

(2013) 08 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13729 of 1991 (O and M)

Mohinder Singh

APPELLANT

Vs

The Market Committee

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : (2013) 4 PLR 838

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The challenge to the termination of service made on 07.06.1991 was on the ground that he had been appointed on 13.05.1991 by the Chairman of the Marketing Committee and the termination order was issued on 07.06.1991 on the ground that the Marketing Committee had been superseded on 13.05.1991 and the Chairman did not have the authority to appoint him. The challenge was on two grounds: (i) the supersession of the Marketing Committee through Government notification came about only on 21.05.1991 and on the day when the appointment was done, the appointment was valid; (ii) there had been no show cause notice before the termination order was issued. The contention of the petitioner was refuted by the respondent pointing out to the fact that under the terms of appointment, he was required to furnish the certificates/affidavits—(i) medical certificate of physical fitness; (ii) proof of date of birth; and (iii) certificate regarding nationality. These documents had not been furnished and he was permitted to join duty on 15.05.1991 without following through the mandatory procedure. The order passed that the appointment was not legal since the decision to supersede was taken by the Government on 13.05.1991 and the fact that the notification was issued subsequently ought not to be taken as material. It is also contended that the order of termination itself constituted no stigma on his future appointment and, therefore, the petitioner cannot challenge the termination through a writ petition. I find that the order of appointment was

passed by a person, who was competent on the day since the notification itself has been issued only on 21.05.1991. Section 36 of the Punjab Agricultural Produce Markets Act, 1961 allows for some emergency powers for the State Government to declare the functions of a Committee to be exercised by a Board or assume itself of the powers vested in it or exercisable by a Committee. When Section 36 of the Act employs the expression that the Government shall do all the acts by a notification, it is the date of notification that could be taken as enabling the authority to the consequence of such notification. The basis of the order of termination was clearly wrong. The appointment could not be stated to be without power on the day when the order was issued.

2. Even the contention made that the petitioner had not submitted the fitness certificate or other documents which were necessary could have been material if there was really anything amiss, namely of the employer coming by information of integrity issues against the employee or he was otherwise disqualified on account of overage. A show cause notice against the termination is a necessary component of natural justice, for, it would have allowed the employee to join issue on the alleged failure of the petitioner to produce the necessary documents. I cannot see this as such a fundamental prerequisite that the person joining service will be taken as having lost his right by failure to produce the documents. The termination order is, therefore, clearly wrong. We have come by a situation of a person, who has held office barely for three weeks before he was terminated from service. It is obvious that he could not resort to an action under Industrial Disputes Act, since he did not have sufficient number of days of service to complain of continuation period of service for at least even a year. I considered for a while whether it would be appropriate to direct reinstatement. Taking note of the fact that he was unskilled labourer, he could not have remained without employment for all these years, but appropriate relief would be to provide to him compensation which I assess at Rs. 1 lakh and direct the same to-be paid with interest at 6% from the date of termination till date of payment. The learned senior counsel would argue vehemently that he had come to Court immediately and for a sheer pendency of the Court, he cannot lose the right to employment itself While I see some fairness in the argument, I cannot still afford to an employee in a public office to be rewarded with a right of reinstatement when the work was an unskilled job and he never been in service all these years and he had not worked even for a month when he was terminated from service. At best, it could have been only considered as wrongful termination which could be compensated monetarily. I do not see that the appointment in Market Committee as a public officer to which the benefit of Article 311 of the Constitution would arise. I, therefore, see that it is only appropriate that the person is rewarded monetarily for the illegal termination that had been effected. The writ petition is allowed to this extent only with cost assessed at Rs. 10,000/- against the respondents.