

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1461 of 1997(O&M)

Date of Decision: 26.04.2017

State of Haryana

... Petitioner

Versus

Shri P.L. Khanduja, Presiding Officer, Industrial
Tribunal/Labour Court, Rohtak & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Garg, Addl.A.G., Haryana,
for the petitioner.

None for respondents.

RAJIV NARAIN RAINA, J.(Oral)

This order disposes of the above-mentioned first case as well as the connected writ petitions* tabulated at the foot of the order, as common questions of law and fact are involved in them which can conveniently be decided by a common order.

Contentends that the question of law involved in these writ petitions is covered by my judgment passed in State of Haryana & anr. v. The Presiding Officer & anr., 2016 (2) SCT 720 : 2017 (1) RSJ 143 holding that the principle of 'equal pay for equal work' cannot be applied by the Labour Court in proceedings under Section 33-C (2) of the Industrial Disputes Act, 1947 (The 'Act').

I have read the order impugned with the assistance of learned Law Officer and am more than satisfied that his contention is correct that these matters are indeed covered by the aforesaid decision. In para 64, the Court's observations were as follows:-

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 noninterference 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].”

In matters of pay and allowances, the employes are covered by Pay Rules. The prayers based on equality of pay of different posts in this batch of cases does not constitute jurisdictional subject matter within the province of the Labour Court or Tribunal for grant of relief in execution proceedings under Section 33 C (2) of the Act to compute money due by way of difference of salary as an existing right.

As a result, all these 17 writ petitions are allowed and the impugned orders are set aside.

26.04.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Sr. No.</i>	<i>Case No.</i>	<i>Parties Name</i>
1	CWP-1462-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
2	CWP-1463-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
3	CWP-1464-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
4	CWP-1465-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
5	CWP-1466-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
6	CWP-1467-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
7	CWP-1468-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.

<i>Sr. No.</i>	<i>Case No.</i>	<i>Parties Name</i>
8	CWP-1469-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
9	CWP-1470-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
10	CWP-1471-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
11	CWP-1472-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
12	CWP-1473-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
13	CWP-1474-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
14	CWP-1475-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
15	CWP-1476-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.
16	CWP-1477-1997(O&M)	State of Haryana V/S Shri P.L. Khanduja, Presiding Officer, Industrial Tribunal/Labour Court, Rohtak & anr.

26.04.2017
monika

Whether speaking/reasoned

Whether reportable

(RAJIV NARAIN RAINA)

JUDGE

Yes

No