

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**Civil Writ Petition No.16806 of 2013 [O&M]
Date of decision: 29.9.2015**

State of Haryana and another

... Petitioners

Versus

The Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mrs.Vibha Dhiman, AAG, Haryana
for the petitioners.

Mr.Rajbir Sehrawat, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

RAJIV NARAIN RAINA, J.

The State of Haryana in the Department of Printing & Stationery has brought this challenge to the impugned award dated 2nd August, 2012 passed by the Industrial Tribunal, Chandigarh determining the dispute referred to it for adjudication. The reference has been answered in favour of the respondent employees who are Learner Binders by means of invoking the principle of 'equal pay for equal work' (for brevity "EPEW") bringing their pay at par with Press Daftris w.e.f June 1, 2007. The finding returned is that the nature of duties and responsibilities of the two posts are the same attracting Articles 14 and 39(d) of the Constitution of India. The

State is aggrieved by the award and prays that it deserves to be set aside for the many reasons discussed below.

2. The two posts involved in the present forensic controversy on the issue of pay-scales, wherein the Learner Binders claim pay parity with Press Daftris. The respondents are the Learner Binders. The dispute is not adversarial in character amongst the employees or even Learner Binders and Press Daftris but the fight is against the State for grant of equal pay with effect from 1982. Both the posts fall in Group-D/Class IV and their conditions of service are presently governed by the Haryana, Printing & Stationery Department [Group-D] Service Rules, 1998 (for brevity 'the rules') duly exhibited on the record of the tribunal as Exb. M-2. Earlier, they were governed by rules framed in joint Punjab. Rule 9 of the rules provides the mode of appointment to the post of Press Daftri. The post is filled by promotion from amongst Learner Binders or by transfer or by deputation of an official already in service of any State Government or the Government of India. In this way, the post of Learner Binder is a feeder post for promotion to the cadre of Press Daftri. The respondent employees joined the petitioner department as direct recruits on the post of Learner Binder on different dates spreading across October 1, 1991 to September 10, 1998.

3. The dispute started simmering in the year 2007 when the Learner Binders working in the Department at Chandigarh served a demand notice through their Union on the management claiming that they were entitled to grant of the higher pay-scale admissible to Press Daftris. They claimed they were performing the same duties and responsibilities and as such were entitled for grant of higher pay-scale equal to that of Press

Daftris. The claim was based on the touchstone of Article 39(d) of the Constitution of India which protects 'EPEW'. The dispute could not be resolved with the management and found its way to the office of the Conciliation Officer who made an attempt to settle the dispute but was unsuccessful in the conciliation proceedings which failed. The failure report submitted to appropriate government enumerating reasons of failure of conciliation proceedings led to the following reference made by the Government of India in the Chandigarh Administration to be adjudicated by the Industrial Tribunal at Chandigarh :-

“Whether the demand raised in the demand notice, dated 1st June, 2007 made by Joginder Pal Singh and others through D.R.Kaith and Vishal Gupta, Authorized Representatives Workers Union, Regd. No.415, Chandigarh to (1) The Secretary and Commissioner, Department of Printing & Stationery, State of Haryana, Chandigarh; (2) The Controller, Printing and Stationery, State of Haryana, Chandigarh is genuine and justified; if so, to what effect and to what relief the union/workers is entitled to, if any?”

4. When the Industrial Tribunal took cognizance of the dispute [which was not specified in the reference order which only referred to the demand notice dated 1st June, 2007 and whether it was genuine and justified], the agitating Learner Binders made a statement before the court that their Union's demand notice be treated as their claim statement. Accordingly, the exhaustive demand notice Ex.P1 was treated as the statement of claim. It was their case that earlier there was no cadre of Binders. Subsequently, in the exigencies of the work, the beginner in the service was assigned work in the Binding Section categorized by the entry

post of Learner Binder in the hope that as soon as the incumbents acquire skill of binding work they will be designated as Binders. However, the object behind creating the cadre of Learner Binders was in time ignored and their hopes were dashed when they were stagnated unable to enjoy the status and pay equal to Press Daftris who did the same job, which act of the management was criticized as unfair and discriminatory. It was their case that the Learner Binders as well as Press Daftris were once in the same grade in the pay-scale of ₹ 300-430/-.

5. Earlier, a dispute had arisen when the pay of the Press Daftris and Learner Binders/Binders was brought at par in times past [1981] when the two posts were structured in the promotional pyramid. The Press Daftris felt aggrieved by reverse discrimination in the matter of pay scales. Feeling aggrieved, they approached this Court in Civil Writ Petition No.5292 of 1986 for grant of the higher pay-scale of ₹ 400-600 with effect from 1st February, 1981 in order to differentiate between promotional posts. They contended that a promotional post must enjoy higher pay-scale in the natural order of things. The prayer was granted and the petition was allowed on 2nd August, 1996. The petitioning Press Daftris were granted the higher pay-scale of ₹ 400-600 with effect from 1st February, 1981. Thereafter, the pay-scale of ₹ 400-600 was revised to ₹ 950-1800 with effect from 1st January, 1986 and further revised to ₹ 3050-4550 with effect from 1st January, 1996 by virtue of successive pay commissions recommending scale to scale revisions. But the pay-scale of the Learner Binders was not revised and accordingly, they remained in the lower pay-scale of ₹ 300-400 with effect from 1st February, 1981 which was further revised to ₹ 750-900 with effect

from 1st January, 1986 and then to ₹ 2550-3200 with effect from 1st January, 1996. This widened the gap of discontent amongst the Learner Binders. On the other hand, the Press Daftris became content since their grievance was redressed by Court.

6. Before the tribunal the Learner Binders referred to the recruitment qualifications for both the posts and as per the rules they maintained that the qualification for the post of Learner Binders and Press Daftri had no realistic difference except for the stipulation of prior experience, which factor should in fact weigh in their favour to grant them higher pay scales. The rule reads : -

Learner Binders	Press Daftri
1. Hindi upto Middle standard.	1. Hindi upto Middle standard
2. One year experience of Preliminary binding work.	2. Should have passed practical test.
3. Should have passed practical test.	

7. Furthermore, as per rule 10, both Press Daftris and Learner Binders have to pass departmental tests provided in Appendix B to the rules. No doubt, as per Appendix-B, the same test is prescribed for both the categories of post. It was pressed that there is a complete similarity between the work done by Press Daftris and Learner Binders and to stress the point, learned counsel for the petitioning Learner Binders submits on the lines of the tribunal reasoning that the appointing authority of both is the same; the qualifications for recruitment are virtually the same; the method of recruitment of both is the same; the place of work is the same floor; both the

posts are interchangeable; the nature of work of both is the similar and the pay-scale of both posts was earlier the same but was separated by success of the writ petition in 1996 adverted to above.

8. On these premises, it was urged before the learned tribunal that both the categories are similarly placed in the same circumstances for all practical purposes and therefore both deserve to bear the same pay-scale on the principle of 'EPEW' attracting Article 39 (d) of the Constitution and the Learner Binders are also entitled to enjoy the higher pay-scale as was granted to the Press Daftris from the same date when granted to the latter. In fact, what they came to tribunal was for a declaration that Binders, Learner Binders, Press Daftri and Ware House Operators perform the same duties and their work is interchangeable. They work under the same roof under the same management and therefore keeping Learner Binders in the lower pay-scale has caused resentment, which dampens their will to work as lower pay brings with it lesser contentment while working shoulder to shoulder. They both fall in Group D service. It is urged that the two posts in question constitute a homogenous class with no reasonable classification setting them apart.

9. The foundation of the Learner Binders case is built on unfair discrimination resting on the Directive Principles of State Policy and the prophylactic remedy would be to equate the posts bringing them at financial par with each other. They further claimed in the lower court that first of all the Learner Binders deserve further promotion to the post of Binders since they had stagnated long and had already earned the one year experience required in preliminary binding work years ago but could not be promoted

for lack of available vacancies in the cadre of Binders. They claimed a direction from the tribunal and against the management to order drawing of a joint seniority list of Learner Binders and Press Daftris and to provide them pay equivalent to Press Daftris with effect from 1.2.1981 and to release the difference of pay along with interest @ 18% per annum from the date of accrual of the cause of action till realization. The demand notice is dated 1st June, 2007.

10. On the other hand, the defence of the Department before the tribunal was built on the following foundations:- The post of Press Daftri is a promotional post from that of Learner Binder and therefore they cannot claim higher pay. A member of the feeder cadre post cannot claim parity of pay-scale with promotional post except by way of promotion. There may be no promotional avenues provided in the rules of service but a rule is a rule however hard it may seem. To clarify the position, the State explained that since the formation of the Printing & Stationery Department, Haryana, Learner Binders and Press Daftris are two separate posts which were earlier governed by statutory rules notified as the The Punjab State (Class IV) Service Rules, 1963 which were in force in joint Punjab before Re-organization of States in 1966. The State of Haryana has promulgated its own service rules governing its own employees working in the Printing & Stationery Department Haryana housed in Government Press, Sector 18, Chandigarh, a building historically common to Punjab, Haryana and the Union Territory, Chandigarh. Both the posts are technical posts and have carried different pay-scales from the beginning. The pre-revised scale of Learner Binders before 1982 was ₹ 70-85 and of the post of Press Daftri, ₹

80-120 and after pay revision, the differential remained equidistant as per scale to scale revisions granted from time to time. The Haryana Press was formed in 1971 and the pay-scale of Learner Binders was accepted by them at the time of appointment without demur which received several pay revisions and the present dispute has been raised at a belated stage. In the matter of pay-scales, the Government is the best judge of its policy and the court would not interfere in executive domain. The claimants/Learner Binders are in receipt of pay according to the rule.

