



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

CWP-17905-2015

Reserved on : 09.09.2024

Date of decision : 24.09.2024

Avtar Singh and another

.....Petitioners

Versus

Punjab State Agricultural Marketing Board and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Sharwan Sehgal, Advocate for the petitioner.

Mr. Pawan Kumar, Senior Advocate with
Mr. Amit Kaith, Advocate and
Ms. Vidushi, Advocate for respondents.

NAMIT KUMAR, J.

1. The petitioners have invoked the jurisdiction of this Court by filing the present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, quashing the show cause notices dated 24.07.2015 (Annexures P-19 & P-20) and orders dated 03.08.2015 (Annexure P-21 and P-22), whereby the petitioners have been dismissed from service with a further direction to the respondents to reinstate the petitioners with all consequential benefits.

2. The case set up by the petitioners is that an advertisement dated 08.11.2011 was issued by the Market Committee, Barnala, whereby 03 posts of Chowkidar were advertised and the petitioners being fully eligible applied for the same and thereafter they were interviewed by the duly constituted Committee on 01.12.2011 and the name of petitioner No.1 was considered by the Market Committee vide

resolution No.9 dated 15.12.2011 against the post fell vacant due to promotion of Sh. Jagtar Singh, Chowkidar as Clerk and the said resolution was approved by all the Members of the Committee. Similarly, the case of petitioner No.2 was considered vide Resolution No.10 dated 15.12.2011 against the post of Chowkidar which also fell vacant due to promotion of Smt. Sukhwinder Kaur as Clerk and the said resolution was also approved by all the Members of the Committee. Thereafter, the petitioners were appointed as Chowkidar vide appointment letters dated 21.12.2011 and they submitted their joining report on 21.12.2011 itself and thereafter, they were asked to submit their Medical Certificate of Fitness and Police Verification Report which were duly submitted by the petitioners. The Secretary, Punjab Mandi Board, vide order dated 15.03.2012, having endorsement dated 28.03.2012, cancelled Resolution Nos.9 & 10, without issuing any show cause notices to the petitioners and without granting any opportunity of hearing, on the ground that at the time of the appointment, no advertisement was issued for the post of Chowkidar and no merit-list was prepared. Consequently, vide order dated 25.04.2012, the appointments of the petitioners were cancelled. Orders dated 15/28.03.2012 and 25.04.2012 were challenged by the petitioners by filing separate writ petitions bearing CWP No.9502 of 2012 (Avtar Singh Vs. Punjab Mandi Board and another) and CWP No.9503 of 2012 (Ram Singh Vs. Punjab Mandi Board and another) before this Court, on the ground that the said orders had been passed in violation of principles of natural justice. Both the petitions were allowed vide order dated 06.04.2015 and the orders dated 15/28.03.2012 and 25.04.2012 were

quashed, however, liberty was granted to the respondents to proceed against the petitioners in accordance with law. Thereafter, the petitioners were allowed to join their services on 28.04.2015, however, they were not paid their salaries. On 09.06.2015, the petitioners were issued show cause notice(s) for holding regular departmental inquiry which was replied by the petitioners vide their letter dated 16.06.2015. Thereafter, both the petitioners were discharged from their duties on 30.07.2015 and 31.07.2015. Aggrieved by, the petitioners approached this Court by filing CWP No.16310 of 2015 (Avtar Singh and another Vs. Punjab State Agriculture Marketing Board and others), seeking quashing of the action of the respondents in terminating the services of the petitioners. The said writ petition came up for hearing before this Court on 11.08.2015 and it was argued on behalf of the petitioners that neither a copy of show cause notice(s) nor any subsequent proceedings pursuant to which the services of the petitioners were terminated, had been supplied to them, including the order of termination itself. Notice of motion in the said petition was issued for 21.08.2015 and in the meanwhile, the petitioners were issued show cause notice(s) dated 24.07.2015 to show cause as to why they should not be dismissed from service. No reply to the show cause notice(s) was filed, however, the petitioners appeared before the Chairman, Market Committee, Barnala. Vide orders dated 03.08.2015, the petitioners had been dismissed from service. Thereafter, writ petition bearing CWP No.16310 of 2015 filed by the petitioners was dismissed as withdrawn due to subsequent development, vide order dated 24.08.2015, with liberty to challenge the

show cause notices as well as order of dismissal. Hence, the instant petition has been filed by the petitioners.

3. A detailed written statement has been filed by the respondents and the claim of the petitioners has been contested on merits wherein it has been stated that the appointments of the petitioners were made in a clandestine manner by the then Chairman of the Market Committee, Sh. Karnail Singh Tuliwal and Secretary of the Market Committee, Sh. Balwinder Singh, as the posts were never advertised in any State/National Newspapers but were advertised in the newspaper called "Komi Den Sangrur" only which has no wide circulation.

4. Learned counsel for the petitioners has argued that the petitioners have wrongly been dismissed from service vide impugned orders dated 03.08.2015 as the posts were duly advertised and proper procedure was followed before issuance of appointment letters to the petitioners, therefore, the impugned orders of dismissal dated 03.08.2015 are liable to be quashed and set aside.

