(2008) 08 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Hakam Singh APPELLANT

Vs

The Punjab State Agricultural Marketing Board and Others RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 42

Citation : (2009) 153 PLR 17 : (2009) 3 RCR(Civil) 698

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The petitioner is aggrieved by order dated 25.5.2007, issued by the Chairman, Punjab State Agricultural Marketing Board-respondent No. 2 transferring, the petitioner from Market Committee, Jagroan to the Market. Committee, Mullanpur. The ground of challenge is that the transfer of the petitioner who is working as Accountant, Market-Committee, Jagraon, is out of cadre and such a transfer cannot be effected without his consent.

2. Brief facts of the case are that the petitioner joined as Clerk on 13.10.1982 with the Market Committee, Jagraon-respondent No. 3. On 8.4.1987, he was promoted as Mandi Supervisor against a reserved vacancy as he belongs to the category of Mazbi Sikh. He could not be considered for promotion to the post of Accountant under the policy of reservation. He filed C.W.P. No. 19766 of 2003. On 5.8.2005, the writ petition was decided in his favour with a direction to the respondents that he be promoted from the date Shri Tarlok Singh-respondent No. 4 has been promoted on the post of Accountant i.e. 15.10.2001. The operative part of the judgment dated 5.8.2005 read as under:

In view of the above, we allow the writ petition. Resolution dated 15.10.2001 (Annexure P-1) and the order of the Appellate Authority dated 13.8.03 (Annexure P-4) are hereby quashed. The petitioner is held entitled to be promoted from the date respondent No. 4 was promoted i.e. on the post of

Accountant. The petitioner shall be entitled to all consequential benefits, such as arrears of salary on the promotional post, increments, seniority and any other benefits to which he would be entitled under the Rules. Let the consequential relief be granted to the petitioner within a period of three months of the receipt of a certified copy of this order. No costs.

3. In compliance with the order passed by the Division Bench, the petitioner was adjusted as Accountant in the Market Committee, Jagraon (P-l). He was, however, transferred from Jagraon to Mullanpur. The petitioner has approached this Court with the grievance that once he has been absorbed in the cadre of Accountant at Jagraon, which was his original cadre, he cannot be uprooted and posted in another Market Committee because it is likely to prejudice his rights concerning seniority and pay etc. In that regard, reliance has been placed on the rules regulating the service conditions of the petitioner known as the Punjab Market Committees (Class III) Service Rules, 1989 (for brevity, ''the Rules'').

4. The stand taken by the respondents in the written statement is that the remedy of revision is available u/s 42 of the Punjab Agricultural Produce Markets, Act, 1961 (for brevity, ''the Act''), which the petitioner has failed to avail and that the power to transfer the Accountant from one Market Committee to another has been conferred on the Chairman, as per Section 3(11) of the Act. On the aforementioned basis the action of the Chairman, Punjab State Agricultural Marketing Board, is sought to be defended. The respondents have also placed reliance on a Division Bench judgment of this Court rendered in the case of Roahan Lal v. The Punjab State Agricultural Marketing Board and Ors. (L.P.A. No. 1290 of 1992, decided on 19.4.1996).

5. After hearing learned Counsel for the parties and perusing the paper book with their able assistance we are of the view that the writ petition deserves to succeed. According to Rule 2(j) of the Rules, the expression ''service'' has been defined to mean the Punjab Market Committee (Class III) Service and as per Rule 6 of the Rules, the Market Committee is the appointing authority of the Accountant. It is further evident from the perusal of Rule 10 of the Rules that seniority inter se of the members of the service has to be maintained committee-wise and the transfer order could be passed by the appointing authority. The aforementioned Rules are reproduced hereunder for the facility of reference:

2(j) "Service" means the Punjab Market Committee Class (III) Service.

6. Appointing Authority:- All appointments to the Service shall be made by the Committee.

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

6. A co-joint reading of the aforementioned rules would make it evident that a member of the service could be transferred by an order passed by the appointing

authority. However, the impugned order of transfer dated 25.5.2007 has been passed by the Chairman of the Marketing Board. Even otherwise, the transfer of the petitioner from one cadre of Accountant belonging to the Market Committee, Jagraon, to the Accountant of another Committee i.e. the Market Committee, Mullanpur, would be violative of Rule 3 read with seniority rule 10 of the Rules. A Division Bench of this Court in the case of constables (Rohtas v. State of Haryana 2006 (4) R.S.J. 142), which is also district cadre, has taken the aforementioned view. Therefore, the writ petition deserves to be accepted.

7. Learned Counsel for the respondents has argued that a Division Bench judgment of this Court in the case of Roshan La1 (supra) has accorded protection to the action of the Chairman, insofar as, the transfer of a person acting as Accountant is concerned. In that case from a existing Market Committee, Dhuri, another Market Committee at Sherpur was carved out and a person working with the Market Committee, Dhuri on the post of Supervisor-cum-Fee Collector was transferred to Market Committee, Sherpur. The writ petition was dismissed by the learned Single Judge. However, the Letters Patent Bench allowed the writ petition and reversed the view taken by the learned Single Judge by observing that the Mandi Board may have the power of superintendence and control over the Committees. The power to transfer the services of Secretary or any other employee dealing with accounts, might be given to the Chairman, yet, the appointing authority is the Market Committee and their seniority has to be determined committee-wise. The Letters Patent Bench has placed reliance on Section 18 of the Act, which provides that every committee is to be a body corporate as well as local authority having perpetual succession and common seal. It could independently hold property. The power of transfer has been vested in the Chairman u/s 3(11) of the Act but that power does not include the power to change the cadre of an employee of one committee to the cadre of another committee. The observation of the Letters Patent Bench in that regard reads as under:

...The power of transfer is found u/s 3(11) of the Act. There is no provision in the Act or the Rules empowering the Board to change the cadre of the employees of one Committee to the cadre of another Committee. We are, with respect, unable to agree with the findings of the learned Single Judge to the effect that merely because the word ''allocation'' has been used, it does not distract from the fact that as far as the petitioner was concerned, it was an allocation by way of transfer to a new Committee. In our opinion, the allocation cannot be equated with the transfer. The transfer is a temporary arrangement and does not affect the lien of the employee in his parent Committee. On the other hand, the allocation of the petitioner from the Market Committee, Dhuri to Sher Pur has resulted in the extinguishment of his lien in the Market Committee, Dhuri. In our opinion, the appellant could not have been allocated to the Market Committee, Sherpur without the consent of the appellant. No consent having been taken, the allocation of the appellant to Market Committee, Sher Pur cannot be sustained....

8. Therefore, the argument raised on behalf of the respondents that there is no change of cadre in the case of the petitioner and it is mere transfer, cannot be accepted because it cannot be successfully argued that the Accountant of the Market Committee, Jagraon when transferred to the Market Committee, Mullanpur, would continue to hold the post in his own cadre and maintain his own seniority with the Accountants of the Market Committee, Jagroan. Therefore, the impugned transfer order dated 25.5.2007 (P2) is necessarily an order changing the cadre of the petitioner from the Market Committee, Jagraon to the Market Committee, Mullanpur.

9. For the reasons aforementioned, this petition succeeds and the impugned order of transfer, dated 25.5.2007 (P-2), which amounts to changing the cadre of the petitioner from the Market Committee, Jagraon to the Market Committee, Mullanpur, is hereby quashed. Since this Court has already stayed operation of the impugned order, vide order dated 31.5.2007, the petitioner shall continue to discharge his duties at the Market r Committee, Jagraon.

10. The writ petition stands disposed of in the above terms.

Sd/- Jora Singh, J.

