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

+ W.P.(C) 6624/2016

PRADEEP

..... Petitioner

Through: Mr.A.P.Dhamija &
Mr.J.P.Singh, Advocates

versus

MANAGEMENT OF
M/S TATA TEA LIMITED

..... Respondent

Through: Mr.Bhaskar Tiwari, Mr.Anant
Kumar & Mr.Ramakant Shukla,
Advocates

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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01.08.2018

1. By way of this writ petition, petitioner/claimant has prayed for setting aside the Award dated 6th June, 2015 passed by the Presiding Officer, Labour Court No.XVII, Karkardooma Courts, Delhi in ID No.68/10/99.

2. The grievance of the petitioner is that despite there being sufficient material on record to prove that the petitioner was working as driver with the respondent/management, learned labour Court erred in returning a finding that the petitioner/claimant was a personal driver to Mr.M.Balakrishnan, an Advisor, Corporate Affairs with the management which is contrary to the documentary evidence adduced by the petitioner.

3. In ID No.68/10/99, the reference was sent to the labour Court No.XVII, Karkardooma Courts, Delhi with the following terms:-

“Whether services of Sh.Pradeep have been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. In the claim statement, the petitioner/claimant had pleaded that he was initially appointed as a driver with M/s Tata Oil Limited in the year 1986 and he used to drive the cars owned by the Company and was also getting reimbursement for uniform and slippers. In the year 1993, M/s Tata Oil Mills Company Ltd. was sold to M/s Hindustan Lever Limited and in the year 1994, he was transferred to M/s Tata Tea Limited as a driver where he was also issued an identity card. On 30.10.1996, he requested the management to grant him full salary, allowance and other benefits at par with other employees of the company. When he raised this demand he was asked by the management not to report for duty. Even prior thereto, neither he was served with any notice of termination nor given notice pay or retrenchment compensation.

5. The facts pleaded in the claim statement were vehemently denied by the respondent/management pleading that the claimant was the personal driver of Mr.M.Balakrishnan, who was working with M/s Tata Oil Mills Company Ltd. till he retired in the year 1993. Thereafter, Mr.M.Balakrishnan was retained as an Advisor, Corporate Affairs with the management with fresh terms of appointment and his perquisite included a company car and reimbursement upto ₹1600/-

per month for a driver-cum-cleaner to be employed by him. After the services of Mr.M.Balakrishnan as an Advisor, Corporate Affairs came to an end, simultaneously the claimant also lost his job being personal driver of an Advisor, Corporate Affairs of the company.

6. It was also pleaded that the documents referred to in the claim statement to establish the relationship of employer and employee between the parties were forged and fabricated.

7. Learned Labour Court framed the following issues on 5th November, 2001:-

- “1. Whether there was no employer and employee relationship between the parties?*
- 2. As per terms of reference.”*

8. To substantiate his claim, the claimant led evidence by way of filing his own affidavit Ex. WW1/A wherein he has referred to the document Ex.WW1/1 to Ex. WW1/99. However, while putting the exhibits on the documents referred to in his affidavit, the documents Ex.WW1/1 and Ex.WW1/2 were exhibited without producing the originals despite opportunity being given. The above said documents were, therefore, de-exhibited by the Court.

9. The management examined its Deputy Manager (Finance) exhibited as MW1 to prove that the claimant was personal driver of Mr.M.Balakrishnan. The management had also placed on record the copy of the various applications Ex.MW1/5 to Ex.MW1/8 and MW1/8A to prove that there was no relationship of employer and employee between the parties.

10. Learned labour Court after considering the evidence adduced by

the parties decided issue no.1 against the claimant who was held to be a personal driver of the Advisor, Corporate Affairs of the respondent/management i.e. Mr. M.Balakrishnan.

11. Today, Mr.A.P.Dhamija, learned counsel for the petitioner/claimant has drawn attention of this Court to Ex.CW-1/1, CW-1/2 and CW-1/4 to highlight that these documents were sufficient to prove the relationship of employer-employee between the parties. Ex.CW-1/1 is a photocopy of the letter dated 26th October, 1995 addressed by the Manager, Tata Tea Limited to the petitioner directing him to receive the Managing Director at the Airport and also to collect money for petrol and car parking expenses. Ex.CW-1/2 is a photocopy of the letter dated 10th January, 1994 by Mr.M.Z.A.Baig addressed to Mr.Arunachalam wherein he has referred the petitioner as a company driver with effect from 1st January, 1994. Ex.CW-1/4 is the photocopy of the identity card showing his designation as driver of Tata Oil Company.

