

# SUPREME COURT OF INDIA

Avinash Chand

Vs.

Chairman, Market Committee

C.A.Nos.8229-8230 of 2003

(Harjit Singh Bedi and K.S. Radhakrishnan JJ.)

06.05.2010

## ORDER

1. These appeals by way of special leave are directed against the judgment of the Division Bench of the Punjab and Haryana High Court dated 15th March, 2010 whereby the writ petition challenging the provision of a retirement age for auctioneers in the Market Committee, have been dismissed. The facts are as under:-

2. The appellants, and several others who had filed writ petitions in the High Court, were working as auctioneers on commission basis in the Market Committee, Kaithal since the year 1963-64 as per Rule 24(5) of the Punjab Agricultural Produce Markets General Rules, 1962, (hereinafter for short 'the Rules'). On 3rd November, 1992, the Chief Administrator, Haryana State Agricultural Board addressed a directive to the Chairmen and Secretaries of the Market Committees reiterating a directive dated 26th August, 1982, that the auctioneers on commission basis should not be allowed to work beyond the age of 60 years. As a consequence of the aforesaid instructions, the services of the appellants were terminated on 27th August, 2000 as they had crossed the age of 60 years. The instructions aforesaid were accordingly, challenged before the High Court. On notice, the respondent Marketing Board and the concerned Market Committees controverted the pleas raised in the writ petition. It was pointed out that the appellants and others like them had been engaged on fixed rates on commission basis as per bye-law 28 of the Punjab Market Committee Bye-laws, 1963 and that the instructions had been issued in conformity with Rule 24(5) ibidem. The High Court, during the course of its judgment observed that Section 33(4)(ii) of the Punjab Agricultural Produce Markets Act 1961, which was applicable to Haryana State as well provided that it was open to the Board to issue instructions in matters which were likely to adversely affect the interests of the Committee or the producers or dealers or any functionaries working in the notified area, and the instructions were thus authorised by statute. The Court also noted that in the arguments made on behalf of the appellants that the instructions of 1992 could not be made retrospectively applicable to their case, it was pointed out that similar instruction had first been issued in the year 1982 (and had only been reiterated in the year 1992) and that in any case the auctioneers were not employees of the Committees or of the Marketing Board.

The Court accordingly held that the instructions issued by the Chief Administrator laid down a policy and in the absence of a fixed tenure laid down by instructions or by Statute or Rules it was not open to the appellants to claim that they should be allowed to continue till they remained physically fit.

“The High Court, accordingly, dismissed the writ petition leading to this appeal. Leave was granted in the year 2003 and the matter has come up today for final disposal. We also notice that although liberty had been given on 6th October, 2003 to request for an early hearing and despite the fact that the matters are on the list, the counsel for the appellant has not appeared before us, although we had waited for him for some time. In the light of the fact that these matters are extremely old, we are not inclined to adjourn them any further.”

3. We have gone through the judgment of the Division Bench of the High Court very carefully with the assistance of the learned counsel for the respondent. Certain facts can be culled out from the judgment of the High Court:(1) that till the issuance of the instructions in 1982 as reiterated in 1992 there was no maximum age limit laid down for auctioneers who had been engaged on commission basis; (2) that the auctioneers were not employees of the Board or the Committees as they were engaged specifically for the purpose of conducting auctions on commission basis and that their services were not governed by any Rules; (3) it was only appropriate in the absence of Rules, that the instructions issued by the Chief Administrator which were in the interest of the Board and the Committees and, therefore, visualised under Section 33 (4)(ii) of the Act, should be made applicable to the case of the appellants; and (4) in the light of the fact that till then, there was no instructions regarding the maximum age of the auctioneers, it was appropriate for the Board to fix the retirement age at par with all government employees who were allowed to continue upto the age of 60 years and in this view of the matter, it could not be said that the step taken by the Chief Administrator was arbitrary or without basis. We endorse the findings of the Division Bench.

“In the absence of rules, it was open to the Chief Administrator to fix the retirement age and it would be futile for the appellants to contend that they should be allowed to continue to function till they remained physically fit. We thus find no merit in the appeals. Dismissed with no order as to costs.”