5. On the other hand, learned Senior counsel for the respondents has submitted that in the present case a fraud has been committed by the then Chairman and Secretary of the Market Committee, Barnala by making the appointments in a colourable manner which is not in conformity with the provisions of Articles 14 & 16 of the Constitution of India and, therefore, the petitioners have been dismissed from service after holding inquiry. Therefore, the orders of dismissal are liable to be upheld.

6. I have heard learned counsel for the parties and perused the relevant documents.

7. The facts are not in dispute that an advertisement dated 08.11.2011 was issued in the newspaper "Komi Den Sagrur", wherein 03 posts of Chowkidar were advertised by the then Chairman and Secretary of Market Committee, Barnala. The age limit prescribed was minimum 18 years and maximum 37 years. The petitioners applied for the said posts and vide Resolutions No.9 & 10 dated 15.12.2011, their appointments were approved by the Committee and consequently, they were issued appointment letters dated 21.12.2011 and both the petitioners joined on the same date i.e. 21.12.2011 itself. Both have also submitted their Medical Certificates of Fitness and Police Verification Reports. Thereafter, resolutions No.9 & 10 dated 15.12.2011 were annulled by the Secretary, Punjab Mandi Board vide order dated 15.03.2012. Consequently, the services of the petitioners were terminated on 25.04.2012. The orders dated 15.03.2012 and 25.04.2012 were challenged before this Court in CWP No.9502 of 2012 (Avtar Singh Vs. Punjab Mandi Board and another) and CWP No.9503 of 2012 (Ram Singh Vs. Punjab Mandi Board and another) which were allowed vide order dated 06.04.2015 by recording a finding that since no opportunity of hearing was granted to the petitioners before termination of their services in view of annulment of resolutions, therefore, the same is in violation of principles of natural justice. However, liberty was granted to the respondents to proceed against the petitioners in accordance with law. Pursuant to order dated 06.04.2015, passed by this Court, the petitioners re-joined their duties on 28.04.2015. Thereafter, the petitioners were issued notices dated 09.06.2015 and in the said notices, the following information was sought from them :-

1. In view of which intimation did you come to the office for appointment, please present the same along with proof.
2. At the time of your selection how many other candidates have come, their details be given.
3. At the time of your selection which officials were present.
4. Whether before joining your duty your medical was done, the same be presented along with proof.

The said notices were replied separately by the petitioners, vide letter dated 16.06.2015. An inquiry was conducted in which witnesses were examined including Manager of newspaper "Komi Den Sangrur" but he did not supply any copy of the newspaper dated 08.11.2011. During inquiry, the then Secretary of Market Committee, Sh. Baljinder Singh admitted that no post of Watchman was lying vacant; no Committee was constituted; only 03 candidates had applied and no merit-list was prepared. It was held that the then Chairman of the Market Committee, Sh. Karnail Singh Tuliwal, who remained Chairman from 18.01.2010 to 06.12.2012 and the then Secretary of the Market Committee, Sh. Balwinder Singh, in connivance with each other and without following the rules have appointed 03 persons without proper publication of the vacancies in the State/National Newspapers and both were held responsible for this illegal act and by fraudulently recruiting these persons as Chowkidars. The said inquiry report was forwarded to the Secretary, Punjab Mandi Board, vide letter dated 03.08.2015. As a result of the inquiry, the charges were proved against both the petitioners and that the fraudulent appointments were made. Thereafter, show cause notices dated 24.07.2015 were issued to the petitioners

along with copy of the inquiry report, as to why they should not be dismissed from service. No reply to the show cause notice(s) was submitted by the petitioners, however, on 30.07.2015, they appeared personally in the office of Chairman, Market Committee, Barnala.

8. In the present case, no proper procedure for making selection to the post of Chowkidar has been followed as governed by the provision of the Punjab Market Committee (Class-IV) Service Rules, 1989 by the then Chairman and Secretary of Market Committee, Barnala as the posts have not been advertised in State/National Newspapers having wide circulation. Interestingly, against 03 posts, 03 applications are alleged to have been received whereas in other Committees, thousands of applicants had applied. No Selection Committee was formed and the appointment of the petitioners were approved by the Committee in its Resolution Nos.9 & 10 dated 15.12.2011 and were issued appointment letters on 21.12.2011 and both have joined on the same very day. The petitioners along with the officials of the Market Committee perpetuated fraud to obtain appointment in a fraudulent manner as the same is clear from the inquiry report and the witnesses examined. Once the petitioners have obtained appointment in fraudulent manner and the appointments were made dehors the rule, the same is nullity.

9. The Hon'ble Supreme Court while considering a similar issue in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and others : 1996(6) SCC 216*, has held as under :-

"6. Having regard to the respective contentions, we are

of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment ex-change, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

10. The Hon'ble Supreme Court while following the abovesaid judgment in ***Arun Kumar Nayak Vs. Union of India and others : 2006 (4) S.C.T. 362*** has opined as under :-

"8. xx xx xx This Court in Visweshwara Rao (supra), therefore, held that intimation to the Employment Exchange about the vacancy and candidates sponsored from the Employment Exchange is mandatory. This Court

also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better.”

