

**(2012) 04 DEL CK 0315**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 1309 of 2000**

M.C.D.

APPELLANT

Vs

Shankar and Another

RESPONDENT

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**Date of Decision :** 17-04-2012

**Acts Referred:**

**Citation :** (2012) 04 DEL CK 0315

**Hon'ble Judges :** P.K. Bhasin, J

**Bench :** Single Bench

**Advocate :** Amita Gupta, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

P.K. Bhasin, J.—The petitioner-management is aggrieved by the Award dated 24th May, 1999 passed by the Industrial Tribunal while declining the relief of regularization as a Garden Chaudhary to the respondent no. 1-workman direct the petitioner-management to pay him wages which are payable to a Garden Chaudhary from 5th December, 1986 till the time he had performed the duties of a Garden Chaudhary. The relevant facts as pleaded by the respondent no. 1-workman are that he was employed with petitioner-management as a Mali in the year 1960 and from 5th December, 1986 the officials of the Horticulture department had assigned him the duties of a Garden Chaudhary and ever since then he was performing the duties of that post. He sought his regularization as a Garden Chaudhary but since the management did not concede to that demand he approached the labour Authorities and in due course the appropriate Government referred his claim of regularization for adjudication to the Industrial Tribunal. The term of the reference was as under:-

Whether Shri Shankar is entitled to be regularized as Garden Choudhary and if so, since when and what directions are necessary in this respect?

2. Before the Industrial Tribunal the respondent no. 1-workman in his statement of claim had claimed that he was performing the duties of a Garden Chaudhary

from 5th December, 1986 onwards and therefore, he was entitled to be regularized as a Garden Chaudhary.

3. The petitioner-management had contested the claim of the respondent no. 1-workman inter alia on the ground that he could not be regularized as a Garden Chaudhary since he did not possess the requisite qualifications prescribed for that post and also because he had never performed the duties of a Garden Chaudhary.

4. After filing its written statement, the petitioner-management stopped participating in the proceedings before the Industrial Tribunal and the Industrial Tribunal accepting the unchallenged testimony of the respondent no. 1-workman passed an Award directing the petitioner-management to pay to him the salary payable to a Garden Chaudhary from 5th December, 1986 till the time he had performed the duties as a Garden Chaudhary but the relief of regularization claimed by him was declined.

5. Feeling aggrieved, this writ petition was filed by the petitioner- management.

6. Learned counsel for the petitioner has submitted that the matter may be remanded back to the Industrial Tribunal for fresh trial after giving an opportunity to the petitioner-management to adduce evidence in support of its defence. It was also contended that in any case, since admittedly the respondent no. 1-workman did not possess the prescribed qualifications for the post of Garden Chaudhary he was not entitled even to the salary payable to a Garden Chaudhary irrespective of the fact that he had performed the duties of a Garden Chaudhary as the Industrial Tribunal has found in his favour though the petitioner's case was that he had never been assigned the duties of a Garden Chaudhary.

7. The respondent no. 1-workman has not been appearing in the matter despite service of notice on him.

8. After having given my thoughtful consideration to the submissions of the learned counsel for the petitioner-management, I am of the view that there is no merit in this writ petition and the same is liable to be dismissed. The management itself had chosen not to contest the claim of the respondent no. 1-workman to the effect that he had been performing the duties of a Garden Chaudhary from 5th December, 1986 onwards. This Court has also been granting the relief of payment of wages to such employees who have been performing the duties of a higher post though not promoted formally and for granting that relief, the question whether the concerned workman possesses requisite qualifications for that post or not has not been considered to be of any relevance.

9. As far as the submission made by the learned counsel for the petitioner-management that the matter should be remanded back for giving an opportunity to it for contesting the case on merits is concerned, the same also cannot be accepted for the reason that management itself had chosen not to approach the

Industrial Tribunal with any application for setting aside the ex-parte proceedings and Industrial Tribunal has also observed in the impugned Award that the management had not even sought setting aside of the ex-parte proceedings ordered against it. This writ petition is, therefore, dismissed.