

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

+ LPA 318/2009

ANAND PRAKASH

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

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

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) 17868/2005 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 Labour Court's findings that there was no appointment letter and the appellant-petitioner even failed to specify his date of appointment as well as the fact there was no evidence that the appellant-petitioner had worked with the respondent-Company, Award passed by the Labour Court called for no interference in Article 226 jurisdiction.

3. Learned counsel for appellant-petitioner submitted that both the

learned Single Judge as well as the Labour Court failed to appreciate that appellant-petitioner had produced the following documents :-

- (i) WW1/3- Letter dt.9.8.96 addressed by Transelektra Domestic Products Limited stating that Appellant Shri Anand Praskash, was their employee and pay orders be handed over to him.
- (ii) WW1/5- is a document issued by Competent Automobiles Co. Ltd. showing that on behalf of Godrej Hicare Ltd. car was given for servicing/repair by the Appellant.
- (iii) WW1/6- is the Bill for the purchase of Battery for the car owned by the Respondent Management.

4. Learned counsel for appellant-petitioner further submitted that learned Single Judge failed to take into account the specific order dated 29th November, 2006 passed by the Predecessor of learned Single Judge wherein it was recorded that M/s. Transelektra Domestic Products Pvt. Ltd. and M/s. Godrej Sara Lee Ltd. are the same company as there was only a change of name of respondent-Company in the year 1999.

5. Having heard the parties and having perused the file, we find that the Labour Court has in its Award dated 20th May, 2005 considered all the documents referred to by learned counsel for appellant-petitioner and after extensively referring to the same, reached the conclusion that there exists no employer and employee relationship between the respondent-Company and appellant-petitioner. The relevant portion of Labour Court's Award is reproduced hereinbelow for ready reference :-

“ I have considered the evidence on record and heard ld. AR for the workman and management. It is a case where the management is a corporate entity and it has filed very detailed affidavit from a high functionary of the management i.e. Dy.Gen. Manager, in which it has been denied that the workman was ever employed by

the company. In support of its case, management also filed on record the attendance sheets for number of years showing of the employees engaged by it. Photocopies of the attendance sheets are on the file. AR for the workman never demanded the original of these registers. The law is well settled that burden of proving relationship of employer and employee lies on the workman. The inference regarding this relationship has to be inferred from facts and circumstances in each case and no general view can be taken in such matters. As already stated the workman in this case has not mentioned firstly specifically date of appointment. The character of employer in this case is very important as shown by the affidavit of management with its Head Quarter at Bombay and Regional Office at Delhi, and all administrative activities are being done in a professional manner and are well documented. It is not conceivable that management of this character will appoint a person as driver without any appointment letter. Workman has failed to prove a single letter or any other oral or documentary evidence to show his continuous working or any payment having been made to him by way of copies of payment vouchers of pay's register or any other record of public authority like Insurance, EPF, or ESI etc. which is compulsorily to be maintained by a management industry. Four years is a long period and existence of no evidence of any sort including records of leave taken etc. during this period in possession of the workman casts a serious doubt on the averment of the workman that he had been employed by the management particularly when it has been very strongly denied by the management. Workman in his cross examination has admitted that he had not filed any letter by which he was employed by the management nor he has filed any letter whereby his services were terminated. He has also admitted that he did not make any complaint to the Labour Authorities regarding denial of service conditions mentioned by him in para 4 and 5 of the affidavit. He has alleged in his affidavit that his signatures were forcibly obtained on blank papers and vouchers . If that is assumed to be correct, natural human conduct would be to expect him to lodge a police report against the management in obtaining his signatures on blank

papers. No such report has been made nor it has been pleaded.

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. Ex.WW1/3 is a letter allegedly written on 9.8.96 by a different management of Transelektra Domestic Products Ltd. Ex.WW1/5 is a letter from Competent Automobiles Co. Ltd, for some fittings with Caralytic Converter & Laminated with Screen. Ex.WW1/6 is a receipt of purchase of battery. These documents allegedly show service of workman, which are alleged proof by the management. I have considered these documents. These documents do not prove anything to show 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 form 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)

6. In view of aforesaid findings, we are of the opinion that this is not a case where Labour Court has failed to take into consideration the documents produced by appellant-petitioner. In fact, after extensively considering the entire documents on record, Labour Court had reached

the conclusion that there exists no employer and employee relationship between respondent-Company and appellant-petitioner. It is pertinent to mention that while Ex. WW1/3 has been issued by the previous management, Ex.WW1/5 and Ex.WW1/6 are only receipts of handing over of a car and a battery bill respectively which in no way conclusively prove an employer-employee relationship between the appellant-petitioner and respondent-management. Moreover, as the findings arrived at by the Labour Court are neither perverse nor based on no evidence, we are of the view that they call for no interference in writ jurisdiction as well as in a Letters Patent Appeal (refer :- *Sadhu Ram Vs. Delhi Transport Corporation* reported in *AIR 1984 SC 1467*, *Harbans Lal Vs. Jagmohan Saran* reported in *AIR 1986 SC 302*, *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and others* reported in *AIR 1988 SC 2168*, *Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Worker's Union and Another* reported in *AIR 2000 SC 1508* and *General Manager, Oil & Natural Gas Commission, Silchar Vs. Oil & Natural Gas Commission Contractual Workers Union* reported in (2008) 12 SCC 275).

7. Consequently, present appeal being devoid of merits is dismissed but with no order as to costs.

MANMOHAN, J.

CHIEF JUSTICE

SEPTEMBER 14, 2009

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