

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

**CWP No. 25246 of 2017 (O&M)
Date of Pronouncement : July 17, 2023**

Dalwinder Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CWP No. 2587 of 2018 (O&M)

Parmjit Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CWP No. 28876 of 2018 (O&M)

Subhash Kumar and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

**Present :-Mr. D.S.Patwalia, Senior Advocate with
Mr. B.S.Patwalia, Advocate
Mr. Akshit Pathania, Advocate
for the petitioner (CWP-2587-2018).**

Mr. Puneet Gupta, Advocate

for the petitioner (CWP-25246-2017)

Mr. Gaurav Deep Goyal, Advocate
for petitioner No.4 (CWP-2587-2018)

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate
for the applicant-CM-3231-CWP-2022

Mr. R.K.Malik, Senior Advocate with
Mr. Varun Veer Chauhan, Advocate
for respondent No.16.

Mr. Inayat Khullar, Advocate
for the respondents No.5, 8, 11 & 32
CWP-25246-2019.

Mr. Sanjeev Soni, Advocate and
Mr. Sarthak Soni, Advocate
for the respondent-Punjab Mandi Board.

Mr. V.K.Sandhir, Advocate
for the applicants-respondent No.15
CM-19568-CWP-2021 in CWP-28876-2018.

PANKAJ JAIN, J. (ORAL)

1. This batch of writ petitions involves the issue of seniority among the incumbents in the cadre of Market Committee Secretaries working under respondent No.2.
2. Respondent No.2 vide public notice issued in April 2011 invited applications for appointment of several posts including the post of Secretary Market Committee. As per the public notice 5 additional marks were to be given to the candidates having rural background i.e. the candidates who had studied in Schools situated in rural areas for 60 months and had passed Class 8th and Class 10th examination from such Schools. The selections were made in the

year 2011 itself. However, the same were challenged in a series of writ petitions with CWP No.11844 of 2012 filed on 12.3.2012 titled as **Anil Kumar Sharma Vs. Punjab State Agriculture Marketing Board and others** being the lead case. The petitions were ordered to be heard along with CWP No.11071 of 2011 **Abhishek Rishi Vs. State of Punjab and others** and were referred to larger bench. Reference was decided by the larger bench on 03.04.2013 holding that grant of 5 additional marks to candidates on the ground of their being from rural background is ultra vires. The matters were finally decided by the Single Bench vide judgment dated 12.5.2015 which has been placed on record as Annexure P-2 in CWP No. 2587 of 2018 holding as under:-

33. For the reasons mentioned above, the present writ petitions being C.W.P. No.1369 of 2012 Parget Singh v. Punjab State Agriculture Marketing Board and others, C.W.P. No. 11844 of 2012- Anil Kumar Sharma vs. Punjab State Agriculture Marketing Board and others, C.W.P. No. 12305 of 2012-Parbhleen Singh Cheema V. Punjab State Agriculture Marketing Board and others and C.W.P. No.12502 of 2012 Kanwal Preet Singh Vs. Punjab State Agriculture Marketing Board and others are allowed. The impugned selections are set aside and the Authorities are directed to re-cast the merit list after ignoring the five additional marks awarded to the candidates having rural background and offer appointment to the candidates, who fall in the fresh merit list. The necessary exercise be done within the period of two months from the date of receipt of a certified copy of this order.”

In compliance of the aforesaid order respondent No.2 passed the following order dated 3.7.2015:

“The below mentioned decision dated 12.05.2015 has been taken by the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No: 1369/12 by Sh. Pargat Singh, Civil Writ Petition No: 12305/12 by Sh. Parbhleen Singh Cheema, Civil Writ Petition No: 12502/12 by Sh. Kanwal preet Singh and Civil Writ Petition No: 11844/2012 by Sh. Anil Kumar Sharma:

"For the reason mentioned above, the writ petition being C.W.P. no 1369 of 2012- Parget Singh vs Punjab State Marketing Board and Other, C.W.P. No. 11844 of Anil Kumar Sharma vs. Punjab State Marketing Board and Other, C.W.P. No.12305 of 2012 Parbhleen Singh Cheema vs. Punjab State Marketing Board and Other, C.W.P. No. 12502 Of 2012 Kanwal Preet Singh vs. Punjab State Marketing Board and Other are allowed. The impugned selection are set aside and the Authorities are directed to re-cast the merit list after ignoring the five additional marks awarded to the candidates having rural background and offer appointment to the candidates, who fall in the fresh merit list.

