

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

+ **W.P.(C) NOS.17694-17695/2006**

% **Reserved on : 15.01.2009**
Date of Decision: 16.01.2009

(1) W.P.(C) No.17694/2006

R.K.INDUSTRIES Petitioner

Through Mr. Raj Rishi, Advocate

Versus

RAM KISHAN & ORS. Respondents

Through Mr.Rama Shankar, Advocate

AND

(2) W.P.(C) No.17695/2006

R.K.INDUSTRIES Petitioner

Through Mr. Raj Rishi, Advocate

Versus

RAM AVTAR & ANR. Respondents

Through Mr.Rama Shankar, Advocate

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? NO
3. Whether the judgment should be reported in the Digest? NO

V.K.SHALI, J.

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1. This order shall dispose of the writ petitions bearing Nos.17694/2006 & 17695/2006, both titled as R.K.Industries Vs. Ram
WP(C) Nos.17694-95/2006

Kishan & Ors. and R.K.Industries Vs. Ram Avtar & Anr. These writ petitions are challenging the orders dated 7th October, 2004 and award dated 27.02.06 and 28.02.06 passed by the learned Labour Court Delhi directing reinstatement and continuity of service of the respondent/workmen in both cases with 50% of the back wages of all other benefits. The Secretary, Labour, Government of NCT of Delhi had made two separate references for adjudication to the learned Labour Court which were as under:-

“Whether Sh.Ram Kishan S/o Gopi Singh and Sh. Karan Singh S/o Sh. Goga Ram has taken full and final dues from management or his services have been terminated illegally or unjustifiably by the management, and if so, to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/govt. Notification are necessary in this respect.”

and

“Whether Sh. Ram Avatar S/o Sh. Har Parsad has taken full and final dues from management or his services have been terminated illegally or unjustifiably by the management and, if so, to what sum of money as monetary relief alongwith consequential benefits in terms of existing laws/govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect.”

2. In pursuance to this, the workmen filed their separate statement of claims alleging that they were appointed as workmen by the petitioner on the post of Turner with effect from 1st January, 1992 on a monthly salary of Rs.2,950/- per month. Their services were terminated illegally without assigning any reason on 23.8.2001 and their signatures were obtained on some papers and vouchers forcibly by

the Management after handing over a cheque for a sum of Rs.6,000/- to each to them. The respondent/workmen are purported to have sent a demand notice dated 25th August, 2001 to the Management which was never replied. The case of the respondent/workmen was that this termination was illegal as it was against the provisions of Section 25-F of the Industrial Disputes Act because he was not paid any retrenchment compensation. The facts set up by both the workmen were almost identical.

3. Notice was issued to the petitioner/Management and the learned Labour Court as per the report of the process server for 7th October, 2004 recorded that the Management was served by affixation and on account of their non-appearance, the Learned Labour Court proceeded them ex parte against them. The workmen examined themselves separately in their identical cases as WW-1 and tendered their affidavits as Ex.WW1/A and other documents as Ex.WW1/1 to Ex.WW1/6. Since the testimony of the workmen were unrebutted, the Learned Labour Court came to a conclusion that the respondent/workmen were individually successful in establishing that their termination to be illegal and unjustifiable by the petitioner /Management. On the basis of the aforesaid finding, the learned Labour Court directed the reinstatement of the respondent/workmen with continuity of service along with 50% of the back wages and other benefits.

4. The petitioner/Management is stated to have learnt about these individual awards only when recovery notices were received by them after the publication of the award. They accordingly, filed an

application under Order 9 Rule 13 for setting aside the ex parte award, which application was rejected by the learned Labour Court vide order dated 11th July, 2006 holding that the petitioners were properly served and there was no material on record to believe that the petitioners were not properly served. After the rejection of their applications, the petitioner has preferred the present two separate petitions against the orders of proceeding ex parte against the petitioner on 7th October, 2004 and the award passed on 27th and 28th February, 2006.

5. The respondent/workmen has filed their counter affidavits and contested the claim of the petitioner that they were not validly served. They also gave the facts of the case which were already stated by them in their statement of claim.

6. I have heard the learned counsel for the parties and perused the record. The short question which arises for consideration is as to whether the petitioner /Management was validly served in both the cases or not. The finding which is recorded by the learned Labour Court is that the petitioner/Management has been served by affixation in both the cases. This view has been formed on the basis of the report of the process Server.

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 show that the service has to be effected on the person concerned either personally or by registered post and in the event of refusal to accept the notice or summon by the parties, the same has to be sent under certificate of posting. There is no provision for service on a party concerned by affixation. Therefore the service by affixation is not permissible according to the rule and that too at the very first instance. Even assuming that it is a valid mode of service to serve a recalcitrant or a party avoiding the service even then it being in the nature of a substituted service can be resorted only when the Ld. Court has formed an opinion that it was not possible to serve the party concerned by ordinary means first.

9. In the instant case, there is no mention about the factum that notice was either served or sent on the petitioner/Management personally or by registered post or even by certificate of posting in the first instance. Therefore, the service by affixation on the petitioner/Management could not be taken to be a valid service and the service by affixation becomes doubtful.

10. In addition to this, the petitioner has taken the specific plea that their factory premises is only at B-42, Okhla Industrial Area, Phase-I, New Delhi. They have specifically denied that they have any factory at B-212, Okhla Industrial Area, Phase-I on which premises notice is

purported to have been affixed. The respondent/workmen in their counter affidavits have denied the averment made by the petitioner to the effect that it does not have its factory at premises bearing No.B-212, Okhla Industrial Area. However, the respondent have not placed along with the counter affidavit any document in prima facie proof which would persuade this Court to believe that the petitioner/Management was having its factory at B-212, Okhla Industrial Area, Phase-I. Therefore, the service by affixation becomes doubtful. Even otherwise it would sub-serve the interest of justice in case an award is passed after a party has been given full opportunity to present its case.

11. In the light of the aforesaid facts, I feel that the petitioner/Management is absolutely correct in stating that since they were not served, therefore, it was prevented by 'sufficient cause' to contest the statement of claim of the petitioner on merits. Learned counsel for the petitioner has also placed reliance for setting aside the ex parte award in case titled as M/s Hydro Tech Engineering Co. & Anr. Vs. NCT of Delhi & Ors. 200 III LLJ 23. Where also our own High Court had set aside the ex parte award by doubting the service on the petitioner in that case.

12. For the forgoing reasons, I am of the considered opinion that as the petitioner was not served in accordance with Rule 18 of Industrial Disputes (Central) Rules, 1957 therefore, they were prevented by sufficient cause from contesting the matters. Accordingly, both the orders dated 7th October, 2004 setting them ex parte and the awards dated 27th and 28th February, 2006 passed against the
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petitioner/Management in ID No.137/2002 and I.D. No.135/2002 are liable to be set aside. However, this will be subject to the petitioner paying a cost of Rs.7,500/- to each of the respondent/workman before the Ld. Labour Court.

13. So far as the applications under Section 17-B of the Industrial Disputes Act, 1947 are concerned, the same are disposed of as having become infructuous on account of the fact that the award itself has been set aside and the matter has been decided finally. These cases are accordingly, remanded back to the learned Labour Court to decide the matter afresh after giving an opportunity to the petitioner/Management to file their written statement within four weeks from today or such extended time as the Ld.Labour Court may deem fit.

14. Parties are directed to appear before the learned Labour Court on 16.02.08.

15. The amount of Rs.82,925/-, which has been deposited in CCD account of the High Court shall be refunded back to the petitioner/Management.

16. All the pending applications stand disposed of accordingly.

January 16th, 2009
RN/RS

V.K.SHALI, J.