

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 6570 of 2011(O&M)

Date of Decision: November 2 , 2015.

Jaswinder Kaur

..... PETITIONER (s)

Versus

Punjab Mandi Board

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. M.K.Tiwari, Advocate
for the petitioner.

Mrs. Sushma Chopra, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Prayer in this writ petition is for quashing order dated 05.04.2011 Annexure P2, whereby petitioner – Jaswinder Kaur, Senior Assistant has been transferred from Divisional Office, Mohali to Establishment Branch (Construction). It is contended that transfer of the petitioner is outside of her cadre, which is impermissible as the rules i.e., Punjab State Agricultural Marketing Board (Class III) Service Rules, 1989 do not provide for a change of cadre. Notice of motion was issued on 19.04.2011 on this specific contention.

Brief facts are that respondent-Board decided to bifurcate the cadre

of Clerks into two. On 28.07.1989, a circular was issued by the Secretary of the Board for inviting options from the Clerks in respect to their promotional channel either in the general line or engineering wing. It was also proposed that separate seniority list for the said two lines be prepared. Petitioner submitted her option for promotion in the Engineering wing line on 30.12.1991. A tentative seniority list of the Clerks/Typists who had opted for their promotion in the Engineering wing was circulated on 19.07.1991. However, instead of issuing final seniority list, order dated 17/18.07.1992 was issued by the respondent-Board withdrawing earlier orders/circulars dated 28.08.1989, 31.12.1990 and 18.02.1991 for separation of the clerical wing into two. It was mentioned that seniority of the Senior Clerks/Clerks has to be common as existing earlier.

Said order dated 17/18.07.1992 was challenged by way of CWP No.2529 of 1992 (Bharpur Singh and others v. Punjab Mandi Board) in which the said order/circular dated 17/18.07.1992 was set aside by this Court vide order dated 23.12.2009. Respondent – Board challenged the said judgment by preferring various Letters Patent Appeals. Division Bench of this Court vide order dated 17.12.2010 in LPA No.1151 of 2010 (Punjab Mandi Board and others v. Bharpur Singh and others) and connected matters, set aside judgment dated 23.12.2009 and upheld the order/circular dated 17/18.07.1992 issued by the Board withdrawing the bifurcation of cadre of Clerks into two.

Learned counsel for the petitioner vehemently argues that there are two wings of service as provided under the Punjab State Agricultural Marketing Board (Class-III) Service Rules, 1989 i.e., Engineering Wing and General Wing.

Mr. Tiwari vehemently argues that a judgment which nullifies the provisions of

statutory rules is *per incuriam* and not binding.

It is a conceded position that the Special Leave Petition against the said decision dated 17.12.2010 passed by the Division Bench has been dismissed by the Hon'ble Supreme Court. Review Application No.31 of 2011 in LPA No.1151 of 2010 has also dismissed on 02.09.2011, Annexure P3. In pursuance to the Division Bench judgment, common seniority list, Annexure R3 has been circulated.

Contention of learned counsel for the petitioner that the Rules in question having not been considered by the Division Bench therefore the said judgment is not relevant, is misconceived, hence unacceptable. In view of the decision by the Division Bench of this Court wherein it has been categorically held that bifurcation of the cadre of Clerks was not permissible and the subsequent circular withdrawing the bifurcation has been upheld, no interference is called for by this Court. Stand of respondent-Board that there being no separation of the cadre of Clerks into two, the petitioner cannot be said to be transferred from one Cadre to the other, is correct and justified.

In view of the facts and circumstances as above, this writ petition is dismissed.

November 2 , 2015.
'om'

(LISA GILL)
JUDGE