11. The said judgment has been followed by a Division Bench of this Court in ***Tripta Devi and others Vs. Secretary, Department of Excise and Taxation, Union Territory, Chandigarh and others : 2008 (3) S.C.T. 719***, wherein it has been held as under :-

*“6. The aforementioned observation of the Constitution Bench fully apply to the facts of the present case. The petitioners have not been subjected to regular process of selection by considering the competing claims of all those persons who were available in the field. It is further appropriate to mention that requisitioning of names from the Employment Exchange alone would not satisfy the requirements of Articles 14 and 16(1) of the Constitution, as has been held by their Lordships' of Hon'ble the Supreme Court in the case of **Excise Superintendent Malkapatnam v, K.B.N. Visweshwara Rai, (1996)6 SCC 216**, laying down that restricting the selection to the*

*candidates sponsored by Employment Exchange is impermissible. Dealing with such a contention, a Division Bench of this Court in the case of **Rajinder Kumar v. State of Haryana, 2006(3) SCT 838 : 2006(2) PLR 474**, has observed as under :-*

*"The only argument which survives for adjudication is that in cases where employees have been appointed by requisitioning the names from the Employment Exchange, should their services be regularised. We are afraid that this argument can also not be accepted because when the requisition is sent to the Employment Exchange it clearly specify nature of employment. In these type of cases the requisition is for employment on 89 days basis or by issuing advertisement in Press for employment on contractual basis. Such like requisitions or inviting applications for appointment on contractual basis or for a limited period would also not be entitled to equation with those who have been selected and appointed in accordance with the selection process as provided by the rules consistent with Articles 14 and 16(1) of the Constitution. It is appropriate to mention that in the case of **Excise Superintendent Malkapatnam v. K.B.N. Visweshwara Rai, (1996)6 SCC 216**, even for restricting the selection to the candidates sponsored by Employment Exchange has been held to be impermissible. It has implicitly overruled the principle laid down at one stage in 1987 in the case of **Union of India v. N. Hargopal, (1987)3 SCC 308**, wherein it was held that requisition can be sent to employment exchanges for regular recruitment and the same use to be held to be a valid source of recruitment. However, the Supreme*

Court in K.B.N. Viswesh-wara Rao's case (supra) has now laid down that in addition to requisition from the employment exchange, the applications should also be called for through public publication in Newspapers having wide circulation and display on office notice boards or announcement on radio, television and employment news bulletins because such a procedure would subserve fair play. Therefore, we have no hesitation in rejecting the submissions made by the learned counsel for the petitioners as nothing has been pointed out that even through employment exchanges recruitment was sought to be made on regular basis.

12. It is a well settled proposition of law that fraud vitiates everything. The Hon'ble Supreme Court, while considering a similar issue in ***District Primary School Council, WB Vs. Mritunjoy Das and others : 2011(4) S.C.T. 24***, wherein also the appointment was obtained by fraud, has held as under :-

*“7. xx xx xx There is, therefore, no violation of the principles of natural justice in the present case. If a particular act is fraudulent, any consequential order to such fraudulent act or conduct is non est and void ab initio and, therefore, we cannot find any fault with the action of the appellant in dismissing the service of the contesting respondents. In this context we refer to the decision of this Court in **Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and Others reported in 2003(4) S.C.T. 318 : (2003) 8 SCC 311** for the proposition that no person should be allowed to keep an advantage which he has obtained by fraud.”*

13. The same view has been taken by the Hon'ble Supreme Court in ***Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and others : 2008(3) S.C.T. 603***, wherein it has been observed as under :-

*“13. xx xx xx He who comes to the Court with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. [See: ***R. Vishwanatha Pillai Vs. State of Kerala & Ors., 2004(1) SCT 673 : (2004)2 SCC 105, Bank of India (supra), Addl. General Manager (supra), Derry v. Peek (1889) 14 AC 337, Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education & Ors., 2003(4) SCT 318 : (2003)8 SCC 311 and Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Ors., 2005(4) SCT 251 : (2005)7 SCC 605***].*

14. In ***Ram Chandra Singh Vs. Savitri Devi & Ors., (2003)8 SCC 319***, this Court in para 26 had observed that fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine.

15. Recently, in ***State of Maharashtra & Ors. Vs. Ravi Prakash Babulalsing Parmar & Anr., 2006(4) SCT 783 : (2007)1 SCC 80*** dealing with a similar situation, this Court has observed thus:

"The makers of the Constitution laid emphasis on equality amongst citizens. The Constitution of India

provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter."

14. Applying the abovestated principles to the facts of the present case, it is held that the petitioners have obtained the appointment by fraud, therefore, they cannot be reinstated in service. Accordingly orders dated 24.07.2015 and 03.08.2015 passed by the respondents are upheld.

15. In view of the above authoritative pronouncements of the Hon’ble Supreme Court and of this Court, the present petition is bereft of merits and is accordingly dismissed with no order as to costs.

24.09.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No