

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.16614 OF 2017 (O&M)

DATE OF DECISION: AUGUST 03, 2017

Gurvinder Singh son of Shri Chamkaur SinghPetitioner

Versus

Punjab State Agricultural Marketing Board
and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Puneet Gupta, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

CM No.No.10486 of 2017

Application is allowed as prayed for.

2. The additional affidavit dated 29.7.2017 of the petitioner is taken on record.

Main case

3. Petitioner, who was working as Sewadar in the office of Market Committee, Sandaur (Sangrur), was promoted to the post of Clerk vide Market Committee Resolution No.201 dated 25.4.2016.

4. Challenge in the instant petition is to the order dated 18.7.2017 whereby Secretary, Punjab Mandi Board exercising the powers conferred under Section 33(4)(1) of the Punjab Agricultural Produce Markets Act, 1961 has cancelled Resolution

No.201 dated 25.4.2016. It is pleaded that the necessary consequence of the impugned order dated 18.7.2017 would be reversion of the petitioner from the post of Clerk.

5. Learned counsel submits that the petitioner was, initially, appointed as a Sewadar on 9.12.2011 in Market Committee, Sandaur by way of direct recruitment. Under the statutory service rules governing the conditions of service, a Class-IV employee is entitled to be considered for promotion to a Class-III post upon possessing experience of five years, qualification of Matriculation and having passed the type test in Punjabi language. It is submitted that upon request having been made by the petitioner, the same was duly considered by the respondent-Committee and promotion of the petitioner to the post of Clerk was approved vide Resolution No.201 dated 25.4.2016 with the condition that the petitioner shall draw salary of the post of Clerk only upon completion of five years experience and after passing the type test. It is argued that even though the petitioner did not possess the requisite eligibility to be promoted to the post of Clerk on the date in question, yet in view of such condition having been imposed, no exception could be taken to the action of the respondent-Committee in having accepted the request of the petitioner. Further submitted that subsequent to the promotion of the petitioner on the post of Clerk, petitioner has completed five years of experience on 9.12.2016 and has also passed the type test on 26.10.2016 and as such, he was fully eligible to hold the promotional post as on the date of passing of the impugned order dated 18.7.2017. Further contended by

adverting to an additional affidavit dated 27.7.2017 of the petitioner duly placed on record that by adopting such modus operandi, no third party right has been affected inasmuch as there was no other Class-IV employee in Market Committee, Sandaur whose rights had been prejudicially affected as regards consideration for promotion to the Class-III post.

6. Learned counsel has vociferously argued that the impugned order has been passed in violation of the principles of natural justice. Prior to passing of the order dated 18.7.2017, no opportunity of hearing had been granted to the petitioner and even no notice had been issued to him. Learned counsel contends that it is settled law that opportunity of hearing has to be granted to an employee against whom any adverse order is being passed so that he can effectively represent against the proposed action. In support of such submission, reliance has been placed upon a Division Bench judgment of this Court in **Ravinder Singh v. Punjab Mandi Board and another** (Civil Writ Petition No.17685 of 2003 decided on 21.2.2005) and upon a judgment passed by a Co-ordinate Bench in **Avtar Singh v. Punjab Mandi Board and another** (Civil Writ Petition No.9502 of 2012 decided on 6.4.2015) and appended as Annexure P5 along with the writ petition.

7. A plea of discrimination has also been raised in terms of citing the instance of one Karanvir Singh who is also stated to have been ineligible as on the date he was promoted on the post of Clerk and against whom no action has been taken. Learned counsel argues that it would not be open for the respondent-

authorities to adopt a method of pick and choose and the action is stated to be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

8. Learned counsel for the petitioner has been heard at length and the case paper book has been perused.

9. The conditions of service of Class-III employees of the Market Committees are governed by the Punjab Market Committees (Class-III) Service Rules, 1989 (hereinafter to be referred as 'the 1989 Rules'). Rule 6 defines the appointing authority and Rule 8 governs the method of recruitment and qualifications. Rule 6, Rule 8 as also appendix B to the 1989 Rules would be relevant to the controversy in hand and are reproduced hereunder:

“RULE 6 – APPOINTING AUTHORITY:

All appointments to the service shall be made by the Committee.

RULE 8 – METHOD OF RECRUITMENT AND QUALIFICATIONS:

(1) Subject to the provisions of sub-rule (4), appointment to the service shall be made in the manner specified in Appendix 'B';

Provided that no person shall be appointed on daily wages or on ad hoc basis.

(2) No person shall be appointed to a post in the service unless he possesses the qualifications and experience as specified against that post in Appendix 'B';

Provided that if no suitable candidate is available for appointment by promotion to a post in the service such a post shall be filled in by transfer.

(3) All appointments by promotion to the service shall be made by selection on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone.

(4) The following percentage of posts in the service shall be reserved for each method of appointment indicated for categories mentioned thereunder namely:-

(A) By direct appointment:-

i) for members of the Scheduled Castes.....25 per cent.

ii) for members of the Backward Classes.....5 per cent.

b) By promotion:-

i) for members of the Scheduled Castes.....20 per cent.

Provided that reservation in the case of sportsmen handicapped persons, freedom fighters of fir ant other categories of person shall also be upto such percentage as may from time to time, be specified by the Government of Punjab for the corresponding service under it.

No person shall be recruited to any post in the service by direct appointment unless he possesses

knowledge of Punjabi language of Matriculation standard or to its equivalent;

Provided that the qualifications for filling a post by direct appointment are less than Matriculation standard the knowledge of Punjabi Language shall be lowered accordingly.

