
(2016) 08 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : CWP No.3424 of 1994

Ram Kanwar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Citation : (2017) 2 PLR 449

Hon'ble Judges : Mr. Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Mr. Ranjit Saini, Advocate, for the Petitioners in CWP No.3424 of 1994; Mr. N.K. Nagar, Advocate, for the Petitioners in CWP No.16764 of 1994; Ms. Shruti Jain Goel, AAG, Haryana, for the Respondents

Final Decision : Disposed off

Judgement

Rajiv Narain Raina, J.—This order will dispose of the aforementioned two petitions, as a common issue is involved in both the cases, which can conveniently be decided by a consolidated order. CWP No.3424 of 1994 has been brought by 227 Drivers, Conductors, Sub Inspectors & Inspectors, who served the Haryana Roadways Depot at Karnal, when the petition was brought against the Department of Transport, Haryana, whereas CWP No.16764 of 1994 has been brought by 4 petitioners belonging to the same category also serving at Karnal claiming the same reliefs.

2. The claim in both the petitions is for direction to the respondents to pay wages to the petitioners in lieu of work done on gazetted holidays and rest days as per the provisions contained in the Motor Transport Workers Act, 1961 (for short "the Act") and the Punjab Motor Transport Workers Rules, 1963 (for short "the Rules"). Is there claim justified, was the question, which fell for consideration when the petition was admitted. The petitioners claim that the Act governs service conditions of motor transport workers, who are employed in Motor Transport Undertakings. Section 2 (g) & (h) define "Motor Transport Undertaking" and "Motor Transport Workers" engaged in carrying passengers or

goods or both by road for hire or reward and includes as private carrier. Persons falling in the category of petitioners by definition are "Motor Transport Workers" in Section 2 (h).

3. Section 13 of the Act provides that no adult motor transport worker shall be required or allowed to work for more than eight hours in a day and 48 hours in any week subject to the provisions of the Act. Section 15 of the Act provides that the hours of work shall be so fixed that no period of work shall exceed 5 hours and that no such motor transport worker shall work for more than 5 hours before he has had an interval for rest for at least half an hour. Section 13 deals with "Hours of Work" and is reproduced below for ready reference:

"13. Hours of Work - No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty eight hours in any week;

Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport workers to work for more than eight hours in any day of forty eight hours in a week, as the case may be.

Provided further than in the case of a breakdown or dislocation of a motor service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty eight hours in a week."

4. Section 19 of the Act further provides that the State Government may, by notification, make rules providing for a day of rest in every period of 7 days and the same shall be allowed to motor transport workers and that even to prevent any dislocation of a motor transport service, the motor transport workers shall not work for more than 10 days consecutively without a holiday for a whole day intervening. Section 19 provides as follows:

"19. Weekly rest - (1) The State Government may by notification in the official gazette, make rules providing for a day of rest in every period of seven days which shall be allowed to all motor transport workers.

(2) Notwithstanding anything contained in sub-section (1), an employer may, in order to prevent any dislocation of a motor transport service, require a motor transport worker to work on any day of rest which is not a holiday so, however, that the motor transport worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

(3) Nothing contained in sub-section (1) shall apply to any motor transport worker whose total period of employment including any day spent on leave is less than six days."

5. Section 26 is relied upon to claim extra wages for overtime, which is the lis in these two petitions. Section 26 reads as follows:

"26. Extra wages for overtime - (1) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first proviso to section 13 or where he is required to work on any day of rest under subsection (2) of Section 19 he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest, as the case may be.

(2) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the second proviso to Section 13, he shall be entitled to wages in respect of overtime work at such rates as may be prescribed.

(3) Where an adolescent motor transport worker is required to work on any day of rest under sub-section (2) of Section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the work done on the day of rest.

(4) For the purposes of this section, "ordinary rate of wages" in relation to a motor transport worker means, his basic wages plus dearness allowance."

