
(2010) 12 P&H CK 0329
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1151 of 2010 (O and M)

Punjab Mandi Board and Others	Vs	APPELLANT
Bharpur Singh and Others		RESPONDENT

Date of Decision : 17-12-2010

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 43

Citation : (2011) 1 ILR (P&H) 953

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of a bunch of four Letters Patent Appeals and one Writ Petition (see footnote). The Punjab Mandi Board and its Officers have preferred three appeals and one appeal has been preferred by the employees of the Board under Clause X of the Letters Patent against the common judgment dated 23.12.2009 rendered by the learned Single Judge allowing the writ petitions by setting aside the order dated 17/18.7.1992 (P-12). The Petitioners in C.W.P. No. 19200 of 2010 have sought quashing of order dated 13.10.2010 (P-2), which has been passed after the common judgment dated 23.12.2009 passed by the learned Single Judge reverting them from the post of Superintendent Grade-II to that of Senior Assistants. Another learned Single Judge vide order dated 27.10.2010 deemed it appropriate that the said writ petition is heard along with the appeals.

2. The facts are noticed from L.P.A. No. 1151 of 2010. The Petitioner-Respondents are the employees of the Punjab Mandi Board (for brevity, "the Board") and working on the posts of Clerks and Accounts Clerks. Their conditions of service are governed by the statutory Rules, namely, "The Punjab State Agricultural Marketing Board (Class-III) Rules, 1989 (for brevity, "the Rules"). Under the Rules, the expression "Engineering Wing" has been defined to mean "a Wing of the Board entrusted with execution of work of civil, electrical, public

health and horticulture of the Board, and the committees." According to Rule 8 of the Rules, the method of recruitment is specified in Appendix "B", which provides two channels of promotion of the Clerks in the Board i.e. (i) In General Line - from Clerks to Senior Clerks, Senior Clerks to Assistants and Assistants to Superintendent Grade-II) / Secretary Market Committee; and (ii) In the Engineering Wing -Clerks to Sub Divisional Clerks (SDC), SDC to Accounts Clerk/Senior Assistant (Accounts) and Accounts Clerk to Superintendent Grade-IV).

3. Initially, the posts of Superintendent Grade-II and Superintendent Grade-IV were in different pay scales. The pay scale of Superintendent-IV was lower than the pay scale of Superintendent-II, inasmuch as, 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. It is also conceded position that the Clerks and Accounts Clerks etc. could be promoted from General Line to Engineering Wing or vice-versa.

4. The Board decided to bifurcate the cadre of Clerks in two cadres i.e. General side and Engineering Wing side. On 28.7.1989, a circular was issued by the Secretary of the Board for taking option from Clerks for opting their promotional channels either in the General line or in the Engineering Wing. It was also proposed to prepare two separate seniority lists for two lines. The said circular specifically provided that option once given shall be final and at no stage it could be changed (P-2). By the cut off date no options were received which necessitated issuance of letter dated 11.8.1989 again inviting options. It was stipulated that the options received after 25.8.1989 would not be entertained (P-3).

5. On 26.2.1990, an order was passed by the Board containing the names of 45 Clerks who opted for their promotion as Accounts Clerks in the Engineering Wing line. It has been mentioned in the said order that the persons mentioned at Sr. No. 1 to 7 were in accordance with their final seniority, which was released on 20.11.1989, accordingly they were promoted to the post of Accounts Clerk in the Engineering Wing (P-4).

6. One of the Assistant, namely, Smt. Harinder Kaur sought clarification with regard to change in channel of promotion. On 9.3.1990, it was clarified by the Board 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 (P-5). 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.

7. On 14.5.1990, a final chance was given to the employees to opt for particular channel of promotion upto 31.5.1990, which was later on extended up to 15.6.1990, vide order dated 21.5.1990 (P-6 & P-7). The order dated 21.5.1990 reads thus:

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.

8. On 18.2.1991, an office order was issued whereby 55 Senior Clerks were finally allocated to the Engineering Wing side as per their options. It was also stipulated that at no stage the allocation would be changed (P-8). Meaning thereby bifurcation had taken place by issuance of the said order and the Clerks working in Board were divided into two cadres i.e. General Wing and Engineering/Construction Wing.