11. State counsel argues that in the matter of pay parity and grant of equivalent pay-scales to different posts governed by the rules, the Industrial Tribunal would exceed its jurisdiction in granting 'EPEW' which work can concededly be undertaken by the constitutional court either under Article 226 of the Constitution of India or under Article 136 on a challenge brought to test the vires or discriminatory aspects in the rules. The department before the tribunal stressed that the 1963 rules earlier applicable to Haryana were good till such time it framed its own rules in 1998 providing in the Binding Section, the post of Press Daftri to be filled 75% by promotion and 25% by direct recruitment. The promotion is from amongst Learner Binders whose 'Work/Out Turn' is up to the mark and their work and conduct satisfactory provided candidates are eligible with Middle standard pass with Punjabi. The direct quota of 25% is to be filled from eligible candidates who possess Matriculation with Punjabi; are trained in Binding Trade from an ITI or possess two years practical experience in binding and allied works. The selection is to be made on the basis of a practical test conducted whereas in the case of Learner Binder, the post is to be filled 100% by direct

recruitment as per old 1963 Punjab rules which require candidates to possess qualification of Middle Standard pass with Punjabi and practical experience/knowledge of binding work for at least one year. The old Punjab rules have been repealed by the new Haryana rules of 1998 which have replaced them. They come into force from 7th May, 1998. Both the posts under consideration are classified in the technical category. To reiterate, the post of Press Daftri is a 100% direct recruitment post whilst the post of Learner Binder is a feeder category post to the promotional post of Press Daftri. The academic qualifications and experience for direct appointment and other than by direct recruitment for both the posts are prescribed as follows : -

TECHNICAL CATEGORY

Press Daftri		i) Hindi upto Middle standard; ii) <u>Two years experience, as Learner Binder</u> ; iii) should have passed practical test.
Learner Binder	i) Hindu upto Middle standard; ii) One year experience of preliminary Binding worked iii) Should have passed practical test	i) Hindi upto middle standard; ii) <u>Two years experience in Binding work</u> ; iii) should have passed the practical test.

12. It followed, that different qualifications were laid down as per statutory rules and the Learner Binders cannot claim parity of pay-scales with promotional posts. **The post of Learner Binder can be filled either**

by direct recruitment or by promotion. The prescription of different pay-scales/pay on the basis of qualifications is within reasonable classification in Article 14. The State thus explains that the decision in CWP No.5292 of 1986 has no bearing on the present case and does not support the stand of the claimants since the matter was decided in a different factual background to remove an anomaly in pay-scales.

13. The controversy involved in that writ petition, and to emphasize, was that Press Daftris who were getting higher pre-revised pay-scales than the other posts before revision, were hit by pay revision and their pay-scales were brought down after revision which was a mistake. The Press Daftris reacted when all of a sudden they started getting the lower pre-revised scale. They were denied the higher pay-scale after revision on a scale to scale basis. It was in this background that the Press Daftris had brought the challenge to this Court in the petition (supra) on a pay anomaly arising out of pay revision occurring in 1982 w.e.f. from 1981. But in the present case the question of pay anomaly is not involved nor is it an associated dispute nor is it determinable in Tribunal jurisdiction in the presence of statutory rules of service which prescribe different pay scales for the two posts. Therefore, that case is of no help to the claimants in any way since the principle laid down in the ruling in CWP No.5292 of 1986 is distinguishable on facts, the moot issue being based on an anomaly. In the present case the principle of 'EPEW' is pressed by way of creation of a new right by court which is a different ball game, the principle not being an abstract one which could be applied only when the comparison leads to complete and wholesome identity and the monetary gap between the two

separate cadres invites hostile and invidious discrimination polluting the character of Article 14 and 16 of the Constitution in an unreasonable manner. The question is one of reasonable classification and whether that can help tie the knot of equivalence.

14. It is also the contention of the State the two posts in question are not inter-changeable. Assuming *arguendo* that the duties are inter-changeable even then there is no question of grant of higher pay-scales because the post of Press Dafti is a promotional post and here lies the vital difference which has not been appreciated by the tribunal.

15. The State then propounds its challenge on the justification of the impugned award citing the authority in **Secretary, Finance Department v. West Bengal Registration Services Association**, AIR 1999 SC 1203 : (1992) 1 SCR 897 with the Supreme Court holding on the question of equation of posts and determination of pay scales as follows:-

“We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well-settled that equation of posts and determination of pay-scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of

different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharges of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay-scales to a reasonable number. Such reduction in the number of pay-scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job-charts in a common scale. Substantial reduction in the number of pay-scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g.,

- (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre,
- (iv) minimum educational/technical qualification required,
- (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc.

We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub- Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the registration service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.”

16. It is protested by the petitioner State that a shoal of factors indicated in the ruling in *West Bengal Registration* case (supra) and in a host of judicial precedents of the Supreme Court and various High Courts, cases which require no elaboration presently since the myriad factors have played bad host in the impugned award and in the supporting evidence to substantiate a claim to relief based on EPEW principles. It is argued that such considerations are not present on judicial record which might indubitably have pointed toward infraction of fundamental rights even when

EPEW law is read in the award as such. The State does not dispute that

when EPEW rule falls squarely in place against the State only then does the right become fundamental in nature as declared by the Supreme Court but still the foundation has to be built by the relief-seeker upon whom lies the burden of proof to discharge. The onus has not been discharged by the claimants and the award is based on *ipse dixit* of the tribunal. A wide variety of inputs which can be attributed to positive indicia in favour of either of the parties are not available on record. EPEW law is not one of art or of science but one of exactitude in applying pay parity.

17. To turn to the case of the respondent employees as was expounded before the tribunal, the working Learner Binders have invoked Section 11 of the Industrial Disputes Act, 1947 to foresee a verdict in their favour in doing complete justice to the disputing workmen based on jurisdiction. The Tribunal it is urged is competent to grant relief and adjudicate on the validity and fairness in the rules vide Section 11 of the Act. This is the moot issue which requires to be answered and determined by this Court in judicial review. The scrutiny of the work of the Tribunal, which has allowed the reference holding the 23 Learner Binders entitled to the pay of Press Daftris with effect from 1st June, 2007 i.e. the date when they raised the dispute commenced by the demand for justice-notice to the department for the first time.

18. Since the issue involves a pure question of law as to jurisdiction, it will not be necessary, to the mind of this court to delve in any detail only on the oral testimonies of witnesses produced and testimonies recorded before the tribunal as no parol evidence could displace the rules of service or be of any help in resolving the *lis* as to re-fixing pay-scales. There

is no gainsaying that the *vires* of the statutory service rules can be questioned only on the constitutional side of the High Court and the Supreme Court.

19. To enter upon the tests of jurisdiction to upset the rules, let us assume that if such a dispute were brought before the civil court and the validity of the rules were brought under challenge, then the jurisdiction of the civil court will remain restricted to the principles of law set out in Section 113 of the Code of Civil Procedure, 1908. The civil court would on a challenge have to seek leave to refer the question to the High Court for its opinion and only on receipt of the opinion would the civil court embark on the remaining journey applying the law laid down by the High Court in answer to the question referred. A look at Section 113 of the CPC is necessary in understanding the hypothetical question to understand in a better way the scope and jurisdiction of the tribunal. The provision reads as follows : -

“113. Reference to high court— subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit : Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall

state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.”

20. Thus, the civil court can do no more than to state the case and seek opinion of the High Court on matters falling under Section 113 of the Code. Indisputably, the cornerstone of the edifice built by the union representing the workers before the Tribunal lies in the validity and operation of rules of service qua pay.

21. The question thus is whether the tribunal possesses such jurisdiction to pass an award contrary to the rule?

22. Any discussion on the point would necessarily be based on firstly, an understanding and application of the decision of the Supreme Court in **The Bharat Bank Limited, Delhi v. Employees of the Bharat Bank Limited**; AIR 1950 SC 188 : 1950 SCR 459 and **Western India Automobile Association v. Industrial Tribunal, Bombay**, AIR 1949 FC 111 on the width of jurisdiction vested in the Labour Courts and Industrial Tribunals of what they can lawfully do which will be discussed later in this order. While examining the issue from this stand-point, it would also be of valuable assistance to first address the issue of the effect of the proviso to Section 113 of the CPC and the nature of the jurisdiction provided to the Civil Court under Section 9 of the CPC and to the High Court under Article 226 of the Constitution of India before we look at what the tribunal has power to devise in term of relief of EPEW etc. It is only on a canvas of ideas within the above provisions of law that the true nature and character of the jurisdiction of the tribunal can be examined and determined vis-à-vis rules of service. It is, however, without doubt that the civil court exercises

plenary jurisdiction under Section 9 CPC and can entertain suits of any kind or value except those of which cognizance is expressly or impliedly barred by law, where remedies would have to be sought and relief obtained from one or the other of the specially constituted forums in the Constitution or by the State or Central Acts.

23. Scope of Section 113 CPC has been recently examined by the Supreme Court in its relationship with Article 131 and 141 of the Constitution of India in **State of Jharkhand v. State of Bihar**; (2015) 2 SCC 431. The Supreme Court has doubted the correctness of its earlier enunciation of law in **State of M.P. v. Union of India**; (2011) 12 SCC 268 and referred the question posed to a larger Bench. Article 131 of the Constitution deals with original jurisdiction of the Supreme Court to the exclusion of any other Court and subject to the provisions of the Constitution to have original jurisdiction in any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more of other States either or between two or more States, if and in so far as the dispute involves any question [whether of law or fact] on which the existence or extent of a legal right depends.

