrial Adjudicator on the said issue. In its written statement, the petitioner had prayed that in case the court found that enquiry proceedings are vitiated, they sought an opportunity to prove the charges against the respondent. The Industrial Adjudicator has given an opportunity to the petitioner to prove the charges against the respondent in the court and for that purpose the case has been listed for its evidence.
11. The petitioner has failed to prove that a fair and proper enquiry was conducted against the workman/respondent and the Industrial Adjudicator has rightly set aside the Enquiry Report. The petitioner is not entitled to any relief.
12. The petition is dismissed with no order as to costs. In view of the dismissal of the petition all pending applications are dismissed.

(VINOD GOEL)
JUDGE

JANUARY 17, 2018
"sandeep"