9. On 19.7.1991, a tentative seniority list of the Senior Clerks/Typists, who opted for their promotion in the Engineering side was circulated and objections were to be filed within 10 days (P-10). Thereafter instead of issuing any final seniority, the Board passed an order dated 17/18.7.1992, withdrawing its earlier orders dated 28.8.1989, 31.12.1990 and 18.2.1991 for separation of clerical wing into two i.e. (i) General Wing and (ii) Engineering Wing. It was stated that the seniority of Senior Clerks/Clerks has to be common as existed earlier (P-12). The Petitioner-Respondents challenged the said order by filing writ petitions primarily on the following grounds:

(i) Order dated 17/18.7.1992 has been 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) The right of promotion which has accrued to the Petitioners against the vacant posts in the Engineering Wing has been taken away without giving an opportunity of hearing to them.

(iii) Benefit one accrued could not have been taken away abruptly.

(iv) The said order is based on misinterpretation of law that the instructions

regarding bifurcation are violative of statutory rules.

10. The writ petitions were contested by the Board primarily on the ground that there was no provision in the Rules providing for two wings and the Government objected to the administrative order being violative of the Rules. The learned Single Judge clubbed all the petitions and allowed the same by a common judgment dated 23.12.2009, by observing as under:

...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.

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.

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.

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.

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.

11. On 13.10.2010, the Board passed another order qua those persons who were promoted as Superintendent Grade-II, reverting them back to the posts of Senior Assistant. The said order is subject matter of challenge in CWP No. 19200 of 2010.

12. Mr. R.K. Malik and Mr. Puneet Gupta have vehemently argued that the service conditions of the employees working in the Board are governed by "the Rules", which have been framed by the State Government u/s 43 of the Punjab Agricultural Produce Markets Act, 1961 (for brevity, "the Act"). Some power of the Board has been delegated to its Secretary vide Government decision dated 28.7.1989/11.8.1987, who issued executive order on 31.12.1990/18.2.1991. On 11.8.1989, the employees were asked to give option for bifurcated cadre of one

unified cadre as per Rules into Engineering Wing and General Wing for the purposes of promotion to higher posts. It was in response to the aforesaid circular that 55 Senior Clerks/Clerks submitted their option and they were accordingly allocated to the Engineering Wing. Some of the employees made a grievance and approached the State Government urging that without amending the Rules the cadre could not have been bifurcated because it would adversely affect their service conditions. Eventually the State Government on 27.8.1991 directed the Board to consider the matter strictly as per the Rules and accordingly the Secretary to the Board reconsidered the matter. As a consequence of reconsideration he found that the circular issued by him was contrary to the Rules, which was not permissible without amendment of the Rules by the State Government. Thus, vide order dated 17/18.7.1992 the Secretary had withdrawn the earlier order of bifurcation of the cadre. As a result of withdrawal all consequences following the exercise of option etc. came to an end.

13. Learned Counsel also argued that the view taken by the learned Single Judge in allowing the writ petitions is unsustainable in law because such course would violate Rule 8(1), (2) and (3) and a unified cadre of Clerks would be bifurcated without any statutory force into Engineering Wing and General Wing. In any case it has been submitted that such a decision of bifurcation of cadre would not stand the scrutiny of the Courts as by executive fiat statutory Rules cannot be amended. According to the learned Counsel issuance of such a circular bifurcating the cadre cannot be regarded as filling up the gaps in the Rules. They have also argued that there was no such benefit which were conferred on the Petitioner-Respondents which needed to be withdrawn and no plea of vested right would be available. It has been pointed out that after bifurcation some Clerks were promoted as Accounts Clerk but by withdrawing the executive decision those employees were continued to be considered as promoted as Senior Assistants from the dates they were promoted as Accounts Clerks. Likewise Smt. Harminder Kaur, who was promoted as Superintendent Grade-IV, was considered to be promoted as Superintendent Grade-II in the same scale from the same date.

14. Mr. M.K. Tiwari, learned Counsel for the Respondents, however, has vehemently argued that in the Rules the post of Clerk, Typists, PBX Operator, Clerk Store Project and Clerks Engineering Wing at the Headquarter have been made eligible for promotion to the post of Assistant/Cashier etc. and there is inherent classification of the cadre, the Secretary of the Board while exercising the power of the Board has merely clarified the position of the Clerks working in the Engineering Wing and the General Wing. According to the learned Counsel the vested rights of the Respondents are sought to be taken away by virtue of promotions having been given to the Clerks on the basis of bifurcation as some Clerks were promoted as Accounts Clerks and has been designated as Senior Assistants after the withdrawal. Likewise, Superintendent Grade-IV has been re-designated as Superintendent Grade-II although in the same pay scale.

According to the learned Counsel withdrawal of the circular should not affect the vested rights of the parties which have resulted after acting on the circular issued by the Board through its Secretary.

