

(1997) 04 SC CK 0028

In the Supreme Court Of India

Case No : Civil Appeal No's. 55, 56 and 57 of 1994

Punjab Mandi Board, Chandigarh and Another

APPELLANT

Vs

Kulwinder Singh and Others

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Constitution of India, 1950 — Article 136, 14

Citation : (1999) 4 JT 646 : (1997) 11 SCC 94

Hon'ble Judges : S. B. Majmudar, J; M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. All these three civil appeals on special leave under Article 136 of the Constitution of India, have been moved by the Punjab Mandi Board, being aggrieved by identical orders passed by the High Court in writ petitions filed by the respective respondents in the High Court. The respondents have contended that the Market Committees functioning in the State at various places had discriminated against the writ petitioners concerned in not granting them the benefit of the pay scale of Rs. 510-800, only on the ground that they were recruited on and after 3-7-1980. The benefit of the aforesaid pay scale was confined to only those Clerks who were recruited by the Market Committees concerned from 1-1-1978 and before 3-7-1980. The appellants contended that this difference was made in the pay scale available to old recruits only as personal pay. The High Court by the impugned judgments negated this contention by finding it to be violative of Article 14 of the Constitution of India, as the recruits after 3-7-1980 as Clerks were discharging the same type of duties. Consequently, the writ petitions were allowed.

2. It appears that at the time of admission of these special leave petitions against the impugned judgments of the High Court, a new contention was canvassed on behalf of the appellants to the effect that the cut-off date of 3-7-1980 was not artificial or without any rational basis. From that date onwards

the posts of Auction Recorder became promotional posts and did not remain feeder posts as occupied by the respondents concerned. This Court noted while issuing notice in the special leave petitions, by its order dated 27-8-1993, that such contention did not appear to have been dealt with by the High Court and therefore, while issuing notice it was mentioned that the petitioners may file an affidavit showing whether the question of the post of Auction Recorder is a promotional post as was canvassed before the High Court. The learned Counsel for the appellants fairly stated that such a point did not appear to have been canvassed before the High Court and in a way that is a new point. It therefore becomes obvious that this new contention, was never placed before the High Court for its scrutiny. As this contention which raises a mixed question of law and fact was not canvassed before the High Court, the respondents had no opportunity to meet the same. It is, of course, true that this contention goes to the root of the matter and becomes relevant for deciding whether the cut-off date of 3-7-1980 was arbitrary or not or was it in any way discriminatory. As it goes to the root of the matter and as the relevant factual basis is not available for its decision in the present proceedings, it would be in the fitness of things and in the interests of justice that these matters are remanded to the High Court for a fresh consideration. We make it clear that we make no observation on the merits of the controversies between the parties. We leave all the contentions open for being considered by the High Court.

3. In the result, the appeals are allowed. The impugned judgments and orders rendered by the High Court in Civil Writ Petition No. 4723 of 1992, decided on 11-11-1992 as well as in Civil Writ Petitions Nos. 15424 and 1625 of 1992, decided on 29-4-1993, are quashed and set aside. These writ petitions are restored to the file of the High Court for proceeding further in accordance with law. All the contentions sought to be canvassed by the writ petitioners are kept open for scrutiny of the High Court along with the new contention, which was canvassed before us for the first time and which has resulted in the remand of these proceedings. It will be open to the respective respondents before the High Court to raise this new contention by way of supplementary counter-affidavits in these remanded proceedings. It will equally be open to the writ petitioners to file rejoinders in connection with the said point. There would be no order as to costs. We request the High Court to expeditiously dispose of these remanded proceedings as the writ petitions are of 1992.