

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4625 of 2020 (O&M)
Date of decision: 23.01.2024

Kulbir Kaur
.....Petitioner
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Jadeep Singh Gill, Advocate
and Mr. Kanwar Raj Singh, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Mr. Vaibhav Sharma, Advocate
for respondents No.2 and 3.

NAMIT KUMAR J.

1. The present writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, for issuance of a writ in nature of certiorari, for quashing the impugned orders dated 16.09.2019 (Annexure P-8) and 01.10.2019 (Annexure P-9), as well as the orders dated 13.12.2019 (Annexure P-12) and 16.01.2020 (Annexure P-14) and further to issue a writ of mandamus for directing the respondents to allow the petitioner to continue on the post of Clerk, which the petitioner was holding before passing of the impugned order(s). Although, prayer for issuance of direction to the respondents to allow the petitioner to join on the post of Auction Recorder, in view of Resolution No.101 dated 21.06.2019 passed by respondent No.3, has

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also been made, however, the said claim has not been pressed by learned counsel for the petitioner, during the course of arguments and liberty has been sought to agitate the same in a separate proceeding at an appropriate stage.

2. In view of the statement made by learned counsel for the petitioner, liberty is granted to the petitioner to agitate the claim for promotion to the post of Auction Recorder in separate proceeding, in accordance with law.

3. In nutshell, vide aforementioned orders, the earlier Resolution dated 19.05.2015 (Annexure P-5), passed by the Market Committee granting promotion to the post of Clerk, on notional basis to the petitioner, have been annulled and the petitioner has been ordered to be reverted to the post of Peon and her revision against the said order has been rejected by the Revisional Authority, being not maintainable.

4. Brief facts, as have been pleaded in the present petition, are that the husband of the petitioner namely Gurpreet Singh was working as an Auction Recorder with the Market Committee, Chanarthal, District Fatehgarh Sahib and after his untimely death on 21.11.2010, the case of the petitioner for appointment as Peon was approved vide Resolution passed by the Committee, which was also approved by the Punjab Mandi Board (hereinafter referred to as 'the Board') vide letter dated 30.06.2011 (Annexure P-1) and the petitioner was appointed as Peon vide order dated 05.07.2011 (Annexure P-2), passed by the Market Committee, Sirhind, Fatehgarh Sahib.

5. It has further been averred that before the year 1997, all

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appointments and promotions made in various Market Committees in the State of Punjab to Class III and Class IV posts were subject to the final approval of the Board in view of provision of Section 20(2) of 'The Punjab Agricultural Produce Markets Act, 1961', however, vide office order dated 07.10.1997, the Board decided that all such employees who are employed by the Committee on earlier occasions and if such employees are sought to be promoted by the Committee then in such case, the Secretary of the Board shall not be required to again seek prior sanction and the following directions were issued:-

“A) The Market Committee shall seek prior sanction from the Secretary of the Board under Section 20(2) only in such cases where the committee for the first instance is granting employment to the concerned person, and the concerned post should have the salary of Rs.500/- and above.

B) In case of promotions, the Employing Authority of the Market Committee Employee, shall on its own letter head decide the promotion cases, but the committee shall decide such cases in accordance with the following, and compliance with the same shall be mandatory:-

1) Whichever post is being filled, the same should be sanctioned in the budget. Apart from this the said post should be covered under the Service Rules.

2) While passing the necessary orders, Reservation shall be taken into consideration.

3) Whichever post is being filled through recruitment, the same shall be related to the particular Committee, and the employee receiving promotion shall be receiving the same from the parent committee itself.

In the future, all cases of appointments/promotions in the Market Committee shall be undertaken in accordance with the above directions only.

*Date**Sd/-*

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(P.S. Aujla)
Secretary
Dated: 07.10.97”

Endst. No.55330-875

6. Thereafter, in the year 2012, the Chairman of the Board vide letter dated 11.12.2012 (Annexure P-4), further delegated its powers in making appointments on compassionate grounds, promotions, fixing of seniority and administrative action of the employees and it was ordered that the same shall be managed by the Committees at their own level in Group ‘C’ and Group ‘D’ category.

7. Further promotion from the post of Peon is to the post of Clerk, which is to be filled up from amongst the Class IV employees working in the Committee, who have 05 years experience and are matriculates and have passed the typewriting test in Punjabi language at a speed of 30 words per minute and the same is governed by the Rules known as ‘The Punjab Market Committee (Class III) Rules, 1989’. Rule 8(1) and 8(2) of the Rules provide as follows:-

8. Method of recruitment and qualifications.-

(1) Subject to the provisions of sub-rule (4), appointments 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'."

Sr. No.	Designatio n of the Post	Method of Recruitment	Qualifications 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 up to 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 5 [second division for 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 Matriculate s of the Education Board and pass the typewriting in Punjabi language at a speed of thirty words per minute.	