APPENDIX 'B'
(See Rule 8)

Sr. No	Designation of the post	Method of recruitment	Qualification for recruitment		
			By direct appointment	By promotion	By transfer
5	Clerk	By direct appointment provided that upto ten percent of the posts as per instructions of the Government of Punjab issued or upto such percentage of posts as may be specified by it from time to time for the services under it shall be filled in by promotion.	Should have passed Matriculation Examination in second division or 10+2 examination from the education board and should pass a test in typewriting in Punjabi language at a speed of thirty words per minute.	From amongst the Class-IV Employees working in the Committee who have an experience of working as such for a minimum period of five years and who are Matriculates of the Education Board and pass the typewriting in Punjabi language at a speed of thirty words per minute.	

10. A bare reading of Rule 8 along with appendix B would

make it clear that appointment to the post of Clerk can be made by direct recruitment as also by way of promotion from amongst Class IV employees who possess experience of five years and possess the qualification of Matriculation and have passed the type test in Punjabi language at the speed of 30 W.P.M.

11. Petitioner while serving on the post of Sewadar was promoted to the post of Clerk vide order dated 28.4.2016. Concededly as on such date, he neither possessed the five years experience nor had qualified the type test. The pleaded case of the petitioner himself is that he had acquired the eligibility to be considered for promotion to the post of Clerk as per rules subsequently i.e. upon completion of five years experience on 9.12.2016 and having passed the type test on 26.10.2016. The promotion of the petitioner to the post of Clerk on 28.4.2016, as such, was de hors the Rules and thus, the decision of the Secretary, Punjab Mandi Board contained in the impugned order dated 18.7.2017 cancelling Resolution No.201 dated 25.4.2016 is well-founded.

12. The impugned order is stated to have been passed in violation of the principles of natural justice. Learned counsel has urged that opportunity of hearing was not granted and even a notice had not been issued to the petitioner. In the same breath, Mr.Puneet Gupta, learned counsel has been very fair and forthright in conceding that as on date of promotion of the petitioner to the post of Clerk i.e. 28.4.2016, the petitioner was not eligible to be appointed by way of promotion to a Class-III post under the 1989 Rules. He has, however, contended that if

opportunity of hearing had been granted, the petitioner could have demonstrated before the Secretary, Punjab Mandi Board that he has acquired eligibility under the 1989 Rules for promotion to a Class-III post even though subsequent in point of time.

13. In the light of the conceded factual premise that the petitioner was not eligible to hold the promotional post under the 1989 Rules on 28.4.2016 would the principles of natural justice be stretched to such a limit that it was still necessary and imperative to grant to the petitioner a hearing/notice?

14. The answer to such poser has to be in the negative. As regards petitioner not being eligible to be appointed to a class-III post by way of promotion on 28.4.2016 under the 1989 Rules already stands conceded. Insofar as acquiring of eligibility subsequent in point of time that cannot possibly cure the infirmity and defect in Resolution No.201 dated 28.4.2016 passed by the Committee promoting the petitioner to a class-III post. Accepting the contention of the learned counsel that the petitioner still ought to have been heard prior to taking the decision contained in the impugned order dated 18.7.2017 would amount to stretching the concept of natural justice to illogical limits. In taking such view, I would draw support from the following observations made by the Hon'ble Supreme Court of India in the case of *Managing Director, ECIL, Hyderabad & Ors. v. B.Karunakar & Ors., 1994 (1) SCT 319:-*

“....The theory reasonable opportunity and the principles of natural justice have been evolved to

uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

15. The reliance placed by learned counsel upon the Division Bench judgment in **Ravinder Singh's** case (supra) is misplaced. The facts of such case involved the reversion of the petitioner therein from the post of Mandi Supervisor to that of Auction Recorder. No opportunity of hearing or notice had been granted prior to the passing of the order of reversion. While upholding the plea of violation of the principles of natural justice, the Division Bench had noticed the contention raised by learned counsel that the employee was fully eligible and had rightfully been promoted to the post of Mandi Supervisor as opposed to the stand taken on behalf of the Mandi Board that the petitioner

therein was ineligible. It was under such conflicting stand taken by the parties, a view was taken that principles of natural justice ought to have been adhered to. In the present case, however, the ineligibility of the petitioner to be promoted to a class-III post on 28.4.2016 under the 1989 Rules is not in dispute and rather stands conceded.

16. Even the judgment of a Co-ordinate Bench in *Avtar Singh's* case would have no applicability. It was a case of termination and not reversion. That apart, there was no issue with regard to the qualifications/eligibility of the petitioner therein for holding the post in question i.e. Chowkidar. The judgment is clearly distinguishable on facts.

17. The plea of discrimination raised by the learned counsel is also without merit. As has been held, petitioner being not eligible under the statutory rules governing the service to have been promoted to a class-III post on the crucial date i.e. 28.4.2016, he had no right to hold such post. A plea of discrimination to sustain pre-supposes a right. Even if the assertion on behalf of the petitioner is taken to be correct at its face value that another employee under the Municipal Committee is being permitted to continue on the class-III post inspite of not having been eligible on the date he was so promoted would not vest any right in favour of the petitioner herein. Article 14 of the Constitution envisages a positive concept. Discrimination cannot be pleaded to seek directions from this Court for the respondent – authorities to perpetuate an illegality.

18. For the reasons recorded above, the instant petition is found devoid of merit and is dismissed.

19. Suffice it to observe that dismissal of the petition would not preclude the petitioner from asserting his right to be considered for promotion to a class-III post in the light of having acquired eligibility under the 1989 Rules subsequent to the date of his initial promotion i.e. 28.4.2016.

20. Dismissed.

AUGUST 03, 2017
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>