

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**RSA No.2526 of 2012 (O&M)
Date of Decision: 10.12.2015**

Haryana State Agriculture Marketing Board, Panchkula.

.....Appellant.

Versus

Dharampal-II.

.....Respondent.

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Gupta, Advocate, for the appellant.

Mr. N.C. Kinra, Advocate, for the respondent.

RITU BAHRI, J.

Defendant-appellant has filed the present second appeal against the judgments of concurrent findings of facts dated 02.06.2010 and 25.02.2012 passed by the Additional Civil Judge (Senior Division), Panchkula and the Additional District Judge, Panchkula respectively, whereby the suit filed by the plaintiff-respondent, Dharampal, seeking preponement of his date of promotion as Mandi Supervisor-cum-Fee Collector from 3.4.1998 to 21.4.1972 at par with defendant No.2-Balbir Singh, Accountant Market Committee, Ambala City, has been decreed.

Facts necessary for disposal of the present second appeal are that respondent-plaintiff filed suit for declaration to the effect that he was entitled to get his date of promotion as Mandi Supervisor-cum-Fee Collector preponed from 03.04.1998 to 21.04.1972 at par with the

promotion given to his junior Sh. Balbir Singh-defendant No.2 with all consequential financial benefits along with interest at the rate of 18% per annum from due date till its realization. Initially, the plaintiff was appointed as Auction Recorder on 06.12.1971 and he joined his duties as such on 07.12.1971 in the Market Committee Charkhi Dadri. It was further averred that vide order dated 6.4.1998 plaintiff-respondent was promoted as Mandi Supervisor-cum-Fee Collector. In the month of November 2006, he came to know that the defendant No.2, who was appointed on 08.02.1972, was promoted as Mandi Supervisor-cum-Fee Collector on 21.04.1972. The Scale of Auction Recorder/Clerk/Caretaker and Storekeeper was the same for all intents and purposes and as such, these posts were equivalent and having same cadre and one seniority list. By virtue of Section 20 (1) of the Punjab Agricultural Produce Markets Act, 1961, all the existing employees of the Market Committees in the State of Haryana were deemed to have been appointed by the Board and as such the plaintiff and defendant No.2 were also deemed to be members of the service of the Board. It was further submitted that name of defendant No.2 was never published in the Seniority list of the Clerks/Auction Recorders/Arrival Records issued by defendant No.1. As per plaintiff, this relief has been granted to similarly situated employees, whereas the case of the plaintiff-respondent was not considered by the defendant No.1 despite having served legal notice/representation dated 05.12.2006. Hence the suit.

Upon notice defendant No.1 appeared and filed written statement taking preliminary objections with regard to maintainability and locus standi. It was stated that the cadres of the plaintiff and defendant No.2 were separate, therefore, the suit of the plaintiff was time barred. The

suit was also barred under Section 31(2) of the Punjab Agricultural Produce Market Act, 1961. On merits, dates of joining and employment of the plaintiff as well as defendant No.2 were admitted. Facts with regard to promotion of defendant No.2 as Fee Collector on 21.04.1972 and issuance of Seniority list of the employees of the Board were also admitted. Rest of the averments made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties following issues were framed by the learned trial Court on 14.03.2008:-

1. *Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP.*
2. *Whether suit of the plaintiff is hopelessly time barred?OPD.*
3. *Whether the present suit is barred under Section 31(2) of the Punjab Agricultural Produce Markets Act, 1961?OPD.*
4. *Whether this Court has no jurisdiction to entertain and try the present suit?OPD.*
5. *Whether the present suit is not maintainable in the present form?OPD.*
6. *Whether the plaintiff has no cause of action to file the present suit?OPD.*
7. *Relief.*

Both the Courts below have decided against the defendant-appellant.

Facts not in dispute before this Court are that the plaintiff-respondent had been appointed as auction recorder in Market Committee, Charkhi Dadri on 06.12.1971, whereas Balbir Singh-defendant No.2 was appointed on the same post on 08.02.1972. Defendant No.2 was promoted as Mandi Supervisor on 21.04.1972, whereas plaintiff-respondent was

promoted on the said post vide order dated 03.04.1998. This fact was admitted by Rajinder Kumar, Clerk (DW-1) in his cross-examination. This witness had further stated that the seniority list was prepared at State level and name of Balbir Singh-defendant No.1 had never been published in the seniority list of AR/Clerk/Storekeeper. He further admitted that defendant-appellant had been granting retrospective promotions to its employees.

The appellant-defendant has also raised objection with regard to limitation and stated that the suit was barred under Article 58 of Limitation Act. It was not the stand of the appellant that after 1973, the cadre of service of employees of the Board became joint and thereafter, any seniority list, either post wise or district wise had ever been circulated. In November, 2006, plaintiff-respondent came to know that Balbir Singh-defendant No.2 had been promoted and thereafter, he (plaintiff) served a notice dated 19.01.2007 under Section 31 of the Punjab Agricultural Produce Markets Act, 1961 upon the defendant-appellant. He had also made a representation dated 05.12.2006 for preponing the date of his promotion as Fee Collector/ Mandi supervisor. This fact had been admitted by Rajinder Kumar (DW-1) in his cross-examination. It was further observed by both the Courts below that the appellant-board had adopted a pick and choose policy and by taking suo-moto action, seniority of some of the employees of the board had been preponed, whereas in some other cases it had been done on the representation(s) of some of the employees. However, similar benefit was being denied to the plaintiff-respondent.

The case of the plaintiff-respondent is covered by the judgments passed by this Court in **Haryana State Agricultural Marketing Board Vs. Dharam Paul and another**, RSA No.2358 of 2010 (decided on

10.03.2014) and Haryana State Agricultural Marketing Board, Panchkula Vs. Gurbax Singh and another, RSA No.1898 of 2012 (decided on 17.09.2012). As per judgment and decree dated 01.08.2001, this benefit was first time extended to one Kali Ram Naidu. This judgment was upheld by the lower appellate Court vide judgment dated 16.01.2002 and thereafter, by this Court vide judgment dated 30.04.2002. Thereafter, Kali Ram Naidu had given up his claim for arrears before the Hon'ble Supreme Court in Civil Appeal No.1585 of 2003. Hence, vide subsequent decisions given by this Court in RSA No.1898 of 2012 and RSA No.2358 of 2010, the employees were not denied the benefit of such promotions. The appellant-board has not chosen to file any appeal against the judgments passed in Dharam Paul's case (supra).

In view of the above, this Court is of the view that suit of the plaintiff-respondent has been rightly decreed by the Courts below and no illegality, much less perversity, has been found in the impugned judgments.

No substantial question of law arises for consideration.

Dismissed.

10.12.2015
ajp

(RITU BAHRI)
JUDGE