

(2009) 12 P&H CK 0083
In the Punjab And Haryana At Chandigarh

Bharpur Singh and Others

APPELLANT

Vs

The Punjab Mandi Board and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Citation : (2010) 1 RCR(Civil) 878 : (2010) 1 RCR(Civil) 609 : (2010) 6 SLR 368

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This judgment shall dispose of civil writ petition No. 2529 of 1992 titled Bharpur Singh and Ors. v. The Punjab Mandi Board and Ors. civil writ petition No. 6783 of 1997 titled Smt. Harminder Kaur v. The Punjab Mandi Board and Ors. and civil writ petition No. 8694 of 1997 titled Smt. Inderjeet Kaur v. The Punjab Mandi Board and Ors. as common questions of law and facts are involved.

2. For brevity sake, facts are being taken from civil writ petition No. 2529 of 1992.

3. The petitioners are the employees of the Punjab Mandi Board, serving as Clerks and Accounts Clerks. The service conditions of the petitioners are governed by the rules called "The Punjab State Agricultural Marketing Board (Class-II) Rules, 1989 (hereinafter referred to as "the Rules). The service rules of the petitioners define Engineering Wing as Wing of the Board entrusted with execution of work of civil, electrical, public health and horticulture of the Board, and the committees.

4. According to Rule 8 of the Rules, the method of recruitment is specified in Appendix "B", which provides two lines of promotion of the Clerks in the Board i.e.:

I. IN GENERAL SIDE

1. Clerks to Senior Clerks

Senior Clerks to Assistants

Assistants to Supdt (Grade-II)/Secy. Market Committee.

II. IN ENGINEERING WING SIDE

Clerk to S.D.C.

S.D.C. to Accounts Clerk/Senior Assistant (Accounts)

Accounts Clerk to Supdt. (Grade-IV).

5. Initially, the posts of Superintendent Grade-II and Superintendent Grade-IV were in different pay scales, as the grades of Superintendent (IV) were less than Superintendent (II). The post of Superintendent Grade-II carried the pay scale of Rs. 800-1400 plus special pay of Rs. 50/-, whereas Superintendent Grade-IV carried the pay scale of Rs. 620-1200 as on 1.1.1986. The Clerks and the Accounts Clerks etc. could be promoted to general side or the engineering wing side.

6. The Board decided to bifurcate the cadre of Clerks in two cadres i.e. general side and engineering wing side. In order to achieve this object, a circular was issued on 28.7.1989 inviting options from all the Clerks working in the Board, as to which channel of promotion they would opt for, as there were two channels of promotion for the Clerks.

7. The circular further provided, that option given shall be final and at no stage it would be allowed to be changed. The copy of the circular is attached as Annexure P-2 to this writ petition. Necessity of issuance of this circular arose as the rules were silent in this regard, therefore, needed to be supplemented by the circular/administrative instructions.

8. Very few Clerks opted for promotion to the engineering wing side, which necessitated the issuance of letter dated 11.8.1989 inviting options positively by 25.8.1989. It was stipulated, that the options received after 25.8.1989 would not be entertained. Copy of the circular dated 11.8.1989 is attached as Annexure P-3.

9. On receipt of options from the employees, the list of Clerks, who opted for their promotion in construction wing side, was released. The options after being circulated were implemented and employees shown at Sr. No. 1 to 7 were promoted to the post of Accounts Clerk, in the engineering wing. The letter of promotion of the employees is attached as Annexure P-4 to this writ petition.

10. One of the employees, Ms. Harinder Kaur sought clarification with regard to change in channel of promotion. To her query, the answer by the respondents was, that the option for change of channel of promotion could be considered only after reversion to the lower post, so as to seek upward promotion, in the line in

other channel, and no one could be allowed to jump over to other.

11. The clarification reads as under:

As per the provisions of Punjab State Agricultural Marketing Board, Class III Service Rules, 1989, Assistant is promoted to the post of Supdt. Grade II or Secretary Market Committee only. An Assistant cannot be promoted to the post of Supdt. Grade IV in Engineering Wing. If you desire to be promoted to the post of Supdt. Grade IV in Engineering Wing and want to be appointed as Accounts Clerk then for this first you would be reverted to the post of Senior Clerk and thereafter alone you can be considered for promotion to the post of Accounts Clerk and Supdt. Grade IV in terms of said rules. If you are willing to be reverted to the post of Senior Clerk then you give option for that.

12. A final chance was, however, given to the employees to opt for particular channel of promotion upto 31.5.1990. The matter was discussed with the employees' union regarding submission of options, and the period, was thereafter extended upto 15.6.1990. The order passed on 21.5.1990 in this regard reads as under:

A meeting was held under the Chairmanship of Secretary of Employees Union, Punjab Mandi Board in which as per decision taken regarding promotion of Assistant to the post of Supdt. Grade IV and Accounts Clerks in Engg. Section. So you are requested to give option regarding promotion to general side or Engg./Construction Wing. If you opt for promotion in Engineering Wing then first you have to seek reversion to the post of Senior Clerk and thereafter as the provision of Class III service rules you will be considered for promotion from Senior Clerk to Accounts Clerk and thereafter to the post of Supdt. Grade IV. In this regard kindly give option as to which side you seek to be considered for promotions latest upto 15.6.90. The option received thereafter will not be looked into.

