

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9415 of 2012

Darshan Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CWP No.10562 of 2013

Surinder Kumar

... Petitioner

Versus

State of Punjab & others

... Respondents

Decided on : 12.04.2016

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.R.K.Arora, Advocate, for the petitioner(s).

Mr.Avinit Avasthi, AAG, Punjab.

Ms.Sushma Chopra, Advocate,
for respondents No.2 to 5.

G.S. Sandhawalia, J. (Oral)

This judgment shall dispose of CWP-9415-2012 & 10562-2013, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-9415-2012 titled *Darshan Singh Vs. State of Punjab & others*.

Petitioner seeks quashing of the order dated 24.02.2012 (Annexure P8) whereby respondent No.3, the Secretary, Punjab Mandi Board, annulled the resolution dated 28.01.2010, passed by respondent No.4-the Market Committee, Amloh. Vide the said resolution, the petitioner was absorbed to the post of Clerk from the post of Electrician. The resolution was not approved by the Mandi Board, vide the impugned order, on the ground that it was not in consonance with the rules and there was no provision for promotion from Electrician, appointed with the Marketing Committee.

It is not disputed that the petitioner, thereafter, has also been promoted as Auction Recorder vide order dated 23.09.2013, however, subject to the final decision of the present writ petition.

Counsel for the petitioner has submitted that at that point of time, the absorption was directed vide the instructions dated 08.12.1992 (Annexure P3). Reference is also made to Annexure P10 whereby representation had been made to the Secretary of the Mandi Board, giving the details of other similarly situated employees who had also been absorbed after converting the technical posts.

Counsel for the respondents, however, submit that the circular dated 08.12.1992 has, thereafter, been withdrawn on 08.02.2013 (Annexure P26) and therefore, the petitioners cannot seek any benefit of the said circular.

Counsel for the petitioner, however, submits that as per the note given in the circular, it was mentioned that the cases which had already been decided will not be opened, at this stage. The said circular of 1992 was the subject matter of consideration by the Division Bench in CWP-7619-2004 titled *Sukhvinder Singh Vs. State of Punjab & others*, decided on 18.01.2007 (Annexure P14) wherein also, similar resolution had been rejected by the Secretary of the Board. It was found that since persons similarly situated had been absorbed in the permanent cadre of Clerks and therefore, the petitioner therein also was entitled for the same treatment. Therefore, the writ petition was allowed, subject to the condition that the candidate had to pass the Punjabi type test, passed by the Clerks. The Board had given 6 months' time to the employees for passing the necessary test and the Board was directed to hold the said test. In the present cases also, it is to be noticed that when the matter came up before the Secretary, on 24.02.2012, the judgment of the Division Bench was in force and the instructions dated 08.02.2013 had not come into force and therefore, the 1992 instructions were very much in force.

Accordingly, keeping in view the observations made in Sukhvinder Singh's case (supra), this Court is of the opinion that the cancellation of the resolution was not justified. Accordingly, the present writ petitions are allowed. Order dated 24.02.2012 (Annexure P8) is set aside. It is, further, pointed out that the

petitioners have already qualified the type test. In case that is not so, the petitioners shall be given adequate opportunity to clear the said test, as ordered by the Division Bench in Sukhvinder Singh's case (supra).

APRIL 12, 2016
sailsh

(G.S. SANDHAWALIA)
JUDGE