

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

**Date of Decision: 11.09.2019
CWP-19249-2014 (O&M)**

SANDEEP SINGH AND ORS PETITIONERS
VS.
STATE OF PUNJAB AND ORS RESPONDENTS

CWP-15160-2014

KULWINDER SINGH AND ORS PETITIONERS.
VS.
STATE OF PUNJAB AND ORS RESPONDENTS

CWP-19262-2014 (O&M)

NIKSON AND ORS PETITIONERS
VS.
STATE OF PUNJAB AND ORS RESPONDENTS

CWP-19748-2014

NAVNEET SINGH AND ORS PETITIONERS
VS.
STATE OF PUNJAB AND ORS RESPONDENTS

CWP-23043-2014

PRABHJOT KAUR AND ANR PETITIONERS.
VS.
STATE OF PUNJAB AND ORS. RESPONDENTS

CWP-18736-2012

SUKHJINDER SINGH PETITIONER
VS.
STATE OF PUNJAB AND & OTHERS RESPONDENTS

CWP-19345-2012

LOVEPREET SINGH AND ANR PETITIONERS.
VS.
STATE OF PUNJAB AND ORS RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Arjun Pratap Atma Ram, Advocate
for the petitioners in
CWP-19249-2014 and CWP-19748-2014.

Mr. Harsh Mehla, Advocate
for the petitioners in CWP-19262-2014.

Mr. J.S.Gill, Advocate
for the petitioners in CWP-23043-2014.

Mr. P.S.Dhaliwal, Advocate
for the petitioners in CWP-15160-2014 and CWP-18736-2012.

Mr. T.P.S.Tung, Advocate
for the petitioners in CWP-19345-2012.

Ms. Samina Dhir, Deputy Advocate General, Punjab.

Mr. Anant Kataria, Advocate for
respondents No. 2 and 3 in
CWP-18736-2012 and CWP-19345-2012.

Mr. Sanjeev Sharma, Advocate
for respondents No. 2 and 3 in
CWP-19249-2014 and CWP-15160-2014.

Mr. Athar Ahmed, Advocate
for respondents No. 2 and 3
in CWP-19748-2014.

Mr. R.S.Bains, Advocate
for respondent No.4 in CWP-19262-2014.

Mr. Sanjeev Soni, Advocate
for the Market Committee, Dhariwal in CWP-23043-2014.

ARUN MONGA, J.(ORAL)

1. Petitioners herein, *inter alia*, seek issuance of a writ in the nature of *certiorari*, for quashing of impugned orders dated 20.11.2012 and 16.05.2014 (Annexures P-7 and P-10 respectively), whereby, the Secretary, Punjab Mandi Board proceeded to annul the selection made by respondent No.3-Market Committee vide which the petitioners were selected. A revision petition filed by petitioners was decided against the petitioners' vide order dated 16.05.2014.

2. Brief background. In CWP-19249-2014 and CWP-19748-2014,

the posts in question are (i) One Auction Recorder Class III (ii) Two Chowkidars Class-IV (iii) Two Clerks Class-III and (i) One Auction Recorder Class-III (ii) One Chowkidar Class IV (iii) Two Sewadars Class IV, respectively, for which advertisement was published on 12.06.2011 (Annexure P-3). Relevant Rules herein are Punjab Market Committee Class-III (Annexure P-1) & Class IV service Rules (Annexure P2); Punjab State Agricultural Services Market Service Punishment & Appeal Rules (Annexures P-13).

3. In CWP-19249-2014, the petitioners are aggrieved by orders dated 20.11.2012 (Annexure P-7) passed by the Secretary Market Committee and 16.05.2014 (Annexure P-10) passed in the petitioners' revision petitions by the Secretary Agriculture, respectively.

4. In CWP-19748-2014, the petitioners are aggrieved by order dated 20.11.2012 (Annexure P-6) passed by the Secretary Market Committee and the order dated 30.05.2014 (Annexure P-8) passed in the petitioners' revision petitions by the Secretary.

