

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

CWP No.1141 of 2019
Date of decision:-17.01.2019

Sukhpinder Deep Singh

.....Petitioner

versus

State of Punjab & others

.....Respondents

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

Present:- Mr. Virinder Kumar Shukla, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.(ORAL)

Petitioner has invoked the extraordinary writ jurisdiction of this Court assailing the order dated 31.10.2018 (Annexure P-8) passed by the Secretary, Punjab Mandi Board and in terms of which apart from other decisions having been taken, resolution No.4 dated 08.09.2014, passed by Market Committee, Sidwan Bet, District Ludhiana, appointing the petitioner as a Chowkidar, has been cancelled.

Facts of the case lie in a narrow compass.

Respondent No.3-Market Committee passed a resolution dated 08.09.2014, appointing the petitioner against a regular post of Chowkidar. In pursuance to such resolution, appointment order was issued on 08.09.2014 itself. Petitioner duly joined on the post. Subsequently on 16.09.2018, the Market Committee in question passed a resolution cancelling the previous resolution No. 4 dated 8.09.2014 pertaining to the appointment of the petitioner. A representation was then preferred to the Secretary, Punjab Mandi Board, raising a plea that as per byelaw 10 (2) of

the Punjab Market Committee (Byelaws) 1963, a Market Committee cannot reconsider a resolution that it has passed within a period of three months. The representation moved by the petitioner was accepted and order dated 28.03.2018 (Annexure P-6) was passed nullifying the resolution dated 16.09.2014, passed by the Market Committee and in terms of which the earlier resolution dated 08.09.2014, had been cancelled. Pursuant to the passing of the order dated 28.03.2018 (Annexure P-6), petitioner again submitted his joining report on the post of Chowkidar on 03.04.2018.

Petitioner is presently aggrieved of the order dated 31.10.2018 (Annexure P-8), passed by the Secretary, Punjab Mandi Board, cancelling resolution dated 08.09.2014 (Annexure P-1) passed by the Market Committee and whereunder the petitioner had been appointed to the post of Chowkidar.

Learned counsel representing the petitioner has raised a three fold submission:(i) it is submitted that recruitment to Class IV employees of the Market Committee is governed by the Punjab Market Committee (Class IV) Service Rules 1989 (hereinafter referred to as 'Rules') and under Rule 6, the appointing authority of a Class IV post including that of Chowkidar, is the concerned Market Committee. It is argued that appointment of the petitioner in terms of passing of resolution dated 08.09.2014 (Annexure P-1) by the Market Committee was upon exercise of the power vested with the Market Committee under the 1989 Rules and as such the impugned decision cancelling the resolution passed by the Committee dated 08.09.2014 cannot sustain;(ii) Counsel submits that appointment of the petitioner was against a Class IV post of Chowkidar

i.e.an unskilled worker. Under Section 3 (1) (d) of the Compulsory Notification of Vacancies Act, 1959, the notification of the post of unskilled worker is exempted under the aforesaid Act. It is sought to be contended that it was open for the Market Committee to have appointed the petitioner on the post of Chowkidar even without making a requisition to the employment exchange;(iii) Counsel argues that the impugned order dated 31.10.2018 (Annexure P-8) has been passed without issuance of a show cause notice to the petitioner and as such the action is arbitrary and illegal.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

A reading of the impugned order dated 31.10.2018, passed by the Secretary, Punjab Mandi Board, would reveal the basis for taking the decision of cancellation of Resolution No.04 dated 08.09.2014. The relevant extract of the impugned order reads as follows:-

“Resolution No.4 dated 08.09.2014 appointing Sukhpinder Deep Singh, Tally Operator against the sanctioned post of Chowkidar without giving advertisement in the newspaper is required to be cancelled”.

Counsel for the petitioner does not dispute that the petitioner was earlier working as a Tally Operator. His appointment to the post of Chowkidar vide Resolution dated 08.09.2014, passed by the Market Committee concerned was against a sanctioned post. He also concedes that prior to appointment of the petitioner no advertisement had been issued in the newspaper.

There would be no quarrel with the proposition that the Market

Committee is the appointing authority in relation to a Class IV post including that of Chowkidar under the 1989 Service Rules. This however would not obviate the requirement in law for the Market Committee to make appointments by resorting to a process of recruitment which does not fall foul of the basic principle of equality of opportunity in matters of appointment to be made by the State Governments/instrumentalities and as enshrined under Article 14 and 16 of the Constitution of India. It is by now well-settled that the first step towards initiating a recruitment process would be to advertise the post/issue a public notice so as to afford a chance to all eligible candidates to participate in the process of recruitment and thereafter to select the best candidate by adopting a transparent and fair criteria of selection. In the present case the petitioner concededly had been appointed by the Market Committee against the sanctioned post of Chowkidar without even advertising the post. This Court would not hesitate in observing that the appointment of the petitioner in terms of Resolution dated 08.09.2014 by the concerned Market Committee was akin to a “backdoor entry”.

The exemption in relation to the post of a unskilled worker under Section 3 of the Compulsory Notification of Vacancies Act, 1959, would not come to the aid of the petitioner. The impugned order dated 31.10.2018 (Annexure P-8), passed by the Secretary, Punjab Mandi Board, is not on the basis that a requisition had not been made to the employment exchange. Rather the only reason for cancelling the resolution dated 08.09.2014 (Annexure P-1) is that recruitment had been made to a sanctioned budget post of Chowkidar, without advertising the same.

The last submission raised by counsel as regards a show cause

notice having not been issued is also not well-founded. Concededly prior to the passing of the impugned order dated 31.10.2018 (Annexure P-8), petitioner was offered an opportunity of personal hearing and which he has availed.

In the considered view of this Court, the principles of natural justice as such were complied with by the respondent-Punjab Mandi Board.

In view of the above, no infirmity is found in the order dated 31.10.2018, passed by the Secretary, Punjab Mandi Board, (Annexure P-8) insofar as the same relates to the present petitioner.

No merit.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

17.01.2019
shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No