6. In exercise of powers conferred under the Act, Punjab Motor Transport Workers Rules, 1963 have been framed. Rule 29 of the Rules provides that no motor transport worker shall be required or allowed to work on a day of rest unless he has or will have a holiday called the substituted day on one of the 3 days immediately before or after the said day and a notice to this effect has been displayed for information of the workers. Similarly, Rule 30 entitles the motor transport worker to claim compensatory holidays which the employer is required to display on or before the end of the month and is further required to maintain a register of compensatory holidays which is to be preserved for a period of three years. Similarly, Rule 31 entitles motor transport worker to claim overtime for the work of more than 8 hours, whereas Rule 32 provides that the State Government may notify in the official gazette, the holidays which shall be granted to the motor transport workers. Rules 29 & 30 are reproduced below:

"29. Weekly rest - (1) No motor transport worker shall be required or allowed to work on a day of rest fixed for him (hereinafter referred to as the "said day") unless -

(a) he has or will have a holiday for a whole day (hereinafter called the "substituted day") on one of the three days immediately before or after the said day; and

(b) the employer has before the said day or substituted day whichever is earlier:

(i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and the day which is to be substituted; and

(ii) displayed a notice to that effect at the premises.

(2) Notice given under sub-rule (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed at the premises of the undertaking not later than the day before the said day or the substituted day to be cancelled, whichever is earlier.

(3) Where in accordance with the provisions of sub-rule (1) any motor transport worker works on the said day and has had a holiday on one of the three days immediately before it that said day shall, for the purpose of calculating his weekly hours or work, be included in the immediately preceding week.

30. Compensatory holidays - (1) Every employer shall display, on or before the end of the month in which holidays are lost, a notice in respect of workers allowing compensatory holidays during the same month or the immediately following two months and of the dates thereof, at the place at which the notice of hours of work prescribed under Section 18 is displayed. Any subsequent change in the notice in respect of any compensatory holiday shall be made not less than three days in advance of the date of that holiday.

(2) Any compensatory holiday or holidays in which a worker is entitled shall be given to him before he is discharged or dismissed and shall not be reckoned as part of any period of notice required to be given before discharge or dismissal.

(3) Every employer shall maintain a register of compensatory holidays in Form No.VI, which shall be prescribed for a period of three years after the last entry in it and shall be provided before the Inspector on demand."

7. The grievance of the petitioners in the present petitions is that despite the statutory provisions in the Act and the Rules framed thereunder as well as the protection granted by the Legislation to the motor transport workers, neither the provisions of the Act or Rules are being strictly followed in Haryana Roadways, Karnal nor the motor transport workers are being extended the benefits under the Act in a proper, legal and fair manner. When the statutory benefits are not given, the same amounts to hostile discrimination by State Transport with motor transport workers of the Operational Wing of the Haryana Roadways, who are not being granted wages at the rate twice their ordinary rates of wages for doing work on any of the holiday/rest days during a year.

8. Rule 30 is in breach when the petitioners in the Operational Wing are not allowed to avail gazetted holidays except the three National holidays i.e. 26th January, 15th August and 2nd October of the year. The holidays under Section 25 of the Negotiable Instruments Act, 1881 are also observed for the employees of the Workshop of the same Department, but not for the petitioners. The petitioners claim violation of Rule 29 relating to weekly rest, which are not being granted to them. They plead that they get no weekly rests, no compensatory holidays nor have the register of compensatory holidays, as required in Rule 30(3), maintained by the department. Similarly, the petitioners are also not being paid double of the wages in lieu of the compensatory holidays.

9. As against this, the employees working in the Haryana Roadways, who are not in Operational Wing are entitled to gazetted holidays, but the petitioners are deprived of the benefits of availing these holidays which is discriminatory. It is the Operational Wing that brings revenue to the Haryana Roadways but they get only step-motherly treatment. The Transport Department treats the petitioners in its Operational Wing of the Haryana Roadways as drones and, therefore, they have come to Court for their assistance demanding their rights under the Act and the Rules.

10. They dwell on the circular dated 05.07.1983 issued by the State Transport Commissioner, Haryana, allowing workers of Haryana Roadways to be paid overtime at double the rate of ordinary wages according to Section 26(2) of the Act. Section 26(1) of the Act provides that motor transport workers shall be entitled to wages in respect of overtime work at such rates as may be prescribed. This circular prescribes the rates being double of the rate of ordinary wages for overtime work. However, the benefit of the circular has remained on paper and the benefit has not percolated to them by arbitrarily denial to the petitioners and other motor transport workers of the Operational Wing of the State Transport of their rights. The relevant extract from circular dated 05.07.1983, on which the substantial claim rests in both the cases, is reproduced below:

"Subject: Payment of overtime to the workers of Haryana Roadways.

In continuation of the decision taken in the Commercial Officers meeting held at Jind on 29.05.1983, it has been decided that the workers of Haryana Roadways would be paid overtime at double the rate of ordinary wages according to Section 26(2) of the Motor Transport Workers Act till further orders."