8. In the year 2015, one post of Clerk was lying vacant and the second post became vacant on promotion of the incumbent of the said post Sh. Raju, who was promoted to the post of Auction Recorder and the petitioner submitted her application to be considered for the said post and it was stated that the petitioner has been granted exemption for passing the typewriting test and the 05 years experience, she would

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complete on 31.07.2016. The case of the petitioner was put up before the Committee and vide Resolution No.7 dated 19.05.2015 (Annexure P-5), it was agreed with consensus and in the public interest that the petitioner, who was appointed on compassionate grounds be promoted with the condition that the petitioner will ensure completion of 05 years service on 31.07.2016 and thereafter, the pay-scale of Clerk i.e. 10300-34800+Grade Pay will be fixed.

9. The petitioner joined as a Clerk on 21.05.2015 and thereafter, she completed 05 years service on 31.07.2016 and she was granted the pay-scale of the post of Clerk.

10. Thereafter, the Board vide office order dated 26.07.2017 (Annexure P-6) withdrew the office order dated 07.10.1997 (Annexure P-3) whereby the Market Committees were authorized to make appointments/promotions to Group C and Group D posts.

11. In the year 2019, the petitioner became eligible for further promotion to the post of Auction Recorder and her case for promotion to the post of Auction Recorder was sent by the Committee to the Board on 21.06.2019 (Annexure P-7), however, the same was rejected by the Board vide letter dated 16.09.2019 (Annexure P-8) on the ground that she was not having requisite experience when she was promoted to the post of Clerk on 19.05.2015. Thereafter, vide another order dated 01.10.2019 (Annexure P-9), the Resolution No.07 dated 19.05.2015 of the Committee whereby the name of the petitioner was approved for promotion to the post of Clerk, has been cancelled even after recording the fact that the petitioner now fulfills all the requisite conditions for

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promotion as Clerk/Auction Recorder and since the petitioner was not fulfilling the condition of 05 years experience when Resolution No.7 dated 19.05.2015 was passed.

12. The petitioner challenged the orders dated 16.09.2019 and 01.10.2019 (Annexures P-8 and P-9), before this Court in CWP No.35877 of 2019 and during the pendency of the said writ petition, the petitioner was ordered to be reverted back from the post of Clerk to Peon vide order dated 13.12.2019 (Annexure P-12) and, therefore, the said writ petition was withdrawn by the petitioner with liberty to file afresh petition with better particulars, vide order dated 10.01.2020.

13. The petitioner preferred a revision petition dated 17.12.2019 before the Secretary, Department of Agriculture, Government of Punjab, impugning the order dated 13.12.2019 whereby the petitioner was ordered to be reverted back by cancelling the Resolution dated 19.05.2015, however, the said revision petition was rejected by stating that appeal lies with the Secretary, Punjab Mandi Board and liberty was granted to file appeal before the said authority vide order dated 16.01.2020 (Annexure P-14), which was conveyed to the petitioner vide letter dated 04.02.2020 and since the Board has already taken the decision and annulled the Resolution dated 19.05.2015, whereby the petitioner was ordered to be promoted, therefore, filing of appeal before the Secretary of the Punjab Mandi Board, would be a futile exercise and consequently, the present writ petition has been filed by the petitioner impugning her reversion to the post of Peon.

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14. The writ petition initially, came up for hearing before this Court on 25.02.2020 and while issuing notice of motion to the respondents, operation of the orders dated 16.09.2019 (Annexure P-8) and 01.10.2019 (Annexure P-9), as well as the orders dated 13.12.2019 (Annexure P-12) and 16.01.2020 (Annexure P-14) have been stayed and it was also clarified that the petitioner shall be permitted to render services as Clerk in the Market Committee, Chanarthal, District Fatehgarh Sahib, Punjab.

15. Written statement on behalf of respondent No.2/Board has been filed and the claim of the petitioner has been resisted by stating that no post of Clerk for appointment by way of promotion was available as on 09.12.2016 and further the petitioner had not passed the Punjabi typewriting test and she did not have 05 years experience as Class IV employee when she was promoted and, therefore, the impugned orders are perfectly legal and valid. It has further been submitted that the Board has powers to annul the Resolutions passed by the Committee, if the same have been passed in violation of the provisions of the Act.

16. Learned counsel for the petitioner submits that although the petitioner was not fulfilling 05 years experience when she was promoted, however, the said promotion was on notional basis and the petitioner was to get the pay-scale of the promoted post only on completion of 05 years experience i.e. on 31.07.2016. The petitioner was promoted against one of the vacant post caused by the incumbent, Sh. Raju, who was promoted as Auction Recorder. The petitioner was

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granted exemption from passing typewriting test when she was appointed as Peon. He further submits that in any case when the order of reversion has been passed by the respondents, the petitioner had already completed 05 years experience and this fact has been recorded by the respondents in the impugned order and the same reads as under:-

“Though the employee now fulfills all requisite conditions for the promotion as Clerk/Auction Recorder, however, Resolution No.7 dated 19.05.2015 passed by Market Committee, Chanarthal, District Fatehgarh Sahib, vide which Smt. Kulbir Kaur, was promoted from Sewadar to Clerk was passed without completion of her 05 years experience and the same is contrary to the Rules/Instructions.”

