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

+ LPA 196/2011

GANESH DIXIT

..... Appellant

Through: Mr. Mahesh Srivastava, Adv. with
Mr. Vaibhav Manu Srivastava,
Advocates

versus

MUDRA COMMUNICATIONS LTD

..... Respondent

Through: Mr. Neeraj Malhotra, Sr. Adv. with
Mr. Ruptal Luthra, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

31.07.2017

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1. The present Letters Patent Appeal ('LPA') is directed against the judgment dated 21st April, 2010 rendered by the learned Single Judge in W.P. (C) 4913 of 1997. The writ petition had been preferred by the respondent Management - M/s Mudra Communications Ltd to assail the Award dated 5th July, 1997 of the Industrial Tribunal.
2. The Industrial Tribunal by the said Award held that the appellant herein was an employee of the respondent management and directed the respondent management to reinstate him as a workman with full back wages. The claim of the appellant before the Industrial Tribunal was that he was serving as a driver under the respondent management and his services had been terminated illegally. The respondent management filed its written

statement before the Industrial Tribunal wherein the respondent management while denying that the appellant was its employee, *inter alia*, submitted as under:-

- “2. With the reference of the para 3 . the management respectfully submits that since the applicant was never employed by the management and was never a workman he cannot claim any facilities mentioned by him to which he is legally not entitled.
3. With the reference of the para 3 . the management respectfully denies the averments made by the applicant. It is submitted that the management to appoint a person, issues a letter of appointment to the appointee. Thereafter the appointee joins the service and is required to submit a joining report. He also has to sign the muster rolls/attendance register from the day he joins the service. A leave record of such employee is also maintained. However, the present applicant was never appointed in the service of the management. Therefore the question of his demanding any facilities does not arise.

It is further submitted that the management herein does not maintain any cars of its own . excepting one for its chairman and Managing Director . Consequently, no drivers are employed by the management, for any other executive of the Company are simply given a car allowance for their conveyance purpose, to utilise as they desire.”

3. The learned Single Judge held that the tests essential to be met to establish the relationship of employer and employee were not found to exist in the present case and that the appellant could not establish his direct supervision under the respondent management; he could not establish that his wages were being paid by the respondent management and admittedly there was no contract of employment executed between the appellant and the respondent company. Consequently, the learned Single Judge reversed the Award made by the Industrial Tribunal.

4. The submission of learned counsel for the appellant is that at variance

with the stand taken by the respondent management in its written statement, while examining their witness through MW-1 Mr. Devender Sood, Senior Manager Administrative, the management for the first time claimed that “the appellant was employed directly by Shri Karan Ahluwalia, Ex. General Manager of the company as his personal driver”. The submission is that the name of Shri Karan Ahluwalia was not disclosed in the written statement. Learned counsel further submits that even though in the written statement it was claimed that only the Chairman and Managing Director had been provided with a car, MW-1 in his cross-examination had admitted that Shri Karan Ahluwalia, who was only a General Manager of the management company had also been provided with Car No. DBC 4108, which belonged to the management company. In his cross-examination MW-1 had also admitted that the respondent company used to pay the running expenses of the said car and Shri Karan Ahluwalia issued Ex. MW-1/C-2 wherein the signatures of the appellant were also found at point ‘X’. Learned counsel for the appellant further submits that the stand of the respondent management that only the Chairman and Managing Director had been provided with a company vehicle was belied by the cross-examination of MW-1 and the employment of the appellant was also demonstrated by Ex. MW-1/C-2.

5. On the other hand, the submission of learned Senior Counsel for the respondent management is that the learned Single Judge has dealt with the aforesaid submission of the appellant in para 5 of the impugned judgment. He further submits that the appellant failed to establish the ingredients essential to establish the relationship of employer and employee and there was nothing to show that he was the workman of the management. He

placed reliance on the judgment of the Supreme Court in *Punjab National Bank Vs. Gulam Dastagir, (1978) 2 SCC 358* which also pertains to the claim made by a car driver engaged by an Area Manager. In this case the Supreme Court had reversed the Award made by the Labour Court by holding that the relationship of employer and employee had not been established by the workman as there was no evidence to establish that there was any supervision of the claimant/employee exercised by the bank.

6. Having heard learned counsel for both the parties and perused the record, we find that as observed by the learned Single Judge, there was no evidence, either oral or documentary to establish that the Appellant/Workman had ever been employed by the Respondent/Management. In fact there is nothing on record to show that the control and direction of the Appellant was vested in the Respondent and merely because there is some evidence to show an ex-employee of the Respondent Company had in his personal capacity engaged the Appellant as a personal driver, the Appellant cannot claim to be an employee of the Respondent or seek re-instatement in the Respondent Company. In our view, the evidence adduced before the Labour Court leads to only one conclusion that the Appellant was a personal driver of an ex-employee of the Respondent/Company and the finding of Labour Court that there was a relationship of employer-employee between the Appellant and the Respondent was wholly perverse. There is no contradiction in the written statement filed by the Management before the Industrial Tribunal and the statement of MW1. Merely because MW1 stated that the appellant was engaged by Shri Karan Ahluwalia, General Manager of the Management Company, as his personal driver, does not contradict the stand of the

management that the appellant was not employed by them ever. The appellant cannot seek to capitalize on the apparent discrepancy in the stand of the management in their written statement with the statement of MW1. Insofar as the Management stated in its written statement that only in respect of the Chairman and Managing Director, the Management maintains a Car, while, in the testimony of MW1, it emerged that even in respect of the General Manager-Shri Karan Ahluwalia, the car was provided by the Management. This discrepancy does not go to the root of the matter and cannot lead to the inference that the appellant was a workman of the Management since the appellant could not establish any of the essential ingredients, which, he should have established to claim that he was a workman under the Management. In our view, the decision in *Gulam Dastagir* (supra) squarely applies in the facts of the present case. In our considered view, the learned Single Judge was fully justified in setting aside the award directing reinstatement of the appellant.

7. There is no merit in the present appeal and the impugned judgment does not call for any interference.

The appeal is accordingly dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 31, 2017

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