

(2003) 10 DEL CK 0025
In the Delhi High Court
Case No : Civil Writ No. 856 of 1998

M.C.D.

APPELLANT

Vs

Om Praksh and Another

RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2004) 136 PLR 48 : (2004) 2 SLJ 366

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; Pragnya Routray, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—Rule.

2. With the consent of the Counsel for the parties, the matter is taken up today for final hearing.

3. This writ petition challenges the award dated 28th May, 1997, passed by the Industrial Tribunal, directing the reinstatement with full back wages from 31st July, 1989 in favor of the respondent No. 1/workman.

4. The Tribunal has found as under:

(a) that the averment about demand notice dated 31st July, 1989 not having been served is not correct in view of the reply filed by the petitioner/MCD before the Conciliation Officer wherein the demand notice dated 31st July, 1989 was admitted to have been received, and

(b) that the plea of management that the respondent No. I/workman had abandoned his services has been held against the petitioner management on the ground that nothing has been shown to substantiate this plea. The attendance register which should have been the best indicator of the abandonment of services has not been produced by the MCD.

5. Admittedly there is no compliance of Section 25-F of the Industrial Disputes Act, 1947. Accordingly the award insofar as it granted reinstatement in favor of the respondent No. 1/workman is entirely sustainable. However, on the question of back wages, automatic payment of back wages in the present case when the demand notice was itself belated by 4 years cannot be resisted by restricting it from the date of the demand notice. Accordingly, this is a fit case where the award in so far as it granted reinstatement deserves to be upheld but the award granting back wages in favor of the workman cannot be sustained. However, the payment received by the workman/respondent No. 1 during the pendency of the proceedings which would really be in the nature of the subsistence allowance shall not be liable to be adjusted by the petitioner.

6. Accordingly, the writ petition is allowed to the extent indicated above and stands disposed of. The respondent No. 1/workman shall be reinstated and will report for duty on 1st December, 2003 to the Deputy Director, Horticulture, Garden Department; Civil Line Zone, Delhi and shall not be entitled to any further amount towards back wages.