

**(2013) 05 DEL CK 0268****Delhi High Court****Case No:** Writ Petition (C) 3761 of 2010

Servokon System Limited

APPELLANT

Vs

Brahm Prakash and Another

RESPONDENT

**Date of Decision:** May 15, 2013**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 17B

**Hon'ble Judges:** Veena Birbal, J**Bench:** Single Bench**Advocate:** Amaresh K. Singh, for the Appellant; Mohd. Nayeemuddin, for R-1/workman, for the Respondent**Final Decision:** Disposed Off**Judgement**

Veena Birbal, J.

By way of this petition challenge has been made to ex parte award dated 20.02.2009 whereby the respondent no. 1/workman i.e. Sh. Brahm Prakash has been given reinstatement with continuity of service and full back wages. An industrial dispute between the parties was referred by Secretary (Labour), Government of NCT of Delhi for adjudication vide office order dated 06.06.2005. Pursuant thereto a statement of claim before the Labour Court was filed by respondent no. 1 against the petitioner i.e. M/s. Servokon System Limited as well as respondent no. 2 i.e. M/s. Alpine Servo Engineering Pvt. Limited. The stand of the petitioner is that petitioner was never served before the Labour Court. As per petitioner, it had come to know of the ex parte award only on 18.01.2010 when a notice was received from the respondent no. 1/workman for compliance of the said ex parte award. On coming to know of the same the present petition has been filed.

2. Ld. counsel for petitioner submits that the petitioner was never served before the Labour Court nor petitioner has its office at the address given in the statement of claim i.e. at plot no. 52-54, Ganesh Park, Rasheed Market, Delhi-110051. It is stated

that Alpine Servo Engineering Pvt. Limited i.e. respondent no. 2 was having an office there at the relevant time. It is submitted that there is no service on petitioner before the Ld. Labour Court. It is further submitted that petitioner has nothing to do with Alpine Servo Engineering Pvt. Limited.

3. Ld. counsel for petitioner has further contended that there is no service on respondent no. 2 i.e. M/s. Alpine Servo Engineering Pvt. Limited before the Labour Court. It is submitted that the Labour Court has proceeded to decide the matter without any service on aforesaid party. It is contended that when the statement of claim was filed against the petitioner as well as respondent no. 2, the Labour Court ought to have ensured service on respondent no. 2 also. It is further submitted by learned counsel for petitioner that respondent no. 1 had worked with him only from June 2002 to December 2002, that is, for about 68 days.

Thereafter, he had left the services of petitioner and had joined respondent no. 2 from January 2003 onwards. It is contended that at the relevant time respondent no. 1 was the employee of respondent no. 2. It is also contended that the petitioner was never served before the Labour Court otherwise the petitioner would have substantiated its stand before the Labour Court. It is submitted that petitioner is not having the office at the address where allegedly the notice was sent. As such the ex parte award is liable to be set aside.

4. On the other hand the counsel for respondent no. 1 has submitted that petitioner was served before the Labour Court and it did not appear deliberately.

5. I have heard counsel for parties and perused the record.

6. Perusal of record of the Labour Court shows that the notice to the petitioner was sent at plot no. 52-54, Ganesh Park, Rasheed Market, Delhi-110051 for 01.10.2005. On the said date, it is recorded that A.R. of the parties are present and statement of claim is handed over. However, the name of the A.R. is not recorded. On the said date matter was adjourned to 17.12.2005. On 17.12.2005 the case was adjourned for filing of written statement. Perusal of relevant order-sheet of Labour Court shows that presence of none is recorded on behalf of management. In the body of order-sheet it is recorded that A.R. of Management is seeking adjournment on the ground that he has been engaged only yesterday. Perusal of record further shows that there is no authority letter of the A.R. of management nor the proceedings shows that the authority letter was ever filed before the Labour Court on behalf of petitioner.

7. Further as per service report on record, the notice for 01.10.2005 has been received on behalf of M/s. Servokon System Limited by one Mr. Pradeep Kumar Shukla. According to the respondent no. 1, Mr. Pradeep Kumar Shukla is the employee of the petitioner. The stand of petitioner is that there is no service on responsible officer of the company. There is no stamp of the company on the notice sent showing *prima facie* that it has been received on behalf of company. It is not

the stand of respondent no. 1 that said employee was authorised to receive summons on behalf of petitioner. Learned counsel for the petitioner submits that there appears some manipulation in service. It is submitted that the subsequent compliance notice dated 18.01.2010 has been sent by respondent no. 1 at the Head Office of the petitioner that is at C-13, Servokon House, Radhu Palace Road, Laxmi Nagar, Delhi-110092. There is no reason why the same was not sent at the address mentioned in statement of claim. The service report relied upon by learned Presiding Officer is not satisfactory. There is nothing on record to show that person receiving summons was authorised to receive the same. Nothing on record has been shown by respondent no. 1 that at the relevant time petitioner was having the office at the said address i.e. at plot no. 52-54, Ganesh Park, Rasheed Market, Delhi-110051. There is no explanation as to why after the impugned ex parte award notice for compliance of said award has been sent by respondent no. 1 at some other address of the petitioner. In these circumstances it cannot be said that petitioner was served before the Labour Court. Accordingly, the impugned ex parte award dated 20.02.2009 is set aside subject to costs of Rs. 7000/-. The matter is remanded back to the Learned Labour Court for fresh adjudication. The Labour Court shall serve a copy of fresh notice to respondent no. 2 i.e. M/s. Alpine Servo Engineering Pvt. Limited. The petitioner shall be at liberty to file its written statement before the Labour Court and thereafter the Labour Court shall proceed with the matter in accordance with law. The parties to appear before the concerned Labour Court on 28.05.2013. On the said date petitioner shall pay aforesaid costs to respondent no. 1. The counsel for petitioner submits that in order to comply with the order passed u/s 17B of the I.D. Act the respondent no. 1 has been taken on duty by the petitioner, without prejudice to its rights and contentions. Learned counsel submits that petitioner will not discontinue the service of respondent no. 1 during the pendency of the case before the Labour Court. It is stated that without prejudice to the rights and contentions of the petitioner as are there in the presence case, the respondent no. 1 shall continue working with the petitioner subject to outcome of the case before the Labour Court. The counsel for petitioner submits that necessary undertaking in this regard shall be filed within four weeks. Let the needful be done within four weeks.

The petition stands disposed of accordingly.