24. The legal position is that if the question of constitutionality of a Statute [either Parliamentary or State Legislation] were to be raised by a party other than the persons specified under Article 131, both the Supreme Court as well as the High Courts are competent to examine the issue. Much of the arguments rests on the cornerstone of Section 113 of the CPC and in

State of Jharkhand, the Supreme Court have held that if Parliament chooses

to repeal the proviso to Section 113 of the Code of Civil Procedure even an ordinary Civil Court functioning in accordance with procedure prescribed under the Code would be competent to examine such a question as to the constitutionality of a Statute or proviso and in short to go into the question of vires of Acts and Rules and to strike it down as unconstitutional as ultra vires the Constitution or Statute on one or more of the fundamental freedoms enjoyed under Part-III of the Constitution which includes Article 16 relating to service matters. Therefore, the source of power lies in Section 113 CPC. But the way jurisdiction is to be exercised by the Civil Court when a challenge is brought before it remains within Section 9 of the Code while Article 226 confers exclusive jurisdiction on the High Court to issue one or more of the five writs for enforcement of any of the rights conferred by Part-III of the Constitution and for any other purpose. What has been doubted by the Supreme Court in *State of Jharkhand's* case is the observations made by the Supreme Court in para. 20 of *State of M.P.* wherein the Supreme Court opined that when the vires of central law are challenged, the appropriate forum for adjudicating the question relating to the validity of Central or other law, then normally the appropriate forum is in the constitutional courts exercising extraordinary writ jurisdiction under Articles 32 and 226 in a writ petition and not by way of an ordinary suit filed under Article 131 which vests exclusive jurisdiction in the Supreme Court as regards disputes enumerated therein. This view has been doubted on the touchstone of Section 113 CPC which is the source of power for proceedings under Articles 32 and 226 as explained in *State of Jharkhand's* case and which is that the trial court itself would have the jurisdiction to

opine on the vires of an Act or Regulation but for the Proviso in Section 113 CPC where the Court is satisfied, and this includes the civil court, that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Civil Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court. Article 226 of the Constitution which confers power to the High Court to issue specified writs for enforcement of fundamental rights and when it entertains a petition in exercise of its original writ jurisdiction, it is by necessary implication drawing strength from Section 113 CPC, the Proviso of which excludes the Civil Court to opine on matters set out therein otherwise the Civil Court enjoys plenary jurisdiction which is extensive in its sweep except when curtailed by law.

25. While one is on the discussion on the issue of jurisdiction, a look at Article 13 of the Constitution becomes necessary and especially Sub Article (2) of Article 13 which prohibits State from making any law which takes away or abridges the rights conferred by Part III of the Constitution and any law made in contravention of this clause shall to the extent of the contravention be void. Sub Article (3) of Article 13 defines law to include any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. In this manner, the High

Court exercises its authority under Article 226 in certain matters as fall under Section 113 CPC to strike down law which is found in contravention of the protections in Article 13. Article 13 then becomes the centre-piece of extra ordinary writ jurisdiction exercised by the Supreme Court and the High Court.

26. The present question arising is as to the power of the Labour Court and the Industrial Tribunal in circumventing and over-riding the rules of service, avoiding it by the side-lanes, enforcing the mandate of Article 39 (d) which falls in Part-IV of the Constitution containing the Directive Principles of State policy. The Directive Principles of State policy are not justiciable in Courts but are the guiding principles of exercise of jurisdiction while dealing with EPEW for both men and women. Article 39 indicates certain principles of policy to be adopted by the State in making laws securing *inter alia* the right to EPEW. What Article 39(d) does is to enlist social justice in policy and to bring both men and men, women and women and men and women to the same level of equality of pay without any unfair discrimination, when they work shoulder to shoulder in the same organization justifying the same salary/wages, same perks and the same emoluments while serving in the Departments of the Government both Central and State. This principle in Article 39(d) has spawned numerous internal and external principles evolved and invoked by the constitutional courts to extend it beyond the frontiers of what Article 39(d) ex facie sets out to do in issues involving gender equality which has been accepted as the controlling hand in the matter of pay parity etc.

27. Then, can the tribunal apply principles of EPEW in contravention of the rules as to qualification, eligibility and pay-scales prescribed in the statutory rules framed by the Governor under the proviso to Article 309 of the Constitution of India? In order to understand this issue, one would have to revert back to the lead case of the Supreme Court in *Bharat Bank* [supra].

28. The ruling in *Bharat Bank Limited* is that the Labour Court or the Tribunal is not a Court as a Civil Court is. It has the trappings of a court in the sense it adjudicates *lis* on evidence adduced before it. The nature of the jurisdiction of the Labour Court is “administrative” and “advisory” in nature since its awards do not become a decree enforceable automatically by the law of the land. It is only when the award is accepted by the appropriate Government and is duly published, that it becomes enforceable after 30 days of the Gazette publication after which the Labour Court/Tribunal becomes *functus officio*. The investigation of facts on evidence adduced by the parties may be a common feature in both judicial and quasi-judicial tribunals. In para. 33, the Supreme Court elucidated that the difference between the two lies in the fact that in the judicial proceedings, the Judge has got to apply law to the facts found, the law of the land which is fixed and uniform, while on the other hand, the quasi-judicial tribunal, renders its decision on the differences between the parties, not in accordance with fixed rules of law, but on principles of administrative policy or convenience or on what appears to be just and proper in the circumstances of a particular case. In other words, the process employed by an administrative tribunal in coming to its decision is not what is known as 'judicial process'. The object

of the Industrial Disputes Act, 1947 as set out in the preamble, is "to make provisions for investigation and settlement of industrial disputes and for certain other purposes hereinafter appearing." The Supreme Court explained that the word, "settlement" suggests the idea of establishing compromise between the interests of disputing parties to restore peace and tranquility and to bring an end to industrial strife.

29. The power of the Labour Court which is provided in Section 11 of the Industrial Disputes Act reads as follows : -

“11. Procedure and power of conciliation officers,

Boards, Courts and Tribunals:- 1[(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit].

(2) A conciliation officer or a member of a Board, 2[or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal] may, for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(3) Every Board, Court, 3 [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely- (a) Enforcing the attendance of any person and examining him on oath; (b) Compelling the production of documents and material objects; (c) Issuing commissions for the examination of witnesses; (d) In respect of such other matters as may be prescribed; and every inquiry or investigation by a Board, Court, [Labour Court,

Tribunal or or National Tribunal] shall be deemed to be a judicial proceeding, within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) A Conciliation Officer 5 [may enforce the attendance of any person for the the purpose of examination of such person or call for] and inspect any document which he has ground for considering to be relevant to the industrial dispute 6[or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) 7 [in respect of enforcing the attendance of any person and examining him or of compelling the production of documents]

(5) A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

[(6) All conciliation officers, members of a Board or Court and the presiding officers of a Labour Court, Tribunal or National Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860). proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government in the same

manner as an arrear of land revenue]. 1[(8) Every 2
[Labour Court, Tribunal or National Tribunal] shall be
deemed to to be a Civil Court for the purposes of 3
[Sections 345, 346 and 348 of the Code of of Criminal
Procedure, 1973 (2 of 1974)].”

30. The awards made by Labour Courts and Tribunals are executed by the civil court under Order 21 of the Code of Civil Procedure, 1908 by virtue of Section 11 (9) of the ID Act. It enjoys the powers as are vested in the Civil Court under the Code when trying any suit in respect of the matters enumerated in Section 11(3) reproduced above. Section 7 of the Act constitutes labour Courts while Section 7A constitutes the Industrial Tribunals. Labour Courts are empowered to decide disputes enumerated in the Second Schedule, and the Tribunals can decide those in the Third Schedule to the Act. The Second and the Third Schedules read as follows:-

The Second Schedule

Matters within the jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

The Third Schedule

Matters within the jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances;

3. Hours of work and rest intervals;
 4. Leave with wages and holidays;
 5. Bonus, profit sharing, provident fund and gratuity;
 6. Shift working otherwise than in accordance with standing orders;
 7. Classification by grades:
 8. Rules of discipline;
 9. Rationalisation;
 10. Retrenchment of workmen and closure of establishment; and
 11. Any other matter that may be prescribed.
31. As far as the the present dispute is concerned the ID Act employs the terms “pay”, “average pay” and “wages” including in Section 2 (aaa). Average pay in Section 2 (aaa) is calculated on monthly, weekly or daily basis. Pay or wages are not necessarily annualized. The term “wages” is defined in Section 2 (rr) to mean all “remuneration” capable of being expressed in terms of money etc. According to the definition, wages is remuneration payable in respect of employment or of work done. In government service pay and salary is fixed by rules payable till retirement on superannuation and is not paid on monthly, weekly or daily basis. There is a difference between “pay” and “wages” paid to labour or “workmen” and regular salary paid to public servants. These terms should not be read interchangeably when we speak of regular pay and salary paid to government servants. The broad divide lies in “white collar-office jobs” and “Blue collar-labour jobs”. It appears to me that the term “wages” in Entry 1 of the Third Schedule should be read in this manner. Therefore, the tribunal suffers restrictions while dealing with regular pay, pay-scale, salary, Grade Pay and Pay Bands admissible to public servants governed by statutory

rules of service and Pay Commission recommendations. Financials are apportioned by legislature to be accountable to common wealth of the State. Wage is salary but salary is not ipso facto wage in service law as distinguished from labour law. It follows that 'classification by grades' in Entry 7 of the Third Schedule to the Act deserves to be read in similar fashion i.e. the power to re-classify what is already classified in rules appears not to be given to the tribunal even though classification generally includes re-classification.

