
(2018) 08 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7826, 11002, 11003, 10245 of 2017

State of Punjab and others

APPELLANT

Vs

Shudish Kumar Sudish Kumar and another

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Constitution of India, 1950 — Article 14, 16(1), 226, 227, 309

Citation : (2018) 08 P&H CK 0023

Hon'ble Judges : SHEKHER DHAWAN, J

Bench : Single Bench

Advocate : H.S. SittaM, Puneet Kumar Bansal, D.R. Punia

Final Decision : Allowed

Judgement

1. In the above titled 29 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 29 writ petitions are being taken up together for disposal.

2. For facility of reference, facts are being taken from CWP No.CWP-7826-2017-State of Punjab and others vs. Shudish Kumar @ Sudish Kumar and another.

3. 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 01.02.2016 (Annexure P/2), whereby Industrial Tribunal, Bathinda (for short, 'the Tribunal') 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.

4. Respondent No.1 Shudish Kumar, was employed as Junior Engineer with the

petitioner-department on regular basis and he was working in the work profile of Field Staff. He filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') before 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 the workman, were enjoying two weekly off on Saturday and Sunday with five working days in a week, but respondent No.1 was allowed only one weekly off, thereby denying him the benefit of five days' week. Thus, the workman was discriminated on this ground. As per the workman, 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 workman claimed arrears to the tune of Rs.7,15,000/-alongwith interest @ 18% per annum in an application under Section 33-C (2) of the Act.

5. 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 and the claim is time barred. As such the Tribunal had no jurisdiction to adjudicate upon the application. On merits, the petitioner-department also took the stand that even the workman was 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 was with regard to the employees working in the offices only and not for the field staff. Respondent no.1 has been working as a Junior Engineer which is a field post requiring full working week. Therefore, there is no parity of the applicant with office employees. Respondent No.1 was a regular employee and was working as Junior Engineer, which is a field post and was getting his salary as admissible to him. The workman was trying to draw parity with the office staff, though there is no such parity.

6. Learned Tribunal, however, after framing issues, decided the said application in favour of the applicant-respondent no. 1 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 01.02.2016 (Annexure P/2). Similar orders have been passed in the connected writ petitions.

7. Feeling aggrieved by the passing of impugned order, (Annexure P/2) the

petitioners have filed the present writ petition.

8. Respondent-workmen have come with the plea that their services are governed by Punjab Civil Services Rules. The said Rules are statutory in nature. These rules provide for only four categories of employees i.e., Group-A, Group-B, Group-C and Group-D. The Rules do not provide for separation of classes of 'field staff' and 'office staff'. When the rules framed under Article 309 of the Constitution of India do not provide for such a distinction between the employees/staff, field staff and office staff, the State cannot create a new category without amendment of Punjab Civil Services Rules.

9. Learned State counsel representing the petitioners contended that learned Tribunal had completely ignored the basic facts involved in these cases 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. Undisputedly, the workmen/respondents were working as field staff and claim in the applications under Section 33-C(2) has been raised seeking parity with other employees who are working in the offices of the Punjab Government.

10. Learned counsel for the workmen-respondents contended on the lines of plea taken in the written statement that the Rules governing the employees are statutory in nature. These rules provide for only four categories of employees i.e., Group-A, Group-B, Group-C and Group-D. The Rules do not provide for separation of classes of 'field staff' and 'office staff'. When the rules framed under Article 309 of the Constitution of India do not provide for such a distinction between the employees/staff, field staff and office staff, the State cannot create a new category without amendment of Punjab Civil Services Rules. As such, the writ petitions are liable to be dismissed.

11. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the notification issued by the Government of Punjab on 07.04.1980 (Annexure P/1) notified that each Saturday of every month shall be observed as holiday in government offices. The stand taken by the State is that as per Rules and Policies of the State Government, the field staff is being paid salary for the entire month because of posts of field staff and the office staff are

not transferable. However, the plea has also rightly been taken that the service conditions governing the office staff and the field staff are different and there is no parity between the two.

12. Identical matter was before Hon'ble Division Bench of this Court in CWP No.11990 of 2004, Balbir Singh vs. State of Punjab and others decided

on 16.12.2005 wherein the Hon'ble Division Bench observed as under:-

“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 Article 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 Som Chand Shah v. Union of

India, (1991) 2 SCC 48, Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1996) 1 SCC 642 and the judgment of the

Constitution Bench in the case of Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788.”

13. In the present case, no member of the cadre belonging to the respondents has ever been granted the benefit of Saturdays and 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. As the respondents-workmen were not working as office staff and as such, they were not entitled for five days' week with two off days in a

week, rather they were/are entitled to get one weekly off with six working days in a week.

14. 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 the 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.â??

15. 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

â??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.??

16. 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 pr??cis 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 xxâ??

17. In view of the above undisputed facts and the view taken by this Court in the above cited judgments, the orders passed by learned Tribunal, which

are impugned in these writ petitions, are patently illegal and are set-aside.

18. Resultantly, all the 29 writ petitions stand allowed in the above terms.