

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

+ **W.P.(C) NO. 10894/2006**

% **Date of Decision: 16.02.2009**

AJAY SERVICE STATION

.... Petitioner

Through : Mr. Harvinder Singh with Ms. Bhawana
Chopra Rustagi, Advocates

Versus

ITS WORKMAN SH. DILGABH SINGH & 7 ORS.

.... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether reporters of Local papers may be
allowed to see the judgment? NO
2. To be referred to the reporter or not? YES
3. Whether the judgment should be reported in
the Digest? YES

V.K.SHALI, J. (Oral)

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1. This is a writ petition filed by the petitioner/management against the award dated 15th January, 2005 passed by the Industrial Tribunal No.-I in ID No. 34/2004 in the case titled ***The Management of M/s Ajay Service Station Vs. Its Workman Sh. Dilgabh Singh & 7 Others.*** By virtue of the impugned award the learned Tribunal had held the termination of services of all the respondent/workmen except one Sh. Mahesh Mishra as illegal and unjustified and accordingly directed their reinstatement with payment of full back wages. So far as Sh. Mahesh Mishra is concerned, a perusal of the award shows that he

had not filed his statement of claim as such no relief of reinstatement was directed in his case.

2. A perusal of the award also shows that the learned Tribunal has observed that the petitioner/management avoided service of the notices which were sent in pursuance to the claim having been filed. It is observed in the record that as the petitioner/management was avoiding service, accordingly, the notice was directed to be served by affixation on the petitioner/management and since it failed to appear, accordingly, they were proceeded ex-parte on 6th July, 2004.

3. The respondent/workman has not appeared despite service and has not chosen to file the counter affidavit to the writ petition.

4. I have heard the learned counsel for the petitioner/management and perused the record. The main argument which has been advanced by the learned counsel for the petitioner/management is that it was not served in accordance with law and there was 'sufficient cause' to set aside the ex-parte proceedings. For the purpose of establishing that the petitioner/management was not served, it was urged by the learned counsel for the petitioner/management that a perusal of the order sheet dated 5th April, 2004 records that none was present on behalf of the petitioner/management despite the service, yet fresh notice is purported to have been issued to the petitioner/management. The next order is dated 11th May, 2004 on account of the fact that on 10th May, 2004 was a holiday. This order again shows that the petitioner/management is purported to have been served for 10th May, 2004, yet fresh service is ordered. The order dated 25th May, 2005 records that as per report of WP(C) No. 10894/2006

the Process Server the manager of the petitioner/management had refused to accept the summons on the ground that he is not competent to receive the same. It is also recorded in this order sheet that the petitioner/management was earlier served before filing of statement of claim. Despite these recordings in the order sheets a fresh notice was ordered to be issued again to the petitioner/management for 6th July, 2004. This time also it was stated by the Process Server in his report that the petitioner/management has refused to accept the service on the ground that no responsible person is available at the spot, accordingly, the petitioner/management was proceeded ex-parte.

5. On the basis of the aforesaid reports and the order sheets it was contended by the learned counsel for the petitioner/management that as a matter of fact the petitioner/management was never served actually. It was urged that it is not stated in the order sheet dated 5th April, 2004 as to how and on what basis the service is assumed to have taken place on the petitioner/management. In the order sheet dated 11th May, 2004 it has been recorded that the summons received by the Clerk, however, if one peruses the record filed by the petitioner, there is no such report on the summons that it having been received by the Clerk. Further, the order sheet does not show that the petitioner/management was ever served by affixation while as in the impugned award it has been stated by the learned Tribunal that it had ordered service of the petitioner/management by affixation. On couple of occasions, it has been observed that the petitioner/Management has been served yet notices have been issued again and again which clearly

shows that even the Court entertained some doubts against the service on the petitioner.