32. The Supreme Court in para. 61 [Bharat Bank] explained the dimensions of the jurisdiction of labour courts observing as under: -

“We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound

by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in *Western India Automobile Association v. Industrial Tribunal, Bombay, and others* 1949 F.C.R. 32 at p. 345 quoted with approval a passage from Ludwig Teller's well known work on the subject, where the learned author observes that "industrial arbitration may involve the extension of ,existing agreement or the making of a new one or in general the creation of new obligations or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements." The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a judicial determination in the proper sense of these expressions"

33. The Supreme Court ruled that the Labour Court can confer new rights and privileges on either party which it considers reasonable and proper, though they may not be without the terms of any existing agreement. The agreement here would refer to, in my opinion, to contracts and standing orders and the offensive standing order is open to dispute settlement within the mechanism provided under the Industrial Employment (Standing Orders) Act, 1946.

34. Section 9A of the Industrial Disputes Act contains a prohibition on an employer to change the conditions of service applicable to any

workman in respect of any matter specified in the Fourth Schedule except after following due procedure and serving notice of change on employees where the principles of natural justice should be adhered to the extent that an opportunity of hearing would be required to be afforded to the workmen being the minimum guarantee of fairness-in-action. However, the present is not a case of change of service conditions and to the converse, where workers seek a better deal for themselves on a fair and just demand raised by the Union. The 23 Learner Binders want the rules of pay to be changed in their favour. The State insists that it cannot be done except by amendment in the rules and there is no need to do so as one is a promotional post of the other and there is reasonable classification as per qualifications and eligibility conditions.

35. Learned counsel for the respondents relies on the ruling in **State of Kerala v. B. Renjith Kumar and others**; (2008) 12 SCC 219. The Supreme Court there considered the action of the State Government in treating the officers presiding over the Industrial Tribunals in Kerala differently from the District Judges in the matter of pay-scales and found the disparity, on the face of it, not in conformity with the affirmation in Article 14 of the Constitution. The Court found no qualitative difference in the nature of functions or duties attached to certain categories of posts in the matter of grant of time-scale of pay as well as selection grade. The decision of the High Court granting parity was found not to be suffering from any infirmity or error of jurisdiction and the appeal of the State of Kerala was dismissed. In para. 13 of the report, the Supreme Court observed that the principle of EPEW has been considered, explained and applied in a catena

of judgments of the Supreme Court, reminding that the doctrine of EPEW was originally propounded as part of the Principles of State Policy in Article 39(d) of the Constitution. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of 'EPEW' has assumed the status of a fundamental right. The Court referred to its earlier dicta in **Randhir Singh v. Union of India**; (1982) 1 SCC 618 and **D.S.Nakara v. Union of India** (1983) 1 SCC 305. The Court also noticed its earlier judgment rendered, at the given juncture, by a Bench of two Hon. Judges in **Union of India v. Dineshan K. K.** (2008) 1 SCC 586 observing that if the necessary material on the basis whereof the claim for parity of pay-scale is made available on record with necessary proof and that there is “equal work of equal quality” and all other relevant factors are fulfilled, the decision of the Central Government denying the benefits of same rank and pay structure to a Radio Mechanic in Assam Rifles as was given to other Central Paramilitary Forces was held to be clearly irrational and arbitrary and thus violative of Article 14 of the Constitution. The reliance on *B. Renjith Kumar's* case by the learned counsel for the respondent is not quite on the mark, nor was the labour court justified in applying its ratio to the dispute in the present case since; firstly, those proceedings arose out of an original writ petition and secondly, the comparison was odious between Learner Binders and Press Daftris with Presiding Officers, Labour Tribunals and District Judges. The issue before the Supreme Court was that prior to 1998 the pay of the three State POLTs was at par with D&SJs. Thence came the Shetty Commission recommendations and D&SJs were granted benefit of pay revision in the

year 2001 w.e.f. from 1996. Respondents 1 & 2 were members of the Bar directly appointed as POLTs while respondent 3 was inducted in 1996. Came pay revision and D&SJs were granted interim relief but the benefit was denied to the respondents, which led to the litigation. The High Court allowed the writ based on an admission of the State before the Court that both the category of Judges, their duties, functions and scales of pay were equal and if this was so then denying 15% interim relief to POLTs was not justified. This position was brought out in a counter-affidavit filed by the State Government called for by the Bench. In sum and substance the case was that posts which stood equated by Government prior to the National Judicial Pay Commission [Shetty Commission] set up in 1994 were unwittingly disturbed when higher pay scales were recommended in 1998 for the D&SJs [₹ 5100-5700] which brought about the disparity in pay and became the subject matter of the *lis*. The State had argued that D&SJs are appointed under Article 234 of the Constitution of India while POLTs are appointed under Section 7-A of the Industrial Disputes Act, 1947 and thus the two posts were not at par with each other as the nature and source of appointment were materially different. Section 7-A of the Act prescribes qualifications for appointment of POLTs/Labour Courts.

36. However, by the Industrial Disputes (Kerala Amendment) Act (Act 28 of 1961), in its application to the State of Kerala, under sub-section (3) of Section 7-A of the ID Act, 1947 for clause (a) the following clause had been substituted. The substituted clause (a) in sub-section (3) reads as under:

“7-A. (3)(a) he is, or has been, a Judicial official not

below the rank of a District Judge, or is qualified for appointment as a Judge of a High Court; or...”

37. Thus, in the State of Kerala, in terms of the above substituted clause (a) in sub-section (3) of Section 7-A of the ID Act, 1947, a judicial officer not below the rank of District Judge is qualified to be appointed as Presiding Officer of the Industrial Tribunal. The decision was rendered in the background of facts which are best noticed in paragraphs 11 to 15 in *B. Renjith Kumar* which deserve a comprehensive understanding of the case in search of its binding ratio, before one applies the principle of 'EPEW' in a given case. To quote:-

“11. Indisputably, prior to 1-7-1988 the pay scale of the Presiding Officers of the Industrial Tribunals and District Judges was Rs 2600-3800. The District Judges were granted selection grade in the scale of Rs 3700-4200. All the three Industrial Tribunal Services at that time were also placed in the selection grade of Rs 3700-4200. The Government of Kerala appointed Pay Commission chaired by Justice T. Chandrashekhara Menon to make recommendations in the matter of revision of pay scales in the case of government employees. The Commission recommended revised scale of Rs 3175-4605 to the Industrial Tribunals (entry cadre) and Rs 4435-5285 to the three Industrial Tribunals who were granted selection grade. The Commission recommended the same scale of pay to the District Judges, Sessions Judges and selection grade District Judges. The Government of Kerala accepted the above recommendations and revised the pay scales of the Industrial Tribunals and District and Sessions Judges as recommended by the Pay Commission with effect from 1-7-1988.

12. In the year 1993, the Government issued G.O. (P)

No. 600/93/Fin. dated 8-12-1993 revising the pay scales of the State Government employees w.e.f. 1-3-1992. By the said order, the scale of pay of the Industrial Tribunals was revised to Rs 5100-5700. In the above pay revision order in respect of District Judges and members of subordinate judiciary, it was noted that revised scale will be separately ordered. It was the admitted case of the State Government that later on the Government issued separate order revising the pay scale of District Judges to Rs 5100-5700 which is the same scale of pay granted to the Industrial Tribunals.

13. Indisputably, the Government of India based on the recommendations of this Court by Resolution dated 21-3-1994 constituted the First National Judicial Pay Commission to go into the question of the pay scales and to recommend uniform scale of pay for the subordinate judiciary in the States and Union Territories. Accordingly, National Judicial Pay Commission (Shetty Commission) recommended pay revision to the District Judges and other members of the subordinate judiciary in the year 1998.

14. It is not in dispute that the officers who presided over the Labour Courts and those appointed as Presiding Officers of the Industrial Tribunals do decide disputes under the ID Act, 1947. There is no qualitative difference in the nature of functions or duties attached to the categories of posts. This parity having been recognised and accepted by the State Government for more than 30 years, the High Court, in our view, has rightly observed that the mere fact that the Constitution refers to the appointment of District Judges alone cannot, by itself, be a good ground for treating the Presiding Officers of the Industrial Tribunal and the District Judges differently. The High Court held that even the Presiding Officers of the Industrial Tribunals

are not outside the ambit of the Constitution as the protection of rules framed under Article 309 as also under Article 311 is available to them.

15. The State Government had granted pay scale on a par with that of the District Judges before the recommendations of the pay scales of the District Judges by the Shetty Commission by which District Judges were placed in higher scales which benefit has been denied to the Presiding Officers of the Industrial Tribunals merely on the ground that the Presiding Officers of the Industrial Tribunals are not appointed under Article 233 of the Constitution of India nor are they appointed to the judicial services of a State under Article 234 of the Constitution. The action of the State Government in treating the officers presiding over the Industrial Tribunal differently from the District Judges in the matter of pay scales on its face is in violation of Article 14 of the Constitution of India. The essential educational and professional qualifications for appointment of the Presiding Officers of the Industrial Tribunals are identical to that of the appointment of District Judges”

38. Learned counsel for the respondent then relies on the authority of the Supreme Court delivered in **The Hindustan Lever Limited v. The Workmen**; (1974) 3 SCC 510 which is a case arising out of the Uttar Pradesh Industrial Disputes Act, 1947 and Section 4(a) of the Industrial Employment (Standing Orders) Act, 1946, Section 3 read with Schedule I, Item No.6 in U.P. Act which is equivalent to Entry 7 in Third Schedule of the ID Act, 1947 relating to classification. The dispute arose out of an act of victimization practiced by the management in transferring P.P.Jude which action the Labour Court had faulted by an award. The question was whether

Jude was placed in Grade T-3 because of his trade union activities. The award had fitted P.P. Jude in Grade T 4. It is true that if the case is one of fitment of P.P. Jude in Grade T 4, then the award cannot be successfully attacked by the appellant company. If on the other hand, the evidence on record shows that P.P. Jude has in effect been promoted to Grade T 4, the award will be defective and will have to be set aside. The answer to these questions will turn around on the view taken whether the work of Animal Feeding Stuff Department was of the nature of the work performed by an employee in Grade T 4.

