



CWP-11548-2024

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-11548-2024

Date of decision: 04.09.2024

M/S GROZ BECKERT ASIA PRIVATE LIMITEDPETITIONER**Vs.****VIKAS ANI AND ANOTHER ...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. A.S. Narang, Advocate,
Mr. K.S. Sandhu, Advocate,
Ms. Manpreet Kaur, Advocate and
Ms. Ishita Kaur, Advocate
for the petitioner.

Mr. K.L. Arora, Advocate
for respondent No.1.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 09.02.2024 (Annexure P-13) whereby Labour Court has rejected application of the petitioner-Management to re-examine its witness.

2. The petitioner moved an application under Section 33(2)(b) of Industrial Disputes Act, 1947 seeking approval of termination of respondent No.1-workman. The Management led its evidence and during the course of evidence, it examined Ajay Kumar Patyal as MW-2. He was examined on 03.07.2023 (Annexure P-7) and his cross-examination took place on 27.09.2023 (Annexure P-9). On the said date, he was partially cross examined, thus, the matter was adjourned to 20.10.2023 and on the said date, the Presiding Officer was on leave and the matter was adjourned to 20.11.2023. On 20.11.2023, the cross-examination of MW-2 was completed. In his cross examination on 27.09.2023, he had deposed



that he has to check his record, if Vikas Ani was a protected workman or not. The said witness did not produce record on 20.11.2023 and cross-examination was concluded. The Management on 11.12.2023 moved an application before Labour Court seeking re-examination of its witness i.e. MW-2.

3. The Labour Court by impugned order dated 09.02.2024 has rejected application of the Management on the ground that act of Management amounts to filling the lacunae in Evidence and Management cannot be permitted to re-examine its witness especially when cross examination took place on two different dates and the witness did not produce any document as disclosed in the cross-examination dated 27.09.2023. The findings recorded by Labour Court are produced as below:-

“It is argued by Learned Representative for the applicant-management that the management is seeking to re-examine MW2 on the ground that MW2 had checked the record if Vikas Ani is a 'protected workman' or not. At the end of his cross-examination on 20.11.2023, MW2 wanted to explain and make a statement to clarify the above-mentioned fact but he was not permitted to do that. To my opinion, the above said argument of Learned Representative for the applicant-management carries not force because the perusal of the cross-examination of MW2 recorded on 20.11.2023 would show that no such request as alleged was made by MW2 for making any clarification with regard to the fact that if Vikas Ani is a 'protected workman' or not. Since, no such request was made, thus there is no order of the Court whereby the request of MW2 was declined. During cross-examination of MW2, wherever required he made voluntarily statements which were duly recorded. Testimony of MW2 was recorded in the presence of Learned Representatives for both the parties. At the end of cross-examination MW2, on 20.11.2023, Learned Representative for the applicant-management did not make any request seeking to re-examine the witness on any point. Moreover, MW2 in his cross- examination partly recorded on 27.09.2023 has admitted the suggestion put by the respondent-workman as correct that being General Secretary of G.B.A. workers' union, Vikas Ani was



*protected workman. MWI immediately changed his stance and again said that he has to check from the check if Vikas Ani was a protected workman or not. Re-examination gives an opportunity to reconcile the discrepancies between the statements in examination-in-chief and cross-examination and also provides an opportunity to the parties to examine the statements inadvertently made at the stage of cross-examination remove confusions or ambiguities in the deposition on the evidence by cross-examination. Re-examination cannot be used to give chance to a witness to undo statement made in cross-examination and to fill lacunae in evidence. The applicant-management did not offer any explanation as to why Learned Representative for the applicant-management did not exercise his right of re-examination of the witness immediately after conclusion of his cross- examination. Now at this stage granting permission to re-examine MW2 would amount to providing of an opportunity to the applicant-management to fill up the lacunae of its case, which will certainly cause serious prejudice to the interest of respondent-workman. The law laid down in the judgments referred by Learned Representative for the applicant-management reported in **2022(3) RCR (Civil) 842 P&H tilted as Surlekha Rani @Sulekha Rani Versus Pardeep Kumar and 2004(8) SLR 781 Cal. titled as Statesman Ltd. & Another Versus The First Industrial Tribunal & Others**, is well recognised by this Court but the ratio of the rulings is not applicable to the facts of the present case.*

4. Mr. A.S. Narang, Advocate submits that petitioner may be put to costs, however, it may not be denied opportunity to re-examine its witness because matter is at Management Evidence stage and workman would get full opportunity to again cross examine the witness as well as examine documentary evidence led by the Management.

5. Per contra, Mr. K.L. Arora, Advocate submits that Labour Court has recorded categoric and reasoned findings. The petitioner is trying to fill-up lacunae in its evidence which would prejudice rights of the workman.

6. I have heard counsel for the parties and with their able assistance perused the record.
7. From the perusal of record, it comes out that Labour Court has passed detailed and reasoned order while rejecting application of Management seeking re-examination of its witness. The Court has noticed demeanor of aforesaid witness as well as representative of Management.
8. Considering the totality of facts and circumstances, the Labour Court has come to a conclusion that permission to re-examine would amount to an opportunity to fill up lacunae in evidence of the Management. The findings recorded by Labour Court seems to be just and fair. There is no reason to invoke writ jurisdiction especially when matter is pending at evidence stage before the Labour Court and petitioner has opportunity to lead other evidence(s) in support of its contentions.
9. Dismissed.

04.09.2024
manoj

JAGMOHAN BANSAL

JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No