5. In both the abovesaid writ petitions, the impugned orders dated 20.11.2012 and 20.11.2012 (Annexure P-7 in CWP-19249-2014 and Annexure P-6 in CWP-19748-2014) have been passed withdrawing the resolution dated 18.08.2011 on the following grounds:

- (i) Complaints had been received regarding recruitment process.
- (ii) Preliminary investigation was conducted justifying the complaints.
- (iii) Selected candidates' qualification is matric pass whereby for Chowkidar it should be middle pass.
- (iv) Merit of the candidates has not been prepared.
- (v) Advertisement has been published in only one news paper.
- (vi) Appointments have been made by the Chairman/Secretary Market Committee giving benefits to clause relatives.

6. In these terms the Secretary Market Committee has annulled the Resolutions dated 18.07.2011 and 18.08.2011 of the Market Committee, Dina Nagar and Resolutions dated 18.07.2011, 13.03.2012 and 13.03.2012 Market Committee Narot Jaimal Singh under Section 33 (4) (1) of the Punjab Agricultural Produce Market Act, 1961.

7. Revisions were filed. Orders thereof are also impugned by way of the writ petitions. The revisions were filed as in terms of impugned orders dated 20.11.2012 the petitioners were automatically relieved/terminated. The revisions were filed on the following grounds:

- (i) No notice or opportunity of hearing had been granted by the respondent Board.
- (ii) Only the Market Committee was competent to appoint the petitioners and the Board not being the competent authority could not have terminated the petitioners' services.

8. The contention of want of opportunity is noticed but has not been dealt with. The fact that no opportunity was granted nor were the petitioners associated with the preliminary enquiry in the orders dated 20.11.2012 is conceded.

9. The respondents defend the order dated 20.11.2012 and the orders in revision dated 16.05.2014 (in CWP-19249-2014) and 30.05.2014 (in CWP-19748-2014) by stating that no opportunity was required to be given in terms of Section 33, 4 (i) and (iii) of the 1961 Act. The same pertain to annulling of Resolution.

10. The order empowering Secretary Agriculture Marketing Board (and giving him the power to cancel the Resolutions by the two Market Committee) is on record as Annexure R2/1 in CWP-19249-2014. The same has been issued under Section 3 (17) (ii) of the Punjab Agricultural Produce Market Act, 1961. A perusal of Annexure R-2/1 reveals that the

Government has delegated the powers of the Board to the Chairman whereas in terms of Section 3(17) the Government is only competent to delegate its own powers to the Chairman/Secretary and the Board is the competent authority to delegate its powers.

11. A delegated cannot further delegate and in any event the Act only provides for the Government to delegate its powers in Section 3 (17) (i) and for the Board to delegate its powers in Section 3 (17) (ii).

12. There is no provision in law under which the Government can delegate powers of the Board. Annexure R-2/1 is vitiated on this account.

13. De hors merits of the case, the impugned action is vitiated on the short ground that no opportunity was given to the petitioners to present their version before passing the same. It is settled law that order of adverse civil consequences can only be passed after opportunity and the principle of natural justice have to be read into the Statute where order is of adverse civil consequences unless the same have been specifically excluded by the Statute. Reference in this regard may be had to a judgment titled as **Automotive Tyres Association vs. The Designated Authority, reported as 2011 (2) SCC, 258.** Thus the action is vitiated on this account.

14. A perusal of impugned order dated 16.05.2014 (Annexure P-10) reflects that even though the contention of the petitioners that no opportunity was granted to them by the respondents-Board before dismissing them from service has been noted yet, the same has been given a complete short shrift by the Appellate Authority while upholding the punishment order dated 20.11.2012 (Annexure P-7).