39. The Supreme Court found that the case of Jude was really of promotion from Grade T 3 to Grade T 4 and promotion is ordinarily a management function. The promotion had occurred when Jude was transferred from one department to another at the discretion of the manager. The Standing Orders protected an adverse action resulting from transfer when Jude was transferred to Engineering Oil Receiving Section. The transfer was valid and it was for the workman to show that it was invalid. The transfer was not as a measure of victimization or trade union activity nor was it an unfair labour practice. There was nothing remiss in the transfer order and therefore the award of the Labour Court was set aside. The case is clearly distinguishable on facts and is of hardly any help to the respondent in this case, which case turns on its own facts and the applicable laws.

40. The Learner Binders would then rely on the decision of the Supreme Court in **Workman Employed by Hindustan Lever Limited v. Hindustan Lever Limited**; (1984) 4 SCC 392. In this case the Supreme Court held that the Labour Court had jurisdiction in the matter of

classification by grades falling in entry 3 of the Fourth Schedule dealing with matters within the jurisdiction of the Industrial Tribunal. Therefore, the Tribunal did not commit any error in entering upon the question of classification by Grades. The demand of the workmen in that case was to confirm employees working in an acting capacity in a grade, then it would unquestionably be an industrial dispute. If the workmen were enjoying the acting capacity in a grade, then they would have a right to claim higher post.

The Court held in para. 10 as under : -

“In the heyday of laissez faire and market economy, wage determination, hours of work, disciplinary measures including quantum of punishment, in short prescribing all enveloping conditions of service were the preserve of management, styled as managerial functions. This relic of the past is slowly withering away since the introduction of the Constitution ushering in socioeconomic revolution through law. Most of the managerial functions in relation to work force have been swept away by legislative enactments enacted to give effect to Arts. 38, 39 and 41 of the Constitution yet the Tribunal dug out from the debris of the past, the concept of managerial function and by a distorted construction of the language of the reference comprehended it in the concept of managerial function and denied to itself the jurisdiction to adjudicate it. In the process the Tribunal failed to take note of the development of law since the decision in Brooke Bond Case.”

41. In the present case, the tribunal in applying the principle of 'EPEW' has by-passed the statutory framework in the rules and in none of the cases cited by the respondent had the Supreme Court noticed the power

and jurisdiction of the tribunal to tinker with service rules while deciding service matter in a tribunal setting. Statutory rules cannot be ignored by the tribunal and Section 11 of the Industrial Disputes Act relied upon by the workman as a source of power is inapt for basing reliance on. That provision does not posit power to override the rules of service howsoever discriminatory they may be, the question being one of jurisdiction to adjudicate and one of maintainability of the action before the tribunal. More appropriate to the analysis in Section 11 of the Act; which describes procedure and powers of Labour Courts and Tribunals, would be as postulated therein that such courts “shall follow such procedure as the arbitrator or other authority concerned may think fit”. The labour court and tribunal arbitrates disputes unlike an ordinary civil court. The question is whether the labour court or tribunal in exercise of power to arbitrate can adjudicate what appears fair and just to it, in conflict with service rules framed under the proviso to Art. 309 of the Constitution. Concededly, it has power to alter contracts and bring them in tune with fairness. But rules of service are not contractual in nature or in origin. They deal with status of Government servants. The tribunal functions as a court within the limits of its jurisdiction and cannot transgress statutory boundaries and enter arenas either prohibited by law or areas which are not strictly conferred by the statute which creates them. Section 11 of the ID Act contains its own parameters which cannot be stretched beyond breaking point of the elasticity ordained by Parliament.

42. The last case relied upon by the respondent is a Division Bench decision of the Calcutta High Court, as before the tribunal, where the

principles of EPEW were applied holding that two different scales for two grades i.e. Inspector Grade-I and Inspector Grade-II, when the nature and qualification of the duties are the same, then the classification between the grades of pay is not reasonable. The Court applied the law in *D.S.Nakara's* case [supra], **Dhirendra Chamoli v. State of U.P.** 1986 SCC 637 and **P.K.Ramchandra Iyer v. Union of India**; AIR 1984 SC 541. The petition arose out of a writ proceeding and not from the Labour Court wherein lies the difference. In **Bangalore Water Supply and Sewerage Board v. A. Rajappa and others**; AIR 1978 SC 548, there is an observation coming from Hon. M.H.Beg, C.J.I in his separate note while agreeing with the view of Krishna Iyer, J. on the question of defining “industry” as follows : -

“I would also like to make a few observations about the so called "sovereign" functions which have been placed outside the field of industry. I do not feel happy about the use of the term "sovereign" here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in *Keshvananda Bharati's* case (1)- Supported by a quotation from Ernest Barker's "Social and Political Theory". Again, the term "Regal", from which the term "sovereign" functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share; however small, in as much as he exercises the right to vote. What is meant by the use of the term "sovereign", in relation to the activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also in as much as the Government has entered largely now fields of industry. Therefore, only

those services which are governed by separate rules and constitutional provisions, such as Article 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication. Hence, to artificially exclude State run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. The question is one which can only be solved by more satisfactory legislation on it. Otherwise, Judges could only speculate and formulate tests of "industry" which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon.”

43. In the aforesaid background, the findings of the tribunal on merits in the present award would need to be addressed and examined. The tribunal has extensively considered the deposition of the witnesses of both the workers and the management. Issues No.1 and 2 are whether the demands are genuine and justified and whether the Court has jurisdiction to decide the reference. Issues No.1 and 2 were taken up together for discussion by the Industrial Tribunal. AW1 Joginder Singh in his cross-examination testified that it is correct that the posts of Learner Binders and Press Daftri are two different posts under the 1963 rules. The posts are technical in nature with different pay-scales. It was admitted position that in the pay revisions of 1986 and 1996, both the posts have different pay-scales. However, in the State of Haryana under the prevalent law of 1971 Government made its first effort to depart from its sister neighbouring State, wherein both the posts were classified separately with different pay-scales. The new rules were promulgated in 1998.

44. AW2 Shri Ram Dass, a Binder who was promoted as Press Daftri deposed that both the posts are different and Press Daftri is a promotional post from the rank of Learner Binders. He deposed in cross-examination that he was not aware of the rules/instructions regarding allocation of work to Learner Binders and Press Daftris as per practice that the same work was taken from both and it was only when work was not being performed as per standard were duties replaced on administrative exigency. This means that interchangeability was based on exigencies of service to tide over a crisis and an emergent situation to take resort to such measures. No writing has been produced on record assigning duties one way or the other. There has thus been to my mind a misreading or rather over-reading of the parol evidence by the tribunal of the testimony of AW2. As far as the oral evidence of the management is concerned, Subhash Chand, Assistant Controller, Printing & Stationary, Haryana appeared as MW1 and deposed in his cross-examination admitting that the appointing and punishing authority of both Press Daftri and Learner Binder is the same. They worked in the same place. Both are performing the same nature of work. Their duty hours are the same. Both are governed by the same rules. Both categories have to meet the same production levels and they are also responsible for the profit and loss of the organization. The educational qualifications of both the posts are the same. Both have to pass the same practical tests. It is correct the witness deposed that the duties of Press Daftri are replaced by Learner Binders. However, this was a simplistic view of a rather complex matter and to the mind of this Court no amount of bald oral evidence could replace the legal position obtaining in rules of service

of different pay-scales nor could the award be based on documentary evidence alone without anything more concrete.

45. W6 is the notification dated 9th April, 1991 published in the Government Gazette [Extraordinary] applicable retrospectively with effect from 1st January, 1986 which relates to a different employer, i.e the Government of Punjab. Serial No.11 in the notification reveals that the post of Learner Binder was merged with the post of Press Daftri. Vide notification dated 3rd January, 1992 published in Chandigarh Administration Gazette Ex.W7s as per serial No.23, the post of Learner Binder was merged with Press Daftri with the same pay-scale but the notification of Haryana Government dated 7th May, 1998 Ex.M2 does not grant equivalence or the same pay-scale to both the posts. One cannot be read into the other. It is on these vacant premises that the tribunal has awarded EPEW to both the categories virtually equating the posts which was not is judicial function. Is this commendable work? At first blush the work of the Tribunal cannot be easily berated when it appears rather just and equitable on the evidence but the question is not of the award being just and equitable, the question really is one of jurisdiction vested in the tribunal to tinker with rules. In my opinion the tribunal has failed to examine the nature, character and effect of statutory rules framed under proviso to Article 309 of the Constitution by the State of Haryana in the year 1998 from which the relief granted to the 23 Learner Binders appears not to readily flow without a declaration of nullity of the rule prescribing pay-scale. If Punjab Government [vide Exb. W6, April 9, 1991] and the Chandigarh Administration [vide Exb. W7, January 3, 1992] have merged the posts or equated them and granted uniformity, the

relief cannot be automatically granted on the basis of inter-State discrimination. The equation will hold water for those States alone. The principles of equality and discrimination lie within the department of the State Government. There cannot be accepted inter-State discrimination for grant of relief on grounds of invidious and hostile discrimination. The award may be well intended in trying to eliminate heartburn but it is jurisdiction-wise, to the mind of this Court, not correct rendition of the law of EPEW as has been evolved by court from the early exploratory days in decisions beginning with **Parbat Kiran Maithani & Ors. v. Union of India & Anr.**, AIR 1977 SC 1553, **Randhir Singh v. Union of India**, (1982) 1 SCC 618 and ending at the turning-point stage in **State of U.P. & Ors. v. J.P. Chaurasia & Ors.**, AIR 1989 SC 19 [pg. 29] where the departures from earlier judicial opinion were applied distinguishing past dicta in order to meet new situations as they kept arising from case to case. Any discussion on EPEW law will remain incomplete without noticing the distinguishing features in its practical application in a series of judgments delivered by the Supreme Court including in **Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India** (1988) 3 SCC 91, **Mewa Ram Kanojia v. All India Institute of Medical Sciences** (1989) 2 SCC 235, **Ghaziabad Development Authority v. Vikram Chaudhry** (1995) 5 SCC 210, **State of Haryana v. Jasmer Singh** (1996) 11 SCC 77, **Orissa University of Agriculture and Technology v. Manoj K. Mohanty** (2003) 5 SCC 188, **State of Haryana v. Tilak Raj** (2003) 6 SCC 123, **Government of West Bengal v. Tarun K. Roy** (2004) 1 SCC 347, **State of Haryana v. Charanjit** (2006) 9 SCC 321,