12. Learned counsel for the respondent/management has submitted that the original of the above referred documents were not produced despite the fact that a plea had already been taken in the written statement about these documents to be forged and fabricated. The photocopy of ID card Ex.CW-1/4 does not even bear the date of issue or till when it is valid. It just bears the name, designation and company. Learned counsel for the respondent/management has drawn the attention of this Court to the various application forms submitted by the petitioner to the company seeking his appointment as a driver, which he would have not applied had there been any relationship of

employer-employee between the parties. Learned counsel for the respondent/management has also drawn the attention of this Court to an application dated 3rd July, 1996 submitted by the petitioner for the post of peon wherein in the column experience he has specifically mentioned that he had been working as personal driver to Mr.M.Balakrishnan, who was at that time posted as Adviser (Corporate Affairs), Tata Tea Ltd. In another application Ex.MW-1/6 dated 21st April, 1995 also he had admitted that he was personal driver of Mr.M.Balakrishnan for past 9 years and sought an opportunity to be given a regular appointment in view of his clean antecedents.

13. I have considered the rival contentions and carefully perused the record. Learned labour Court appreciated the oral and documentary evidence and even quoted the relevant paras of the documents to arrive at the conclusion that the petitioner was a personal driver of the Advisor, Corporate Affairs of the respondent/management. The reasons given in support of above findings in the impugned award are as under:-

“9. Oral evidence of WW1 and MW1 on this issue is totally opposite to each other. In order to fathom into the probative value of their evidence, the documents produced by both parties are required to be analysed. The most critical documents relied upon by the claimant are Mark CW1/1 and CW1/2. Mark CW1/1 is a letter signed by Mr. Ajay Bhuchar, Manager of M/s. Tata Services Limited to the claimant on 26.10.1995 requesting to pick up Managing Director Mr. Krishan Kumar from the Airport. Mark WW1/2 is a letter signed by Mr. M.Z.A. Khan vide which the claimant was

appointed as a driver of M/s. Tata Tea Limited Company w.e.f. 01.01.1994. Stand of the management right from the beginning is that the claimant was relying upon forged and fabricated documents. In examination in chief recorded on 16.05.2006, the claimant was successful in exhibiting those documents. The objection was taken by the management on 06.08.2008 and those documents were de-exhibited and were given mark as Mark CW1/1 and Mark CW1/2. Onus of proof of these documents was upon the claimant. He could have proved these documents by two means – i. By producing the original and secondly by examining the witnesses i.e. Mr. Ajay Bhuchar and Mr. M.Z.A Baig i.e. by whom the documents have been purportedly signed. He had filed an application for a direction to the management to produce the documents but he withdrew the said application on 20.03.2008. He did not examine Mr. Ajay Bhuchar and M.Z.A Baig. In this way, these documents have gone unproved. Document Ex. CW1/4 i.e. I. Card is also of no consequence because it has been issued by M/s. Tata Oil Mills Limited whereas the case is against M/s. Tata Tea Limited. Ex. CW1/6 is also of no value because its original never saw the face of the court. The claimant did not examine Mr. Balakrishnan by whom it has been signed. He had not examined Mr. S.P. Malhotra to whom it has been addressed. Moreover, there is nothing in this document which may suggest that it was written to M/s. Tata Tea Limited. Additionally, the said document is dated 05.06.1990 and by that time Mr. Balakrishnan was still working with M/s. Tata Oil Mills Limited and not with M/s. Tata Tea Limited. The claimant had applied to M/s. Tata Services Limited for a permanent post of driver and response Ex. CW1/20 of that company came to him

on 13.10.1995 at the address of Mr. Pradeep (Driver) C/o Tata Tea Ltd. The claimant did not examine Mr. M.Z.A Baig by whom it has been purportedly signed. He did not file original of it. Objection regarding that document has been taken by the management that it was a forged and fabricated document. It is very much possible that address of the claimant is mentioned as C/o Tata Tea Limited in Ex. CW1/20 because he was the driver of higher official of the said company. Petrol bills Ex. CW1/21 to Ex. CW1/47 and bills Ex. CW1/49 to Ex. CW1/59 issued by car maintenance company are of no help to the claimant because it is the consistent stand of the management that the cars were provided to Mr. Balakrishnan by the company and those were driven and serviced by the claimant.

10. On the other hand, there is a vital document Ex. MW1/4 vide which services of Mr. Balakrishnan were hired as a consultant by the management. It becomes clear from clause 2 of that document that Mr. Balakrishnan was provided with a company car which was to be maintained by the company. It becomes clear from clause No. 3 and 4 that Mr. Balakrishnan was entitled to reimbursement of Rs.1600/ per month for driver and cleaner salary. The said document proves that the company had provided Mr. Balakrishnan car and the driver was to be engaged by himself for which he was to be reimbursed. Documents Ex. WW1/M1 to Ex. WW1/M3 dated 02.09.1996, 01.10.1996 and 31.10.1996 are the vouchers showing that the claimant had taken salary from Mr. Balakrishnan and not from the management. These documents were put to him in cross examination and he admitted that those were bearing his signatures. He admitted his signatures on documents Ex. WW1/M4 to Ex. WW1/M6.

