

1972

Present : Wijayatilake, J.

H. M. Z. ABDEEN (Managing Proprietor, Haloya Estate), Appellant,
and N. PONNUSAMY, Respondent

S. C. 39/71 and 52/71—Labour Tribunal Case K/9639

Labour Tribunal—Service of notice of date of inquiry—Omissions and irregularities—Procedure that should be followed—Industrial Disputes Regulations 23, 25 et seq.—Civil Procedure Code ss. 370 et seq.

Ex parte order was made against the 1st employer-appellant on the basis that notice of the date of inquiry had been served on him by the Police who had been entrusted to serve the notice. But the return relating to service of notice was merely a chit with a note that notice had been served ; it did not set out when and where the notice was in fact served as required by the conditions of the process issued to the Police. The employer-appellant categorically stated that notice was not served on him.

Held that there should be a fresh inquiry. “Returns in the form as in the instant case can lead to an abuse of procedure and it should be the duty of Presidents to have them scrutinized and reject them and call for an explanation from the officer concerned lest these Applications before Labour Tribunals take devious courses and in the result tend to defeat both justice and equity.”

It would be salutary for Labour Tribunals to conform to the procedure set out in sections 370 *et seq.* of the Civil Procedure Code and also to maintain a proper journal depicting all steps taken in any proceedings.

APPEAL from an order of a Labour Tribunal.

P. Naguleswaran, with *Sarath Dissanayake*, for the 1st employer-appellant.

C. Ranganathan, Q.C., with *U. C. B. Ratnayake*, for the applicant-respondent.

Cur. adv. vult.

January 3, 1972. WIJAYATILAKE, J.—

This Appeal raises an important question of procedure in Labour Tribunals.

The applicant who has been a clerk-cum-teamaker of Haloya Estate since 1951 alleges that his services were wrongfully terminated on 18.1.70. By his application dated 9.2.70 he prayed for re-instatement with back wages, adequate compensation for loss of career and Estate Staffs' Provident Fund contribution money due to him amounting to Rs. 18,020. In the caption to his application he has set out seven respondents who are designated as the “employers”. The 1st respondent is designated as the Managing Proprietor of Haloya Estate.

The case had been set down for Inquiry on 15.6.70 and the proceedings on this date have been recorded as follows :

“ Mr. Aboosaly mentions that Mr. Taylor is appearing for the respondent and moves for a postponement on personal grounds.

Mr. Wickremaratne has no objection. Refixed for 26.8.70.

Issue fresh notice on the respondent. Applicant takes notice.”

It may be noted that the President appears to have been under the impression that there was only one respondent as he has repeatedly used the singular “ respondent ”.

Thereafter when the case was called on 26.8.70 it is recorded that the *respondents* are absent and the notices on the respondents have been returned undelivered. Mr. Wickremaratne had moved for fresh summons on the *respondents* through the Police and summons had been issued accordingly for 24.10.70 with a notice to them that if they failed to appear on the next date *ex parte* evidence will be led and order made. Although the case had been refixed for 24.10.70 it had next been called on 9.12.70 ; on which date it is noted :

“ The respondent is absent. Re-issue summons on the respondent through Galaha Police with the endorsement that if he fails to appear on the next date the matter will proceed *ex parte*. Re-issue for 23.1.71.”

Here again the President appears to have been under the impression that there was only one respondent. Furthermore, there is nothing to show what transpired on 24.10.70. A medical certificate dated 18.10.70 stating that the applicant is ill at the Cancer Institute, Maharagama has been filed. Apparently the case has been postponed on this letter without even calling it on 24.10.70.

When the case came up on 23.1.71 it is recorded that the respondents are absent and that on the first date of Inquiry there was appearance for the respondents and thereafter on all the dates of Inquiry the respondents were absent and notices were issued on the respondents through the Police. Having referred to the respondents in the plural the record proceeds to state that notice of Inquiry for this date was sent through the Police and the Police have reported service of notice on the respondent. “ The respondent is absent to-day.” It may be noted that in regard to the service of notice the President has referred to the respondent in the singular. Thereafter on the applicant moving the case had proceeded to Inquiry *ex parte*. The applicant had given evidence ; but after his evidence the record does not indicate whether the Inquiry had been adjourned or concluded ! Thereafter on 12.2.71 Mr. Wickremaratne, the Proctor for the applicant had brought to the notice of the President that notices had not been served on all the parties and that notice had been served through the Police only on the Managing Proprietor and he had moved for an order against him. Thereupon the President, on the same day, had proceeded to enter judgment against

the *respondent* for a sum of Rs. 29,916.70 cts. Apparently, here he refers to the 1st respondent. In his Order he observes that from the record he finds that notice on the respondent had been served through the Police and the Police have reported service.

