

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

+ LPA 334/2009

GULSHAN RAI MADAN Appellant
Through Mr. G.D. Gupta, Senior Advocate as Amicus
Curiae with Mr. Shahzad Khan, Advocate.
versus

GOVT OF NCT OF DELHI & ANR. Respondents
Through Ms. Raavi Birbal, Advocate for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER
% **15.12.2009**

1. This appeal is directed against the judgment dated 2.9.2008 passed by the learned Single Judge dismissing the Appellant's Writ Petition (Civil) No. 6382/2008.

2. The facts leading to the filing of this appeal are that the Appellant was on 8.5.1989 appointed as "Customer Support Executive" in Grade M-7 in Tata Telecom Ltd. (presently known as Avaya Global Connect India), Respondent No. 2, herein at New Delhi. He was earning a salary of Rs.18,000/- per month. Subsequently, the Appellant was promoted to Grade M-6 as "Senior Engineer Strategic Accounts". Against the order dated 10.10.2002 passed by the Respondent No. 2 removing him from service, the Appellant on 23.1.2005 filed a statement of claim before the Labour Court. On 22.9.2004 the Secretary (Labour), Government of National Capital Territory of Delhi (GNCTD) referred to the Labour Court an industrial dispute on the issue whether the termination of the services of the Appellant by the Respondent No. 2 was illegal and unjustified and if so, the consequential relief to which the Appellant was entitled. In its written statement before the Labour Court Respondent No. 2 raised a preliminary objection that the Appellant was not a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 (ID Act).

3. On 3.9.2007 the Labour Court made an Award holding that the Appellant was not a workman within the meaning of Section 2(s) ID Act and, therefore, the dispute raised was not an industrial dispute within the meaning of Section 2(k) of the ID Act. Aggrieved by the aforementioned Award, the Appellant filed Writ Petition (Civil) No. 6382 of 2008 in this Court which came to be dismissed by the impugned order dated

2.9.2008.

4. At our request Mr. G.D. Gupta, learned Senior Counsel kindly consented to be Amicus Curiae to the said Appellant and addressed arguments. It is submitted by Mr. Gupta that the finding of the learned Single Judge that the Appellant was not a workman on the ground that exception (iv) to Section 2(s) of the ID Act stood attracted was erroneous in the facts and circumstances of the case. Placing reliance upon the judgment of the Supreme Court in *Anand Regional Cooperative Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah*, (2006) 6 SCC 548. It is submitted there was a single instance where the Appellant assisted the management in supervising the work of contract labourers, since the contractor who employed them was not available on the given date. This by itself could not change the nature of the functions assigned to the Appellant thereby holding him not a workman within the meaning of Section 2(s) of the ID Act. Mr. Gupta referred to certain documents on record which show that the Appellant himself attended to the complaints of customers and therefore he was a workman for all practical purposes. He also referred to the organizational chart which showed that the Appellant was at the bottom rung. In sum, it is submitted that there were no persons working below the Appellant in the organization and, therefore, he could not be said to be a supervisor or a manager and be held to be outside the definition of 'workman' under Section 2(s) of the ID Act.

5. On the other hand, Ms. Raavi Birbal, learned counsel appearing for Respondent No. 2 placed reliance on the judgments of the Supreme Court in *H.R. Adyanthaya and others v. Sandoz (India) Ltd.*, (1994) 5 SCC 737, *Burmah Shell Oil Storage and Distribution Company of India Ltd. v. The Burma Shell Management Staff Association*, 1970 (3) SCC 378 and *Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh*, (2005) 3 SCC 232. She contended that on his own admission, the Respondent was not a workman.

6. Section 2(s) of the Industrial Disputes Act, 1947 which defines workman reads as under:

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to

an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

7. The evidence of the Appellant before the Labour Court shows that even according to the Appellant he was performing the work of Supervisor. The relevant portion of his cross-examination is as under :

“I was issued appointment letter of the time of my employment. I was appointed w.e.f. 1st June 1989. Prior to my appointment I had submitted my bio-data to the company. I have not brought today copy of bio-data. I was retired from Indian Air Force as a servant. I am a diploma holder in electronics and communication. I have also passed Computer Engineering Examination from AMIE. I have completed said course prior to my retirement. Initially I joined as a trainee Air Craftman in Indian Air Force and thereafter I was promoted as Air Craftman, Leading Air Craftman, Leading Air Corporal Servant. It is correct that the above promotional post under supervision of request. I have also passed written examination of junior warrant officer in Indian Air Force. Thereafter, I joined Modi Xerox as a technician and worked approximately four years. My last resignation was Telecommunication Officer. Since I was in Modi Xerox, the Tata Telecom installed their EPABX to Xerox I interacted through Xerox and applied directly to the Rama Mahajan and given my bio-data.

It is correct that I joined Tata Telecom as a Executive Cadre. It is correct that Ex. WW1/M1 was issued by the management at the time of my appointment which is my initial appointment letter. The Ex. WW1/M1 bears my signature of point ‘A’. It is correct that my first designation as per Ex. WW1/M1 i.e. customer support executive in Grade M-7. The staff of the company wherein I was appointed are covered under S-Grade. It is correct that the grading of staff members from S-1 to S-6. I was lastly promoted from Grade M-7 to M-6 as a Senior Engineer. I was again re-designated as Senior Engineer, Strategic Accounts. It is correct that I have made correspondence with Scope Complex situated at Laxmi Nagar, opposite Telephone Exchange Building. Again said I was working there. I was the incharge of that project and getting the

assistance of my manager. I was supervising the job of contractual workman, who were working under my supervision there was installation of EPBAX including cabling work in Scope Complex. It is correct that my last drawn salary were more than Rs.18,000/-.

(emphasis supplied)”

8. The Respondent further stated during his cross-examination as under :

“I was also supervised the project carrier Aircon Gurgaon and Eastern Command in Indian Army during my of employment with Tata Telecom. Three were contractual workers working in the abovesaid project, who were working under my supervision and control. Those contractual workers of the abovesaid project were 6 to 7 and again said about 10 to 12.

(emphasis supplied)”

9. It is plain to us that even according to the Appellant the nature of his duties while employed with the Respondent No. 2 was such that he was outside the purview of Section 2(s) of the I.D. Act read with exception (iv) thereof. It is not as if his supervisory work was on a single occasion as contended. Further, he was admittedly earning more than Rs.18,000/- per month. Ultimately each case has to be decided on the facts and the evidence that has come on record.

10. We accordingly find no merit in this appeal and is dismissed as such with no orders as to costs.

CHIEF JUSTICE

S.MURALIDHAR, J

DECEMBER 15, 2009

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