15. We have thoughtfully considered the respective submissions made by the learned Counsel for the parties. It would be necessary to examine the provisions of Section 43(1) and (2)(xxiii), (xxix) and (xxx) of the Act, which reads thus:

43. Power to make rules.-(1) The State Government may by notification make rules for carrying out the purposes of this Act. (2)(i) to (xxvii) xxx xxx xxx xxx (xxviii) service rules, recruitment rules, provident fund rules, pension rules and such other rules as may be required for the employment of the staff of the Board and Committees;

(xxix) the penalties to be imposed upon the employees of the Board and Committees, including the manner of imposing such penalties and the right of appeal against such penalties;

(xxx) nature and status of the servants of the Board and Committees;

16. A perusal of the aforesaid statute makes it evident that the State Government by notification could make service rules, recruitment rules and also make any such other rules as may be required for the employment of the staff of the Board and the Committees. The State Government is further empowered to make rules which may provide for nature and status of the servants of the Board and the Committees. Accordingly, the State has framed "the Rules" which regulated the service conditions of the employees of the Board. A perusal of Section 43 of the Act would further show that no power has been given to the Board or its Secretary to exercise the authority to frame Rules. In any case, the power which was delegated to the Secretary was that of the Board and not the power which was exercisable by the Government. Therefore, the Secretary of the Board could not have taken any decision which is in contravention of the statutory Rules because the Rules contemplate only one unified cadre of Clerk and bifurcation of the cadre would certainly be against the statutory Rules.

17. We are further of the view that u/s 41-A of the Act the State Government is fully empowered to issue direction to the Board and the Board is under an obligation to give effect of the same. Section 41-A of the Act, which was inserted by way of an amendment in 1978 reads as under:

41-A. Powers of State Government to issue directions to Board. The State Government may issue to the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act and the Board shall give effect to all such directions.

18. It was in pursuance to the aforesaid provision that the State Government issued direction on 27.8.1991 to the Board to proceed in the matter strictly as per the Rules (R-1/2). The direction of the Government issued on 27.8.1991 is self-explanatory, which reads thus:

Subject-Regarding aggrieving of promotions in the construction wing of the Board.

Ref.: Your memo No. Const-Ssttt-2/4274, dated 7.6.91

Service rules have been framed for regulating service conditions/promotions of employees of the Board and there no provision of seeking option etc. & making promotions on that basis. Therefore, after carefully considered that the promotions of the employees in the Mandi Board may be made in accordance with the provisions of Service rules and Government instructions.

19. Acting on the aforesaid decision, the Board reconsidered the matter and withdrew the circular bifurcating the cadre of Clerk, vide order dated 17/18.7.1992 (P-12). The aforesaid decision as extracted by the learned Single Judge in the impugned order dated 23.12.2009, reads thus:

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-6/19389-19448, 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. E-6/21421-21600 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.

20. It is, thus, evident that the amendment sought to be made by the Board through its Secretary was wholly without jurisdiction and justification because there was no power with the Board either to issue an executive order or amend the Rules. The aforesaid power is vested only with the State Government. In any case, the Board was directed by the State Government in pursuance to power u/s 41-A of the Act to reconsider the matter and accordingly the orders have been passed withdrawing the earlier executive direction issued by the Board through its Secretary. Accordingly, the decision of the Board dated 17/18.7.1992 (P-12) is liable to be upheld and the view taken by the learned Single Judge in that respect is liable to be set aside.

21. There is another aspect of the matter. Apart from the fact that the Board did not enjoy any power to amend the Rules, there was no possibility to amend the Rules by issuing instructions bifurcating the cadre of Clerks into two. It is incorrect to say that the Board could exercise the power to issue executive instructions as no such power is traceable for the Board under the Act or the Rules. Even a competent authority could not have issued executive instructions to amend the Rules because bifurcation of cadre result into changing the conditions of service forcing an employee to opt for anyone of the channels of promotion in the bifurcated cadre which would adversely affect their further promotion. It is, therefore, legally unsustainable argument that issuance of such a circular by the Board was merely filling up the gaps between the Rules. As a matter of fact, it is adversely affecting the conditions of service of the employees and not filling up the gaps, as has been incorrectly observed by the learned Single Judge. Therefore, on that account also the view taken by the learned Single Judge is not sustainable and the order dated 17/18.7.1992 (P-12) withdrawing the circulars dated 31.12.1990 and 18.2.1991 is lawful and cannot be set aside.

22. For the aforesaid reasons, these appeals are allowed. The judgment of the learned Single Judge is set aside and the writ petitions filed by the employees of the Board are dismissed. No order as to cost.

A photocopy of this order be placed on the files of connected cases.