11. The decision taken is till further orders.

12. The petitioners maintained that the circular dated 05.07.1983 is being deliberately misinterpreted to mean as if the same would apply in respect of duties/work performed by motor transport workers beyond eight hours in any day or forty eight hours in any week in terms of Section 13 of the Act. It is, however, submitted that in view of Section 26(1) of the Act, if a motor transport worker is required to work on any day of rest, still he is entitled to be paid double of the ordinary wages for the said working day. They pray for equality of treatment between Operational Wing and other employees of the Transport Department, who are in Workshops and offices. Motor transport service is an essential service. The petitioners are compelled to work incessantly without monetary recompense.

13. The petitioners also draw strength from Minimum Wages Act, 1948 (for short "the 1948 Act"). Employment in public motor transport is one of the employments that fall within the schedule under Section 2(i) of the said Act. Section 14 of the 1948 Act entitles an employee, who works on any day in

excess of the number of hours constituting a normal working day for payment of wages at the overtime rate for every hour or for part of an hour worked in excess. Section 14 of the 1948 Act provides as follows:

"14. Overtime - (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of Section 59 off the Factories Act, 1948 (63 of 1948) in any case where those provisions are applicable."

14. The petitioners in Para.17 of the petition (CWP No.3424 of 1994) have listed their six grievances, which they urge are statutorily protected. Such benefits are enumerated as follows:

"(i) Weekly rest or compensatory day of rest in terms of Rules 29 of the 1963 rules.

(ii) Wages at the rate double of the ordinary wages in lieu of non-grant of weekly rest or compensatory day of rest as referred to above.

(iii) Extra wages at the rate twice the ordinary rate of wages in respect of the work done on the gazette holidays as per the Government notification.

(iv) Payment of wages double of the ordinary wages for rest days even though an alternate rest day is provided thereafter.

(v) Weekly rest for employees of the Operation Wing are statutorily required to be fixed but the same are not being fixed.

(vi) The employees of the Operation Wing are also entitled for the benefit of all gazette holidays notified by the Haryana Government or in the alternate, payment of wages in lieu thereof, but the same are not being paid and they have also been deprived of the arrears of last many years."

15. Aggrieved by the action of the respondents in depriving them of their benefits due under the Acts and Rules submitted a detailed representation dated 29.07.1993 signed by the employees of the Operational Wing of Karnal Depot. They say in Para.18 of the petition that there is already an administrative policy decision by the respondents not to extend the scope of statutory benefits under the Act to employees in the category of the petitioners and, therefore, they have every reason to believe that their representation is of no avail and that is what brought them to this Court in the two petitions.

16. In this background, they pray for suitable directions to the respondents by a

writ of mandamus for the relief sought.

17. On notice, the State has put in its written statement. The respondents have refuted the claim of the petitioners based on statutory provisions in the Act and the Rules framed thereunder for the reason that the State Government has framed Rules governing the service conditions of the petitioners. These rules are known as "the Haryana Transport Department (Group C) Haryana Roadways Service Rules, 1995". Respondents aver that the service conditions of the petitioners are described in Rules 22 & 23 of the said Rules. Both the Rules provide as follows:

"22. Working hours, holidays and leaves

- The daily and weekly hours of work in case of operational staff and technical staff shall be as prescribed in the Factories Act, 1948 and in the case of the staff other than the operational staff and technical staff, the same shall be, as prescribed in the Motor Transport Workers Act, 1961. As regards the operational staff and technical staff, pattern of Haryana Government will generally be followed.

23. Overtime allowance - The overtime allowance shall be paid to the workshop and the operational staff, in accordance with the provisions of the Factories Act, 1948 and the Motor Transport Workers Act, 1961, as the case may be."

18. Working hours, holidays and leaves of operational staff and technical staff as per Rule 22 will be those as are prescribed in the Factories Act, 1948 and in case of staff other than operational staff and technical staff, the same shall be as prescribed in the Motor Transport Workers Act, 1961. However, overtime allowance shall be paid to the workshop and operational staff in accordance with the provisions of the Factories Act, 1948 and Motor Transport Workers Act, 1961, as the case may be. According to Rule 32 of the Punjab Motor Transport Workers Rules, 1963, prevailing prior to reorganization, inherited by Haryana, the State Government may notify the official gazetted holidays, which shall be granted to motor transport workers. In this way, the public holidays notified by the Government to be observed in public offices under the Haryana Government during the calendar year are not applicable upon the petitioners. Similarly, the holidays notified under the Negotiable Instruments Act are also not applicable to the petitioners.