In compliance of the above order of the Hon'ble Punjab and Haryana High Court, the appointment letters issued in respect of the selection/appointment to the posts of Secretary Market Committee vide letter no: establishment-1/26978 dated 12.03.12 are being hereby set aside and they are being relieved from the service of the Board immediately."

3. On the same date another order bearing office order No.599 (2015) was passed to the following effect:-

“Subject: Regarding offer of the appointment to the post of Secretary, Market Committee in the Punjab Mandi Board.

The appointments to the posts of the Secretary, Market Committees by way of direct recruitment in the year 2011 by the Punjab Mandi Board have been made on the basis of merit prepared after the written test (in which 5 marks of rural area were given) by C.dac, Mohali. Against these appointments the Civil Writ Petition No.11844/2012 by Sh. Anil Kumar

Sharma, Civil Writ Petition No.1369/12 by Sh. Pargat Singh, Civil Writ Petition No.12305/12 by Sh. Parbhleen Singh Cheema and civil Writ Petition No.12502/12 by Sh. Kanwal Preet Singh and have been filed before the Hon'ble Punjab and Haryana High Court. For the implementation of the decision dated 12.5.15 passed in these Writ Petitions, a 3 members committee was constituted. As per the order of the Hon'ble Punjab and Haryana High Court the counseling of the candidates for the post of the Secretary, Market Committee has been made after ignoring 5 marks of rural area and the merit list has been recast by the 3 members Committee on 22.06.2015. Keeping in view the recommendations of the 3 members Committee and considering of some representations on the basis of the approval dated 25.06.15 given by the Chairman Mandi Board as per the merit list, the successful candidates are being offered appointment on the posts of the Secretary Market Committee in the pay scale of Rs.10300-34800-5000 Grade Pay on the conditions as below mentioned:

1. The Seniority list will be issued separately as per Rule 11 of the Punjab State Agricultural Marketing Board (Class II) Service Rules, 1988. Serial numbers shown in this appointment letter be not treated as seniority list.

2. The candidates mentioned at Serial Nos.23 to 27,33, 34, 36, 52, 53 and 56 will be paid salary according to the instructions issued vide letter no.7/204/2012-4 F.P.1/66 dated 15.1.15 by the Punjab Government Finance Department (Finance Personnel-1 Branch).

3. The candidates mentioned at serial nos 1 to 22,28 to 32, 35, 37 to 51, 54, 55 and 57 are already serving as Secretary Market Committee in the Board. Therefore, the service of these employees will be counted from the previous date and there will be no probation period for them. The conditions of letter no.establishment-1/83017-66 dated 13.12.11 and letter no.establishment-1/26978 dated 12.03.12 will be applicable upon them as such.

4.If you are working in any Government Department/semi Government Department then the joining report be submitted after relieving properly from the department. The benefit/seniority of previous service will not be given.

5. As per the service rules, the candidates mentioned at serial nos. 23 to 27, 33 34, 36, 52, 53 and 56 shall be on 2 years probation period from the date of joining on these post. If during the probation period

you work or conduct is not found satisfactory then your service will be terminated without any notice.

6. Due to any reason, if case of abolition of the post, your service can be terminated anytime by giving one month prior notice or in lieu to this by giving one month salary and allowances. If you want to resign from the post then you shall give one month notice or one month salary along with allowances in lieu thereof.

7. No higher education will be obtained by you without the prior approval.

8. You will not be paid any Travelling Allowance/Daily wages for joining to this appointment

9. As per the Punjab Government notification: 8/1/2004-3P.F.2/2078 dated 2.3.2004, and Letter no:3/72/2003/F.P.P.C./7280 dated 12.12.2006 by the Punjab Government, Finance Department (the Finance Pension Policy and Coordination Branch), new "Defined Contributory Pension Scheme" will be applicable on your appointment.

10. Your original character certificate, caste certificate, degree/certificate related to educational qualification shall be submitted to this department at the time of giving joining report. These certificates shall be attested from the concerned Institutions/Universities and of upon verification, if any document is found to be false or institutions/universities is found to be bogus then this appointment letter will be treated as cancelled itself.

