

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

+ LPA 321/2009

MAHESH CHAND

Through

..... Appellant
Mr. Jay Salva with
Mr. Pravin Sharma and
Ms. Meenakshi, Advocates

Versus

GODREJ SARA LEE LTD.

Through

..... Respondent
Mr. Rajiv Tyagi and
Ms. Chanchal Biswal,
Advocates

Reserved on : 3rd September, 2009

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Date of Decision : 14th September, 2009

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J

1. Present letters patent appeal has been filed challenging the judgment dated 20th November, 2008 whereby appellant-petitioner's writ petition being W.P.(C) 17866/2005 challenging the Award dated 20th May, 2005 passed by Labour Court-VII, Delhi has been dismissed.

2. Learned Single Judge held that in view of the ample material on record the Labour Court's finding that there exists no relationship of

employee and employer between appellant-petitioner and respondent-Management, is unexceptionable and could not be said to be based on no evidence so as to warrant any interference by a writ court.

3. Mr. Jay Salva, learned counsel for appellant-petitioner submitted that Labour Court and learned Single Judge failed to appreciate not only the true import of Ex. WW1/4, Ex. WW1/5 and Ex. WW1/6 but also the evidence led by respondent-Management as well as the order sheets dated 30th March, 2009 and 29th November, 2006 wherein respondent-Management had admitted that appellant-petitioner was their workman. Consequently, Mr. Salva submitted that the finding arrived at by the Labour Court was perverse and should be interfered with by the learned Single Judge.

4. Ex. WW1/4 is a letter written by respondent-Management addressed to the concerned Transport Authority wherein they had admitted that appellant-petitioner was their driver. The said letter dated 27th November, 1998 is reproduced hereinbelow for ready reference:-

GODREJ HI CARE LTD.
REGIONAL OFFICE (NORTH)
LAXMI INSURANCE BUILDING
2/2 ASAF ALI ROAD, NEW DELHI-110002
TEL 3231562 FAX 3230171

Date : 27 Nov 98

To
The Transport Authority,
East Zone-LONI,
DELHI.

Sub: ATTESTING THE PARTICULARS OF DRIVING
LICENSE

Sir,

It is requested from your office to attest the Driving License particulars of our company driver Mr. Mahesh Chand.

Please find written below the particulars of Mr. Mahesh Chand whose license has been issued from your office.

Name – MAHESH CHAND

Father's Name – SHRI PREM CHAND

Driving License No.- P93051953 EZ

The license of the above mentioned person has been submitted in the Police Station-and these particulars are required by the insurance company.

Kindly arrange to attest the particulars.

Thanking you,

For GODREJ HI CARE LTD.

Sd/-

(Regional Manager Customer Service)

*REGISTERED OFFICE PIROJSHA NAGAR, EASTERN
EXPRESS HIGHWAY, VIKHROLI (EAST)
BOMBAY-400 079 PH. : 5170650
5170508, 5172547 FAX : 5171191*

(emphasis supplied)

5. Ex. WW1/5 is a certificate issued by the Branch Manager of respondent-Company certifying that appellant-petitioner had been employed as a driver on temporary basis from 1st November, 1996 to December 15, 1998. The said certificate is reproduced hereinbelow for ready reference :-

*Godrej Hi Care Limited
Luxmi Insurance Building
2/2a, Asaf Ali Road,
New Delhi-110 002.*

TO WHOM SO EVER IT MAY CONCERN

This is to certify that Mr. Mahesh Chand S/o Shri Prem Chand, has worked with the above mentioned organization on a temporary basis as a Driver from November 01, 1996 to December 15, 1998.

During this period of two years his conduct and behavior was very good.

Sd
SIBASHISH SARKAR
Branch Manager.