11. *Following contents of Ex.WW1/M4, Ex. WW1/M5 and Ex. WW1/M6 are most relevant:*

Ex. WW1/M4:

Sir, I Pradeep (driver-cum-cleaner) have been in the services of Mr. Balakrishnan (Adviser Corporate Affairs, Tata Tea Limited, New Delhi) as driver for last 9 years and during my services I have always dedicated myself to my responsibility by obeying the orders.

Ex.WW1/M5:

Experience: 9 years working experience since 1987. I have been working as personal driver to Mr. M. Balakrishnan.

Ex.WW1/M6:

Sir, I have been working as driver-cum-cleaner under you since 1987 and looked well by your act of kindness. ... Sir, before you get retired, I request you to kindly take me in the payroll of the company as a regular employee.

Ex.MW1/8A:

Sir, I Pradeep (Driver-cum-Cleaner) have been in the service of Sh. M. Balakrishnan (Advisor Corporate affairs Tata Tea Ltd., New Delhi) as driver for last 9 years and during my service I have always dedicated myself to my responsibilities by obeying orders.

From all these applications moved by claimant himself and admitted by him in cross examination, it becomes clear that in 1995 and 1996, he was working as a personal driver of Mr. M. Balakrishnan. He had written four different applications to M/s. Tata Services Limited, Tata Tea Ltd. and Mr. M. Balakrishnan seeking the

permanent job of driver. If he was already working as a driver with Tata Tea Limited, why he was again seeking the same job from the same company and the sister concerns? When the term of Mr. M. Balakrishnan was coming to an end, the claimant became more desperate about his future and and that is why, he wrote an application Ex. WW1/M6 on 02.08.1995 to Mr. M. Balakrishnan mentioning that he (M. Balakrishnan) was getting retired next year and that was a said news for him. That is why he requested him to take him on the pay-roll of the company as a regular employee. It further shows that till the date of that letter i.e. till 02.08.1995, he was not the employee of the company.

12. Taking into account the above discussion, it is held that claimant was the personal driver of Mr. M. Balakrishnan and he was never employed by the management.”

14. Legal position is well settled that this Court while exercising writ jurisdiction should not act as an appellate Court. In exercise of power of judicial review, interference is warranted by this Court only if the claimant is able to show that the award impugned herein suffers from perversity.

15. During the course of hearing, learned counsel for the petitioner/claimant tried to wriggle out the situation by submitting that the petitioner was seeking regularization and not employment. The submission raised on behalf of the petitioner is again contrary to the admission made in the application dated 3rd July, 1996 wherein in the column experience he has specifically described himself as to be a personal driver of Mr.M.Balakrishnan for the past 9 years. The management has also proved on record vide Ex. MW1/4 that

Mr.M.Balakrishnan before his superannuation was entitled to a company car and reimbursement for driver. Even after his superannuation when he was re-employed as an Advisor, Corporate Affairs, Tata Tea Limited, he was entitled to a company car and reimbursement for the driver. Merely because the payment was made by the company for a driver was not sufficient to draw an inference that the petitioner became an employee of the company.

16. There can be no dispute that the issue that the petitioner was a personal driver of Mr.M.Balakrishnan, Advisor, Corporate Affairs of the management or he was an employee of the management, is a question of fact. Such an issue was required to be decided by the learned Labour Court on appreciation of evidence adduced by the parties. The finding of learned Labour Court that the petitioner was a personal driver of its Advisor, Mr.M.Balakrishnan, whose salary was reimbursed by the respondent/management, is based not only on the documentary evidence produced by the respondent/management but also on admission made by the petitioner in his application seeking employment from the respondent/management. In his applications Ex.WW1/M4 and WW1/M5 he has specifically mentioned, as extracted from para no.11 of the impugned award, that he was having experience of 9 years as personal driver of Mr.M.Balakrishnan. Since the conclusion arrived at by the learned labour Court cannot be termed to be against any provision of law or evidence or is manifestly erroneous or perverse, such finding cannot be interfered with by this Court in exercise of power of judicial review. The findings returned by learned Labour Court are also based on the decision reported as

Mudra Communications Ltd. Vs. Ganesh Kumar & Ors., 169 (2010) Delhi Law Times 481 wherein it was held that the person engaged by the General Manager to drive his car would not become employee of the company.

17. The impugned award does not suffer from any illegality or perversity so as to exercise power of this Court in writ jurisdiction. Hence, the writ petition is dismissed.

PRATIBHA RANI, J.

AUGUST 01, 2018
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