19. The aforesaid service Rules came into force from January, 1995. Notice of motion was issued in this case on 17.03.1994 and it was ordered that the petition be listed along with CWP No.1903 of 1994. The petition was admitted on 02.05.1995 to be listed for hearing with CWP No.1903 of 1994.

20. The admitted position is that prior to January, 1995, there were not notified Rules. The new Rules make provision governing holidays, working hours and overtime allowance and the services of the petitioners can be governed only by Rules notified under proviso to Article 309 of the Constitution of India. However,

the Act has been made applicable wherever cited in the Rules. In Para.10 of the reply, the respondents maintain that the grievances of the petitioners enumerated in Para.10 (supra) have been met out with the applicability of the 1961 Act. The State avers that with the coming into force of the new Rules w.e.f. January, 1995, the circular dated 05.07.1983 relied upon by the petitioners has lost its relevance. However, it is admitted that the petitioners will be paid wages in accordance with the 1961 Act being a schedule employment. Broadly, in more words than one in its reply, State has admitted that the benefits available under the Act, Rules and the Service Rules would be available to the petitioners. In short, in Para.21 of the written statement, the State asserts that under the new Rules, the grievances of the petitioners have been met and, therefore, nothing remains to be decided by the Court.

21. The petitioners have filed a rejoinder to the written statement filed by the State. They submit therein that the stand of the State is not wholly correct that with the notified Rules, the grievances of the petitioners have been redressed. But the ground situation is that the grievances of the petitioners have not been removed "completely". They submit that an artificial distinction has been created between the operational staff and technical staff by introducing the Factories Act, 1948. The ministerial staff shall be governed by the provisions in the Motor Transport Workers Act, 1961. However, the operational staff, like the petitioners, has been denied gazetted holidays as per the gazette notification in each year. Neither the gazette notifications nor the new Rules specifically prohibit the benefit of holidays notified by the Haryana Government. They submit that they are working under an Undertaking of the State Government and their services are under the administrative control of the Haryana Government and as per Rule 1.22 of the Punjab Civil Services Rules, as applicable to Haryana, they are government employees and they cannot be denied the benefit of holidays notified by the Haryana Government. The action of the respondents in denying the benefit of these gazetted holidays to the petitioners is totally illegal, arbitrary, and discriminatory and is, thus, liable to be struck down. They would urge that the Rules formulated in the year 1995, nowhere suggest any categorization for granting holidays. The Department has illegally and arbitrarily created a hyper technical discrimination between the operational, technical and ministerial staff of the Group-C services. However, ministerial staff is entitled to all holidays mentioned in Annexure P-1, whereas technical staff is granted holidays in addition to all Sundays, all festival holidays as declared by the State Government. However, the operational wing, which is also in Group C service and similarly situated to technical and ministerial staff is granted only three gazette holidays. The rest of the holidays are being denied to the petitioners without any rhyme or reason. Once the Act and the Rules framed thereunder have been made applicable to the petitioners, then it follows that the claim of the petitioners is justified and the benefits available under the Act and the Rules deserve to be provided to them. Even though the Act has been made applicable, but the benefits have not been made available either in terms of the Act or Rules

or on the basis of the new Service Rules. None of the petitioners has been granted benefit under Rule 29 of the Rules. There are no weekly rests for the operational wing as per the Rules in force. The rest of the contents of the petition are reiterated and those of the written statement explained and the remaining grievances highlighted.

22. In the facts and circumstances presented in the pleadings of the parties, there is much to be said either way. However, the difficulty remains in implementation of the admitted benefits due and at the same time the case presents a latent challenge to the 1995 Rules which challenge can only go only before the Division Bench. It may be noted that when this petition was admitted, writ petitions went to the Division Bench unlike today, where matters go to Single Bench where the vires of Rules are not in question.

23. Accordingly, so far as the admitted benefits are concerned, the petitions are allowed. Those benefits be calculated and paid to the petitioners as is the rightful due. However, so far as other issues are concerned, the petitions are dismissed with liberty to the petitioners to challenge the 1995 Rules in accordance with law before the appropriate Bench. The benefits under this order as admitted by the State in its written statement be computed and paid within six months from the date of receipt of certified copy of this order.

24. Both the petitions stand disposed of accordingly.