11. The fitness certificates in respect of physical fitness for the government job of the candidates mentioned at serial nos. 23 to 27, 33, 34, 36, 52, 53 to 56 issued by the Civil Surgeon, has to be produced before joining on duty, if any deficiency is found in the medical examination report then this appointment letter will be treated as cancelled itself.

12. If the behavior and previous conduct of the candidates mentioned at serial nos. 23 to 27, 33, 34, 36, 52, 53 to 56 is not found satisfactory in the police verification then this appointment letter will be cancelled immediately without giving any notice and salary paid to him for that period shall be returned back without any delay.

13. Your services will be governed under the Punjab State Agriculture Marketing Board Services Rules and the Punjab Civil Service (General and Common Conditions of Service) Rules 1994 and the Rules applicable on the employee of the Punjab Mandi Board issued from time to time and the Punjab Government Servant (Conduct) Rules 1966 will be applicable.

14. The Punjab State Agriculture Marketing Employees (Conduct) Rules, 1989 will be applicable on you and under Rule 23 of these Rules if any person who has more than one spouse alive, he/she is not entitled for the

appointment. Therefore, if you are married then as per this offer, a self declaration has to be given as per you eligibility.

15. A self declaration will be given by you that you have not been punished in any criminal case and nor anytime your services have been dismissed or removed by the State Government, the Government of India or any public sector undertaking.

16. Your duty/posting can be done in the Head Office or any office within the field by the Punjab Mandi Board.

17. Some of the candidates have obtained their M.B.A. Degrees from foreign. By not considering them, the additional marks have not been given for the time being. It will be considered after receiving the written instruction from the U.G.C. in respect of the recognition of these foreign universities.

18. Those candidates, who have given their provisional degrees, have been selected on this condition that they will submit their degrees to this office within the period of 3 months.

19. Those candidates who have not produced their S.C. /B.C. certificate at the time of concealing they will present their certificate before this office within 3 months.

20. As per Sub-Para no: 2 of Rule 9 of the Punjab State Agriculture Marketing Board, Class-2 Service Rules 1988, the Departmental examination will have to be passed. The Secretary Market Committee who have already passed the departmental exam those have no need to pass again.

21. A self declaration will be given by you that you have not P.R./Green card/Citizenship/Dual Citizenship/Immigration of any foreign Country.

22. As per Rule 19 of the Punjab State Agriculture Marketing Employees (Conduct) Rules 1989, you have to give property return (as per the Performa is enclosed herewith) at the time of joining.

23. Three character certificates shall be given by you to the Punjab Mandi Board within three months. In which one character certificate should be given by the Principle/Academic Officer of the University, College, School or the last studied Institution and as per this remaining two character certificates should be given by the different persons who know about your personal life but not your relative and also not linked with you the University, College, School or the Institution.

In case you are agree with this offer, the Punjab Mandi Board Public Service Interest is feeling proud to sending its wishes for your successful life If you agree with the offer under the above written conditions then you are not permitted to join on duty without giving written proof. You have to be present on duty within 10 days from the receiving of this letter. After

that, no permission will be given for present on duty.

Ajmer Singh, Chairman

Dated:3.7.15"

4. Merit list was revised as per judgment dated 12.05.2015. On revision of merit list some of the candidates were ousted and some fresh candidates came in while some of the appointees remained unaffected so far as being in service is concerned. However alteration of merit list obviously affected their inter-se seniority as well.

5. As per relevant rules and schedule appended thereto there are two modes of recruitment to the post Secretary Market Committee:

- a) 40% by direct appointment and
- b) 60% by promotion.

6. Further as per Rule 11 of the Punjab State Agricultural Marketing Board, (Class-II) Service Rules, 1988 a member recruited by direct recruitment is senior to the member recruited otherwise.