S.C. Chandra v. State of Jharkhand (2007) 8 SCC 279, **Official Liquidator v. Dayanand and others** (2008) 10 SCC 1 etc. and more recently in **State of Punjab v. Surjit Singh** (2009) 9 SCC 514, the vantage point being navigated in the *J.P.Charausia* law (supra). However, it is equally well embedded in the case law that when EPEW principles do apply with full vigour then it “is not an abstract doctrine but one of substance” as held in *Randhir Singh* case (supra). The view held by the Supreme Court in **Kishori Lal Bakshi v. Union of India**, AIR 1962 SC 1139 that principle of EPEW had nothing to do with Article 14 was disapproved in many of the judgments that followed the *Randhir Singh* decision.

46. In **State of Haryana v. Tilak Raj** (supra) the Supreme Court elaborated thus:-

6. The principle of “equal pay for equal work” is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organization. In *Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India* this Court explained the principle of “equal pay for equal work” by holding that differentiation in pay scales among government servants holding the same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less — it varies from nature and culture of employment. It was further observed that judgment of administrative authorities concerning the responsibilities which attach to the posts and the degree

of reliability expected of an incumbent would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.”

Then again:-

“Equal pay for equal work” is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.”

47. In **State of Punjab v. Surjit Singh**, (supra) the Supreme court again articulated the doctrine of EPEW holding it not to be an abstract principle and would be capable of being enforced in Court only when “equal pay must be for equal work of equal value” was found existing and thus the principle of law could have no mechanical application in every case. The Court proceeded to hold as below:-

“Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable

relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a

party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.

48. The result achieved by the impugned award can strictly only be achieved by amending the rules or by respondent employees challenging its vires before the writ Court on principles such as are visited by the vice of unfair discrimination, unreasonableness etc. by seeking declarations from the jurisdictional court bringing them in tune with the rule of law. There can, however, be no doubt that the labour court/tribunal can override contracts and create new obligations but it cannot at the same time assume jurisdiction it does not possess. There is a passing reference to the place of statutory service rules in the scheme of things while juxtaposing the mandate of Article 309 with the labour laws in the verdict in **Himanshu Kumar Vidyarthi v. State of Bihar and others**, (1997) 4 SCC 391, the Supreme Court observing; “When the appointments are regulated by the statutory rules, the concept of “industry” to that extent stands excluded”. If there is no “industry”, it is trite that relief cannot flow from the tribunal.

49. The broad canvas of powers exercisable by an industrial tribunal was considered in a forerunner judgment of the Federal Court in *Western India Automobile Association* case [1949] preceding *Bharat Bank* wherein it was held that such a tribunal can do what no Court can, namely, add to or alter the terms or conditions of the contract of service. The legal position would much later be explained with reference to status of Government servants succinctly by the Supreme Court in **Roshan Lal Tandon v. Union of India**, AIR 1967 SC 1889: 1968 (1) SCR 185 as follows:-

“It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much

more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by *Salmond and Williams on Contracts* as follows:

“So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.”

(*Salmond and Williams on Contracts*, 2nd Edn.p. 12).”

50. On an anxious and thoughtful consideration of the matter, this Court is not disposed toward conceding such extensive power in the labour court or industrial tribunal to virtually scrap and wipe out the face of the statutory rule prescribing pay scale and attaching it to the two posts in issue and to permit the labour fora to re-write the rules of service, however well intentioned the award may be. Service rules framed under the constitutional provision [Art. 309] enjoy primacy, subject to discipline of Article 14. This is because rules of service framed by way of subordinate legislation are not in the nature of a contract born of ad idem of the employer and its employees or by them accepting the terms of employment. We are not on what the service conditions should or ought to be as explained largely in *Roshan Lal Tandon* case. The labour court/tribunal exercises quasi-judicial powers to settle disputes which, and to quote, the power in the forum “suggests the idea of establishing compromise between the interests of disputing parties” and further still “It [LC&T] can confer rights and privileges on either party which it considers reasonable and proper, though they may not be without the terms of any existing agreement. It is not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.” And then again the Supreme Court held: “Where the discretion is committed to any body or a tribunal exercising quasi- judicial functions which are not fettered by ordinary rule of law, the tribunal should in the absence of any provision to the contrary be deemed to have the final authority in the exercise of that discretion”, [as per B.K.Mukherjea, J. in *Bharat Bank*].

51. In **Jaswant Singh v. Union of India**, AIR 1980 SC 115, the Supreme Court had occasion to deal with, inter alia, the fate of a large number of work-charged employees engaged in the projects of the Bhakra Beas Management Board facing retrenchment wherein the Court observed that though they could not be treated as temporary Central Government employees governed by separate rules but still they were industrial workers entitled to the benefits of the ID Act. The Court held that “Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification.”

52. In **J.K. Iron and Steel Company Ltd. v. Mazdoor Sabha**, AIR 1956 SC 231, the Supreme Court observed:

“It is evident from this that though these tribunals [labour] are not bound by all the technicalities of civil courts, they must nevertheless follow the same general pattern. Now the only point pertains to pleadings and issues of ascertaining the real dispute between the parties, to narrow down the area of conflict and to see just where the two sides differ. It is not open to the Tribunals to fly off on a tangent and by, disregarding the pleadings, to reach any conclusions that they think are just and proper”

53. The law on the subject in its full landscape apparently not present in the mind of the Tribunal when it ventured to classify the posts by its own equation applying EPEW. It appears to have misread the authority in *Bharat Bank* from where it quoted a passage of the judgment in the impugned award. The authority in *Bharat Bank* is binding on the question of contracts of service but not on the primacy of statutory rules of service governing employees serving in a department of the government with pay

and emoluments fixed by rules. Thus, the court *a quo* failed to address itself with any depth on the subject matter, which question was left begging answers and proper findings, which issues would go to the root of jurisdiction, fraught with many underpinnings and the workings of Section 113 CPC, Article 32, Article 226 of the Constitution, Section 9 of the CPC etc and Section 11 of the ID Act itself and their interplay on what is now more clearly brought out on the limited question referred to larger Bench in *State of Jharkhand* case [supra] was not present in its mind. I am inclined to think that the Tribunal was not the apropos Forum to ventilate the grievance referred for determination as it was bound by the rules of service and had to apply them and could not sidestep them for any of the reasons mentioned in the award. Even though every respect has to be paid to Article 39 (d) of the Constitution, which is a fundamental right of equality and of EPEW, but if there is a reasonable classification among a class or classes of persons, then the result cannot be achieved by mechanically or automatically applying the principle of EPEW to a case of the present kind. It cannot override rules and eschew them as rubbish. The tribunal could not disentangle the concept of contracts of service from rules of service framed under power conferred by the Constitution and the distinction between private law and public law element. Evidently, the clubbing of posts and giving them the same pay is not the function of the Court much less the labour court even conceding its extensive powers. The State of Haryana would be deemed to have acted in the welfare of its employees while making the rules. Merely because the employees of Punjab, Haryana and U.T. Chandigarh work in the same building, that will not change the law in the rules of Haryana in the hands of

an industrial adjudicator. To repeat, the question is one of jurisdiction i.e. the authority to decide and not the merits of the claim. The well intended act may not be lawful and “Most of the evil in this world is done by people with good intentions”, remarked poet T.S.Eliot. I am not on the fairness or the unfairness of the demands raised by the Learner Binders but the tribunal could not have achieved what a regular civil court could not have by bar of Section 113 of the Code. Though the labour court or tribunal can follow such procedure as it thinks fit but it is bound by the law in service jurisprudence as evolved by the superior courts and to apply it, otherwise, the Tribunals would be seen exceeding their powers and that is the reason why the salutary provisions of Article 227 exist in the Constitution for the High Courts to keep lower courts/tribunals within the bounds of their jurisdiction and keep them from overstepping the boundaries. While dealing with distinctions between superior courts and inferior courts in the context of review jurisdiction the Supreme Court drew the distinction citing with approval the English law stated in Halsbury's Laws of England [4th Edn. Vol 10, para 713] in **M.M.Thomas v. State of Kerala**, Civil Appeal 9663 of 1994 decided on 6.1.2000 thus:- “In Naresh Shridhar Mirajkar v. State of Maharashtra & Anr, [1966] 3 SCR 744=AIR 1967 SC 1 a nine Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a Court of Record. In Halsbury's Laws of England, [4th Edn. Vol.10, para 713] it is stated thus :-

"The chief distinctions between superior and inferior courts are found in connection with jurisdiction, Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so,

while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and super-intendence in certain classes of actions, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular action."

(Though the above reference is to English Courts the principle would squarely apply to the superior courts in India also.)"

