

(1989) 08 GUJ CK 0017
In the Gujarat High Court

Usmangani Abdulrehman Mansuri

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 17-08-1989

Acts Referred:

Factories Act, 1948 — Section 51, 51

Citation : (1990) 1 GLR 325

Hon'ble Judges : V.H. Bhairavia, J;S.B. Majmudar, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—In this petition, under Article 226 of the Constitution, read with Articles 14 and 16 thereof, 155 employees whose names are listed at Annexure "D" to the petition and who are working on different posts as foremen, mechanics, helpers, fitters etc. in the Central Workshop division and Water Tanker sub-division at Odhav, Ahmedabad and who are in service of the first respondent-State in the Public Works Department, have raised two grievances against the State of Gujarat and the Superintending Engineer who is the head of the department and who are respondents Nos. 1 and 2 respectively. The first grievance is that the respondents are not giving benefit of all public holidays declared during any calendar year to be enjoyed by the State Government employees, to the petitioners and the second grievance is that they are also denied the benefit of second and fourth Saturdays which are already treated as paid holiday for other Government servants. According to the petitioners, all employees of the State of Gujarat and also employees of P.W.D. and Roads and Buildings and Irrigation Department are governed by the Bombay Civil Service Rules and as such, they are entitled to public holidays as declared by the State of Gujarat from time to time and they are also entitled to alternative holidays being second and fourth Saturdays. The petitioner's case is that Rule 4 of the Administrative Rules by which the petitioners are governed, insofar as it denies benefit of second and fourth Saturdays and public holidays to the persons working in Workshop in violative of Articles 14 and 16 of the Constitution. According to the petitioners, the aforesaid action of the respondent-authorities

suffers from two types of discrimination: (1) internal discrimination in the sense, discrimination inter se employees working in the same workshop, and (2) discrimination amongst persons similarly situated like the petitioners who are working in Odhav Workshop under P.W.D. and other employees of the State Government working in different departments but doing same type of work and who enjoy the benefit of public holidays and second and fourth closed Saturdays. It is, therefore, prayed that respondents be directed to extend to all the petitioners, the benefit of public holidays and benefit of second and fourth closed Saturdays either without any condition or with condition of rotation as may be deemed proper by this Court and to declare that Administrative Rule 4 insofar as it denies benefit to the petitioners, as unconstitutional and void. They have also prayed for consequential benefit of arrears of over-time wages with 12% interest. They have also prayed for restraining the respondents from taking any disciplinary action against the petitioners in respect of being absent on public holidays and second and fourth Saturdays enjoyed by the petitioners in April 1988.

2. This petition is opposed by the respondents by filing affidavit-in-reply on behalf of respondent No. 1 -- N. K. Varsat, Deputy Secretary to the Government in the Roads and Buildings Department has filed his affidavit-in-reply on 30-8-1988. He has filed further affidavit dated 20-9-1988. One M.V. Vachelu, Under Secretary, R and B Department, Gandhinagar has also filed his affidavit-in-reply on 20-7-1989. The petitioners have filed their affidavit-in-rejoinder as well as supporting affidavit of Pithva Chunilal Keshavlal, Vice President Government Drivers and Technical Staff Union, Ahmedabad and S.G. Makwana, General Secretary, Govt. Photo Registry Employees Union, Ahmedabad, in support of the petition.

3. We will deal with the contents of these rival affidavits in the later part of this judgment. In short the contention of the respondents is that the petitioners form a class by themselves. That they are governed by the provisions of the Factories Act under which they have to work upto 48 hours per week i.e. for six days with 8 working hours per day and they can enjoy only one weekly holiday. Respondents contend that the cases cited by the petitioners for comparison are not comparable and, therefore, there is no question of any hostile discrimination so far as the petitioners are concerned. Having given these introductory facts, we may now proceed to deal with the twin grievances raised by the petitioners in the light of the respective versions of the parties.

