

**(2009) 03 DEL CK 0296**

**Delhi High Court**

**Case No:** Writ Petition (Civil) No. 2394 of 2006

Datamation Consultant Pvt. Ltd.

APPELLANT

Vs

Shri Ranjit Kumar

RESPONDENT

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**Date of Decision:** March 25, 2009

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 29 Rule 2
- Industrial Disputes (Central) Rules, 1957 - Rule 18
- Industrial Disputes Act, 1947 - Section 17B

**Hon'ble Judges:** V.K. Shali, J

**Bench:** Single Bench

**Advocate:** Gagan Mathur, for the Appellant; M.M. Kashyap, for the Respondent

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**Judgement**

V.K. Shali, J.

The challenge in this writ petition by the petitioner is to the ex-parte award dated 17th November, 2004 passed by the learned Labour Court No. II in ID No. 311/2002 in the case titled Datamation Consultants Pvt. Ltd v. Sh. Ranjit Kumar.

2. By virtue of the aforesaid award the learned Labour Court has come to a finding that the dismissal of the respondent/workman w.e.f 12th January, 2001 was illegal and unjustified, and accordingly, it directed the reinstatement of the respondent/workman with 50% of the back wages and all other legal benefits.

3. The contention of the learned Counsel for the petitioner is that the petitioner was not served in accordance with law, and therefore, he did not get a reasonable opportunity to represent their case before the learned Labour Court. It is contended by the learned Counsel for the petitioner that they learnt about the ex-parte award in the month of October, 2005 after its publication, whereupon they obtained a certified copy on 19th October, 2005, and thereafter filed the instant writ petition in the month of February, 2006. It was contended that after obtaining the certified copies, it transpired from the record that summons were purported to have been

issued to the petitioner/ management on 20th February, 2003 for their appearance on 4th April, 2003 and these summons are reported to have been served by the Process Server on the petitioner/company on 2nd April, 2003 whereas the summons were never received in their office as would be evident from the fact that neither the name of the person who is purported to have received the summons nor the seal of the petitioner/company is reflected on the summons.

4. On 4th April, 2003 on account of their non appearance they were proceeded ex-parte and the aforesaid award has been passed. The learned Counsel for the petitioner, in order to substantiate his point that they were not served, and were therefore prevented to contest the matter on merits, relied upon the judgment in the case titled [Shalimar Rope Works Ltd. Vs. Abdul Hussain H.M. Hasanbhai Rassiwalla and Others,](#)

5. As against this, the learned Counsel for the respondent has vehemently contended that the petitioner were aware and they were duly served as is reflected from the report of the Process Server who has no reason to give a incorrect and false report, and therefore, the report must be presumed to be correct with regard to the service of the petitioner/management. It is further urged by the learned Counsel for the respondent that the service of the respondent/workman have been terminated on 12th January, 2001 and till date neither the award has been implemented nor his application u/s 17-B of the Industrial Disputes Act, 1947 which was filed as early as in January 2007 has been decided, and therefore, the respondent/workman is left at the stage of starvation.

6. I have carefully considered the submission of the respective sides. I have gone through the record also. I find substance in the submission made by the learned Counsel for the petitioner/management that they have not been served in accordance with law, and therefore, they have been deprived of the opportunity to represent their case before the learned Labour Court. This view I am forming on the basis of the report of the Process Server on the summons that neither the name of the person to whom the summons having been served nor does it bear the seal of the petitioner/company. In the absence of these two facts it cannot be assumed by any stretch of imagination that the Process Server has served on the right person who was duly authorized on behalf of the petitioner/management. In the case of M/s Shalimar (supra) cited by the learned Counsel for the petitioner though while dealing with Order 29 Rule 2 Sub-clause (b) of the CPC, has held that simply leaving, the summons at the address of the company could not be treated to be as a valid service though Order 29 Rule 2 Sub-clause (b) is not strictly applicable to the facts of the present case because under the Industrial Tribunal (Central) Rules, 1957 there is a specific Rule 18 which deals with service, but the wider principle is applicable. This principle has not been adhered to. It therefore supports the point that the petitioners were not duly served and accordingly, the ex parte award deserves to be set aside and the matter remanded back to the learned Labour Court to be decided

afresh after giving an opportunity to the petitioner/Management to file their written statement and adduce their evidence.

7. As regards the question of the petitioner's application u/s 17-B of the Act which was filed as early as on 2007, the said application ought to have been decided much earlier but the said application cannot be considered today as the main matter itself is being disposed of on merits. However, keeping in view the fact that the petitioner is alleged to have been dismissed in 2001, the award has been passed on 17th November, 2004 and was challenged in 2006 by the petitioner and the fact that his application u/s 17-B of the Act remained pending and thereby depriving him of the statutory benefit to which he was entitled otherwise, I feel the interest of justice would be sub-served in case the amount of Rs. 30,000/- which stands deposited with the learned Registrar General of this Court by the petitioner in pursuance to the order dated 21st February, 2006 is released to the respondent/workman by way of costs for setting aside the ex parte award.

8. For the forgoing reasons, I accordingly set aside the ex parte award dated 17th November, 2004 subject to the amount of Rs. 30,000/- deposited by the petitioner with the learned Registrar General of this Court, to be released to the respondent/workman by way of costs along with interest accrued thereon and remand the matter back to the learned Labour Court with the direction that the same shall be decided afresh after giving an opportunity to the petitioner/Management to file written statement and contest the matter.

9. Needless to say that the learned Labour Court shall endeavour to dispose of the matter as expeditiously as possible.

10. Parties are directed to appear before the learned Labour Court on 15th April, 2009.