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

Date of decision: 14.01.2019

+ **W.P.(C) No.8745/2010**

MAHESH KUMAR SHARMA Petitioner
Through Mr.L.S.Chaudhary, Adv. with
Mr.Ajay Chaudhary, Adv.,
Mr.Parambir Singh, Adv.,
Mr.Vishesh Kumar, Adv., Mr.Viresh
Chaudhary, Adv. & Mr.Anurag
Tomar, Adv.

versus

SAHARA INDIA PARIWAR Respondent
Through Ms.Neha Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the orders dated 20th September, 2010 and 23rd September, 2010 as also the Award dated 27th September, 2010 passed by the learned Labour Court, Karkardooma Courts, Delhi in ID No.225/05 (old) 432/08 (new).
2. The brief facts necessary for the adjudication of the present writ petition may be noted at the outset. The petitioner having been appointed as a Clerk/Assistant Junior Worker (Cashier) with the respondent on 23rd November, 1985, was dismissed from service vide order dated 14th March, 2005, based on the findings of a domestic

inquiry which, according to the petitioner, was conducted in a biased and pre-determined manner and without following the principles of natural justice. The petitioner, after serving a legal notice to the respondent, raised an industrial dispute which was referred to the learned Labour Court resulting in the aforesaid ID No.225/2005.

3. The petitioner then filed his affidavit of evidence before the learned Labour Court on 11th January, 2007, whereafter he was cross-examined on various dates and his evidence was finally concluded on 12th April, 2010. The record further shows that on 2nd August, 2010, the respondent's first witness/MW 1 had appeared before the Labour Court but his cross-examination had to be deferred as no authorised representative of the petitioner was present to cross-examine the said witness. The matter was, therefore, adjourned to 20th September, 2010, on which date MW 2 appeared before the Court and tendered his examination-in-chief by way of an affidavit. However, he could not be cross-examined on the same date as the authorised representative of the petitioner/workman was not present and at about 12:38 p.m., as recorded in the impugned order itself, the right of the petitioner to cross-examine MW 2 was effectively closed. Vide the same order, the Court also declined to grant any further opportunity to the respondent/management for producing MW 1 for his cross-examination on account of his failure to appear before the Court after his examination-in-chief was recorded on 2nd August, 2010. The Court then directed that the matter to be listed on 22nd September, 2010, for arguments on the preliminary issue regarding validity of the inquiry.

4. The record shows that on 20th September, 2010 itself at 1:00

p.m., the petitioner moved an application under Section 151 CPC read with Section 11 A of the Industrial Disputes Act, 1947 seeking recall of the impugned order passed earlier that day and requested that he be permitted to cross-examine MW 2. This application was taken up for hearing at 1:10 p.m. by the learned Labour Court and was dismissed by holding that no justifiable reasons had been given in the said application except for stating that the authorised representative of the workman was busy when the matter was called out earlier.

5. After the dismissal of the petitioner's aforesaid application, the matter was taken up on 23rd September, 2010, on which date the learned Labour Court, by relying on the unrebutted testimony of MW 2, passed an order deciding the issue of the validity of the inquiry against the petitioner. Subsequently, vide the impugned Award dated 27th September, 2010, which was again based on the unrebutted evidence of MW 2, the learned Labour Court rejected the claim of the petitioner. It is in these circumstances that the present petition has been filed impugning the order passed on dated 20th September, 2010 as also the consequential order dated 23rd September, 2010 and Award dated 27th September, 2010.

6. The only short submission made by the learned counsel for the petitioner is that it being an admitted position that MW 2, on whose unrebutted testimony the issue of the validity of the inquiry was held against the petitioner and the impugned orders were passed, had appeared before the learned Labour Court for the first time only on 20th September, 2010, there was no reason for the Court not to accommodate a bona fide request of the petitioner/workman for a

passover so as to enable his authorised representative to cross-examine the said witness. I am of the view that even though the impugned order dated 20th September, 2010 records that no cross-examination had been carried out despite an opportunity being granted, the very fact that the said order had been passed at 12:38 p.m. as recorded in the order itself and an application for recall of the same was moved at 1:00 p.m. on the very said date, which was also dismissed at 1:10 p.m. as recorded in the order itself, makes it evident that there is merit in the submission of learned counsel for the petitioner, that he was always willing to cross-examine MW 2 and if he had been granted a short accommodation by way of a passover, MW 2's cross-examination could have taken place on the same day.

7. Learned counsel for the respondent has tried to defend the impugned Award on merits but has not been able to dispute the aforesaid position that the application for recall of the order passed at 12:38 pm on 20th September, 2010 was dismissed on the very same day at 1:10 p.m. She, however, submits that even the respondent was denied an opportunity to produce MW 1 for cross-examination and, therefore, states that in case the petitioner is granted an opportunity to cross-examine MW2, the respondent may also be granted liberty to produce MW 1 for cross-examination. In these circumstances, I am unable to appreciate as to how the learned Labour Court has come to a conclusion that the cross-examination of MW 2 was not carried out despite an opportunity or that there was such a pressing hurry to close the right of the petitioner/workman to cross-examine MW 2, especially when it is an admitted position that MW 2 had appeared

before the Court for the first time only on 20th September, 2010. Therefore, it cannot be stated that the petitioner had deliberately avoided to cross-examine MW 2 or was taking unnecessary adjournments for the said purpose. Although the learned Labour Court was fully justified in directing that the proceedings be expedited in view of the fact that it was an industrial dispute relating to the year 2005, in my considered opinion there was no justification for the learned Labour Court to proceed with such a tearing hurry by giving a go bye to the principles of natural justice. It must be borne in mind that the right of cross-examination is vital for a workman to defend himself against the evidence tendered by the witnesses produced against him. The Court ought not to prejudice the workman by closing this right in undue haste as it is an important tool to arrive at the truth.

8. Therefore, the order dated 20th September, 2010 as also the consequential order dated 23rd September, 2010 and impugned order dated 27th September, 2010, cannot be sustained and are set aside. The matter is remanded back to the learned Labour Court to proceed with the matter from the stage of cross-examination of MW 1 and MW 2. It is made clear that the petitioner will not be granted more than two opportunities for cross-examining the aforesaid witnesses.

9. Keeping in view the fact that the matter pertains to the dismissal of the order passed in 2005, the learned Labour Court is requested to expedite the hearing. The petitioner would be at liberty to move an appropriate application before the Court with an advance copy to the learned counsel for the respondent appearing before this Court, for fixing a date for the appearance and cross-examination of

MW 1 and MW 2.

10. The petition is allowed in the aforesaid terms with no orders as to costs.

(REKHA PALLI)
JUDGE

JANUARY 14, 2019/aa



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