

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No. 1178 of 2015 (O&M)

Date of decision : 26.4.2016

Nagar Council, Samrala

.. Appellant

versus

Ram Sanjeevan and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. V. K. Sandhir and Mr. Sanjeev Soni, Advocates,
for the appellants.
Mr. Sunny Singla, Advocate, for respondent no. 1
in LPA Nos. 1178 and 1179 of 2015.

Rajesh Bindal, J.

This order will dispose of three appeals bearing LPA Nos. 1178 to 1180 of 2015. However, the facts have been extracted from LPA No. 1178 of 2015.

The appellant -Nagar Council, Samrala is before this Court against the order dated 25.3.2015 passed by the learned Single Judge, vide which the order dated 11.5.2006 passed by the Labour Court, Ludhiana, on the applications filed by the workmen, was upheld.

The brief facts of the case are that the workmen, who are working with the appellant as Beldar, Fitter and Mali, filed applications before the Labour Court, Ludhiana, claiming wages for having served on Saturdays. The same were partly accepted by the Labour Court vide order dated 11.5.2006 and the workmen were held entitled to receive wages on account of working on Saturdays. Aggrieved against the order dated 11.5.2016, the appellant filed writ petitions in this Court, which were also dismissed.

Learned counsel for the appellant while referring to letter dated 2.3.1994 (Annexure A-1) submitted that 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. As the respondent workmen are in the field staff, hence, not entitled for two days holiday in a week as per the aforesaid letter. It was further submitted that the respondent-workmen are doing field job and they have no concern with the staff working in the office. In support of his claim, reference was made to Division Bench judgment of this Court in CWP No.11990 of 2004 Balbir Singh and others vs State of Punjab and others decided on 16.12.2005.

On the other hand, learned counsel for the respondent-workmen submitted that the workmen are working as Beldar, Fitter and Mali with the appellant. He submitted that employees working in one office cannot be treated differently. It was submitted that the staff working in the office are enjoying two holidays, whereas the respondent-workmen are required to work on Saturdays, without any wages. Hence, they are entitled to be paid wages for having served on Saturdays. He further submitted that the appellant had itself admitted in its written statement that the workmen were not entitled to wages beyond a period of three years preceding the date of their applications. In support of his plea, learned counsel for the respondent-workmen placed reliance upon judgment of Hon'ble the Supreme Court in Municipal Employees Union (Regd.) Sirhind and others vs State of Punjab and others (2000) 9 Supreme Court Cases 432. The prayer is for dismissal of the appeal.

Heard learned counsel for the parties and perused the paper book.

It is not in dispute that the respondent-workmen are working in the field. The plea of discrimination can be raised only amongst equals. Once none of the category of employees, to which the petitioners belong, are working in the office enjoying Saturday as a holiday, the petitioners cannot be granted extra wages for working on Saturdays as all the employees in the cadre of the petitioners are working for six days in a week. The issue involved in the present appeals was considered in detail by this court in Balbir Singh's case (supra), wherein while referring to earlier judgments on the issue, following findings were recorded:

“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 Articles 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 Somchand 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.

In the present case, no member of the cadre belonging to the petitioners has ever been granted the benefit of holidays on Saturdays or 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. The matter is no longer res-integra. A Division Bench of this Court reviewing its earlier decision rendered in C.W.P. No. 647 of 2003 on 16.1.2003, accepting RA No. 110 of 2003, decided on 11.3.2003, has come to the following conclusion:

“The question 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, Tmate, 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 State Electricity Board do not work on Saturdays. It is, therefore, submitted on the basis of the decision rendered by the Hon'ble Supreme Court (noticed 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 (noticed 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 some (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 order (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 grievance 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.”

It is, thus, evident that the view taken by the Supreme Court in the case of Municipal Employees Union (supra) has no application to the facts of the present case. We have failed to discover the so called discrimination, which is sought to projected in the present case. The petitioners belong to the field staff and cannot seek parity with the office staff and, therefore, they cannot seek equal treatment with the unequal. Therefore, we do not find any legal justification to accept the claim made by the petitioners. For the reasons stated above this petition fails and the same is dismissed.”

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.

(Rajesh Bindal)
Judge

26.4.2016
vs

(Harinder Singh Sidhu)
Judge

(Refer to Reporter)