17. He has placed reliance upon the judgment of the Hon’ble Supreme Court in case of **“Ram Sarup vs State of Haryana”, 1979(1) SCC 168.**

18. Per contra, learned counsel for the respondent/Board submits that since the petitioner was not eligible when she was promoted on 19.05.2015 as she was not fulfilling the clause of experience of 05 years, therefore, she has rightly been ordered to be reverted back and, therefore, the impugned order(s) passed by the respondents are perfectly legal and valid.

19. I have heard learned counsel for both the parties and perused the record with their able assistance.

20. The facts are not in dispute that the petitioner was appointed as Peon on compassionate grounds on 08.07.2011 on account of death of her husband. Further promotion from the post of Peon is to

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the post of Clerk and one post was vacant and another became vacant in the year 2015 on account of promotion of Sh. Raju, who was promoted to the post of Auction Recorder from Clerk. The petitioner submitted application for consideration for promotion to the post of Clerk. Although the petitioner was eligible as she was matriculate and clause of passing the typewriting test was relaxed in her case and as on that date, she was having experience of 03 years and 09 months as against required experience of 05 years as Peon, however, her case was considered by the Committee and it was ordered that she would be promoted on notional basis and would be entitled to the pay-scale on the post of Clerk on completion of 05 years service as Peon. She has been granted the said pay-scale after she has completed 05 years experience. In terms of Circulars dated 07.10.1997 (Annexure P-3) and 11.12.2012 (Annexure P-4), the Board was competent to make promotion to the post of Clerk, although the said powers have been withdrawn later on by the Board vide letter dated 26.07.2017 (Annexure P-6), however, the said order cannot be made applicable retrospectively and would be applicable only with effect from the date of issue of the said order i.e. 26.07.2017. In the impugned order dated 01.10.2019 (Annexure P-9), it has been admitted by the Board that the petitioner now fulfills all the requisite conditions for the promotion not even as Clerk but also for the post of Auction Recorder but since she was not having the experience of 05 years, when she was promoted to the post of Clerk, therefore, she is liable to be reverted back. Once the petitioner has already completed the experience of 05 years on 08.07.2016, she cannot be reverted back in

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view of the law laid down by the Hon'ble Supreme Court in *Ram Sarup's case (supra)* wherein a confirmed Statistical Officer was appointed as Chief Inspector of Shops. After he had worked for about ten months on the said post, he was transferred to the post of Labour-cum-Conciliation Officer because the Government had taken a decision that the posts of Statistical Officer and Labour-cum-Conciliation Officer should be made interchangeable. However, the Rules were not amended in conformity with the said decision. The employee continued in his new post for about nine years whereupon he was reverted on the ground that he was not qualified for the post of Labour-cum-Conciliation Officer under Rule 4(1) of the Punjab Labour Services (Class I & II) Rules, 1955, which required the experience for five years in the working of labour laws as Labour Inspector or Deputy Chief Inspector of Shops or Wage Inspector. The question which came up for consideration before Hon'ble the Supreme Court was whether his appointment was wholly void and ineffective or merely irregular. Their Lordships' have held that the appointment as Labour-cum-Conciliation Officer was irregular and not void since the employee did not possess the requisite experience but as soon as he acquired the necessary experience mentioned in the relevant Rules, his appointment must be regarded as having been regularised. It was further held that the employee must be deemed to have been appointed to that post only on the expiry of a period of five years calculated from the date when he was appointed Chief Inspector of Shops. The judgment in *Ram Sarup's case (supra)* has been followed and applied in the cases of **Buddhi Nath Chaudhary**

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v. Abahi Kumar, (2001) 3 SCC 328 and Tridip Kumar Dingal v. State of West Bengal, (2009) 1 SCC 768. In Buddhi Nath’s case (supra) it has also been held that where appointment has been made long back pursuant to a selection that need not be disturbed.

21. Even otherwise, the petitioner was promoted on 19.05.2015 on notional basis and was to get the pay-scale of the post of Clerk only on completion of 05 years experience, therefore, she could not have been reverted back from the said post once she has already completed the experience of 05 years. The petitioner is even eligible for further promotion to the post of Auction Recorder, a fact which has been admitted by the respondents in the impugned order itself. Still further, she has continued to work on the post of Clerk from 08.07.2011 till date and a period of more than 08 years have passed, therefore, she cannot be allowed to be reverted back, at this stage.

22. Consequently, the present petition is allowed and the impugned order(s) dated 01.10.2019 (Annexure P-9), 13.12.2019 (Annexure P-12) and 16.01.2020 (Annexure P-14) are hereby set-aside and the petitioner shall be allowed to continue as Clerk, with all consequential benefits.

(NAMIT KUMAR)
JUDGE

23.01.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No