

CWP-28402-2013

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-28402-2013

Date of Decision: 3rd September, 2019

Darshan Singh

...Petitioner

Versus

Industrial Tribunal, Patiala & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ravi K. Mattoo, Advocate
for the petitioner.

Mr. Tarun Kumar, Advocate for
Mr. Nitin Kaushal, Advocate
for respondents No.2 to 4.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the award dated 04.10.2013 (Annexure P-1) passed by the Industrial Tribunal, Patiala, whereby, reference has been answered against the petitioner – workman to the effect that the termination of services of the petitioner is legal and justified.

2. The undisputed facts are that the Chairman of the Market Committee, Samana, in anticipation of approval from the Market Committee, appointed Darshan Singh son of Mukand Singh – petitioner on *ad hoc* basis w.e.f. 08.05.1987 (Annexure P-5) . The said appointment was approved vide resolution dated 12.05.1987 by the Market Committee, Samana, by creation of a temporary post. He continued as such despite there being a note given by the Secretary, Market Committee, Samana that there was a similar matter pending before the High Court and it is after that

only, the adjustment of the petitioner be made. Despite that, Chairman of the Market Committee has proceeded to appoint him as an Auction Recorder. His services were regularized vide resolution dated 21.02.1990 (Ex.M-14) w.e.f. 21.05.1989. The President of the Board approved the post of Auction Recorder on temporary basis in the pay-scale for the financial year 1987-88 in anticipation of the resolution of the Market Committee, Samana.

3. The case which was pending before this court was CWP No.6813-A of 1986, titled as 'Jaswant Singh & another Vs. Punjab State Agri. Marketing Board & others', wherein, challenge was to the appointments of Sheesha Singh and Harinder Singh, who were also appointed in the year 1987 as Auction Recorders. The said writ petition was allowed by this Court vide judgment dated 11.01.1996 (Annexure P-2) and the selection and appointment of respondents No.3 and 4 i.e. Harinder Singh son of Ajaib Singh and Sheesha Singh son of Phulla Singh were set aside. It would not be out of way to mention here that Harinder Singh had expired and therefore, the Court did not proceed to further go into the details of his case, however, challenge to the appointment of Sheesha Singh was considered and decided by holding that the appointment could not have been made by promotion of the said person as he was a class-IV employee, whereas, Clerks, who are class-III employees, were not even considered for appointment to the post of Auction Recorder. Because of the non-consideration of the claim of any of the persons for appointment to the post of Auction Recorder, the same could not be sustained. The Court had further proceeded to hold that even if, for the sake of exemption, the

Competent Authority wanted to fill the post by direct recruitment, it was incumbent upon them either to advertise the post or to ask applications from various eligible persons, which was also not done apart from the fact that the vacancies were never notified to the Employment Exchange. The appointments were made for extraneous consideration in an illegal manner and thus, in violation of the provisions of Articles 14 and 16 of the Constitution of India.

A submission was made before the Court that the services of the employees, whose appointments had been challenged, had been regularized and they had been continued in service for such a long time but the Court rejected the said contention by holding that when the very initial appointment of an employee is bad in law being violative of the provisions of Articles 14 and 16 of the Constitution, the said contention could not be accepted particularly when the appointment was not based on merits but on extraneous consideration. Even if an irregular appointment is regularized, it does not change its character and the illegality is not cured.

4. On the basis of this judgment of the Court, since the appointment of the said person was found to be of similar nature as he was appointed in violation of Articles 14 and 16 of the Constitution in the Market Committee, Samana, notice under Section 25-F of the Industrial Disputes Act was served upon him, which was challenged by the petitioner by way of a revision petition before the Additional Secretary Agriculture Department, Punjab, under Section 42 of the Punjab Produce markets Act, 1961. Initially, directions were issued that he be not relieved from the post.

He, therefore, continued on the said post till the decision by the said

authority on 28.09.2001 (Annexure P-3) when the revision was dismissed. The Additional Secretary, Agriculture Department, has considered the case of the petitioner in detail and found that the petitioner was illegally appointed and his pleas were covered against him by the ratio of the judgment of this Court in CWP No.6813-A of 1986, titled as 'Jaswant Singh & another Vs. Punjab State Agri. Marketing Board & others' (Annexure P-2).

5. In pursuance to the order passed by the Additional Chief Secretary, services of the petitioner stood terminated, which led to the reference by the petitioner on a demand notice dated 01.09.2002, which has been decided against him vide impugned award dated 04.10.2013 (Annexure P-1).

6. It is the contention of the learned counsel for the petitioner that the case of the petitioner is distinguishable from that of Harinder Singh and Sheesha Singh and therefore, the same could not have been equated or made the basis for terminating the services of the petitioner. He contends that the petitioner was appointed against a temporary ex cadre post created by the Chairman of the Market Committee and therefore, the said post could not have been treated to be one which could be termed to be filled by promotion only. His further contention is that the case of Sheesha Singh and Harinder Singh was different as they were working on the post of helper and promoted to the post of Auction Recorder surpassing the intermittent post in between i.e. Clerk, without considering the other eligible candidates. Further, in those cases, there was specific findings recorded that their appointments were made on the basis of the

recommendation of either the Chief Minister or that of the Chairman, Marketing Board, Punjab, which is not the case of the petitioner. Reference has also been made to the information received by the petitioner under the Right to Information Act, according to which, Mandi Board used to fill the post of Auction Recorder by way of direct recruitment. He, on this basis, asserts that the appointment of the petitioner is in accordance with law and therefore, the termination thereof, without following the due process of law especially when his services have been regularized, is not sustainable.

