

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

**L.P.A.No.723 of 2016 (O&M) in
C.W.P.No.16806 of 2013
Date of Decision: July 05, 2018**

Joginder Pal Singh & others

...Appellants

Versus

State of Haryana & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MR.JUSTICE AMIT RAWAL**

**Present: Mr. Prateek Gupta, Advocate,
for the appellants.**

**Mr. Ankur Mittal, Addl.A.G.Haryana,
for the State.**

AMIT RAWAL, J.

The present Intra Court Appeal has been preferred against the judgment dated 29.9.2015 rendered by the learned Single Judge, whereby Writ Petition preferred against the award dated 2.8.2012 passed by the Industrial Tribunal, Chandigarh (for short, the Tribunal) having answered in favour of the employees-appellants being Learner Binders by means of invoking the principle of 'equal pay for equal work' bringing them at par with Press Daftris w.e.f. 1.6.2017, has been allowed.

Along with the appeal, Civil Misc.Application No.1499 of 2016 under Order 1 Rule 10 CPC has been filed seeking permission of this Court for filing the appeal on behalf of the employees, who were party before the Tribunal, but State of Haryana without impleading them, filed the

writ petition only against Joginder Pal Singh.

This Court, vide order dated 26.10.2016, while issuing notice of motion in main appeal as well as on the application seeking condonation of delay, had allowed Civil Misc.No.1499-LPA of 2016. The same reads as under:-

“Present: Mr.Prateek Gupta, Advocate
for appellants.

....

CM No.1499-LPA of 2016

Allowed as prayed for.

LPA No.723 of 2016 (O&M)

We do not find any infirmity in the legal proposition set out in the impugned judgment. Just to settle equities, issue notice of motion for 06.02.2017.

Notice re: condonation of delay also.

Pendency of the present appeal shall not be an impediment in the way of the appellants to take recourse to their remedy in law as mandated by the learned Single Judge.”

On perusal of the aforementioned order, it is evident that no infirmity was found in the legal proposition as culled out in the impugned judgment, but notice was issued only to settle the equities. Even liberty to take the remedy in accordance with law as granted by the learned Single Judge was kept intact.

Mr. Prateek Gupta, learned counsel appearing on behalf of the appellants submitted that the genesis of the judgment rendered by the learned Single Bench had been that the Tribunal did not have the jurisdiction to try and entertain the reference submitted for adjudication of the dispute amongst the employer and the employees, but protected the interest of the appellants by giving liberty to seek vindication of the

grievance under Article 226 of the Constitution of India. The operative part of the order reads thus:-

“49. In reviewing this matter at the stage of the award, it would be appropriate for this Court to step out of jurisdiction while reviewing the award of the Labour Court and exercise its powers under Article 226 of the Constitution to request the State to address itself to the grievance and take an administrative decision whether the 23 Learner Binders should be put at par with the others in the same workplace. The result of the Labour Court award can only be redressed by amending the rules. The other course which may 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. The Haryana Government may even exercise its power to relax rule in favour of 23 Learner Binders but this Court can only make a suggestion but ordinarily not issue a command by mandamus. This appears to me to be the only just way out if the suggestion finds favour with the Government but at the same time it must address itself and take an informed decision on the dispute. The demand may be genuine and justified but the relief may be incapable of being granted by the Labour Court. This dichotomy requires attention in appropriate quarters to be considered for redressal in an appropriate forum, in the first instance by the petitioning department. 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 labour court as applicable to arbitrations would not be the proper thing to do. It would be conceding too much authority in the tribunal where none exists in codified form. 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. That power vests in the constitutional courts to be exercised in appropriate cases to prevent infractions of guarantees in Part III and the Directive Principles of State Policy as have been read into Part III of the *suprema lex* or the Big Book. It would be a rather dangerous thing to do to, 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 posts in a promotional ladder even though they may belong to the same class of service.”

It has been brought to the notice of this Court that liberty granted by the learned Single Judge has not been availed as yet by the appellants. Be that as it may, since the appellants have been permitted to avail the remedy, particularly when this Court after discussing the case law threadbare found that the Tribunal did not have the jurisdiction to try the dispute amongst the employer and the employees, we do not consider that the impugned order suffers from any illegality or perversity enabling us to form a different opinion than the one arrived at.

For the reasons stated above, no ground for interference in the impugned order is made out. Resultantly, the Letters Patent Appeal is dismissed. Consequently, the application for condonation of delay in filing the appeal is also dismissed.

**(RAJESH BINDAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 05, 2018
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No