15. I have gone through the relevant applicable Service Rules i.e Punjab Market Committee (Class-III) Service Rules 1989 and the Punjab

State Agricultural Marketing Service (Punishment and Appeal) Rules, 1988 meant for Class-III and IV employees of the Mandi Board, wherein Clause 14 and Rule 8 are identical and para materia. For ready reference, Rule 14 reproduced here-in-below:-

14. Discipline Penalties and Appeals -

In the matters of discipline punishment and appeal the members of the service shall be governed by the provisions of the Punjab State Agricultural Marketing Service (Punishment and Appeal) Rules, 1988.

(2) The authority empowered to impose penalties as specified in rule 5 of the Punjab State Agricultural Marketing Service (Punishment and Appeal) Rules, 1988 and the appellate authority there under in respect of members of the Service shall be as specified in Appendix 'C'."

16. The above Rules clearly envisages that penalties to be imposed on the employees are to be as per Punjab State Agricultural Marketing Service (Punishment and Appeal) Rules, 1988.

17. The relevant extract of Rule 8 of 1988 Rules, which provides for the procedure for imposing major penalties, is extracted hereinbelow:-

"8. Procedure for imposing major penalties -

XXXXX

(3) Where it is proposed to hold an inquiry against an employee under this rule and rule 9, the punishing authority shall draw up or cause to be drawn up :-

(i) the substance of the importance of misconduct or misbehaviour into definite and distinct articles of charges;

(ii) a statement of imputations of misconduct or misbehaviour in support of each article of charges, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the employee ;

(b) a list of documents by which and a list of witness by whom the articles of charges are proposed to be sustained.

(4) The punishing authority shall deliver or cause to be delivered to the employer a copy of the articles of charge, the statement of the

imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.”

(5) (a) On receipt of the written statement of defence the punishing authority may itself inquire into such of the articles of charge as are not admitted or ; if it considers it necessary so to do , appoint under sub-rule (2) an inquiring authority for the purpose , and where all the articles of charge have been admitted by the employee in his written statement of defence, the punishing authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 9.

(b) If no written statement of defence is submitted by an employee, the punishing authority may itself inquire into the articles of charges or may, if it considers it necessary to do so, appoint under sub-rule (2), inquiring authority for the purpose.

(c) Where the punishing authority itself inquires into any article of charge or appoints as inquiring authority for holding an inquiry into such charge it may by an order appoint an employee or a legal practitioner, to be known as the Presenting Officer' to present on its behalf the case in support of the articles of charge.

XXXXX”

18. The above Rule leaves no manner of doubt, that before awarding punishment of dismissal which is a major penalty, an inquiry is to be conducted in accordance with the procedure prescribed therein.

19. In respect of non-conducting of the inquiry, following unsustainable stand has been taken by respondents No. 2 and 3 in their return:

“That sub-para (iii) of para 12 of the writ petition is wrong, hence denied. Section 33(4)(1) of the Act does not envisage any requirement of affording any opportunity and Secretary of the Marketing Board is competent to annul any resolution of a Market Committee which is not in conformity with law or with the Rules or bye-laws made thereunder. Therefore, order Annexure P-7 is perfectly legal the petitioners have

failed to show that their selection and appointment vide resolutions dated 18.07.2011 and 18.08.2011 were in accordance with the law.”

20. In the aforesaid premise, impugned orders dated 20.11.2012 and 16.05.2014 contained at Annexures P-7 and P-10, respectively, are set aside with liberty to the respondents to pass fresh orders in respect of Resolution after granting an opportunity of being heard to the petitioners as well as all the respondents.

21. Until the fresh orders are passed, the petitioners shall be allowed to continue in service. In case, an adverse order is passed, the same shall not be implemented for a period of 30 days in order to give the petitioners a fair opportunity to assail the same.

CM Nos.2538-39-CWP-2018 in CWP-19249-2014

Applications are disposed of with the observation that it would be appreciated if the respondents also deal with the contention of the petitioners raised in the present applications and pass appropriate orders within a period of 30 days, as it is contended by the learned counsel for the petitioners that similarly situated other persons have been accorded the benefit of salary and other benefits, whereas the petitioners have not be granted the same.

Photocopy of this order be placed on the file of other connected cases.

11.09.2019
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No