(emphasis supplied)

6. Ex. WW1/6 is an inter-office memorandum indicating receipt of keys of respondent-Management’s car from appellant-petitioner. The said memo is reproduced hereinbelow for ready reference :-

Godrej Hi Care Ltd.
INER OFFICE MEMO

<i>From: Videep</i>	<i>To: Mahesh</i>
<i>Place:</i>	<i>Place:</i>
<i>Ref.: Date:</i>	<i>Ref.:</i>

Received the keys of Car No. DL6CA4489

- 1. Keys*
- 2. RC paper (Duplicate) + insurance*
- 3. Stereo*
- 4. Spare Wheel*
- 5. Jack*
- 5. Car Cover*

The Car in good condition.

Sd/-
15/12

(emphasis supplied)

7. In cross-examination, respondent’s witness i.e. Deputy Manager (Human Resources), admitted the aforesaid three documents. The relevant portion of the cross examination of said witness is reproduced hereinbelow for ready reference :-

“Mr. Vidip Singh was HRD Assistant of our Delhi Office. It is correct that Ex.WW1/4, was issued by him. I can’t deny the signature of our officer Sibashish Sarkar on Ex.WW1/5. I have seen Ext.WW1/6. It is an inter office memo. It is correct that it bears signature of Vidip Singh. I have no knowledge of (not readable) in 1998, of Car No.DL6CA 4489.”

(emphasis supplied)

8. From the order sheet dated 29th November, 1996, it is apparent that the respondent-Management's Counsel admitted before the learned Single Judge that appellant-petitioner used to be engaged as a driver as and when some respondent's official used to visit Delhi. The order dated 29th November, 2006 is reproduced hereinbelow for ready reference :-

"29.11.2006

Present: Mr. Praveen Sharma for the petitioner.
Mr. T.C. Gupta for the respondent.

WP(C) No. 17866/2005

During arguments, a perusal of the record shows that official of the respondent company had issued certificate to the petitioner workman about his employment in the company by period of two years. This certificate is admitted by the management. During cross examination another letter which was written by the official of the management company to transport authority for verification of the licence of the petitioner workman has also been admitted wherein workman has been shown employee of the management. Despite these letters the trial Court brushed aside this documentary evidence and held that there was no employer/ employee relationship between the petitioner and the management. A perusal of the Award of the trial Court shows that detailed affidavit from high functionary of the management was filed. He did not bother to refer to the cross examination of the witnesses of the management as well as witnesses of the workman wherein these documents were categorically admitted. It is stated by the learned counsel for the respondent that petitioner only used to be engaged as and when some high official used to visit Delhi but this fact is not pleaded in the affidavit filed by the management. The management had altogether denied the relationship. Workman stated that Mr. A. Mahendran, Managing Director and Mr. M.Y. Verma, Marketing Director also used to visit Delhi whenever they used to visit Delhi apart from his regular employment. These two persons have not been examined by the Labour court because it was not pleaded before the Labour Court so learned counsel for the respondent agreed they are ready to appear before the Labour Court. I consider it would be better if they should appear before this Court.

To come up on 18th December 2006."

(emphasis supplied)

9. Though an application for modification/clarification of order dated 29th November, 2006 was filed, learned Single Judge did not recall the order in its entirety. In fact, the order dated 29th November, 2006 was clarified only to the extent that it was not mandatory for respondent-Management to produce its Managing Director or Marketing Director before this Court. The order dated 28th September, 2007 is reproduced hereinbelow for ready reference :-

“Present: Mr. Rajiv Tyagi, Advocate for the respondent.

CM No.15596/2006 in WP(C) No.17866/2005

This application has been made for clarification of order dated 29th November, 2006 wherein after making observations about the facts pleaded, this Court observed that it would be better if the Managing Director Mr. A. Mahendran and Marketing Director Mr. M.Y. Verma should appear before this Court. The purpose of this observation was that a settlement could be arrived at between the parties in presence of senior officials of the company. Their presence was not ordered otherwise. The Regular Bench may or may not call them according to its discretion.”