13. On the basis of options received, an amended final list of Senior Clerks/ Clerks/Typists, was released on 18.2.1991. The list also had a stipulation, that at no stage the allocation would be changed. Thus, with passing of order Annexure P-8, the bifurcation of the cadre stood completed, and the Clerks working in Board were divided into two cadres i.e. general wing and engineering/ construction wing.

14. A meeting was held between the representatives of the union and the management, wherein following decision was taken:

(i) That the seniority list of the clerks of Engineering Section shall be Circulated as they have been finally allocated.

(ii) That the clerks of the Engineering Wing shall be promoted to the post of S.D.C. A copy of the said decision of Board is annexed as Annexure P-9.

15. The Board released a tentative list of Clerks of constructions wing on

19.7.1991, inviting objections within a period of 10 days of the receipt of circulation of the seniority list, but final seniority list was not released. Instead of releasing the final seniority list, in terms of the bifurcated cadre, the respondents passed the impugned order Annexure P-12, which reads as under:

There was a common cadre of clerical staff of Engineering Wing and General Wing of Punjab Mandi Board. That without amending the Rules, by an executive order, the Engineering Wing and General Wing were separated. No proposal for amending the rules regarding this was made. That vide office order No. E-6/1938919448, dated 28.7.89 and order No. E-6/21421-21609, dated 11.8.89, employees were asked to give options for Engineering Wing or General Wing for upward line of promotions.

That as per office order No. 1852(1990), dated 31.12.90, 55 Senior Clerks/ Clerks on the basis of their options, were finally allocated to Engineering i.e. Construction Wing. That office order No. 329(1991), dated 18.2.91, was issued regarding allocation after making minor changes. That as per Memo No. 3/29/ M-1-91/14940, dated 27.8.91 issued by the Department of Agriculture and Forests of Punjab Government, it was mentioned as there are service rules to regulate the service/promotion of the employees of Punjab Mandi Board and there is no provision regarding the giving and taking of options etc. on the basis of which promotions were to be effected.

The staff members of Mandi Board may remain in Engineering Wing or Construction Wing, they are one and the same and there was no justification for separating them into two, as same rules apply on entire clerical cadre. The bifurcation of the clerical cadre into 2, gives rise to the problem of fast promotions on the one side and slow promotions on the other side. On the basis of report submitted by the Committed constituted for the purpose, it is decided, without amending the Rules, the option taken from the staff members regarding their bifurcation into Engineering and General Wing be withdrawn to place the staff again into the same position as they were before giving the said options.

That under the circumstances explained above the letter No. E-6/19389-19448, dated 28.7.89 & letter No. E6/ 21421-21600 dated 11.8/89 vide which option from the staff were sought to select their line of promotions are withdrawn and accordingly the allocations of 55 Senior Clerks/Clerks made in Construction/ Engineering Wing side vide office order No. 1852(1990) dated 31.12.90 and after making few amendments finally allocation made vide office order No. 329(1991) dated 18.2.91 also withdrawn. The common seniority list of Senior Clerks/Clerks shall prevail as it were before giving options.

16. The order Annexure P-12, reproduced above, has been impugned by the petitioners on the following grounds:

(i) That the impugned order Annexure P-12 is without jurisdiction, as it is issued by the Secretary of the Board without any reference to the decision in this regard by the Board, even though the decision to bifurcate the cadre into two was taken

by the Board.

(ii) That by ways of impugned order, accrued right of the petitioners to be considered for promotion against the posts lying vacant in the construction wing, has been taken away, without giving an opportunity of hearing to the petitioners.

(iii) That the petitioners having been finally allocated in terms of the options given by them, the benefit accruing could not be abruptly withdrawn.

(iv) That the impugned order is based on mis-interpretation of law, that the instructions regarding bifurcation are violative of statutory rules.

17. The writ petition was opposed primarily on the ground, that there was no provision in the service rules providing for two wings i.e. general wing or engineering wing. It is also pleaded, that the Government objected to the administrative order being violative of the service rules, which did not provide for two wings in the cadre of Clerks.

18. On consideration, I find force in the stand of the petitioners. It is well settled law, that executive instructions can be issued to supplement the rules or fill up the gaps. The executive instructions or administrative decision can only be said to be bad, if they violate any statutory rule, or are with respect to matter which covers the field. Once the rules regarding promotion provided in the general wing and the engineering wing were silent, then it was open to the Board to supplement these Rules by way of executive instructions and that is what was done, that too with the consent of the employees' union.

19. The matter did not end with the issuance of instructions, but these are implemented by circulating the tentative seniority list and inviting objections. Seven employees out of the bifurcated list were also promoted.

20. The valuable right of consideration for promotion in engineering wing/general wing, therefore, accrued to the employees, who had opted for a particular wing. Therefore, the employees had a legitimate expectation to be considered for promotion. It was not open to the Secretary of the Board to withdraw the executive instructions without following the principles of natural justice. The impugned order is without jurisdiction as it has been passed by Secretary, without any authority from the Board.

21. As already observed, the impugned order is in violation of principles of natural justice, as no notice was issued to the concerned employees before withdrawing the instructions, issued for bifurcation of the cadre for the purpose of promotion.

22. Consequently, this petition is allowed, the impugned order Annexure P-12 is set aside and the position existing prior to the issuance of order Annexure P-12 is ordered to be restored.

23. No costs.