

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

+ **Writ Petition (Civil) No.10307/2006**

Date of Decision : 31.03.2009

APOLLO HOSPITAL ENTERPREISES LTD. Petitioner

Through: Mr. Neeraj Gupta, Advocate

Versus

SH. SURESH MALLIK & ORS. Respondents

Through: Mr. Prashant Jain, Advocate
for R-1 & R-2.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. Whether 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 |

V.K. SHALI, J.

1. This is a writ petition for setting aside ex parte award dated 10.2.2006 passed by the Labour Court II in ID 54/2004 titled Suresh Malik and Vineet Chawla vs. the Management of Apollo Hospital. By virtue of aforesaid ex parte award the termination of both the respondents on 28.5.2003 was held to be illegal and unjustified and in contravention of Section 25 (F) of the Industrial Disputes Act and consequently the same was set aside with the direction of reinstatement and 50% of the backwages. The respondent workman was also given the benefit of continuity of service.

2. The case of the petitioner management is that they were never served the summons and consequently they could not appear before the learned Labour Court and the principles of natural justice were not adhered to before passing of the ex parte award. It has been accordingly prayed that the ex parte award be set aside.

3. The respondent workman has filed their counter affidavit and contested the claim of the petitioners for setting aside the ex parte award. It has been stated by them that the services of Suresh Malik and Vineet Chawla were illegally and unjustifiably terminated by the petitioner management which necessitated the making of a reference to the learned Labour Court by the appropriate government. The learned Labour Court after effecting service on the petitioner management proceeded ex parte as the petitioner despite service failed to appear in the matter.

4. I have heard the learned counsel for the parties and perused the record of the ID No.54/2004.

5. There is no dispute about the fact of the respondents having been employed with the petitioner. The reference which has been made by the appropriate Government is also not disputed but it is the contention of the petitioner that the respondent are not workmen within the definition of Section 25 (s) of the Industrial Disputes Act. It was also contended by learned counsel for the petitioner management because of the fact that they could not appear before the Court below and were deprived of the right of hearing and contesting the case before the learned Labour Court for adjudication of the matter on merits. It is alleged by them that it was only after the award was published on 4.5.2006 when they learnt about the award that they filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex parte award which was not allowed on account of the fact that the learned Labour Court has become functus officio. Thereafter the petitioner has filed the present writ petition.

6. The record of the learned Labour Court has been also summoned. The photo copies of the summons and the report of the

process server has been filed along with the writ. I have seen the original record including the order sheets.

7. The reference was made to the learned Labour Court on 4.2.2004 when notices were directed to be issued to the management through process server (recorded as PS), RC and dasti and a preemptory direction was given that in case of avoidance, refusal and the premises having been found locked or out of station summons, notices shall be served by affixation and the next date was given as 6.8.2004.

8. On 06.8.2004 despite waiting till 11:30 a.m. none of the parties were present. The learned Labour court recorded that as nobody has appeared on behalf of the petitioner management despite having been served by affixation and matter was adjourned with the direction to the process server to be present on 21.8.2004.

9. On the said date of 21.8.2004 the statement of process server Shivkanth Sharma was recorded. He stated that on 15.7.2004 he had met the Clerk of the Administration Branch who advised him to deliver the summons in the MRD Section (Basement). On visit to MRD Section by the process server he stated to have refused to accept the summons and on the basis of this report of the process server the learned presiding officer of the Labour Court assumed that the petitioner management was duly served and since nobody had appeared on their behalf they were proceeded ex parte.

10. The petitioner learnt about the ex parte award having been passed only after the publication of the award whereupon they filed an application under Order 9 Rule 13 before the learned Labour Court which was also dismissed on account of the presiding officer having become functus officio. That is how the present writ petition has been filed.

11. In the present writ petition the only point which has been urged by the learned counsel for the petitioner is that the petitioner management not having been served in accordance with law, therefore, the ex parte order be set aside and the matter be remanded back to the learned Labour Court. The learned counsel for the respondent has contested this issue.

12. Rule 18 of the Industrial Disputes (Central) Rules, 1957 lay down as under:-

“Service of summons or notice.-Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an Arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting.]”

13. A perusal of the Rule 18 shows that summons of the notices have to be served by ordinary process or by RC. In the instant case on the very first date i.e. on 4.2.2004 there is an order that notice be issued to the petitioner management by process server, RC and dasti but no RC cover seems to have been filed or sent to the petitioner management. Only process server is purported to have gone and furnished a report with regard to the refusal of the clerk in the administration block and then refusal by the clerk in the MRD Section. It has been infact stated by the petitioner that there is no section in the Apollo Hospital by the name of MRD Section or Department.

14. It has been stated that in the order dated 4.2.2004 that in case of avoidance, refusal or premises being locked the service had to be effected by affixation. The date of service on which the respondent workman was required to appear before the court was given 6.8.2004. Since on 6.8.2004 nobody appeared the matter was proceeded ex parte

against the respondent at about 11.30 p.m. A perusal of the order sheets of the learned Labour Court clearly shows that the petitioner has not been served validly in accordance with law which is envisaged in Rule 18 inasmuch as no notice by RC cover has been sent and even in cases where there is a refusal by the petitioner management or any other party the Rule 18 specifically lays down that notices must be sent by UPC. No notice or summon by UPC was sent in the instant case on the contrary a preemptory order was passed on 4.2.2004 because of avoidance, refusal or premises being locked etc., the notices be served through affixation. This direction of service of summons or notice by affixation on the very first date was totally inappropriate on the part of the learned Labour Court inasmuch as the effecting of service is not to be treated as empty formality but it is only a notice or intimation given to the party to make him aware that he or it may take steps to defend its interest in respect of the statement of claim. The casual approach in which the service of affixation has been taken to be as valid service is not only in violation of the principles of natural justice but also in violation of Rule 18 of the Industrial Disputes (Central) Rules, 1957.

15. For these reasons I feel that the petitioner was absolutely right in contending that no proper and valid service is effected on the petitioner management. I accordingly set aside the ex parte award passed against the petitioner management and remand the matter back for Labour Court-II.

16. But while the parting, it is stated that the respondent workman has filed application under Section 17B of the Industrial Disputes Act for grant of maintenance to enable them to survive. These applications were filed in the month of August, 2006 and the other is in September, 2006 but despite the fact that more than two years have

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passed, yet reply to the said applications has still not been filed and therefore the averments made by the petitioner in the said application remain un rebutted. I accordingly impose a costs of Rs.20,000/- to be paid by the petitioner to the respondent workman in equal proportion before the learned Labour Court for setting aside this ex-parte award.

17. With these directions, the parties are directed to appear before the learned Labour Court on 01.5.2009 and the learned Labour Court shall give an opportunity to the petitioner management to file its response to the statement of claims and thereafter proceed to decide the matter on merits as expeditiously as possible.

V.K. SHALI, J.

March 31, 2009
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