Mr. Naguleswaran, learned counsel for the appellant, submits that the entire proceedings are irregular as the President appears to have overlooked the fact that the Application was made against seven respondents; and having proceeded to Inquiry *ex parte* on a wrong assumption that notices had been served on all the respondents ultimately sought to make an order against the 1st respondent on the representation made by the Proctor for the applicant that notice had been duly served on him. Learned counsel for the appellant refers me to the Regulations 25 *et seq.* framed under the Industrial Disputes Act—Government Gazette 11,688 of 2.3.59 and to sections 370 *et seq.* of the Civil Procedure Code, and he questions the regularity of the service of notice on the 1st respondent too as the return is quite bare and it does not set out when and where the notice was in fact served as required by the conditions of the process issued to the Mahawela Police. On a perusal of this return I find that it is a chit with a note dated 21.1.71 that notice had been served; but there is no reference whatever to the date or place of such service. It is quite improper that the officer making this return has treated the Tribunal so casually and it is equally surprising that the President had entertained it in this form and accepted it as a due service of the notice issued by him. Returns in the form as in the instant case can lead to an abuse of procedure and it should be the duty of Presidents to have them scrutinized and reject them and call for an explanation from the officer concerned lest these Applications before Labour Tribunals take devious courses and in the result tend to defeat both justice and equity.

The 1st respondent in his affidavit presented to the President on 28.2.71 categorically states that notice was not served on him. Considering the quantum of the claim involved, it is very unlikely that the Managing proprietor would have ignored a summons or a notice in this case. In the light of my above observations a substantial doubt arises in this matter and I am of the view that the Order made *ex parte* cannot be sustained. It would be salutary for Labour Tribunals to conform to the procedure set out in sections 370 *et seq.* of the Civil Procedure Code in the interests of all parties concerned.

Mr. Ranganathan, learned counsel for the applicant-respondent, submits that it is significant that the respondents have not filed answer although there is provision for them to do so under the Industrial Disputes Act—see Regulation 31. In the circumstances, the respondents being in default issue of notice on them would be redundant and any omission or irregularity in the service of notice is of no avail to the appellants. However, the learned President having adopted the procedure of issuing notice on the respondents and the case having

proceeded on that basis and the applicant's Proctor having recognised the necessity for the service of such notice before an *ex parte* Order is made, in my opinion, it is now too late in the day to fall back on the failure of the respondents to file answer. In this context, I do not think Regulation 23 is of any avail to the applicant.

With regard to the failure to serve notice on the other respondents Mr. Ranganathan relies on the judgment in *Gaffoor v. Almeida*¹, but in my opinion, the facts can be clearly distinguished as in the instant case the applicant has set out categorically in his application at paragraph 7 that he continued to serve "these employers diligently and faithfully till December 1969". Therefore, the fact that the 1st respondent is the Managing proprietor is of little consequence.

I might mention that no journal appears to have been maintained by the President in respect of this case, and I am of the view that the confusion which has resulted can be attributed to this. I should think if Presidents of Labour Tribunals adopt the procedure prevalent in our Courts of maintaining a journal depicting the action taken many of these irregularities could be avoided. I am constrained to make this observation as this is not the first case where I have noticed the absence of a proper journal. The mere filing of papers without reference to the journal can lead to an abuse of procedure as in the instant case. In the light of the omissions and irregularities I have referred to I am unable to hold that the Order made by the President is just and equitable. Vide *Danny v. William*²; *Bata v. Sirisena*³.

I would accordingly set aside the Order and send the case back for Inquiry *de novo* before another President. I make no order as to costs of Inquiry. I award the 1st Employer-appellant Rs. 250 as costs of this Appeal.

- *Case sent back for fresh inquiry.*

¹ (1971) 74 N. L. R. 164.

² (1969) 73 N. L. R. 23.

³ (1970) 74 N. L. R. 94.