55. One more facet needs to be examined in evaluating the award on judicial review. The Tribunal has relied on a Division Bench judgment of the Patna High Court in **State of Bihar v. the Presiding Officer, Industrial Tribunal, Patna and others**; 1977 Labour & Industrial Cases 803 commending conferment of power in the Tribunal to adjudicate and decide matters in relation to conditions of service of Government servants, meaning thereby, the Tribunal can interfere with the rules framed under proviso to Article 309 of the Constitution. The reasoning of the Patna High Court are in paragraphs 12 and 14 and the same are reproduced : -

"It is true that the conditions of service of a Government servant can be laid down either by the appropriate Legislature and in the absence of the same having been so laid down, by the Governor of a State. But the mere fact that there is such a power, does not in our view, affect the jurisdiction of a properly

constituted Tribunal to adjudicate in relation to an industrial dispute between the Government servant and the State. Article 309 of the Constitution itself indicates that the powers conferred therein are “subject to the provisions of this Constitution”. In our opinion, therefore, the mere fact that conditions of service have been laid down under Article 309 of the Constitution does not affect the exercise of powers by a validly constituted authority. If it derives its power under a provision of the Constitution itself. Art. 246 of the Constitution enumerates the subject matter of laws which can be made by the Parliament and by the Legislature of a State. It is not in dispute that the industrial Disputes Act has been enacted in exercise of the powers conferred by the Constitution. If the Industrial Disputes Act provides for adjudication of disputes, the power to so adjudicate is derived under a provision of the Constitution itself and the exercise of such power, affecting the conditions of service of persons serving the State would be permissible as Art.309 of the Constitution itself indicated that this Article is subject to the provisions of the Constitution. This includes any law validly enacted by a competent Legislature. Thus, in our opinion, the Industrial Tribunal is not shut out or precluded from adjudicating an industrial dispute which may have an impact, either direct or indirect, on the service conditions of persons serving in the Union or the State.

14. The learned Solicitor General next contended, relying on the proviso to Art. 309 of the Constitution, that the service conditions laid down by the Governor (as in the present case) are to prevail until the provision in that behalf is made by an Act of appropriate legislature. The emphasis was that except for an Act of an appropriate Legislature, the rules are always to prevail. In our view, the proper way to read this Article

is not to read the proviso first and then to hold that since the rules made by the Governor can only be superseded by an Act of appropriate Legislature, there is no power in any authority to adjudicate on a matter which relates to the rules laid down by the Governor in exercise of powers under the proviso to Art. 309 of the Constitution. The power of the Governor would not be greater than the power of the Legislature as envisaged in the first paragraph of this Article. The first paragraph of this Article clearly says that the power is subject to the provisions of the Constitution. We have already explained as to what we understand by this expression. It, therefore, appears to us that when the proviso to Art. 309 says that the rules made by the Governor cannot be superseded except by or under an Act of the appropriate Legislature, it only emphasises the fact that the rules made by the Governor are to prevail until modified, changed or superseded by the Legislature. It does not have the effect of nullifying the opening words of Art. 309 of the Constitution. It is, therefore, not possible to accede to the contention of the State that the reference in this case was invalid or infructuous for the reasons already discussed.”

56. The Patna High Court based its decision on a reading of Articles 309 and 310 of the Constitution. Article 310 has in its opening words the expression “except as expressly provided by this Constitution” while Article 309 speaks of, “subject to the provisions of this Constitution”. The Court turned to the view that this vital difference in the two Articles makes all the difference. The High Court reasoned that the Industrial Disputes Act has been enacted in exercise of powers conferred by the Constitution. If the Act provides for adjudication of disputes, the power to so adjudicate is derived under a provision of the Constitution itself and the

exercise of such power, effecting conditions of service of persons serving the State would be permissible as Article 309 of the Constitution itself indicates that this Article is subject to the provisions of the Constitution. The Division Bench referred to Article 246 of the Constitution which enumerates the subject matter of laws which can be made by the Parliament and by the Legislature of a State. On this reasoning, the contention of the State was rejected that the reference to the Industrial Tribunal, Patna was invalid.

57. On facts, the Court dealt with work-charged employees of the Kosi and Gandak Projects of the River Valley Projects Department in the State of Bihar. The disputes in their factual matrix were with respect to pay scales, according to a previous award; the manner and procedure of fixation of pay of an individual workman in the new scales in the context of the 3rd Pay Revision Committee report and the formula adopted by the State in designing apt pay scales. The dispute related to workmen numbering about 18000, apart from the regular employees. The pay scales of work-charged employees of the department was revised and higher pay scales were fixed after merging the cost of living allowance. That was slightly altered in September, 1961 but so far as the regular employees were concerned, their pay scales remained unregulated leading to higher pay to work-charged workmen in the corresponding category. The regular employees were covered by the general revision of pay scales for Government employees recommended by the Second Pay Revision Committee with effect from April 1, 1964. There was an anomaly existing in the replacement scales.

Rest of the facts should not detain us as here since presently the concern is

only with the question of jurisdiction of the Tribunal in interfering with the rules of service relating to pay scales.

58. Nevertheless, work-charged employees do not hold posts under the State. They are beyond the pale of Articles 309, 310 and 311 of the Constitution. There is sufficient judicial authority of the Supreme Court and the various High Courts, including this Court to hold as much, since the days of the decision rendered by the Patna High Court in the late 70s much water has flown. Work-charged employees are tenure appointees whose services come to an end automatically on completion of project. Re: status of work-charged employees one may refer to the rulings of the Supreme Court in **State of Rajasthan v. Kunji Raman**, (1997) 2 SCC 517; **Ajmer Vidyut Vitran Nigam Ltd. & Ors. v. Navin Kumar Saini**, (2010) 15 SCC 17; **Punjab State Electricity Board & Ors. v. Jagjiwan Ram**, (2009) 3 SCC 661; **State of Haryana & Ors. v. Sita Ram**, (2013) 16 SCC 677 etc. A priori, work-charged employees are charged to the works and wages are drawn from financial estimates involved in executing and carrying out the purposes of the project, even if the arrangement continues for a sufficiently long time that would not alter their status. Be that as it may, such employees acquire the status of “workmen” under the Act as analyzed above and, therefore, the Tribunal concededly in such a case possesses power to replace contracts and their pay scales or fair wages, as is the settled legal position. To my mind the ruling of the Patna High Court is clearly distinguishable on facts and it seems to this Court that there was hardly any necessity to venture far afield into Articles 309 and 310 of the Constitution when the result could have been achieved without resort thereto. The position would

be entirely different if rules were framed by the legislature or by the executive in exercise of power under proviso to Article 309 defining the conditions of service of work-charged employees including their pay and allowances and confer upon them status beyond contractual relationship. This Court would thus not like to place any reliance on the ruling in the present state of facts and thus to support the Tribunal when it placed blind reliance on the judgment without analyzing its ratio in order to vest authority in it to apply EPEW law on Learner Binders and thereby change the rules of service in the matter of pay. The ruling can apply more appropriately to mainstream service in or under the State Government.

59. However much I would broadly wish to support the work of the tribunal on equity but feel unable to persuade myself to put the seal of approval of this Court on the impugned award when it overrides the rules and reads more than what should be read. Equity as it is often said must give way to the express law. Equity should not trample on statutory rules. Needless to say, it is for the Government to examine this issue holistically and consider taking steps, if it wants or deems fit to remove any vestige of unfairness in the same work place, as anyone in place of the respondent 23 Learner Binders could have heartburn on a perception of deprivation of equality amongst a small class [and of chances of further promotion] of people in case the oral evidence is to be accepted by court tilting the balance and which was readily accepted and applied to the facts and circumstances coming via the recorded testimony of witnesses. Nevertheless, no amount of oral evidence can replace the law on a legal issue.

60. The question of interchangeability in the posts of Learner Binders and Press Daftri may appear to shine light but all the same the Haryana Government pays its employees salary and remains the best judge of its office needs. The disparity was, to put the record straight, explained by the State on administrative grounds and the exigencies of administration in the matter of interchangeability to tide over sudden disruption. But there are no written orders assigning duty shown to the court. The demand may be bonafide but it does not necessarily follow that it is justified in the presence of rules classifying the posts in issue. It is a trite law that the rules of service by themselves justify the difference in pay scales of different posts.

61. In reviewing the award, it may not I think be inappropriate for this Court to step a little outside its jurisdiction to exercise beneficially the original powers under Article 226 of the Constitution to a limited extent to request the State to address itself to the grievance standing above the case and take an administrative decision whether the 23 Learner Binders should be put at par with the others, if similarly placed, in the same workplace, keeping all the permutations and combinations in mind. However, the result of the impugned award can only be redressed by amending the rules. The other course which could possibly be adopted by the aggrieved workers is to petition this Court under Article 226 of the Constitution, in which jurisdiction, full-fledged powers can be exercised to examine the grievance from all sides of the prism and EPEW law read into the provisions to restore the equitable balance in pay at par. The Haryana Government may even consider exercising its power to relax rule, if there is an enabling rule in this respect, in favour of 23 Learner Binders to consider better emoluments and

their promotions if vacancies are available in the cadre of Binders to remove long standing stagnation in service. However, to this end this Court can only make a constructive suggestion even when ordinarily it would not issue a writ of mandamus to the State in a case coming via the Tribunal on the moot issue of jurisdiction. This appears to me to be the only just way in case the proposal finds favour with the Government. But at the same time the competent authority must address itself to the issue and take an informed decision on the dispute. In the circumstances the demands may appear to be bona fide and perhaps even justified but the relief in my opinion may not be capable of being granted by the tribunal while flying in the face of rules.