4. (1) About grant of benefit of public holidays: So far as the grievance is concerned the petitioners contend that they are victimised by two way discrimination : (1) internal discrimination, in the sense that Supervisors Junior Engineers and Deputy Engineers working in the same workshop are enjoying the benefit of public holidays which is denied to them. So far as this aspect of the matter is concerned, the stand of the respondents as revealed by paras 5 and 6 of the affidavit of N.K. Varsat dated 30-8-1988 is that nature of work done by the

petitioners is absolutely different than the work done by office staff or supervisory staff. It is submitted that the petitioners are concerned with repairs and maintenance of Govt. vehicles. It is also submitted that after due deliberation and careful consideration, the Government had rightly come to a conclusion that such staff should not be given holidays on 2nd and 4th Saturdays because the nature of services rendered by them is of vital importance. That at any time, their services could be required because a vehicle can go out of order at any time and in the circumstances, it was thought fit not to give holidays to such staff on second and fourth Saturdays.

5. It is further contended in the affidavit that the petitioners do not form part of the office staff but they are workmen working at the workshop. No workmen working in such a workshop in the entire State is given holidays on 2nd and 4th Saturdays. It is further submitted that the workmen working in a Workshop and Government employees working in office or the supervisory staff be long to different classes and hence, no question of discriminatory treatment arises in the present case.

6. Miss Doshit for the respondents submitted that the persons working in supervisory capacity are transferable from workshop to other departments and as they are governed by the Civil Service Rules and at the transferred places, other employees similarly situated would be getting benefit of public holidays and second and fourth Saturdays, this benefit is preserved for them. But that does not mean that the petitioners who are not transferable should be given the same benefit especially when they formed a separate class by itself in Class III and IV categories of services working in workshop doing actual work of repairing vehicles or work connected therewith.

7. Mr. Trivedi for the petitioners placed strong reliance on the decision of B.K. Mehta, J. in Special Civil Application No. 263 of 1977 at Annexure "E" to the petition for contending that pursuant to the said decision, even by agreement of parties, compensatory benefits for loss of weekly and public holidays is made available to the supervisory staff in the same workshop and, therefore, this benefit must be made available to the petitioners also. It is not possible to agree with the contention of Mr. Trivedi for the simple reason that the judgment of B.K. Mehta, J. has noted the agreement between the parties that supervisory staff in the workshop will be given compensatory benefit for the loss of weekly and public holidays if they have to work on these days and only retrospective date from which benefit had to be made available was left to the Court and that is how B.K. Mehta, J. fixed the date from which benefit will be made available to the employees. But this would, at the highest, show that the supervisory staff was given compensation for the loss of public holiday and second and fourth Saturdays, meaning thereby, otherwise their right to enjoy these holidays was accepted. But that was for supervisory staff. We are inclined to agree with Miss Doshit for the respondents that supervisory staff forms a separate category and as they are transferable out of workshop, they have to be treated at par with

employees who may be getting 2nd and 4th Saturdays and public holidays in the offices where they would be transferred and to maintain that parity, this benefit is made available to supervisory staff in the workshop. It also goes without saying that the work which the supervisory staff does in the workshop would be entirely different as compared to the work which the petitioners who belong to Class III and Class IV services will be doing, as they will be concerned with actual repairs of vehicles and maintenance of vehicles and would be doing manual work; while the supervisory staff or clerical staff would not be required to do same type of continuous work and their presence of public holidays and usual Saturday may be conveniently dispensed with. In short, clerical and supervisory staff in the same workshop doing different type of work and discharging different functions, cannot be readily compared with the petitioners who are doing entirely different type of work and who are governed by the Factories Act. It is also pertinent to note that supervisory staff would not be governed by the provisions of the Factories Act as submitted by Miss Doshit for the respondents and that is the additional reason why benefits given to them cannot be made available to the petitioners and there will arise no question of violation of Articles 14 and 16 of the Constitution in such eventuality, if such benefit is not conferred on the petitioners. In our view no case of internal discrimination is made out by the petitioners so far as denial of benefit of public holidays to the petitioners vis-a-vis supervisory staff goes.

