

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19027 of 1995

Date of Decision: 09.05.2016

Manvinder Singh

... Petitioner

Versus

Punjab State Agricultural Marketing
Board and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Bansal, Advocate,
for the petitioner.

Mr. Sukhdip Singh Brar, Advocate,
for the respondents.

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

RAJIV NARAIN RAINA, J.(Oral)

1. The parent Market Committee of the petitioner was at Goniana. He was appointed on July 27, 1977 as Auction Recorder. One Jagjit Singh whose parent Committee was Market Committee, Bhuchio was posted by transfer to Market Committee, Goniana where he was promoted on September 02, 1982 as a Mandi Supervisor. It would be apposite to refer to Annex P-1 which is the decision dated April 30, 1982 wherein it is prescribed that seniority would be assigned with reference to the parent Committee. On November 11, 1982 the policy was modified by the State Government (Annex P-2) wherein it was decided that March 31, 1982 would be the appointed date to be the cut off place of posting of Auction Recorders in the various Market Committees in the State of Punjab and thereby the date for purposes of assigning seniority. The instructions fixed

the point from which inter se seniority is to be measured.

2. The complaint of the petitioner is that Jagjit Singh was promoted in advance of the policy and, therefore, there was no legal basis to promote him on September 02, 1982 and Jagjit Singh's rights would remain subservient to the rights of the petitioner for promotion to the post of Mandi Supervisor in his parent Committee.

3. Aggrieved by the action of the respondents ignoring his claim for promotion in Market Committee, Goniana to the post of Mandi Supervisor the petitioner made representation which has been decided by the impugned order dated July 04, 1995 (Annex P-8). The claim has been rejected by the Administrative Officer/Secretary on the ground that Jagjit Singh was promoted as Mandi Supervisor in the year 1982 according to instructions applicable at that time and now that promotion cannot be disturbed. The instructions applicable on the date when Jagjit Singh was promoted was the Circular No.62 Annex P-1 dated April 30, 1982 which instructions in the material part reads as follows:-

“3. While transferring the employees of Market Committees following the relevant section 3 (ii) of the act, because of the transfers from one Market Committee to other Market Committee, the seniority is affected in those Market Committees where the employees are transferred from other Market Committees and they are seen losing heavily. In the same manner on the other side many times undue advantage occurs in the Market Committee from where the transfer takes place. Apart from this, many management problems arise due to such transfers.

4. In this situation it is dangerous for the clean and proper decision. Those employees who are adversely affected by this are harassed and they have to resort to appeals etc. because of which additional work is created and delaying

correspondence has to be resorted to.

5. *In view of the aforesaid situation it has been decided that while transferring the employees from one Market Committee to second Market Committee, the rights of the employees regarding promotion seniority and service etc. will be considered in the parent Market Committee where he has been appointed on first appointment and in that committee alone they shall be promoted in accordance with the seniority. In this way the rights of promotion of the transferred employees which accrued to them in their parent committee will continue to take and demand their rights for promotion in their parent committee as if they have not been transferred from the parents committee if the same can not be given in the new committee.*

6. *The aforesaid instructions shall be applicable w.e.f. 1.4.1982.”*

4. The gist of the instructions is in para.5 (supra) which prescribes that the rights of promotion of transferred employees which accrued to them in their parent committee will continue to take seniority and are entitled to demand their rights for promotion in their parent committee as if they have not been transferred from the parent committee if the same cannot be given in the new committee. The instructions obviously were meant to take care of complications arising out of large scale transfers from one Market Committees to the other.

5. The respondents have contested the petition by filing written statement. They have not taken any objection as to delay and laches in approaching Court. Neither is the impugned order passed on ground of delay and laches or bar of limitation. The matter having been admitted by this Court it would appear too late to defeat the rights of the petitioner on ground of delay and laches. The case demands that it should be decided on

merits even though two decades have gone by for the case to mature for

arguments. The Market Committee in its written statement states that as per Annex P-2 dated November 11, 1982 the place of the parent Committee was fixed according to place of posting as on March 31, 1982 and as per these instructions, Jagjit Singh was rightly promoted as Mandi Supervisor. It has been averred in para.3 that Jagjit Singh was promoted as per letter No.160 of 1982 in which it was made clear that the parent Committee of an employee will be the same at which place he was appointed on March 31, 1982 and Jagjit Singh was promoted under these instructions. If Jagjit Singh could be promoted under the instructions dated November 11, 1982 then his advance promotion on September 02, 1982 would appear to impinge on the rights of the petitioner who was then the senior most Action Recorder awaiting promotion as Mandi Supervisor in his parent Market Committee, Goniana. It may be mentioned that Jagjit Singh is not a party to the instant petition. In case, the petitioner succeeds this Court will refrain itself from passing an order which would be prejudicial to the interest of Jagjit Singh who stands retired just as the petitioner does from service. The petitioner superannuated on August 31, 2008. Mr. Brar has no instructions from the respondents but the Court will assume that Jagjit Singh must be of about the same age as the petitioner and superannuated.

6. The defence of the Market Committee in its written statement does not inspire any trust and confidence in the Court. As a matter of fact in the written statement the Market Committee has avoided to mention or highlight the date of the instructions dated November 11, 1982. It is well settled that instructions operate prospectively or do not create or take away rights accruing prior to their issue.

7. In these circumstances, this Court is of the considered view that the petitioner has been wronged by the Market Committee, Goniana and he deserves to be considered for promotion from September 02, 1982 when Jagjit Singh was promoted in Market Committee, Goniana though he belonged to Market Committee, Bhucho.

8. As a result of the above discussion, the writ petition is allowed. A certiorari is issued quashing the impugned order dated July 04, 1995 (Annex P-8). However, quashing of the order will not entail any adverse legal consequence on Jagjit Singh either on his further promotions, if any, or in his terminal benefits or any change thereto since he is not a party and has not been heard in the making of this order. The respondent-Market Committee, Goniana will pass an order in writing considering the case of the petitioner from antedated promotion as Mandi Supervisor from September 02, 1982 i.e from the date Jagjit Singh was promoted. In case, his record till then justifies promotion then he would be granted notional promotion retrospectively but with all consequential benefits from the date of filing of the petition till superannuation.

(RAJIV NARAIN RAINA)
JUDGE

09.05.2016
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