

LPA No.640 of 2021(O&M)

#1#

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

LPA No.640 of 2021(O&M) in

CWP No.13619 of 2021

Date of Decision:-30.07.2021

Manmohan.

.....Petitioner.

Versus

State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Ramesh Goyal, Advocate for the Petitioners.

JASWANT SINGH, J.(ORAL)

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

Appellant-Manmohan has filed the present *intra-court* appeal under Clause X of the Letters Patent Appeal, seeking modification of the impugned interim order dated 27.07.2021 passed by learned Single Judge,whereby notice of motion has been issued, however, prayer for interim relief has been declined on the ground that the judgment relied upon by writ petition is *prima-facie* strictly not applicable to the petitioner.

At the very outset, we had put a query to the learned Counsel for the petitioner regarding maintainability of the instant appeal preferred by him, as the same has been filed against an interim order.

To this, learned Counsel for the appellant has submitted that the

writ petitioner-appellant is about to retire on 31.07.2021 and by declining interim stay to him, the learned Single Judge has virtually dismissed the writ petition as same would be rendered infructuous. It is further argued that the learned Single Judge has ordered the writ petition to be tagged alongwith CWP No. 10507 of 2021, in which interim stay on retirement has been granted by relying upon judgment passed by a Division Bench of this Court in **Dr Joginder Pal Singh & others Vs Union of India & others (P-5)** bearing CWP No. 20447 of 2020 decided on 01.03.2021 and, therefore, the appellant was also entitled for grant of interim stay in same terms.

Heard learned Counsel for the appellant and scrutinized the paper-book.

We are of the view that the instant appeal is not maintainable against the interim order dated 27.07.2021 as the Ld. Single Judge has not finally adjudicated the dispute involved therein. Vide interim order dated 27.07.2021, learned Single Judge has merely declined grant of interim stay, in view of the fact that according to him the Judgment passed by the Division Bench in ***Dr Joginder Pal Singh's case supra*** is *prima-facie* not applicable to the case of appellant as he is a Haryana Government Employee, whereas the judgment of Division Bench pertains to employees of Union Territories of India and institutes funded by Central Government. To satisfy ourselves, we have also perused the Judgment passed by Division Bench and are of similar view at this stage. Further, mere grant of interim stay by another single judge, cannot bind another co-ordinate bench as an interim order does not reflect the final adjudication on an issue and is always a *prima-facie* opinion of the Judge at an initial stage. Hence, grant of interim stay in another case, cannot be deemed as a binding precedent for a

co-ordinate bench to take the same view.

Thus, it is seen that the issue vis-à-vis applicability of the judgment is yet to be adjudicated by the learned Single Judge and hence it cannot be assumed by any stretch of imagination that vide interim order dated 27.07.2021 the issue involved in the writ petition has been finally adjudicated. This view of ours is supported by the Judgment passed by Hon’ble Supreme Court in **Midnapore Peoples Co-op. Bank Ltd and ors Vs Chunial Nanda and others** 2006(5) SCC 399, wherein the Hon’ble Supreme Court has, *inter-alia*, held that a Letters Patent Appeal against an interim order passed by writ court would be maintainable *firstly*, if the issue involved has been finally adjudicated; *secondly*, if the order finally decides an issue which materially and directly affects the final decision in main case; and *thirdly*, order which finally decides a collateral issue or question which is not the subject matter of the main case.

As observed earlier and is also evident from the facts of the present case, we do not find any such final adjudication by learned Single judge in the interim order dated 27.07.2021.

In view of the above, finding no merit, the present appeal is hereby ordered to be **dismissed**.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

July 30, 2021
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No