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

Date of decision: 06.02.2019

+ **W.P.(C) 730/2019**

JORAWAR SINGH THROUGH LRS. Petitioner
Through: Mr.I.J.S. Mehra with
Ms.Tabbassum Firdausi, Advs.

versus

MOTHER DAIRY FRUIT AND VEGETABLE
LTD Respondent
Through: Mr.Raj Birbal, Sr. Adv. With
Ms.Raavi Birbal, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226/227 of the Constitution of India, the petitioner/workman seeks quashing of the impugned award order dated 31.10.2018 whereby his claim has been rejected upon finding that his termination was based on a valid departmental inquiry. The petitioner has also sought a direction for permission to cross-examine the respondent/Management's witness MW 2. At this stage, it may be appropriate to refer to the prayer in the writ petition which reads as under:-

"In view of aforesaid facts and circumstances it is prayed that the Hon'ble

Court may be kind enough to summon record of learned trial court, set aside order dt.31.10.2018 of learned trial court and to allow the petitioners to cross examine the witness of the Management, to hear and decide the claim petition on all issues instead of taking and deciding Enquiry Issue as Preliminary Issue and to decide the claim petition of workman by giving proper opportunity of being heard/argue on merits, in the interest of justice.”

2. Learned counsel for the petitioner submits that the petitioner was illegally terminated from his services by the respondent on 10/11.02.2011, whereafter he raised an industrial dispute which had remained pending for the last many years. He states that even though MW-2, namely Mr.Udai Kumar Thakur, had tendered his examination-in-chief only on 14.03.2018, the right of the petitioner to cross-examine him was closed by the Court on 20.07.2018 itself despite the fact that the matter was listed for his cross-examination on 18.07.2018 for the first time. He, thus, submits that the petitioner has been deprived of an adequate opportunity to cross-examine the said witness. He further submits that even the impugned award has been passed in violation of principles of natural justice as the petitioner's authorised representative was not even heard before the said award was passed. He draws my attention to the order dated 25.10.2018 passed by the learned Labour Court, when the matter was, for the first time, listed for arguments and states that even though the petitioner had on that date moved an application seeking an adjournment, the Court had on the very

same date after rejecting the petitioner's request for adjournment, reserved orders and that too only after hearing the arguments of the management. He, thus, submits that not only the impugned award but also the orders dated 20.07.2018, 11.09.2018 and 25.10.2018 are liable to be set aside.

3. After some arguments, learned counsel for the petitioner states that even though he has sought multiple reliefs in the writ petition, he has instructions to press only the reliefs for setting aside of the impugned award and for grant of one opportunity to cross-examine the management's witness MW-2, namely Mr.Udai Kumar Thakur.

4. Ms.Raavi Birbal, learned counsel for the respondent, who appears on advance notice, states on instructions that keeping in view the fact that the matter pertains to an old industrial dispute, she does not oppose the petitioner's limited prayer for grant of one more opportunity to cross-examine MW-2. She, however, prays that the same may be allowed only subject to costs.

5. In view of the fair stand taken by the learned counsel for the respondent as also the fact that the record in itself shows that the right of the petitioner to cross-examine MW-2 was closed within two days, I am of the considered opinion that interest of justice demands that the petitioner/workman be granted one last opportunity to cross-examine MW-2 and to address arguments thereafter.

6. In view of the fact that the petitioner is being granted one more opportunity to cross-examine MW-2, the impugned award

dated 31.10.2018, the order dated 20.07.2018 as also order dated 11.09.2018 have to be necessarily set aside and are accordingly set aside. It is made clear that the order dated 11.09.2018 is set aside only to the extent of permitting the petitioner to cross-examine MW-2 and the petitioner's prayer seeking review of order dated 27.10.2016 stands rejected. Even otherwise, the said order has already attained finality.

7. The writ petition is accordingly allowed in the above terms, subject to payment of Rs.2,000/- as costs by the petitioner to the respondent. As I am informed that the matter is listed before the learned Labour Court on 12.02.2019 for further proceedings, the learned Labour Court is directed to fix a convenient date for production of MW-2 to enable the petitioner to cross-examine him. It is made clear that only one opportunity of cross-examination will be given to the petitioner and in case he fails to avail the same for any reason whatsoever, the Court will be free to proceed with the matter as per law.

8. The writ petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

FEBRUARY 06, 2019/gm