

1971 Present : H. N. G. Fernando, C.J., and Sirimane, J.

G. E. PITTER, Petitioner, and D. DAHANAYAKE (President, Labour Tribunal) and 3 others, Respondents

S.C. 859/70—Application for a Mandate in the nature of a Writ of Certiorari and/or Mandamus

Industrial Disputes Act—Application under s. 31 B—Service of notice to a party—Procedure when notice sent by registered post is not served—Industrial Disputes Regulations, Regulation 18.

Where an application for relief under section 31 B of the Industrial Disputes Act was dismissed by the Labour Tribunal on the ground that the applicant was not present on the day of inquiry, after a notice sent by registered post to the applicant about the date of inquiry had been returned undelivered to the office of the Tribunal—

Held, that, when a notice sent to a person by registered post is not delivered, the Secretary of the Tribunal has a duty under Regulation 36 of the Industrial Disputes Regulations to cause the notice to be affixed at the entrance to that person's last known place of abode. It is only if a person fails to appear after notice is effected by that method, that the Tribunal may be entitled to deal with his matter in his absence.

APPPLICATION for a Writ of *Certiorari* and/or *Mandamus*.

W. E. M. Abeysekera, with M. W. Amerasinghe, for the petitioner.

K. P. V. Karunaratne, Crown Counsel, for the 2nd respondent.

June 13, 1971. H. N. G. FERNANDO, C.J.—

The present petitioner had made an application to the Labour Tribunal under Section 31 (b) of the Industrial Disputes Act. The matter was apparently taken up for inquiry, and the Tribunal thereafter made the following Order :—

“The notice sent to the Applicant not being served it has been returned to the office. On the day of Inquiry the Applicant was not present before the Tribunal.

The application is dismissed.”

As stated in the Order itself, it would appear that notice of the date fixed for hearing of the Petitioner's application had not in fact been served on the Petitioner. The file of the Tribunal shows that a notice sent by registered post to the Petitioner had been returned undelivered to the office of the Tribunal.

The relevant provision as to the service of such notices is contained in Regulation 36 of the regulations made under the Act. Regulation 36 provides that the service on a person of any notice, summons under the Act shall be effected by hand or by registered post or by affixing such notice, summons at the entrance to his last known place of abode.

The third method of service prescribed in Regulation 36 is one which is prescribed in several other contexts in statute law as an alternative to direct service, in cases where direct service is not possible. It seems to us that when a notice sent by registered post is not delivered, the Secretary of the Tribunal has a duty to cause the notice to be served by this third method. It is only if a person fails to appear after service is effected by that method, that the Tribunal may be entitled to deal with the matter in the absence of that person.

The Order dismissing the Petitioner's application is set aside. The Tribunal will take necessary steps to fix a date of hearing, after notice to the proper parties, and to inquire into the Petitioner's original application.

SIRIMANE, J.—I agree.

Order set aside.