
(2018) 07 P&H CK 0222

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13798, 13799, 13800, 13801, 13802, 13803, 13804, 13805, 13806, 13807, 13808 Of 2017

Chief Engineer, PWD (B&R) And Another

APPELLANT

Vs

Jaswant Singh And Another

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Constitution of India, 1950 — Article 14, 226, 227

Citation : (2018) 07 P&H CK 0222

Hon'ble Judges : Shekher Dhawan , J

Bench : Single Bench

Advocate : H.S. Sitta

Final Decision : Allowed

Judgement

1. In all the above mentioned 11 writ petitions, the matter in controversy involved is as to whether the workmen, who are working as 'Field Staff', are entitled to wages for working on Saturdays, therefore, by this common judgment, all these writ petitions are taken up together for disposal. For facility of reference, facts are being taken from CWP No.13798 of 2017-Chief Engineer, PWD (B&R), Patiala and another versus Jaswant Singh and another.

2. Present writ petition under Article 226/ 227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing impugned order dated 27.01.2017 (Annexure-P1), whereby Industrial Tribunal, Ludhiana (for short, 'the Tribunal') allowed the claim of wages for working on Saturdays for a period of three years prior to the date of filing of application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act').

3. Facts relevant for the purpose of decision of this writ petition; that respondent No.1-applicant (Jaswant Singh) filed an application under Section 33-C(2) of the Act, seeking additional wages amounting to Rs.93,600/- from the petitioners-department for working on Saturdays. He joined the petitioners-department on

01.01.1977 as Beldar and was drawing sum of Rs.18,000/- per month. It is claimed that the applicant was not given benefit of working on Saturdays as the Punjab Government had adopted five working days week for its employees w.e.f. 07.04.1980. As such, he was entitled to paid holidays on all Saturdays as every Saturday was off day/paid day in all the departments/public offices/ public undertakings of Punjab Government. As the applicant had worked for 156 Saturdays during the period from March, 2007 to March, 2010, he was entitled to receive additional wages amounting to Rs.93,600/- from the petitioners-department.

4. The stand of the present petitioners before the Tribunal was that the Tribunal has no jurisdiction to entertain and decide the application under Section 33-C(2) of the Act as the applicant has no vested or pre-existing right to receive the benefit of extra wages/overtime for working on Saturdays. He was employed as field staff and was performing essential services of the State of Punjab, as such Saturdays could not be allowed as holidays to him. Therefore, he was not entitled to extra wages/ overtime wages for working on Saturdays. It was further stated that this Court in CWP No.11990 of 2004 'Balbir Singh versus State of Punjab' has already dismissed the similar claim. There is also no discrimination to the rights of the applicant as he was required to work on Saturdays. Therefore, there is no parity of the applicant with the office employees.

5. Learned Tribunal, however, after framing issues, decided the said application in favour of respondent No.1-applicant holding the applicant entitled to receive monetary benefit for working on Saturdays for a period of three years preceding to the filing of the application on 5. 05.2010 and the petitioner-department was held liable to determine his claim and to make payment within two months, failing which the applicant shall be entitled to charge interest on the due amount at the rate of 6% per annum, vide impugned order dated 27.01.2017 (Annexure-P1).

6. Feeling aggrieved by the impugned order (Annexure-P1), the petitioners have filed the present writ petitions.

7. Notice of the petition was given to the respondents. Although on 19.07.2017, respondent No.1 was represented by counsel, but none appeared on his behalf at the time of hearing arguments on 27.07.2018. Service of respondent No.2 was dispensed with vide order dated 19.07.2017.

8. Learned State counsel representing the petitioners, at the outset, contended that as the applicants-workmen were working as field staff, they were not entitled to wages for working on Saturdays. The Punjab Government had declared five working days week for its employees who are working in the offices only and that benefit was not for the field staff. Undisputedly, the respondents were working as field staff and their claim for parity with other employees, who are working in the offices of the Punjab Government, is without any justification.

9. Learned State counsel, while referring to the judgment of this Court, dated

10.07.2018, passed in CWP No.8815 of 2017-State of Punjab and others versus Madhu Sharma and others, has submitted that since the issue has been decided against the workman, the present writ petitions also deserve to be dismissed in terms of the order passed by this Court in CWP No.8815 of 2017.

10. There is no dispute that applicants-workmen were working as field staff. Their job was not in the office and as such, they were not entitled for five days working with two off days in a week, rather they were entitled to get one weekly off with six working days in a week.

11. Such a matter was before Hon'ble Division Bench of this Court in LPA No. 1178 of 2015, Nagar Council, Samrala Vs. Ram Sanjeevan and others, decided on 26.4.2016, wherein Hon'ble Division Bench observed as under:-

"..... If the aforesaid principles of law are applied in the case of the respondent-workmen, the only conclusion which can be reached is that they are not entitled to the relief prayed for, for the reason that none of the employees in the cadre of the respondent-workmen are working in the office enjoying Saturday as a holiday. As the respondent-workmen are not employees working in the office, rather they are working as Beldar, Fitter and Mali in the field, hence, the judgment in Municipal Employees Union (supra) has no application to the facts of the present case. The respondent workmen cannot equate themselves with the staff working in the office. They belong to the field staff, hence, the plea of discrimination is totally misconceived.