7. While the aforesaid issue regarding direct recruits was going on before this Court certain candidates got promoted as Secretary, Market Committee. The promotions were after the initial appointments but were prior to 3rd July, 2015 i.e. when corrected direct appointments came into being. Respondents issued tentative seniority list placed on record as Annexure P-4. Representations/Objections against the same were filed by two set of employees:

i) The employees who were appointed by way of promotion in the interregnum i.e. from the year 2012 till 03.07.2015 relying upon para 33 of the judgment passed in **Anil Kumar Sharma's case**

(supra) claimed that since the selections of the year 2011 were set aside by the Writ Court and the appointments have been made after casting merit list afresh, these appointments have to be for all intents and purposes considered from 03.07.2015. Resultantly, the employees who came on the cadre of post of Secretary Market Committee prior to 03.07.2015 by promotion have to be treated senior.

ii) Second set of objections were filed on behalf of the candidates who came afresh in the merit list after its revision as per the dictum of the judgment passed in CWP-11844-2012 but as per the merit are senior to the candidates who despite revision are able to retain their service. Their claim is that it is the merit list which as per Rule 11 of the Punjab State Agricultural Marketing Board, (Class-II) Service Rules, 1988 would determine the seniority and thus, they have to be treated senior to the candidates who have been granted exception vide para 3 read with para 5 and 11 of office order bearing No.599 (2015) dated 3.7.2015.

8. It is the aforesaid two sets of objectors who are before this Court impugning the final seniority list.

9. Learned Senior counsel representing the promotees submits that once the writ court ordered fresh appointments after setting aside the earlier selection, the fresh selection has to be w.e.f. 03.07.2015 and no exception thereto can be made. He further submits that the private respondents were before the Writ Court in CWP-11844 of 2012 and their plea with respect to being effected by the judgment was specifically raised but rejected by the Writ Court. Reference is

being made to the observations made in para 31 and 32 of the judgment.

10. He further submits that any other interpretation would amount to reviewing/modifying the judgment despite the fact that this Court is not sitting in appeal over the same and thus, the same would be beyond jurisdiction of this Court. It has been further submitted that so far as the persons who have come afresh in the merit list are concerned they also cannot claim benefit of Rule 11 of Rules, 1988 as the same would amount to granting them premium for the period when they were not even born on the cadre.

11. Learned Senior counsel representing the direct recruits who have come afresh in the merit list on the other hand, submits that the impugned action of the Board is unsustainable being in the teeth of Rule 11 of the 1988 Rules as the way the Board has interpreted the judgment the same has seriously prejudiced the rights of the petitioners. The petitioners were treated with injustice in the earlier selection and now again the rights of the petitioners are being prejudiced as they are being made junior to the persons who as per law should be junior to them.

12. Learned Senior counsel representing the private respondents however, submits that the petitioners had to face earlier round of litigation for no fault on their part and are being made to face the ordeal of another round of litigation again. It has been contended that private respondents are the ones who were in the merit list in the earlier selection as well as the revised selection. Their service rendered to the Board has been rightly recognized by it and

the same cannot be washed away simply for the reason that some other persons were illegally selected in the earlier round.

13. Learned counsel representing the Board has also argued on similar line and has submitted that the private respondents are the one who in any way have made it to the merit list and have continuously served the respondent-Board since their selection in the year 2011 and thus, their service from the year 2011 till 2015 needs to be recognised.

14. I have heard learned counsel for the parties and have gone through the record of the case.

The relevant Rule that needs to be considered reads as under:-

As per Rule 11 of the Punjab State Agricultural Marketing Board, (class-II) Service Rules, 1988:

“11. Seniority of member of service. - The seniority inter se of the members of the Service in each cadre shall be determined by the length of continuous service on a post in that cadre of the Service :

Provided that in the case of members appointed by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the seniority based on the order of merit determined by the recruiting authority, shall not be disturbed :

Provided further that in case a candidate is permitted to join the Service after the expiry of the said period of four months in consultation within the recruiting authority, his seniority shall be determined from the date he joins the Service :

Provided further that in case a candidate of the next selection has joined the Service before the candidate referred to in the preceding proviso joins, the candidate so referred shall be placed below all the candidates of the next selection who join within the time specified in the first proviso :

Provided further that in the case of two members appointed on the same date their seniority shall be determined as follows :-

- (a) *a member recruited by direct appointment shall be senior to a member recruited otherwise :*
- (b) *a member appointed by promotion shall be senior to a member appointed by transfer ;*
- (c) *in the case of members appointed by promotion or transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and*
- (d) *in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment ; and if the rates of pay drawn are also the same, then by their length of service in those appointments ; and if the length of such service is also the same an older member shall be senior to a younger member."*