The matter be put up before the Regular Bench on 11th October, 2007.”

10. It is pertinent to mention that during the proceedings before the learned Single Judge, appellant-petitioner had placed on record a summon from the Court of MACT, Delhi in respect of an accident which had occurred while appellant-petitioner was driving a car owned by respondent-Management.

11. In view of the aforesaid facts, we have to examine the finding of facts arrived at by the Labour Court as the learned Single Judge has

extensively relied upon the same. The relevant portion of the Labour

Court's order reads as under :-

“The workman has relied on two letters namely Ex.WW1/3, 4 & 5 to show that these were issued by the management in connection with driving of vehicle. I have gone through these two documents. Exh.WW1/4 is a letter allegedly written on 27.11.98 by management company to Transport Authority in East Zone-Loni, asking it to verify the Driving License of driver Mahesh Chand and Ex.WW1/5 is the original letter certifying that he worked as a driver on temporary basis, signed by the Branch Manager. Ex.WW1/6 is another letter bearing no particular date which is Inter Office Memo in token of receiving keys of Car No.DL6CA4489 and other accessories of the car. I have considered these documents Ex.WW1/5 shows his working as temporary driver for two years i.e. w.e.f.1.11.96 to 15.12.98. This is in total consideration of the evidence of the workman that he has been working with the management for four years. This letter also does not bear any date and is imply a computer typed. This document creates doubt in the case of the workman. The other letter Ex.WW1/4 asking for Driving License asking verification of Driving License by the company has been challenged by the management in its evidence as an act of fabrication and was never issued by the company. Ex.WW1/6 also does not bear any date and is not conclusive of any fact of employment. In my considered view, these documents themselves are not sufficient to establish an employer employee relationship and are of doubtful origin. These documents would have some value only if there were some basic primary nature of evidence of more acceptable type as already mentioned in the forum of ESI, PPF records maintained by the company or PPF No. etc. which liability the company would not have escaped if the workman was working there. There is no evidence of even leave taken or refused in four years. The workman has not been able to question the detailed affidavit filed by the management including the evidence of attendance sheet filed for the period of Oct, 2000 to Dec 2001. None of the attendance shows workman in the long period of four years. On a total balancing of evidence, I don't find that workman has been able to discharge his burden of evidence to prima facie show that he was a driver of the company. So, I hold that there existed no relationship of employer and employee between the parties.”

(emphasis supplied)

12. Though it is a salutary principle of law that writ court neither sits in appeal over the decision of the Labour Court nor re-appreciates the

evidence merely because another view is possible, but it is equally well settled that where a finding of fact arrived at by the Labour Court is perverse or contrary to evidence, writ court has not only the power but also a duty to rectify such an error.

13. In the present case, the admitted documents clearly prove beyond doubt that appellant-petitioner was employed as a driver by the respondent-Company. We find that in the present case the Labour Court without giving any reason has reached the conclusion that the documents filed by appellant-petitioner are of a doubtful nature. Moreover, cross-examination of respondent's witness as well as this Court's order dated 29th November, 2006 clearly prove that respondent-Management had, in fact, admitted that appellant-petitioner was employed as its driver. In the present case, the said admission has not been explained by respondent-Management. In our opinion, admission is the best piece of evidence and respondent-Management must be held bound by the same.

14. Consequently, the present appeal is allowed. Accordingly, impugned judgment dated 20th November, 2008 and Award dated 20th May, 2005 are set aside and appellant-petitioner's services are held to have been illegally terminated. Appellant-petitioner is held entitled to reinstatement but considering the fact that he has not worked with respondent-Management since December, 1998, it is directed that appellant-petitioner would only be paid 50% back wages from 15th

December, 1998 till the date of reinstatement.

15. With the aforesaid observations, present appeal stands allowed.

MANMOHAN J.

CHIEF JUSTICE

SEPTEMBER 14, 2009

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