8. (2) External discrimination: So far as external discrimination is concerned, the petitioners have contended that in Government Photo Litho Press, in Government Photo Registry Department, in Project Drilling subdivision under Mechanical Circle and in Govt. Transport Service at Gandhinagar, the concerned employees working therein have been given benefit of public holidays and there is no reason why the petitioners should be denied the said benefit and therefore also on the ground of external discrimination in this connection, the respondents, action should be voided. We shall deal with these categories one by one.

9. Photo Litho Press: Employees therein are concerned with printing work and ancillary work connected therewith. So far as this category of work is concerned, the stand of the respondents is revealed by the second affidavit of M.V. Vachelu, Under Secretary to Government dated 20-7-1989. It has been pointed out that so far as Photo Litho Press is concerned, the same is placed under the administrative control of the Director of Printing and Stationery. The said Press is registered under the Factories Act and the persons employed in the said Press are governed by the provisions made in the said Act. The said employees are entitled to the benefits granted to them under the various Labour Laws and over and above, such benefits, of 30 days' earned leave. It is further denied that the said employees are given a benefit of holidays on every second and fourth Saturday of the month. That the said Press functions on all Saturdays, and neither a holiday nor any additional salary for working on 2nd and 4th Saturday is given to any such person. Taking a clue from the said stand taken by the deponent, it was submitted that public holidays are being enjoyed by employees

working in the Press even though they are also governed by the provisions of the Factories Act. This is no doubt true. However, the fact remains that the work which an employee does in the Government Printing Press would not be of the same type as the work which an employee will do in the workshop. Miss Doshit was right when she contended that press employee cannot be compared with workshop employees. Consequently, there will remain no question of hostile discrimination when workshop employees who have to do the work of repairing vehicles are not given some benefits which the Press employees get, even though both of them may be governed by the Factories Act.

10. Photo Registry Department: The petitioners have raised a similar contention of discrimination vis-a-vis employees working in the Photo Registry Department of the State of Gujarat. So far as this grievance is concerned, it stands on identical footing with the grievance about discrimination in connection with employees in Photo Litho Press. Employees in Photo Registry Department are not doing same type of work as the petitioners are doing in the workshop. Hence, their case is not comparable. Miss Doshit was right when she contended that this type of comparison between unequals cannot support their case of discrimination under Articles 14 and 16 of the Constitution. Our reasoning in ruling out discrimination between the petitioners on the one hand and employees of Photo Litho Press and others will also apply to this contention of the petitioners about external discrimination.

11. Project Drilling Sub-division under Mechanical Department: The learned Advocate for the petitioners placed strong reliance on the benefit of public holidays given to employees in Project Drilling sub-division and hence the case of external discrimination on this score. So far as this aspect is concerned, affidavit of N.K. Varsat, Deputy Secretary dated 20-9-1988, become relevant. In para 17 of the affidavit, it has been submitted that the petitioners form a different class. Drilling sub-divisions are not registered under the Factories Act. That the work done by the petitioners is different from the work done by the persons working in Drilling sub-division under the Mechanical Circle. That persons working in Drilling sub-division have to work on site and very often they have to work very hard and continuously under open sky even in scorching heat. It is submitted that working conditions of the petitioners and the persons working in Drilling sub-division are different. It is also submitted that sites at which workmen in Drilling sub-division work are far away from their office/establishment/ home. It is submitted that the petitioners cannot be compared with workmen working in Project Drilling sub-division. It is further submitted that the persons working in Project Drilling sub-division are not entitled to overtime even if when they work more hours because of certain peculiar circumstances. That the petitioners are entitled to overtime and thus they get more remuneration in the event of working more. Thus, both the classes are different and, therefore, it cannot be said that the respondent authorities are giving discriminatory treatment to the petitioners. It is further submitted that working rules are not applicable to the persons working in Project Drilling sub-division or to the persons working in Polytechnic. The aforesaid stand

