

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

+ **W.P.(C) NO. 14392/2006**

Date of decision: 20.01.2009

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M/S AKASH ELECTRONICS

.... Petitioner

Through Mr. H. K. Chaturvedi, Advocate

Versus

SH. SURESH CHAND

.... Respondent

Through Mr. Pankaj Srivastava, Advocate

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. The petitioner/management has filed the writ petition challenging the ex-parte award dated 22nd September, 2003 passed by Shri.T. R. Naval, Ld. Presiding Officer of Labour Court, Karkardooma Court in ID No. 75/2001. By virtue of the aforesaid award the termination of service of the respondent/workman by the petitioner/management w.e.f. 3rd March, 2000 was held to be illegal and unjustified, and accordingly, the Ld. Labour Court directed reinstatement of the respondent/workman with payment of full back wages @ Rs. 3500/- per month.

2. The petitioner/management feeling aggrieved by the aforesaid award has preferred the present writ petition challenging the award

both on merit as well as on the question of the petitioner having been proceeded ex-parte by the Ld. Labour Court, without effecting a valid service on the petitioner/management on account of which they did not get an opportunity to present their case. The respondent/workman has not filed its counter affidavit despite opportunity having been given.

3. I have heard the learned counsel for the parties and perused the record. The learned counsel for the petitioner/management instead of making any submission on merit with regard to the challenge to the award has confined his submissions before this Court only with regard to the setting aside of the ex-parte award on the ground that the petitioner/management has been proceeded ex-parte without the petitioner/management having been served either personally or by the registered post. It was also urged that the service has to be effected in accordance with Rule 18 of the Industrial Tribunal (Procedure) Rules, 1949. Rule 18 of the Industrial Tribunal (Procedure) Rules, 1949 laid down 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.”

4. A bare perusal of the aforesaid rule shows that as far as possible, the notice/summons must be served on the petitioner/management personally or by registered post. The purpose of service is to give a fair and reasonable opportunity to the petitioner/management to contest

the claim of the respondent/workman. It has been visualized in the rule that there may be persons or management who/which may be indulging in dilatory tactics and for that purpose they may refuse to accept the service or the registered AD cover containing the notice or the summon as the case may be. In such an event the Ld. Labour Court has been given the power to issue the notices/summons under postal certificate. If a letter is addressed to the addressee under postal certificate and it is shown to have been dispatched in the ordinary discharge of the official business then the Court can very well draw a presumption of fact that the said notice/summon has been served on the petitioner/ management. This is a presumption of fact which is rebuttable presumption and if the party so presumed to be served discharges the onus that the notice has not been received by them. This is also conditioned by the fact that the UPC cover has not been received back.

5. The petitioner/management has placed on record two certified copies of the relevant orders of the Ld. Labour Court dated 20th February, 2002 and 25th July, 2002. The order dated 20th February, 2002 shows that notice sent to the petitioner/management was received back unserved and the Ld. Labour Court directed issuance of the fresh notice to the petitioner/management by registered cover and under postal certificate. It was also observed that if notices are unserved, steps be taken for effecting service of Dasti notice and as well as pasting of notice for 25th July, 2002. It has been noticed by the Ld. Labour Court that the notice sent to the petitioner/management has been

received back with the report that the petitioner/management has refused to receive while as the UPC was deemed to have been served as the same was not received back, and accordingly, the petitioner/management was proceeded ex-parte.

6. I am of the view that these two orders cannot be taken to read that the petitioner has been served. This is on account of the fact that admittedly the petitioner/management has not been served personally either on 20th February, 2002 or on 25th July, 2002. The registered cover which was issued on 20th February, 2002 was received back with the report that the petitioner/management has refused to receive it. No statement of the postman has been recorded with regard to the said report. It is a common knowledge that it is very easy to procure the report specially where parties are litigating in Court and invariably this is done to ensure that an uncontested decree or an award is obtained against the either side. Therefore, the report on the registered cover could not be accepted as a gospel truth of refusal by the petitioner/Management.

7. Another mistake which seems to have been committed by the learned Court is that according to the rule 18 the registered cover and UPC are not to be sent simultaneously as the purpose is not to complete an empty formality in dispatching the letters or notices but the purpose of sending notices by R/C cover and UPC is to ensure that the petitioner/management must learn about the claim of the workman and come forward to contest the same. That is the reason, the rule envisages that it is only after receipt of registered cover that the

notices/summons ought to be sent by UPC. This has not been done in the instant case, therefore, the Ld. Labour Court in my considered opinion was over anxious to proceed with the matter and wrongly assumed that the petitioner/management has been served on account of UPC having been not received back.

8. The petitioner/management in the instant writ petition has made a specific averment to the effect that the petitioner/management was not served nor did it receive any notice either by UPC or by any other means. On the contrary, it is averred that the reports of the refusal have been procured by the respondent/workman in collusion with the postman. The respondent/workman has not chosen to file the counter affidavit, therefore, this averment of this petitioner/management goes unrebutted and there is no justification in disbelieving the petitioner/management that the petitioner was not validly served.

9. Accordingly, I feel as the petitioner/management was not validly served in accordance with law, and therefore, it was prevented by sufficient cause from contesting the claim, and accordingly, the ex-parte award passed on 22nd September, 2003 passed in ID No. 75/2001 set aside subject to pay of costs of Rs. 25,000/-.

10. The petitioner was directed to deposit a sum of Rs. 50,000/- on 13th September, 2006 on the very first date subject to which the operation of the impugned order was stayed. Out of the aforesaid amount a sum of Rs. 25,000/- shall be released to the respondent/workman on account of payment of costs for setting aside the ex-parte decree and the balance amount be given to the

petitioner/management. The parties are directed to appear before the Ld. Labour Court on 6th February, 2009 for further proceedings in the matter.

JANUARY 20, 2009
KP/RN

V.K. SHALI, J.