15. Judgment in CWP-11844 of 2012 alongwith Rule 11 of Punjab State Agricultural Marketing Board, (Class-II) Service Rules, 1988 holds the key to the controversy involved in the present *lis*. The operative part of the judgment rendered by the Writ Court in CWP-11844 of 2012 also need to be perused:

31. The issue raised on behalf of the private respondents that they having served the respondent for over three years and there being no fault on their part, they should not be ousted, is an issue, which has already been considered and rejected by the Division Bench in Subeg Singh's case (supra), by holding as under :- "No doubt, the appellants have been serving for the last about three years, but the question that stares us in the faces is, what about those who were kept out of service for three years because of them. And also for no fault of theirs. And being more meritorious. We are mindful of the fact that the situation could have been altogether different had the policy of the State formed part of the criteria that was originally finalised on 12.03.2009. As in that case even if awarding five extra marks was held to be unconstitutional by the Full Bench in Abhishek Rishi's case (supra), yet it could be maintained and considered that appellants being bona fide participants in the

process of selection could not be made to suffer for no fault of theirs. And we could still consider moulding the relief. Unfortunately, in the matter in hand besides the unconstitutional advantage of five extra marks that was afforded to the appellants and decision of Full Bench in Abhishek Rishi's case (supra), alteration of criterion for selection when the process was at an advance stage, completely vitiates the selection and resultant appointments. It is also discerned from the records that the orders dated 30.11.2013 (Annexure A-8) regarding successful completion of probation period of the appellants were issued subject to the decisions of this Court in CWP No. 15646 of 2011 and CWP No. 15645 of 2011. That being so, we are unable to persuade ourselves to mould the relief, as is being prayed for. [Emphasis supplied]"

32. Further, it has not been projected whether any of the private respondents have become overage for fresh recruitment. No exercise was done by counsel for the respondents to bring about the fact so as to how many of the private respondents would actually be ousted if a fresh merit list is drawn up after ignoring five additional marks, awarded to the candidates with rural background. In any case, as held by the Division Bench in Subeg Singh's case (supra), the private respondents cannot be allowed to reap the benefits of marks, the grant of which has been held to be constitutionally impermissible, especially when there is no delay on the part of the petitioner to have approached this Court through the present petition.

33. For the reasons mentioned above, the present writ petitions being C.W.P. No. 1369 of 2012 - Parget Singh v. Punjab State Agriculture Marketing Board and others, C.W.P. No. 11844 of 2012 - Anil Kumar Sharma v. Punjab State Agriculture Marketing Board and others, C.W.P. No. 12305 of 2012 - Parbhleen Singh Cheema v. Punjab State Agriculture Marketing Board and others and C.W.P. No. 12502 of 2012 - Kanwal Preet Singh v. Punjab State Agriculture Marketing Board and others are allowed. The impugned selections are set aside and the Authorities are directed to re-cast the merit list after ignoring the five additional marks awarded to the candidates having rural background and offer

appointment to the candidates, who fall in the fresh merit list. The necessary exercise be done within the period of two months from the date of receipt of a certified copy of this order. No costs.”

16. Some dates are relevant too. The advertisement for direct recruitment was issued in April 2011. The appointments pursuant thereto were made in November, 2011/December, 2011. The writ petition challenging the selection was filed on 12.3.2012. Reference was decided by the Full Bench of this Court on 3.4.2013. The private respondents are appointees to the post of Secretary, Market Board by way of promotion in the years 2013,2014 and 2015. Meaning thereby that had there been no dispute with respect to the selection and respondent No.2 would have acted as per law, selectees pursuant to advertisement in April 2011 would have been senior to the petitioners who have been recruited by way of promotion.

17. The argument raised by Mr. Patwalia, learned Senior Advocate appearing on behalf of the petitioners with respect to the claim of the private respondents having been considered and rejected by the Court in earlier round of litigation is misconceived. Para 31 of the judgment is amply clear that the plea was raised on behalf of the private respondents facing ouster in the said writ. The private respondents herein never stared at such eventuality. Thus, the claim of the private respondents was neither raised nor adjudicated upon. The private respondents are thus, right that so far as the service rendered by them with the Board in the year 2011 to 2015 is concerned the same cannot be washed away once they have retained their selection even as per revised criteria.