7. On the other hand, learned counsel for respondents No.2 to 4 has submitted that the judgment passed by this Court in CWP No.6813-A of 1986, titled as 'Jaswant Singh & another Vs. Punjab State Agri. Marketing Board & others', would be fully applicable as the principle laid down in the said case would apply to the present case as well. Petitioner has been appointed in violation of the provisions of Articles 14 and 16 of the Constitution of India and the said post has been filled on the whims and fancies of the Chairman of the Market Committee, Samana, as the same was done even prior to the passing of the resolution. The factum of there being a note given by the Secretary of the Market Committee, Samana, relating to the pendency of a similar writ petition before this Court and without awaiting the decision thereof, the action of regularizing his services shows the tearing hurry, which was resorted to by the then Chairman of the Market Committee, Samana, to grant him the benefit of not only the regular pay-scale but regularization in service also. There was no advertisement issued nor were the vacancies notified to the concerned Employment Exchange.

Petitioner was just picked up and appointed on the post. He, therefore,

contends that the termination of the petitioner, being legal and the award passed by the Industrial Tribunal, Patiala, being in accordance with law, do not call for any interference.

8. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

9. The facts do not leave any manner of doubt that the post, on which the petitioner, was appointed was a temporary post, on which post he had been appointed without any advertisement or calling for the applications of eligible persons. The post has also not been notified to the Employment Exchange. Meaning thereby, no procedure whatsoever has been followed for appointment to a public post, thus, violating the provisions of Articles 14 and 16 of the Constitution of India. Since the initial appointment of the petitioner is at the whims and fancies of the Chairman of the Market Committee, Samana, his appointment cannot be said to be in accordance with law and being nonest from the inception. This being so, there is no question of regularization of the services of the petitioner being acceptable. An illegal act cannot be legalized merely because it has been regularized and that too, not in accordance with law.

10. This Court, in CWP No.6813-A of 1986, titled as 'Jaswant Singh & another Vs. Punjab State Agri. Marketing Board & others' had held on the principles of violation of Articles 14 and 16 of the Constitution that for appointment to the post of Auction Recorder, it was incumbent upon the Market Committee to either advertise the post or to ask for applications from various eligible persons or at least, to notify the vacancies to the

concerned Employment Exchange, which was not done in the present case as well. The appointment was, therefore, made in wholly illegal manner and on account of extraneous consideration. Since the claims of the eligible persons had not been considered, the appointment was totally violative of the provisions of Articles 14 and 16 of the Constitution of India.

11. As regards the contention of the petitioner's counsel that his services have been regularized, the answer to the said argument was also given by this Court in that very judgment where, it has been held as follows:-

“Mr. Subhash Ahuja, counsel for the fourth respondent submits that his services had been regularized vide order dated February 1, 1990 w.e.f. May 4, 1988. On this basis, the counsel submits that the respondent is entitled to continue in service. The very initial appointment of respondent No.4 was bad in law. It has been made in utter violation of the provisions of Articles 14 and 16 of the Constitution. The appointment was not based on merits but on extraneous influences. It cannot, thus, be sustained. Even if an irregular appointment is regularized, it does not change its character. The illegality is not cured. Consequently, it makes no difference to the merits of the case.”

In view of the above, this plea is also not sustainable and therefore, rejected.

12. As regards the plea of the petitioner that persons junior to him

have been retained, suffice it to say that in pursuance to the order passed by this Court 19.09.2018, whereby, the Secretary of the Market Committee, Samana, was called upon to file an affidavit giving the details as to how many Auction Recorder were appointed by the respondents in the year 1987 and out of them, how many are still working with the Management, an affidavit has been filed, wherein, it has been submitted that only three Auction Recorders were appointed, two of whom were Harinder Singh and Sheesha Singh. Harinder Singh had unfortunately died during the pendency of CWP No.6813-A of 1986, titled as 'Jaswant Singh & another Vs. Punjab State Agri. Marketing Board & others' and Sheesha Singh retired on 31.10.2015. It has further come on record in the reply, which has been filed by the respondents that Sheesha Singh was appointed prior to the petitioner and therefore, no benefit can be claimed by the petitioner and in any case, Sheesha Singh subsequently had been appointed after consideration for promotion to the post as per the direction issued by this Court referred to above.

13. In view of the above, the claim of the petitioner is devoid of merit and the writ petition, therefore, stands dismissed by upholding the award dated 04.10.2013 (Annexure P-1) passed by the Industrial Tribunal, Patiala.

(AUGUSTINE GEORGE MASIH)
JUDGE

3rd September, 2019
Harish

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