

(2018) 07 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8815 Of 2017

State Of Punjab And Others

APPELLANT

Vs

Madhu Sharma And Others

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

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

Citation : (2018) 3 SCT 773

Hon'ble Judges : Shekher Dhawan, J

Bench : Single Bench

Advocate : H.S. Sitta

Final Decision : Allowed

Judgement

1. 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 16.09.2016 (Annexure P/4), whereby Industrial Tribunal, Bathinda allowed the claim of wages for working on Saturdays for a period of three years prior to the date of institution of CWP No. 18989 of 2002.

2. Facts relevant for the purpose of decision of this writ petition; that Hari Chand (since deceased) was working as Work Munshi with the petitioners-department and he was working in the work profile of Field Staff. Said Hari Chand died on 14.1.2006 leaving behind his L.Rs, who are respondents No. 1 to 4 herein. They filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, "the Act") before Industrial Tribunal, Bathinda (for short, "the Tribunal") contending that w.e.f. 7.4.1980, Punjab Government adopted five working days week for its employees and ever since the issuance of said notification, all the employees of the State Government, except Hari Chand, were enjoying two weekly off on Saturday and Sunday with five working days in a week, but Hari Chand (deceased) was allowed only one weekly off, thereby denying him the benefit of five days' week. Thus, Hari Chand was discriminated

on this ground. As per the respondents, no Bye-laws, rules, instructions uniformly making it applicable to all the employees, were issued for six working days a week. On that account, the respondents claimed arrears to the tune of Rs.5,76,000/- alongwith interest @ 18% per annum in an application under Section 33-C(2) of the Act.

3. The stand of the present petitioners before the Tribunal was that the application under Section 33-C(2) of the Act itself was not maintainable because the respondents (LRs of deceased Hari Chand) had no existing right and as such the Tribunal had no jurisdiction to adjudicate upon the application. The petitioner-department also took the stand that even the respondents were aware of the notification/rules of the State Government with regard to adopting of five days' week for its employees vide notification dated 7.4.1980, but the same were with regard to the employees working in the offices only but not for the field staff. Hari Chand (deceased) was working as a Junior Engineer which is a field post requiring working full week. Therefore, there is no parity of the applicant with office employees. Hari Chand (since deceased) was a regular employee and was working as Work Charge Munshi, which is a field post and was getting his salary as admissible to him. The respondents were trying to draw parity with the office staff, though there is no such parity.

4. Learned Tribunal, however, after framing issues, decided the said application in favour of the applicants-respondents no. 1 to 4 and the petitioner-department was held liable to determine their claim and to make payment within three months alongwith interest @ 6% per annum, vide impugned order dated 16.09.2016 (Annexure P/4).

5. Feeling aggrieved by the impugned order, (Annexure P/4) the petitioners have filed the present writ petition.

6. Notice of the petition was given to the respondents but despite service, no body put in appearance on behalf of respondents No. 1 to 4 on 19. 7.2017 and subsequent adjourned dates and even on 6.7.2018.

7. Learned State counsel representing the petitioners contended that learned Tribunal had completely ignored the basic facts involved in this case because the notification (Annexure P/1) issued by the Punjab Government with regard to five working days week was applicable to the employees working in the offices only and that was not for the field staff. Undisputed, Hari Chand (since deceased), was working as a field staff and claim in the application under Section 33-C(2) has been raised on his behalf by his L.Rs., seeking parity with other employees who are working in the offices of the Punjab Government.

8. Having considered the submissions made by learned counsel for the petitioners and appraisal of the record, this Court is of the considered view that that there is no dispute about the fact that Hari Chand (since deceased) was working as a field staff as he was holding the post of Work Munshi/Junior Engineer. His job was not in the office and as such, he was not entitled for five

days' week with two off days in a week, rather he was entitled to get one weekly off with six working days in a week.

9. 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."

10. 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."

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

12. 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 inter-service

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"

13. In view of the above undisputed facts and the view taken by this Court in the above cited judgments, the impugned order 16.09.2016 (Annexure P/4) passed by learned Tribunal is patently illegal and is set-aside.

14. Resultantly, the writ petition stands allowed in the above terms.