

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

LPA No. 1401 of 2018 (O&M)

Date of Decision: 27.09.2018

Dakshin Haryana Bijli Vitran Nigam and another

.....Appellants

versus

Nihal Singh and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Puneet Jindal, Sr. Advocate with
Mr. Raghav Kakkar, Advocate, for the appellants.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 3793-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 97 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 1401 of 2018

This intra court appeal is directed against the judgment and order dated 28.03.2018 passed by the learned Single Judge allowing the writ petition filed by the respondents herein.

2. The writ petition was preferred by the respondents seeking the following main relief:-

- i) Issue a writ, order or directions, preferably a writ in the nature of mandamus for grant of pay/salary of the post of AE/SDO along with consequential benefits from 16.05.2014 the date, the petitioner has been transferred and posted in public interest (current duty charge) and

performing the duties/functions and discharging the responsibilities of the post of SDO/AE, being the non grant of the same ultra virus and violation to the Article 14, Article 39(d), Article 21 of the Constitution of India.”

3. Learned Single Judge relying upon the judgment dated 29.11.2016 rendered by this Court in Civil Writ Petition No. 16541 of 2015 *P.D.Kaushik v. State of Haryana and others*, based on identical set of facts raising identical question of law allowed the relief claimed by the respondents-petitioners and directed the appellant Nigam to make payment of arrears of difference of salary of the post of SDO (A&E) and JE-I from 13.05.2014 onwards with all consequential benefits of pay and allowances.

4. Learned Single Judge further observed that once the appellant Nigam was directed by this Court in similar circumstances to pay the difference of arrears, it was not proper for the respondent Nigam not to have granted this relief by themselves and thus also imposed a costs of Rs.20,000/-.

5. Learned senior counsel for the appellant vehemently contends that the order was passed ex-parte without putting the appellant Nigam herein to notice and thus is liable to be set aside being in teeth of the principle of natural justice. Admittedly, the learned Single Judge did not put the appellant Nigam to notice and proceeded to decide the matter on the ground that the point involved for adjudication is no longer res-integra. Thus it is not in dispute that the impugned order passed by the learned Single Judge has been passed without hearing the appellant Nigam and is ex-parte. However, the principle of natural justice is not a straight jacket formula.

Apart from alleging violation of principle of natural justice, it has also to be

demonstrated that some prejudice has been caused on account of denial of an opportunity.

6. In the case in hand, learned counsel for the appellant Nigam has failed to demonstrate that what prejudice has been caused or in other words it has failed to demonstrate that there was any defence available worth consideration which could have been pleaded before the learned Single Judge in case a notice was issued or that issue involved was not covered by the decision relied upon. In the absence of any such prejudice being demonstrated, the appellant-Nigam is not liable to succeed only on the ground that the impugned order passed by the learned Single Judge is in violation of the principle of natural justice. Once the issue raised was covered by an earlier judgment of this Court, the learned Single Judge in our considered view committed no illegality in following the same view.

7. In view of the above, we do not find any infirmity in the judgment of the learned Single Judge which may require our interference. Appeal accordingly fails and stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.09 .2018
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Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√