taken by the respondents clearly brings out a sharp distinction between the working conditions of the petitioners on the one hand and the working conditions of employees in Project Drilling sub-division. They are doing different types of work under different circumstances and environment and, therefore, their cases are not comparable. The petitioners, therefore, cannot draw any assistance from the benefit of public holidays or second and fourth Saturdays which may be enjoyed by persons working in Project Drilling sub-division under Mechanical Department, even while some of the employees may be actually doing the working the repairing vehicles in this division.

12. Motor and Transport Department of Police Department: The petitioners next contended that atleast in police department, employees are given benefit of public holidays as well as second and fourth Saturdays which may be given to the petitioners. So far as this aspect of the matter is concerned, affidavit of Mr. M.V. Vadhela, points out that so far as Motor Transport Section under the Director General of Police is concerned, it is comprised of two categories of employees- one of the said categories is the Executive Officers of the Police Force and are governed by the Bombay Police Act. The remaining staff is civilian staff which is governed by the Gujarat Civil Services (Conduct) Rules and also by the provisions made in the Bombay Police Service Rules. Such staff comprises of technical hands like mechanics and tradesman like Carpenter, Electrician etc. This staff though part of the police department, is basically civilian in nature and they are permitted to observe regular office hours and enjoy holidays as being done by the other civilian staff. That such civilian staff is not governed by the provisions made in either the Factories Act or by any other Labour Laws. The staff of such workshops are transferable from one workshop to another or even from the workshop to the other departments under the Director General of Police. The petitioners have taken strong objection to the aforesaid stand of the deponent and have filed affidavit of Mr. U.A. Mansuri, one of the petitioners and one Pithva Chunilal Keshavlal, Vice President of the Government Drivers and Technical Staff Union, Ahmedabad, to submit that Motor Transport Division of the police department is registered as a factory under the Factories Act and, therefore, the deponent Mr. Vadhela has made a wrong statement on oath and is required to be proceeded with for perjury. It is pertinent to note that all that deponent Vadhela has stated is that civilian staff working in Motor Transport Section under the Director General of Police is not governed by the provisions of either the Factories Act or any other Labour Laws. The deponent has nowhere stated that this section is not registered under the Factories Act. Consequently, it cannot be said that the deponent has perjured himself. That apart, even on the basis that Motor Transport Section may have been registered as a factory under the Factories Act, the question would still remain as to whether civilian staff which is transferable outside workshop and which is enjoying the benefit of second and fourth Saturdays or public holidays can be treated to be comparable to the petitioners who are working in Central Workshop under P.W.D. at Odhav, Ahmedabad. As the staff is basically civil in nature and permitted to observe

regular office hours and enjoy holidays as is being done by other staff and is transferable to other departments and offices, under the Directorate General of Police, they would form a separate class and category as compared to the petitioners who are not transferable outside the workshop and for whom no question of maintaining parity with the working conditions of other servants working under the Transport department would survive. Even this aspect of external discrimination therefore is found to be without any substance.