For the reasons mentioned above, the present appeals are allowed. The judgment of the learned Single Judge is set aside."

12. In Review Application No. 110 of 2003 in CWP no. 647 of 2003 titled Virsa Singh and others Vs. Punjab State Electricity Board and others, Hon'ble Division Bench of this Court passed the following order on 11. 03.2003:-

"The issues to be determined in the instant case is whether the petitioners are entitled to extra wages for working on Saturdays. The petitioners in the present case are employees of the Punjab State Electricity Board. They are holding posts of Junior Engineer, Assistant Junior Engineer, Lineman, Assistant Lineman, Driver, Chowkidar, Regular T-Mate, Work-charged, T-Mate, Sub Station attendant, Foreman etc. It is contended by the learned counsel for the petitioners that all the petitioners have been posted in the field where they are required to discharge duties even on Saturdays whereas the employees working in the offices of the Punjab Stated Electricity Board do not work on Saturdays. It is, therefore submitted on the basis of the decision rendered by the Hon'ble Supreme Court (notices above) that extra wages should be paid to the petitioners. There is no doubt that the petitioners in the present case render duties for six working days in every week, but there is no parity in the controversy in the present case with that of the decision rendered by the Apex Court, (notices above). The posts occupied by the petitioners are only in the field. There is no such that posts (as is held by the petitioners) in any of the

offices of the Punjab State Electricity Board. The pleadings of the present case also do not reveal that any person belonging to the cadres to which the petitioners belonging are discharging duties for a period of five working days and week or are not required to work on Saturdays like the petitioners. The basis in granting relief to the appellants before the Apex Court, in the decision (Notice above) was that persons from the same cadre borne on the same seniority list working for six days in a week, were being granted the same emoluments as those who had to render duties for only five working days a week. In other words no benefit was being given to the employees for working for an additional 52 working Saturdays per year. The aforesaid position does not exist in the present case. In the present case, it cannot be said that there is an arbitrary determination of a wages payable to the persons belonging to the same cadre. It is not the grievances of the petitioners, in the present case, that a person similarly situated as the petitioners working for lesser number of days is drawing the same emoluments as the petitioners.

For the reasons recorded above, we find that there is no parity in the controversy raised in the present case with that which arose for consideration before the Apex Court.

No other argument was advanced on behalf of the petitioners.

We, therefore, find no merits, in the contention of the petitioners in their claim for additional wages. The instant petition is accordingly dismissed."

13. Similar view was taken by Hon'ble Division Bench in CWP No. 11990 of 2004 - Balbir Singh Vs. State of Punjab.

14. In yet another identical matter i.e., Municipal Corporation,

Patiala through its Commissioner Vs. Presiding Officer, Labour Court, Patiala and another, 2018 (1) SCT 478, a Co-ordinate Bench of this Court also observed as under:-

"53. As a result of the above discussion, I hold in précis as under:

(i) It is declared that the Field Staff have no existing right to claim wages for work done on Saturdays as they work in a six day per week schedule as per law with the advantage of additional casual leave and other benefits etc. not available to the Office Staff, which compensate them adequately and beneficially and it is held that they have no claim as against the Office Staff to either work for 5 days a week or claim wages for Saturdays as overtime or extra work done because the nature and duties of work are totally different as between the two categories of employees when their services are not interchangeable. It is also held that there is no commonality in the work profile of Office Staff and Field Staff in the State of Punjab. They are reasonably classified with the objects sought to be achieved by the moot notifications in the exigencies of administration and the precepts of good governance linked with what is desirable to keep citizens happy with their daily lives.

(ii) In the present scheme of things and in the facts and circumstances of these cases, Article 14 of the Constitution has no place and is not violated when the Field Staff and Office Staff bear their separate birthmarks of service and belong to different cadres and separate seniorities, which cannot be interchanged by transfers and postings much like a two way street bound by rules or bye-laws governing the services in the cases under consideration. There is no interservice discrimination practiced of an unfair kind even though the administrative department in Government or local body and its controlling authority may be common to both when the cadres and seniority lists are admittedly maintained separately with separate channels of promotion between the two types of employees, one with tools in hand, the other paper; and,

xx xx xx xx"

15. This Court in Madhu Sharma's case (supra) allowed similar writ petition filed by the State of Punjab and set aside the impugned order whereby the claimants were held entitled to wages for working on Saturdays.

16. In view of the above undisputed facts and the view taken by this Court in the above cited judgments, the impugned order 27.01.2017 (Annexure-P1) passed by learned Tribunal is patently illegal and is set aside.

17. Resultantly, all the aforementioned writ petitions stand allowed in the above terms.