18. In view of the above, I do not find that there is any merit in the plea raised by learned Senior counsel representing the petitioners that accepting the claim of the said candidates would any way amount to tinkering with the judgment passed by this Court in the earlier round of litigation.

19. Having held so, the next question that arises for consideration of this Court is whether the candidates who have come in the revised merit list for the first time can be treated junior to the private respondents despite being higher in merit. Any such decision will militate against the mandatory provisions contained in Rule 11. This Court thus, feels that any such interpretation will amount to defeating the mandate of law. Trite it is that the courts exercise jurisdiction to uphold the law not to defeat it.

20. Mr. Patwalia learned Senior counsel further submits that granting deemed date of appointment to the fresh appointees from the year 2011 would be granting them the relief beyond their pleadings. He refers to the prayer made in CWP-28876 of 2018 claiming that the grievance of the petitioners was only against recognition of the service rendered by their juniors in the merit list prior to 03.07.2015. The said argument though seems to be attractive at the first blush but is misplaced.

21. The objection raised by the petitioners in CWP-28876 of 2018 against the tentative seniority list placed on record as Annexure P-9 reads as under:-

“This fifth tentative seniority list dated 26/12/16 is not only wrong but is also illegal and against the law as settled by Higher Courts of this country and must be

rectified for the following reasons:

a. Because I deserved position in merit list prepared in 2011 but i was ignored due to wrongful marks given by the PNB to certain candidates in respect of rural background. Thus I alongwith other deserved candidates was forced to file CWP No 11844, 1369, 12305, 12502 of 2012 and vide orders dated 12/5/15. I get relief from the Hon'ble High Court of Punjab and Haryana at Chandigarh. Consequently merit list was recast and I secured employment in Punjab Mandi Board. The passing of the orders dated 12/5/15 by the Hon'ble High Court goes to justify my contention that I was made to suffer for no fault of mine. It was due the fault of Punjab Mandi Board that I could not secure this very job in 2011 making me run from pillar to post to secure the ends of justice. As I was not at fault therefore my joining the Punjab Mandi Board in 2015 will relate back to the year 2011 because had the PMB not committed the mistake of granting 05 additional marks to the candidates with rural background, I would have secured this job in 2011 itself. That being so, my joining of service in PMB so far as seniority is concerned has to be reckoned from the year 2011 when my candidature was wrongly withheld.

b. While issuing the fifth tentative seniority list dated 26/12/16, the concerned authorities have also ignored the fact that the decision of pushing back my seniority list has far reaching repercussions. As said earlier my seniority in PB should have been reckoned from 2011 when my merit was wrongfully ignored; now instead of giving my rightful position in respect of seniority. PMB is once again wrongfully withholding my rightful seniority because of which I am bound to suffer huge financial backlash. This backlash can only be avoided if PMB place me in the rightful position in respect of seniority.

As a matter of fact, the order dated 12/5/15 passed by the Hon'ble High Court in CWP No. 11844 of 2012 shows that it was PMB which was at fault and therefore I ought to

have been shown as senior even to those persons who had joined in 2011 in pursuance of same advertisement dated April 2011 and had attained less marks than me (i.e. by ignoring 5 additional marks given to the candidates from rural background, as per the orders of the Hon'ble High Court). As per the settled law, when I was not at mistake and my appointment was wrongfully withheld in 2011 then even upon my joining in 2015 [consequent to the High Court's order) I should have been given notional seniority from 2011 onwards and employees who had secured less marks than me should have been shown below me in the seniority list. However, in this fifth seniority list dated 26/12/16 even the employees who secured less marks than me are being shown above merit the seniority list.

It therefore requested that considering the averments in the foregoing paragraphs the seniority list dated 26/12/16 may kindly be re-casted and I may kindly be given notional seniority from 2011 onwards in Punjab Mandi Board.”