13. It was lastly contended by way of illustration of external discrimination that employees working in Government Transport Service at Gandhinagar enjoy the benefit of public holidays. For that, reliance was placed on the Government resolution Annexure "C", dated 19-12-1973. In the said Resolution, it has clearly been pointed out that provisions of the Factories Act are to be applied to the workshop staff working in Government Transport Garage and that this staff shall be eligible to all public holidays save and except second and fourth Saturdays declared by the Government of Gujarat as they continue to be Government servants though covered by the Factories Act, 1948. Placing strong reliance on this Resolution, it was submitted that if workshop staff working in Government Transport Service at Gandhinagar can get benefit of public holidays though governed by the provisions of the Factories Act and though required to do 48 hours of work, there is no reason why the petitioners should be deprived of this benefit. However, it was submitted that so far as benefit of second and fourth Saturdays is concerned, to that extent, even this resolution remains discriminatory. In our view, leaving aside the question of non-granting of second and fourth Saturdays to Government Transport Service at Gandhinagar, insofar as this Resolution grants them benefit of public holidays, the said benefit deserves to be extended to the petitioners. It is interesting to note that the petitioners are working in P.W.D. Workshop at Odhav, Ahmedabad. They are doing the same work of repairing of Govt. vehicle of P.W.D. while their counterparts in workshop at Gandhinagar do the same work of repairing Govt. vehicles but they may not be heavy vehicles like Trucks and Tankers but may be Ambassador cars. However, the work of repairing these Govt. vehicle would be of the same pattern and type, whether Govt. Jeep is repaired or Ambassador car is repaired or Truck is repaired, would make no difference so far as repairing work is concerned. Miss Doshit for the respondents was at pains to point out to us that extent of work of repairing G.S.T. cars would not be so much and the need and urgency of work will not be so study as would be felt while repairing heavy vehicles belonging to P.W.D. in Central Workshop and the staff in the Central Workshop would be required in larger quantity as urgency also would be felt, to a larger extent in respect of heavy vehicles utilised in carrying out P.W.D. work at different work sites. Such urgency will not be there in case of G.T.S. garage and, therefore, there machanics can legitimately be given public holidays. But such benefit necessarily cannot be extended to the petitioners and there would be no discrimination if this is not done. This contention cannot be countenanced. When the nature of work done by Class III and IV employees in G. T. S. garage at

Gandhinagar is of the same type as the work done by the petitioners in the Central Workshop at Odhav, Ahmedabad, there is no reason why they should be discriminated against in the matter of granting of public holidays.

We, therefore, accept the contention of the learned Advocate for the petitioners so far as this aspect of external discrimination is concerned and holds that the petitioners are entitled to all the public holidays declared by the respondent-State in a calendar year as are made available to the Govt. Transport Service employees in the Government Workshop at Gandhinagar.

14. Before leaving this aspect, we may also mention that in the Award passed by the Presiding Officer of the Labour Court, Ahmedabad in Reference (LOA) No. 43 of 1982, at Annexure "H" to the petition, the Labour Court has granted the same benefit to the employees of Junagadh workshop of the same P.W.D. of the State of Gujarat. It is true that when we turn to the reasoning part of that award, so far as this claim is concerned, we find mere ipse dixit of the Presiding Officer to the effect that demand No. 3 in respect of granting of festival holiday is also reasonable and proper. It is also true that the said award under challenge before this Court in Special Civil Application No. 1817 of 1987, which is pending before this Court. We, therefore, do not consider this award for the purpose of granting relief to the petitioners in connection with enjoyment of public holidays. But we choose to base our decision on the same benefit being made available to Govt. Transport Service Employees at Gandhinagar, as discussed earlier.

15. Claim for second and fourth Saturdays: So far as this claim is concerned, the petitioners are on a weaker footing. Same reasoning which is adopted by us for negating the petitioner's case for discrimination in connection with grant of public holidays to Supervisors, Junior Engineers and Deputy Engineers in the Central Workshop as well as to employees in Photo Litho Press, Photo Registry Department, Project Drilling sub-division under the Mechanical Department and Motor Transport Section to Police Department, would ipso facto apply for negating the petitioners' case for grant of second and fourth Saturdays on the basis of the alleged discrimination qua the petitioners as compared to the employees in the aforesaid departments, and we, therefore, need not repeat the same at this stage. We may state that so far as the question of internal discrimination is concerned, that would not survive for the simple reason that this supervisory staff forms a class by itself and for the detailed reasons given by us earlier, the petitioners cannot be given the same benefit of second and fourth Saturdays which is being enjoyed by the supervisory staff which forms a separate category.

16. So far as external discrimination is concerned, as discussed above, employees of Photo Litho Press, Photo Registry Department, Project Drilling sub-division and Motor Transport Department of Police Department, form separate categories of employees doing different type of work and governed by the different set of rules, even though they may be working at places which are governed by the Factories Act. Consequently, it is not possible to accept the

contention of the learned Advocates for the petitioners that the petitioners should be given benefit of second and fourth Saturdays as is being given to these employees. It is also pertinent to note that u/s 51 of the Factories Act, employees governed by the Factories Act can be asked to work for 48 hours in a week and per day, they cannot be asked to do work for more than 8 hours, meaning thereby, they can be required to work for six days in a week. It is true that this is the maximum work which can be extracted from employees governed by the Factories Act. It is open to the employer to take less work from them as submitted by Mr. Trivedi for the petitioners. However, when employer is entitled to take six days' work from an employee governed by the Factories Act, to direct the employer to take 40 hours work per week by giving the benefit of holidays of second or fourth Saturday in the concerned work, would amount to cutting away the working hours as allowed by the Factories Act. Of course, that can be done if on the touch stone of Articles 14 and 16 of the Constitution, this is required to be done. On the facts of this case, we do not find that any comparable case is made out by the petitioners for being given benefit of second and fourth Saturdays. It is also pertinent to note that even GTS employees working in Govt. Transport Workshop at Gandhinagar do not enjoy the benefit of second and fourth Saturdays though they enjoy benefit of public holidays and which is made available to the petitioners by the present order. Once we find that the petitioners' case is comparable on all fours with the workshop employees working in Govt. Transport Service Workshop at Gandhinagar, whichever benefits are available to them would be available to the petitioners and nothing more. If GTS employees at Gandhinagar do not enjoy the benefit of 2nd and 4th Saturdays as holidays, it will be too much for the petitioners to contend that still they should be given this additional benefit. We do not find anything illegal in the Resolution Annexure "C" dated 19-12-1973 when it denies the benefits of second and fourth Saturdays to this staff. There is nothing inherently illegal about the same as it falls in line with the Factories Act and it remains within the permissible limit of 48 hours of work in a week viz. six working days of 8 hours of daily duty. Consequently, no case is made out by the petitioners on the ground of alleged discrimination-external or internal to enable them to get benefit of second and fourth Saturdays as closed holidays. We may however say that Rule 4 of the Rules insofar as it denies benefit of all public holidays declared by the State of Gujarat for Government employees, to the petitioners is to that extent illegal and hit by Articles 14 and 16 and cannot be pressed in service by the respondents.

17. As a result of the aforesaid discussion, this petition will have to be partly allowed by directing the respondents to extend the benefit of all public holidays in the calendar year that may be declared by the State Government, to the petitioners and to that extent Rule 4 of Workshop Rules would stand abrogated or superseded and would remain inoperative.

18. The next question is from which date, this benefit should be made available to the petitioners. Mr. Trivedi for the petitioner placed various alternatives for our consideration in this connection. He firstly submitted that this benefit may be

made available to the petitioners from the date of appointment of the respective employee. Alternatively, it was submitted that this benefit may be made available from the date of filing of Special Civil Application No. 752 of 1982 which was moved in this Court by some of the petitioners and who were directed by A.P. Ravani, J. by his order dated 30-3-1984 to wait till decision in Reference No. 43 of 1982 which was pending before the Labour Court in connection with similar dispute raised by employees of Junagadh workshop, was made available. It was next contended that in any case benefit should be made available from the date of judgment of the Labour Court in that Reference and lastly, it was contended that failing all these, atleast from the date on which the petitioners served notice of claim to the respondents or atleast from the date of filing of this petition this benefit be made available in the last resort. In our view, benefit from all earlier dates pressed in service by Mr. Trivedi cannot be made available to the petitioners. The dates when the petitioners were employed in service would be totally irrelevant. Filing of Special Civil Application No. 752 of 1982 also will not be relevant date as that petition is already disposed of. The Labour Court judgment in the Award in Junagadh matter also cannot be of any avail to the petitioners as they were not parties to the said proceedings and that award ex facie applies to the Junagadh employees only. The petitioners might have served notices on the respondents regarding the present claim but that was prior to coming to this Court. They have come to this Court by way of the present petition only on 16-5-1988. Consequently, this is the date on which they have effectively moved this Court with proper grievance and that would be the relevant date from which benefit of public holidays can be made available to them, at the highest and we see justification in granting that much retrospective benefit to the petitioners.

19. In the result, this petition is partly allowed. Respondents are directed to extend the benefit of all public holidays declared by the State of Gujarat for being enjoyed by Govt. servants and this benefit will be made available to the petitioners from the date of the present petition i.e. from 16-5-1988. If the concerned petitioners have been deprived of benefit of all these public holidays which we made available to other Govt. servants from 16-5-1988 onwards, the petitioners will be entitled to money value of the wages for these public holidays on the basis of total wages for the concerned holidays not enjoyed by them from 16-5-1988 onwards, all throughout, till the date of the present order. The respondents are also directed to make available to the petitioners benefit of all future public holidays declared by the State of Gujarat from time to time. Prayer (A) will stand granted to this partial extent. Petition will stand dismissed so far as prayer for benefit of second and fourth Saturdays as holidays is concerned, we hold that the respondents will be liable to pay to the petitioners arrears of overtime wages which might accrue to the petitioners on the basis that the petitioners were entitled to get public holidays that are declared as available to them by us, from 16-5-1988 onwards till the date of the present order and which might not have been enjoyed by the petitioners. However, we are told by Mr.

Trivedi for the petitioners that the petitioners have of their own enjoyed these holidays. In that view of the matter, no question of paying them arrears will arise. But equally there will remain no question of deducting this amount of post wages from their salaries and the respondents will be restrained from effecting recovery of this amount of wages which may be treated to have been earned by the petitioners for the concerned public holidays which they might have enjoyed of their own after 16-5-1988 upto date. Prayer (B) will stand granted to the aforesaid extent. So far as prayer (C) is concerned, the respondent naturally will have to be restrained from taking any disciplinary action against the petitioners in respect of the public holidays which might have been enjoyed by them of their own accord after 16-5-1988 as that part of their action will stand protected by the present order. Prayer (C) will stand granted to the aforesaid limited extent. Rule is partly made absolute accordingly. There will be no order as to costs.

20. After this judgment was pronounced in open Court, Mr. Trivedi for the petitioners having realised that we have rejected prayer so far as benefit of second and fourth Saturdays as holidays is concerned, submitted that by a letter dated 2-4-1988 at Annexure "I" written by the second respondent, it was mentioned that holidays regarding alternative Saturdays which could not have been enjoyed by the petitioners and which were illegally enjoyed will result in adjustment of these days against their accumulated leave due and if there are no such leave, then salary would be deducted. He submitted that despite this letter, the petitioners' salaries are straight away deducted without first adjusting these days against their accumulated leave and that the respondents should be directed to act according to their letter dated 2-4-1988. We do not see any objection in directing the respondents to go by the directions contained in the letter dated 2-4-1988 at Annexure T to the petition. Respondents are accordingly directed to find out whether the concerned petitioners have illegally enjoyed second and fourth Saturdays as holidays which are not due to them and if they are so found to have enjoyed, then these days will be first adjusted against the accumulated leave and if there is no balance leave, then only the question of deducting actual wages will arise.

21. In the light of this direction, if any amount is refundable to the concerned petitioners, the same shall be refunded to them. This exercise may be completed within a period of four weeks from receipt of this order at their end. Direct service of writ granted.