
(2012) 08 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 13323 of 2011 (O and M)

Om Parkash and Others

APPELLANT

Vs

Jalandhar Development Authority and Others

RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2013) 1 SCT 336

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Vipin Dey, for Mr. K.L. Arora, for the Appellant; H.S. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioners have approached this court impugning the order dated 20.4.2011 (Annexure P-5), whereby the claim

made by the petitioners regarding wages for public holidays, i.e., Saturdays has been declined. Learned counsel for the petitioners submitted that

the petitioners in the present case are working with Jalandhar Development Authority (for short, "the Authority") on various posts, such as Pump

Operator, Skilled Mazdoor, Mason, Fitter Coolie, Helper, Chowkidar, Malicum-Chowkidar, Key-man, Patrolman etc. There are two sets of

employees working in the Authority, but still first set of employees, such as Bill Clerks, Bill Distributors, Meter Readers, Ledger Keepers, Clerks,

Stenographers, JEs, XENs, SEs, Additional Chief Administrator, ADO and EO are not required to work on Saturdays, whereas the petitioners,

who belong to second set of employees, are required to work on Saturdays, hence, they are entitled to be paid wages for the same in terms of

notification dated 11.12.1986 (Annexure P-3) issued by the Government of Punjab.

2. On the other hand, learned counsel for the respondents, while placing reliance upon a Division Bench judgment of this court in C.W.P. No.

11990 of 2004 Balbir Singh and others v. State of Punjab and others, decided on 16.12.2005, submitted that in the cadre of the petitioners there is

no post which is there in the office. All are working in the field. The plea of discrimination can be raised only amongst equals. Once none of the

category of employees, to which the petitioners belong, are working in the office enjoying Saturday as a holiday, the petitioners cannot be granted

extra wages for working on Saturdays as all the employees in the cadre of the petitioners are working for six days in a week.

3. Heard learned counsel for the parties and perused the paper book.

4. The issue involved in the present writ petition was considered in detail by this court in Balbir Singh's case (supra), wherein while referring to

earlier judgments on the issue, following findings were recorded:

After hearing learned counsel for the parties and perusing the record, we are of the view that the plea of discrimination as envisaged by Articles 14

and 16(1) of the Constitution can be successfully pleaded only when the discrimination is practised amongst the equals. In other words the plea of

discrimination cannot be set up by those employees who belong to entirely a different cadre and are governed by different sets of rules. There is a

serious challenge thrown to the doctrine of equality in the present time when two un-equals are sought to be projected for an equal treatment by

raising the bogey of discrimination. Even equals can be treated differently if there is a valid classification as envisaged by Articles 14 and 16(1) of

the Constitution. In that regard, reference may be made to the judgments of the Supreme Court in the cases of Prem Chand Somchand Shah and

Another Vs. Union of India (UOI) and Another, Reserve Bank of India and others Vs. Peerless General Finance and Investment Company Ltd.

and another, and the judgment of the Constitution Bench in the case of Bennett Coleman and Co. and Others Vs. Union of India (UOI) and

Others,

5. In the present case, no member of the cadre belonging to the petitioners has ever been granted the benefit of holidays on Saturdays or Sundays

and comparison is sought to be made between the non-technical staff, which is devoted to the office work and the petitioners are deputed on duty

in the field. The matter is no longer res-integra. A Division Bench of this Court reviewing its earlier decision rendered in C.W.P. No. 647 of 2003

on 16.1.2003, accepting RA No. 110 of 2003, decided on 11.3.2003, has come to the following conclusion:

The question 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 State Electricity Board do not work on Saturdays. It is, therefore,

submitted on the basis of the decision rendered by the Hon"ble Supreme Court (noticed 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 (noticed 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 some (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 order (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 grievance 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.

6. It is, thus, evident that the view taken by the Supreme Court in the case of Municipal Employees Union (supra) has no application to the facts of the present case. We have failed to discover the so called discrimination, which is sought to be projected in the present case. The petitioners belong to the field staff and cannot seek parity with the office staff and, therefore, they cannot seek equal treatment with the unequal. Therefore, we do not find any legal justification to accept the claim made by the petitioners.

For the reasons stated above this petition fails and the same is dismissed.

If the aforesaid principles of law are applied in the case of the petitioners, the only conclusion which can be reached is that the petitioners are not entitled to the relief prayed for, for the reason that none of the employees in the cadre of the petitioners are working in the office enjoying Saturday as a holiday. They belong to the field staff, hence, the plea of discrimination is totally misconceived.

For the reasons mentioned above, the writ petition is dismissed.