62. In the main I am inclined to think that to concede power to the labour court or tribunal to ignore and depart from rules of service governing pay and post in a department of government and to read jurisdiction *ex aequo et bono* in the tribunal as applicable to arbitrations [which procedure it can follow by virtue of Section 11 (1) of the Act] may not be the proper thing to do. It would be conceding too much authority in the tribunal where none exists in codified form in the Act or in its Schedules. Contracts of service it may change or alter in its judicious discretion but not the rules framed under proviso to Article 309 of the Constitution of India in side effect. That power vests either in the rule making authority or in the constitutional courts to apply EPEW to be exercised judiciously in an appropriate case to prevent infractions of fundamental guarantees in Part III and the Directive Principles of State Policy as have been read into fundamental rights recognised in the *suprema lex* or the Big Book. It would be a rather dangerous thing to do to allow Labour Courts and Tribunals to

wield such authority, good intentions notwithstanding. The issue touches upon policy matters which are the prerogative of the State i.e. to prescribe pay scales and designate and classify posts in a promotional ladder even though they may belong to the same class of service. There is thus a fundamental flaw and error committed in the exercise of jurisdiction not vested in the tribunal in applying EPEW principles by disregarding the Haryana, Printing & Stationery Department, Ministerial/Industrial [Group-D] Service Rules, 1998 and applying to them parity of treatment *vis-à-vis* the respondents and the Press Daftris in the matter of pay.

63. The rulings in *Western India Automobile* and *Bharat Bank* may not, in my humble view, stretch to cases covered by statutory rules of service framed under the proviso to Article 309 of the Constitution of India since the issue was neither raised nor decided in those cases which were rendered at a time when the expansion of the term “industry” in Section 2 (j) of the Act had not pervaded then prevailing judicial thought when those cases were rendered in nascent industrial law in India. The two rulings are thus not authorities on the limited issue raised and considered in this petition *vis-à-vis* their interplay with statutory rules of service and their application in the labour court/tribunal while confronted with a rule designating posts and prescribing different pay scales for them and to go about altering them by EPEW incision by changing their character and content. This is, I think, where the observations of Hon. Beg, CJI in the *Rajappa* case (quoted *supra*) may find valuable place and be of help in resolving the present dispute. Besides, it may be worth a reminder that the once aggrieved Press Daftris had succeeded in getting their pay anomaly

resolved by this Court in its extraordinary original civil writ jurisdiction. Those employees did not raise an industrial dispute or go to the labour court/tribunal seeking legal redressal of their grievance. Assuming *arguendo*, if the present respondents are put at par with Press Daftris in pay it may spark off another vicious circle and cycle of litigation. Press Daftris will once again clamour for higher pay on the other equally well settled principle that usually a promotional post enjoys higher pay. If permitted to be applied to the case in hand, it would lead to a never ending process. It cannot be over-emphasized that the foundation of jurisprudence lies in the pious hope that litigation must come to an end in the best possible manner and in the shortest predictable time which is practicable. This is another reason why the Haryana Government should adventure out on the grievance threadbare [settled by the forum on merits but upset on jurisdiction by this order] and to holistically find fair and just solutions in search of a balanced equipoise and to endeavour to do so with a spirit of “humanism”, “inquiry” and “reform” enshrined in the *dharma* of Art. 51A (h) of the Constitution. The case before the tribunal, after all, was not one without any iota of evidence whatsoever, apart from the Tribunal over-reading them as gospel truth and placing implicit faith on the oral testimonies of witnesses which may not in their paraphrasing contain the crux of the rules or the recognized tests of applicability of EPEW law. It would however in the hope of this Court be reasonable for the petitioner to take some final decision on the touchy subject of EPEW within say six months or so, after the order is received and delivered in the office of the Secretary to Government of Haryana in the Department of Personnel and Administrative Reforms routed

through the Secretary of the department concerned in Printing and Stationary being the administrative department.

64. In the wake of the above detailed discussion, this Court in summary is inclined to hold as follows:-

1. (i) Labour Courts and Industrial Tribunals are not conferred, possessed or vested with power or jurisdiction under Section 11 of the ID Act or any other law to arrogate upon them the power to supplant statutory service rules regulating recruitment and conditions of service and salary, and to vary them as per their whims or virtually strike down their financial and other terms duly apportioned and budgeted by legislature by reading in the principles of 'equal pay for equal work' and 'quantum meruit' detrimental to the interests of the employer State in its various departments of government. EPEW and quantum meruit are mostly two sides of the same coin. One brings pay at par while the other arrears of difference of pay home for shouldering duties and responsibilities of the higher post without any permanent or associated consequential benefits. Administrative Service law is not developed, evolved or dependent on oral testimonies of witnesses who may not know how to appreciate rules of service or may tend to exceed their brief or be exposed to uncontrolled cross-examination. Service law rests for its proper application on documents and documentary evidence. It is trite rule of evidence that no amount of evidence can be led as to contents of documents. Traditionally, a fundamental rule

of evidence is that oral evidence may be adduced to prove all facts, except documents, provided always that the oral evidence is direct. Oral evidence that is not direct is challenged by the hearsay rule and, unless it is saved by one of the exceptions to the hearsay rule, is inadmissible. In India, this principle is stated in section 59 and 60 of the Evidence Act. Personal opinions or individualistic judgment of the tribunal should not be allowed to hold sway in a service matter and instead the tendency deserves to be guarded against. Primary evidence of the contents of a document is the document itself [section 62 of the Evidence Act]. The *ipsissima verba* of Hon. Krishna Iyer, J. in *Rajappa* is apt to allude to as when the Judge observed: “Courts do not substitute their social and economic beliefs for the judgment of legislative bodies.” In the presence of rules the determination can no longer be left to mere evidence based adjudication when the issue goes to the root of jurisdiction and the lack of it in the Forum.

(ii) These forums can only apply the express provisions enshrined in statutory rules in force which are clear and unambiguous and to give full effect to them, as they stand in a litigation before them when they are in issue. The dispensation in cases of the present kind must lie moulded within the statutory framework of rules without meaning to harm them, however grave the mischief may appear. The rule which appears to offend fundamental rights can only be amended by

the rule making authority, or struck down by High Courts/Supreme Court, or is re-enacted after court declarations are handed down, or be read down to save them, as the case may be. However, none of these situations fall within the ambit, scope and functions assigned to the Labour Courts and Tribunals while settling labour disputes in the socially beneficial scheme of things the Act preserves and protects.

(iii) Notwithstanding the wide definition of “industrial dispute” in Section 2 (k) of the ID Act, this rule [theory of non-interference with statutory rules] applies only to public employment and not to cases of industrial disputes involving “workmen” such as daily wagers, casual or work-charged employees and other employments etc. and the “employer”, the employer being the State or its agencies engaging labour in the exigencies of administration, which labour stand in non-rule territory and are not holders of appointments to public service governed by pay scales, cadre strength and the recruitment rules protected by Articles 14, 16 & 311 of the Constitution but by the law of service contract. Then, in cases of this type the labour court/tribunal can well use its special powers to ameliorate the conditions of service of labour for their betterment and prevent victimization, unfair labour practice, unfair discrimination and unreasonableness arising within the discipline in Art. 14 of the Constitution. Such employees would fall in the beneficial molar of labour law protections as

understood in the Industrial Disputes Act, 1947. In other words, when, and to quote [see para 2, *Umadevi-3*] “A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages.”, it is only then the employer [State] and employee relationship can fall in the domain of the labour court for the forum to apply EPEW principles and alter contracts of service to more beneficial terms it deems fit to serve the ends of justice. But at the same time, this would not empower the forum to tinker with statutory rules prescribing pay scales and attaching them to public posts after regular recruitment is made on them in terms of the constitutional scheme of appointments. Those rules will prevail subject to what is held in sub paragraph (ii) above with respect to challenge to the constitutionality of an objectionable provision in the rules before the appropriate court.

(iv) The rule appears clearly not to apply to private employment in “industry” or industrial establishments where employment is governed by contract of service or by Model Standing Orders, which are statutory in nature, and govern the conditions of service and the terms of employment, but which create no status of the kind as explained in *Roshan Lal Tandon* case. In such cases, the rule in *Western India Automobile Association* and *Bharat Bank* cases would apply and the Labour Courts and Tribunals may exercise powers extensively to

replace unfair contracts or unfair terms in them wherever the vice is found in the letters of appointment or in Model or Certified Standing Orders which are in conformity with the Model Standing Orders framed and certified by the appropriate authority under the Industrial Employment (Standing Orders) Act, 1946. These Orders are applicable to private employment which bears no public law element unless a statutory body itself resorts to procedure under the said Act. In the present case, there are no Model or Certified Standing Orders involved, which in any case, cannot be in derogation of constitutional provisions which will prevail and pervade over all other matters and things.

(v) To concede such unbridled power and authority to Labour Courts and Tribunals while making awards and orders under the ID Act may bring with it disastrous results in service jurisprudence and in governance. While on the other hand such disputes as to applicability of EPEW law arising from express statutory rules of service ought to be left to the remedy of judicial review exclusively before the constitutional courts or the tribunals created under the Constitution of India through parliamentary legislation as explained in the case of the latter fora by the Supreme Court in **L. Chandra Kumar v. Union of India**, (1997) 3 SCC 261 [cf. Articles 323-A & 323-B of the COI].

65. Accordingly, this writ petition is accepted and the award of the Tribunal is set aside for want of jurisdiction and maintainability of the industrial reference made to the Tribunal which notification is declared invalid. However, liberty as above is granted to the respondents since nothing said in this order is meant to express an opinion on the merits regarding EPEW and *quantum meruit* principles and their applicability to the case in hand which issue is left open in view of the nature of the orders passed in this case.

66. A copy of this order be circulated by the office amongst the Learned Labour Courts and Tribunals falling within the territorial jurisdiction of this Court for their guidance while dealing with disputes involving the State and its departments, on the one hand, and their employees on the other, who qualify as “workmen” under the ID Act, when the employment relationship is governed by statutory rules of service, as explained above.

(RAJIV NARAIN RAINA)
JUDGE

September 29, 2015

Paritosh Kumar