In the writ petition also there is a specific averment. The same reads as under:-

“14-A. It is a case where the illegality has been perpetuated qua the petitioners firstly on the account of the fact that the petitioners could not be conducted in service due to the illegal clause which was subsequently set-aside by this Hon'ble Court and secondly, when they were finally given the appointment they have been placed junior to those candidates who joined service after taking advantage of illegal clause and were less meritorious. Furthermore, it is also submitted that the seniority of the private respondents cannot be reckoned from the year 2011, as the same was set-aside by this Hon'ble Court and official respondents were directed to recast the merit list, with such a background, the service rendered by the private respondents since, 2011 cannot be counted for the purpose of counting the seniority as the same is per-se illegal, as

the order of Hon'ble Court setting aside the appointment of private respondents will take away all the benefits granted by the official respondents to the private respondents. Infact, it is a case where the petitioners have suffered due to illegal and arbitrary policy of the official respondents in the advertisement of April, 2011 and when the said clause of the policy was impugned and striked off by this Hon'ble Court, then in no case the benefit of reckoning the date of appointment of the private respondents can be taken to be in 2011, it should be other way around and the petitioners should be given notional benefit since the year 2011."

22. In view of the above, the contention raised by the learned Senior counsel Mr. Patwalia cannot be accepted.

23. Learned Senior counsel representing the fresh appointees is right in submitting that they cannot be treated with injustice twice. The plea raised that fresh appointees can't be granted benefit for the period they were not even born on the rolls is again misconceived. Fresh appointees had right to be born on cadre and they were deprived thereof. The said right was recognized and restored in the earlier round of litigation. The law supporting the rights by inventing motions and fictions is not foreign to service jurisprudence. If required for the purpose of doing substantial justice the Court is bound to take notice of such legal fiction. Deemed date of appointments are recognized norm for effecting substantial justice. The other aspect that this Court cannot lose sight of is that these candidates cannot be made to pay for the time that was spent before the Court in the earlier round of litigation. It is a basic tenet of law that no man should suffer because of act of Court and trite it is that the rights of the parties get crystalized on the date of institution of the

lis. Reference can be made to the law laid down by this Court in **Sarup Singh Vs. the Punjab State Agricultural Marketing Board 1996 (2) RSJ 751** wherein it has been held as under:-

9. *The delay in disposal of the writ petition by this Court will not and cannot be held to dis-entitle the petitioner from getting the relief. The rights of the parties crystallised on the date of initiation of the proceedings. The delay in disposal of the case will not take away the rights which have already been crystallised on the date of the institution of the proceedings.*

The same has been reiterated by the Apex Court in the case of **Atma Ram Mittal Vs. Ishwar Singh Punia (1988) 4 SCC 284** as under:-

“9. Judicial time and energy is more often than not consumed in finding what is the intention of the Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at PG NO 535 the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. (Underlined by the Court). See Commentaries on the Laws of England (facsimile of 1st edition of 1765, University of Chicago Press, 1979 Vol. 1, p. 59). Mukherjea, J. as the learned Chief justice then was, in Poppatlal Shah v. State of Madras, 1953 SCR 677 said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind the said Judge Learned Hand, long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislator has used and the true meaning of what words as was said by Lord Reid in Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G., 1975 Appeal Cases 591 at 613. We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law. If the immunity from the operation of the Rent Act is made and depended upon the ultimate disposal of the case within the period of exemption of 10 years which is in reality ability, then there would be empty reasons. In our opinion, bearing in mind the well-settled principle that the rights of the parties crystallise on the date of the institution of the suit as enunciated by this Court in Om Prakash Gupta v. Dig Vijendrapal Gupta,

(supra), the meaningful construction must be that the exemption would apply for a period of 10 years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceeding must be instituted within the stipulated period of 10 years. Once rights crystallise the adjudication must be in accordance with law. “

24. That being the law, the candidates who came into employment during the pendency of *lis* can not be allowed to march over and trample the rights of the direct appointees only because they were treated unjustly and their appointments got delayed due to pendency of *lis*.

25. In view of the above, the writ petitions filed by the promotees i.e. CWP-2587-2018, CWP-25246-2017 are dismissed. The claim filed by direct recruitees in CWP No. 28876-2018 is allowed holding as under:

1. Appointments pursuant to Public Notice issued in April, 2011 are held senior to the persons appointed by way of promotion as Secretary Market Committee after initial selection/appointment being deemed appointees of the year 2011 but on notional basis without any monetary benefit.
2. Merit list/select list revised on the basis of judgment dated 12.5.2015 shall govern the inter se seniority of the incumbents who got appointed on the basis of such merit/select list.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

July 17, 2023
archana

Whether speaking/reasoned	Yes
Whether Reportable :	Yes