

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

Date of decision: 25.05.2016

CWP No.13411 of 1992 (O&M)

Bikram Singh & others

...Petitioners

Vs.

The State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S.Kehar, Advocate, for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. S.S.Rangi, Advocate, for respondent No.2.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

This petition was filed at a stage when a legal notice was served on the respondent – Punjab State Agricultural Marketing Board dated 18.08.1992 (Annex P-7). The claims of the petitioners and their grievances were set out in the notice with reasons in their support. The respondent – Board was requested to meet the claims of the representationists and to pass appropriate orders within one month of receipt of notice. However, in case, the decision was not favourable to them then reasons therefor may be intimated to know the position and their rights, and for them to take

appropriate recourse to any further action that they may deem just and proper.

The case appears to be controlled by judicial orders passed in CWP Nos.5039 of 1984; 4475 of 1988; 6422 of 1988; 13498 of 1991; 11234 of 1991 & 17223 of 1991. At least a few of which are detailed orders applying the principles laid down in Y.V. Rangaiah Vs. J. Sreenivasa Rao & others, (1983) 3 SCC 284 for vacancies which occurred prior to the rules coming into force on 02.05.1988, which were adverse to the interest of Assistant Secretaries in Market Committees in Punjab run by the respondent – Board. These periods can be divided into three parts (i) prior to 08.08.1984; (ii) after 08.08.1984 till 1988 when the rules were finalized; & (iii) beyond 1988 when the rules came into force on 02.05.1988, as delineated in the interim order dated 29.01.2016 for convenience of understanding the case.

Learned counsel for the respondent – Board was asked to file an additional affidavit explaining the position regarding vacancies in the cadre of Secretary, Market Committees, Punjab delineated in the changing ratios. The additional affidavit has been filed in which the position has been explained in Paras.1 to 3. The periods involved are either occupied by instructions or instructions issued in supersession of previous instructions and the draft service rules. The Board says that the draft service rules were never implemented by the Board. It is stated that petitioner No.9 was promoted as Assistant Secretary on 01.12.1986 as per instructions dated 08.08.1984. It is mentioned in Para.5 that none of the petitioners fulfilled the regular work experience except Avtar Singh (petitioner No.9) as envisaged even in draft service rules. The Board says that if the case of

petitioner No.9 is considered as per the draft service rules, then the decision passed by this Court will have to be reviewed. It is however admitted that the decisions of the Court have been implemented with respect to directions issued to promote the petitioners therein in accordance with rules/criteria which was available prior to the service rules came into force in 1988 without insisting upon the conditions laid down for promotion in the service rules. The petitioner Sikander Singh has filed a reply to the additional affidavit.

While this Court sits in secondary review of administrative action, it appears that the Board should indicate its stand in the present case by an order in writing determining the rights of the petitioners with reference to the case law mentioned above. There is no impugned order in this case. It is not enough to decide the case on pleadings and affidavits. In absence of an impugned order, favourable or adverse to the interest of the petitioners, it will not be possible to form an opinion on contingencies, which would best be reflected by an administrative order, if it was passed to know the mind of the implementers of the orders of the court in the respondent– Board. In the considered opinion of this Court, the matter deserves to be remanded for passing a reasoned order on all the aspects of the case so that clarity comes on the disputes. Only then can judicial review be properly exercised.

Consequently, the present petition is disposed of with a direction to the respondent – Board to take a final decision on the rights of the parties in the light of the judgments rendered by this Court in the aforesaid cases in the first instance. The decision would be taken within three months from the date of receipt of certified copy of this order. Those of the petitioners, who request personal hearing, the same will be granted to

them. The liberty as aforesaid and the necessity of passing a speaking order would follow. The petitioners are at liberty to challenge the order in case it is adverse to their interests as though they are in court since 1992.

25.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE