

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 8344 of 2015 (O&M)

Date of decision : 29.7.2016

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Nagar Council, Mandi Gobindgarh

.....Petitioner

vs.

Presiding Officer, Labour Court
and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Sanjeev Soni, Advocate
for the petitioner.

Mr. D.S. Gurna, Advocate,
for respondents No. 2 to 11, 13 to 19, 21 to 32, 34,
35 & 38 to 44

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P.B. Bajanthri, J.

Petitioner – Nagar Council, Mandi Gobindgarh, through its Executive Officer, presented the above petition in which order dated 22.8.2014 (Annexure P-3) of the Industrial Tribunal, Patiala, is under challenge.

2) The respondents are all in the cadre of Tubewell Operator, Assistant Pump Driver, Beldar, Plumber, Fitter, Sewerman and Sevadar. Some of them have already retired from service. They have submitted application under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short hereinafter referred to 'I.D. Act, 1947'), for commutation on their claims for having discharged their duties of the post on Saturdays during the period from 1.1.1999 to 31.12.2007

alongwith interest @ 18%. The Labour Court directed the petitioner to calculate the total amount of extra wages of the respondents by taking into consideration salary of each of the applicant during the relevant period and number of total Saturdays on which each applicant actually worked, during the relevant period and release the amount to the respondents within three months from the date of passing of the order failing which the respondents shall also be entitled to the interest @ 6% per annum on the ordered amount, from the date of passing of the order till actual realisation.

3) Before adverting to the contentions of the petitioners, as well as, respondents, it is relevant to take note of various factual aspects which were dealt earlier in some of the litigations relating to payment of extra wages towards working on Saturdays. In the year 1993-94, Punjab State Government issued a policy decision relating to the office staff working in the Punjab State government offices are entitled to holiday on Saturday and Sunday. The employees who are working in the fields, they are entitled to only Sunday as holiday. Clerical staff who are all working in the office had a grievance that for some time their services were drafted to octroi check-post/barriers. Therefore, the clerical staff or peons who were supposed to work in the Municipal office and whose services have been drafted to octroi check-post/barriers were compelled to work on Saturdays and Sundays and other Gazetted/general holidays. In view of these facts and circumstances, such of those clerical staff demanded that they are entitled for additional wages on Saturdays

since the clerical staff who were colleagues in the cadre would get holiday on Saturday if they are working in office. The said issue was the subject matter before the Supreme Court in Civil Appeal Nos. 8434 with 8435-8440 of 1997 and connected matters, *Municipal Employees Union and others vs. State of Punjab and others*, 2000 (9) SCC 432. Para 7, 8 and 14 reads as under:-

“7. We may mention at the outset certain well established and not disputable facts pertaining to the service conditions of the appellants.

8. The appellants are employees of the respondent-Municipal Committees being peons belonging to Class-IV service and clerks belonging to Class-III service. It is also well established on record that there is a common seniority of clerks and peons maintained by the concerned Municipal Committees and their pay scales are also the same. It is now found by the High Court and for which there cannot be any controversy that the octroi staff could be rotated vis-a-vis the staff in the offices of the concerned Municipal Committees. Therefore, the only grievance is that when the clerks and peons are require to work at the octroi check-posts and barriers they are not given the benefit of closed Saturdays, which according to them, results in

discrimination or denial of their right which accrues to all the staff members similarly situated and who have the common employer, namely, the concerned Municipal Committees.

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14. In our view, in the facts of the present case and in the light of the order which we propose to pass in the present proceedings it is strictly not necessary to examine this question finally. We may assume for the present discussion that Rule 3 of general rules may not cover this question. But even on this assumption the moot question remains as to whether the employees belonging to Class-III and Class-IV service of the respondent-Municipal Committees who have common employer and who have common seniority list and also common pay scales, when required to work either at the octroi check-post or in exigencies of service in committees, can have an equal right to enjoy Saturdays as holidays and whether the right available to their entire cadre as such to enjoy such weekly holidays be denied only to a limited category of octroi staff, who, due to exigencies of service may, at a given point of time, be required to work not only in the offices

but by rotation in the octroi check-posts or barriers.”

4) In this background the respondents-employees approached this Court in CWP No. 11811 of 2002 in which the respondents sought directions to the petitioner herein to extend the benefits in terms of law declared by the Hon'ble Supreme Court in Civil Appeal No. 8434 of 1997 Municipal Employees Union and others vs. State of Punjab and others, decided on 15.3.2000 and further declare them that they are entitled to get wages for the extra work done on Saturdays and other Gazetted holidays on which they worked while their colleagues in the office were permitted to enjoy as holidays, alongwith all consequential benefits etc. CWP No. 11811 of 2002 was disposed of on 31.7.2002 with the following observations :-

“ The State Government is expected to obey and follow the law laid down by the highest Court of the land and grant benefits to its employees, who were similarly situated in accordance with law. It will not be appropriate for the government to compel its employees to seek redressal of their grievances through process of the court. In this regard, detailed directions were issued by a Division Bench of this Court in the case of Satbir Singh & another vs. The State of Haryana and others, Civil Writ Petition No. 4382 of 2002

decided on 21.3.2002. We do hope that the government would at its own at least now and upon consideration of the cases of the petitioners pass appropriate orders in the light of the judgment of the Apex Court as expeditiously as possible.

In any case, the petitioners are at liberty to invoke the provisions of Section 33-C (2) of the Industrial Disputes Act, as their right to receive monetary benefits has already been settled by the highest court of the land. If the petitioners have performed their duties on Saturdays and Sundays then in terms of the judgment of the Supreme Court, their claim can hardly be refuted. In other words, it appears to us that right of the petitioners stands settled and it is only consequential benefits in terms of money that are being denied by the respondents to the petitioners. Appropriate remedy in terms of the above judgment is under the Industrial Disputes Act, but we do hope that respondents would not compel the petitioners to take recourse to such procedural law.

This petition is accordingly disposed of with the above observations.”

5) The petitioners aggrieved by the order dated 31.7.2002

passed in CWP No. 11811 of 2002 approached Supreme Court. On 14.2.2008. Supreme Court disposed of the Civil Appeal No. 1476 of 2003 and connected matters. While disposing the appeal following observation has been made :-

“In this view of the matter, we are of the opinion that it is not necessary for us to interfere with the impugned judgment at this stage. We may notice that in Civil Appeal No. 5873 of 2006 disposed of on 15.12.2006, this Court observed as under:-

“ An application under Section 33- C(2) would be maintainable if the workmen has a legal right in relation to his claim. They will have to establish the same. In such a proceeding, undisputedly the applicants shall be entitled to raise all contentions before the Industrial Court. We, therefore, do not find any merit in these appeals. The appeals are dismissed”.

For the reasons stated hereinbefore, these appeals are disposed of.”

6) Consequently, the respondents filed an application before the Industrial Tribunal, Patiala on 1.4.2008, claiming that each of the respondent have worked on Saturdays to the extent of 470 days during the period from 1.1.1999 to 31.12.2007 under Section 33 (C) (2) of the I.D. Act. The Labour Court framed the following issues on 15.4.2009 :-

- “1. Whether the applicant is entitled to receive the amount detailed in the application from the respondent? OPW
2. Whether the application is not maintainable in the present form? OPR
3. Whether the application is not maintainable under Section 33-C (2) of the Industrial Disputes Act, 1947? OPM
4. Relief.”

7) On 22.8.2014 application filed by the respondents-employees under Section 33 (C) (2) of the I.D. Act, 1947, was decided and the petitioners herein were directed to calculate the total amount of extra wages of the respondents etc. The petitioners, aggrieved by the order passed by the Industrial Tribunal, Patiala dated 22.8.2014 (Annexure P-3) presented this petition.

8) Learned counsel for the petitioner raised two contentions:-

- i) application under Section 33 (C) (2) of I.D. Act, before the Industrial Tribunal, Patiala, filed by the respondents is not maintainable;
- ii) the petitioner's claim is not covered by decision of the Supreme Court reported in **Municipal Employees Union's case (Supra).**

The learned counsel for the petitioner submitted that application under Section 33 (C) (2) of the I.D. Act, could be invoked where a

right has been accrued by any statutory rules, orders, letters etc. in the absence of any provision to right to seek additional or extra wages for discharging the duties of the post held by each of the respondent for discharging the duties on Saturdays. Invoking aforesaid provision is absolutely wrong. Their right has not been determined by the petitioner or any other competent Court so as to file application under Section 33 (C) (2) of the I.D. Act. Therefore, Industrial Tribunal, Patiala has no jurisdiction to entertain applications of the respondents under Section 33 (C) (2) of the I.D. Act and it is without authority of law. Respondents – employees are entitled to additional or extra wages for working on Saturdays and Gazetted holidays has not been determined positively by Division Bench as well as Supreme Court. Only observation has been made. Respondents should have approached petitioners or they should have filed contempt application or sought review of the Division Bench to determine their rights. On this preliminary issue, writ petition is to be allowed and the order of the Industrial Tribunal, Patiala, dated 22.8.2014 is to be set aside.

9) It was further submitted that Supreme Court decision in **Municipal Employees Union's case (Supra)**, is not applicable to the respondents' case and it is distinguishable for the reasons that the Supreme Court decided the case relating to Clerks and Peons, who were working both in the offices of the Municipal Committee who were enjoying those Saturday holidays and such of those Clerks and Peons whose services have been drafted to octroi check-posts and barriers, such of those persons working on Saturdays and holidays.

Whereas in the present case, the respondents are in the cadre of Tubewell Operator, Assistant Pump Driver, Beldar, Plumber, Fitter, Sewerman and Sevadar. Except Sevadar, other cadres which are mentioned above are working in the field. Throughout their services they would be working in the field and they have to work on Saturdays. The respondents form a separate class of employees, so also clerks and peons, who were working in the office of the Municipal Committee. Both the sets of employees designation, nature of work and seniority are entirely different. Hence respondents cannot claim parity. Therefore, the respondents' case is not identical so as to extend the benefit of decision in *Municipal Employees Union's case (Supra)*.

10) The respondents' case do not fall under the category of a cadre of persons who discharged duties both in the office, as well as, in the field so as to extend extra wages, monetary benefit for working on Saturdays.

11) Learned counsel for the petitioners further submitted that decision rendered in the respondents' case in CWP No. 11811 of 2002, this Court has not given finding whether the respondents are entitled for benefit on par with Clerks or Peons and further observation of this Court that the respondents could invoke Section 31 (C) (1) & (2) of I.D. Act. Even in civil appeal No. 1154 of 2003 Court has not decided the issue whether the respondents are similarly situated persons like Peons and Clerks whose services have been drafted both in the office, as well as, field and respondents

are footing in a different state. Thus the respondents submission to get the benefit of extra wages for having worked on Saturdays has not been determined or any declaration to that extent by any Court. Consequently, invoking Section 31 (C) (1) and (2) of the I.D. Act, by the respondents before the Labour Court is without merit.

12) Learned counsel for the petitioner submitted that in identical matter the Division Bench of this Court in LPA No.1178 of 2015 decided on 26.4.2016 titled as Nagar Council, Samrala vs. Ram Sanjeevan and others, who were Beldar, Fitter and Mali, this Court had distinguished the application of judgment of the Supreme Court passed in **Municipal Employees Union's case (Supra)**, pointing out that respondents in the aforesaid LPA are standing on a different footing to that of the case decided by the Supreme Court in **Municipal Employees Union's case (Supra)**. Thus there is a finding given by the Division Bench of this Court, that persons like beldar, fitter and Mali, who are working on field and if they are working on Saturdays, they are not entitled for monetary benefits like extra wages on par with peons and clerks, who have worked both in the office, as well as, in the field, as narrated in the Supreme Court decision in **Municipal Employees Union's case (Supra)**. Hence, the Industrial Tribunal, Patiala, committed error in giving direction in application No. 281 of 2008 filed under Section 33 (C) (2) of the I.D. Act, 1947 and it is liable to be set aside.

13) Per contra, learned counsel for the respondents submitted that invoking Section 33 (C) (2) of the I.D. Act, 1947, is in

accordance with the decision in CWP No. 11811 of 2002 decided by the Division Bench of this Court, where in the respondents were the petitioners. The Division Bench while disposing the CWP No. 11811 of 2002 held that decision of *Municipal Employees Union's case (Supra)*, is applicable.

14) Division Bench decision of this Court has been confirmed by the Supreme Court in Civil Appeal No. 1476 of 2003 and connected appeals, decided on 14.2.2008, claim of the respondents have been determined and observations of this Court, as well as, Supreme Court, the respondents acquire the right to move application under Section 33 (C) (2) of the I.D. Act, 1947. In other words, right of the respondents for claiming extra wages for discharging the duties of the post held by them on Saturdays has been conferred by decision of this Court, as well as, Supreme Court. Therefore, the contention of the petitioner that application of the respondents under Section 33 (C) (2) of the I.D. Act, 1947 before the Industrial Tribunal, Patiala, is very much maintainable and there is no flaw what so ever, in entertaining application under Section 33 (C) (2) of the I.D. Act, 1947 by the Industrial Tribunal, Patiala and directing the petitioners to extent monetary benefits.

15) Learned counsel for the respondents further submitted that it is true that respondents are in the cadre of Tubewell Operator, Assistant Pump Driver, Beldar, Plumber, Fitter, Sewerman and Sevdar. Their services are also required in the Municipality office and also in field work. Therefore, the respondents' cadre or status

can't be distinguished on par with the Clerks and Peons, who are working in the office. Merely because Peons/Clerks whose services have been drafted in the octroi check-post/barriers and they were not on holiday on Saturdays. Similarly, the respondents are also entitled for extra wages for having discharging the duties of the posts held by them on Saturdays and Gazetted holidays. One set of employees cannot be denied wage benefits on par with the other set of employees who are working under a single employer. Since right to extra wages has already been determined by this Court in CWP No. 11811 of 2002 and the same has been upheld by the Apex Court, in so far as respondents are concerned, therefore, limited question for consideration is that what is the extra wages to be paid to the respondents. Thus there is no infirmity, what so ever, in the award passed by the Industrial Tribunal, Patiala, dated 22.8.2014 (Annexure P-3). The petition is to be dismissed.

16) Heard learned counsel for the parties.

17) In Nagar Council, Mandi Gobindgarh (Municipal Committee), staffs consists of clerical – those who are working in Municipal Committee offices and technical staffs who are working in connection with Municipal Committee in the field. They form a separate class of employees. In so far as, clerical staffs, like clerks and peons, who were working in the Municipal Committee offices discharged their duties five days in a week, in so far as technical staff, who were working in fields, are concerned, they are working six days in a week. The clerks and peons were often drafted to octroi check-

post/barriers, whereby they were compelled to work on Saturdays also, even though Saturday is a holiday for such class of persons. In this background clerks and peons claim extra wages for discharging the duties of the post on Saturdays also, which was the subject matter of the litigation in which the Supreme Court in the case of **Municipal Employees Union and others vs. State of Punjab and others**, 2000 (9) SCC 432, has held that clerks and peons who discharged duties in octroi check-posts/barriers, are entitled for extra wages for having discharging duties of the post on Saturdays with reference to the fact that they form a class of persons of a clerical cadre, common seniority list and also common pay scales have been taken into consideration, so also equal right for equal pay (wages). The respondents who fall under different class of employees and who are working exclusively in the field, they are claiming extra wages on par with clerical staff. In CWP No. 11811 of 2002, the respondents herein sought for a direction to extend similar benefit on par with the clerical staff read with decision in **Municipal Employees Union's case (Supra)**. The Division Bench of this Court with reference to Satbir Singh's case, as well as, decision of the Supreme Court made an observation that State Government is to obey and follow the law laid down by the highest Court of the land and grant benefits to its employees who were similarly situated in accordance with law. It further made an observation that the respondents right to receive benefits has already been settled by the highest Court of the land, while referring liberty to invoking the provisions of Section 33 (C) (2) of the I.D. Act, 1947.

Further it is observed **“In other words, it appears to us that right of the petitioners stands settled and it is only consequential benefits in terms of money that are being denied by the respondents to the petitioners (respondents herein). Appropriate remedy in terms of the above judgment is under the Industrial Disputes Act, but we do hope that respondents would not compel the petitioners to take recourse to such procedural law.”** The petitioner – Municipal Council aggrieved by the decision of this Court passed in CWP No. 11811 of 2002 preferred an appeal before the Supreme Court. The Supreme Court rejected the appeals in Civil Appeal No. 1476 of 2003.

18) Perusal of the judgment passed in CWP No. 11811 of 2002 read with Civil Appeal No. 1476 of 2003, the Court has not conferred any right on the respondents herein so as to claim extra wages for working on Saturdays. If the Court has conferred right on the respondents, then question of invoking Section 33 (C) (2) of the I.D. Act, 1947, would arise. At this stage, it is relevant to notice that respondents as per the observation made by this Court in CWP No. 11811 of 2002 should have approached the petitioner – Municipal Council or should have filed a review petition seeking for declaration that the respondents are entitled to extra wages on par with the clerical staffs or the respondents should have filed a contempt petition. Thus cited cases of Satbir Singh is not relevant. In Satbir Singh's case it was held that “when judgment attain finality, State to grant relief to its employees who are similarly situated”. In the

present case respondents are not in the cadre of clerks/peons so as to say that respondents are similarly situated parties in the case *Municipal Employees Union's case (Supra)*. They have resorted to invoking Section 33 (C) (2) of the I.D. Act, 1947, having regard to the observations made by the Division Bench of this Court, as well as, the Supreme Court, in Civil Appeal No. 1476 of 2003. Decisions in CWP No. 11811 of 2002 read with Civil Appeal No. 1476 of 2003, there is no declaration that the respondents are entitled to extra wages for having discharged the duties on Saturdays. Therefore, application under Section 33 (C) (2) of the I.D. Act, 1947 before the Labour Court, is not maintainable. The Labour Court fell error in entertaining the application and passing award in favour of the respondents. The question of invoking Section 33 (C) (2) of the I.D. Act, 1947, would arise as and when right of an employee created for entitlement of extra wages (for working on Saturdays and general holidays). In the present case neither the Municipal Committee nor the Court have determined the right of the respondents that they are entitled for extra wages. Consequently, the impugned award is liable to be set aside.

19) In identical matter in the case of Surinder Pal and others, Lachman Singh and others and Ram Sanjeevan and others, who were also similarly situated persons like respondents herein, award of the Labour Court was in their favour. Writ petition filed by Nagar Council, Samrala – CWP No. 19938 of 2008 and connected petitions were dismissed. Consequently, Nagar Council, Samrala, preferred LPA Nos. 1180, 1179 and 1178 of 2015. The Division Bench of this

Court allowed the LPA filed by Nagar Council, Samrala. The only distinction with the respondents to that of Surinder Pal and others are concerned, the respondents herein approached this Court, matter was decided by the Division Bench with reference to the **Municipal Employees Union's case (Supra)**, whereby liberty was given to the respondents to invoke Section 33 (C) (2) of the I.D. Act, 1947, and the same was upheld by the Supreme Court. Therefore, it is necessary whether the decision rendered by the Supreme Court in **Municipal Employees Union's case (Supra)** is judgment in *rem* or *personam*. Reading of para 7 and 8 of the aforesaid Supreme Court judgment, it is crystal clear that the said judgment is applicable to clerks and peons of the Municipal Committees, who form a separate class than the respondents herein. Therefore, the judgment of the Supreme Court is in *personam*. A right in *rem* is a right exercisable against the world at large, as contrasted from a right in *personam* which is an interested protected solely against specific individuals. Actions in *personam* refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas action in *rem* refer to actions determining the title to property and the rights of the parties and not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in *personam* refers to a judgment against a person as distinguished from judgment against a thing, a right or status and a judgment in *rem* refers to a judgment that determines the status or condition of property which operates directly on the property itself

(Vide Black's Law Dictionary).

20) The judgment in **Municipal Employees Union's case (Supra)**, it is evident that it is judgment in *personam* i.e. to a class of employees viz., clerical staff and peons. Therefore, no right has been conferred by this Court in favour of the respondents who are holders of the post of Tubewell Operator, Assistant Pump Driver, Beldar, Plumber, Fitter, Sewerman etc., in CWP No. 11811 of 2002 and in Civil Appeal No. 8434 of 1997. In so far as merits is concerned, Division Bench of this Court, rejected claim of extra wages in so far as employees like Beldar, Fitter and Mali, in LPANo. 1178 of 2015.

21) In view of the above narrated facts and discussion of various decisions, civil writ petition is allowed. Award of the Labour Court dated 22.8.2014 (Annexure P-3), is set aside. This order would not come in the way of deciding two Sewadar's claim viz., Jasveer Singh s/o Hansraj and Surjit Singh s/o Inder Singh (respondents in the present case) by the petitioner with reference to decision in **Municipal Employees Union's case (Supra)**. Such decision shall be taken by the petitioner and to settle their claim within a period of three months.

22) No order as to costs.

(P.B. Bajanthri)
Judge

July 29th, 2016
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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No