6. On the basis of the aforesaid record it was contended by the learned counsel for the petitioner/management that there are contrary facts emerging from the record which make any reasonable person draw an inference that the petitioner/management was actually not served, and accordingly, this non service of the petitioner/management constituted a sufficient cause in the eyes of law which prevented the petitioner/management from contesting the claim. It was also contended that this fact has been averred on oath in the petition yet no counter has been filed in this regard by the workman and therefore, the service becomes doubtful.

7. Rule 18 of the Industrial Disputes (Central) Rules, 1957 reads as under:-

“[18. 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.]”

8. A perusal of the aforesaid Rule would clearly shows that not only the notice is to be issued personally to the party but it can also be sent through registered cover. In the instant case, there is no evidence emerging from the record or from the order sheet that the notice has

ever been sent to the petitioner/management by the registered cover. It has also been envisaged that in the same Rule that in the event of a party refuses to accept the service of summons/notice in such eventuality summons/notice is to be sent under postal certificate. Obviously, once a summon/notice is shown to have been dispatched under postal certificate a presumption of fact can be conveniently drawn against the petitioner/management that it has been served and the onus is on the petitioner/management to show that it has not been served. In the instant case, the order sheet does not show that the notice was ever sent under postal certificate even if we assume the report of the Process Server regarding refusal to be correct.

9. The petitioner/management is assumed to have been served on the basis of the Process Server report. I have seen the Process Server report, they are very vague and does not make a mention of the name of the person who represented himself to be the Manager and refused to receive the summon/notice on the ground of any responsible person not being present at the petrol pump. It has also not been stated by the Process Server in his report in whose presence he has offered summon/notice to the Manager nor his name of such a person given. The time has also not been given. The statement of the Process Server who is purported to have taken the notice, his statement has also not been recorded. Normally, if there is a report of refusal, the learned Labour Court ought to have recorded the statement of the Process Server especially when the refusal is purported to have taken place twice. The earlier service report could not have been relied upon by the

Labour Court because no reference is made in the order sheet about them.

10. Accordingly, once it becomes doubtful, as to whether, the service of summons/notice have been effected on the petitioner/management the benefit of the same has to be given to the petitioner/management by setting aside the ex-parte decree.

11. The learned counsel for the petitioner/management has also placed reliance on a Division Bench judgment of this Hon'ble High Court in case titled ***Hydrotech Engg. Co. and another Vs. NCT of Delhi and others***, 2006 LLR 482 wherein a similar contingency our own Court has observed that the report of the Process Server was absolutely vague and it did not mention the name of the so called master/owner or whom process server had contacted or even the time when he served the summons/notice is not mentioned in the summons/notice. The report of the Process Server cannot be relied upon, and accordingly, the impugned ex parte award was set aside in the said case.

12. Similarly, in the instant case, also the report of the Process Server seems to be doubtful. Even if the report of the Process Server is to be relied upon the learned Tribunal ought to have recorded the statement of the Process Server before proceeding the petitioner/management ex-parte. On the contrary, I feel that the provisions of Rule 18 of the Industrial Disputes Act, 1947 were not followed by the learned Tribunal both in letter and spirit. No summon/notice were sent by registered cover. At a later date on account of refusal of summon/notice, notice

was not even sent under postal certificate, therefore, the service report of the petitioner/management becomes doubtful.

13. For the reasons mentioned above, I am of the view that the service on the petitioner/management it is doubtful, and accordingly, they were prevented by 'sufficient cause' to contest the claim of the respondent/workman. Accordingly, the ex-parte award dated 15th January, 2005 passed by the learned Tribunal against the petitioner/management is set aside, subject to payment of cost of Rs. 25,000/-. The matter is remanded back to the learned Industrial Tribunal to decide the matter after giving an opportunity to file the reply to the statement of claim. Parties are directed to appear before the Industrial Tribunal No-I, Karkardooma Courts, Delhi on 3rd March, 2009.

February 16, 2009
KP/RN

V.K.SHALI, J.