

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

LPA-482-2018 (O&M)

Date of decision:- 06.12.2018

Davinder Singh

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Ramesh Goyat, Advocate,
for the appellant.

Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the respondents.

* * * *

KRISHNA MURARI, C.J. (ORAL)

With the consent of learned counsel for the parties,
the appeal is being disposed of finally.

This intra court appeal under Clause X of the Letters Patent has been filed by the appellant-petitioner challenging the judgment and order dated 24.01.2018 passed by the learned Single Judge dismissing the writ petition seeking a relief to command the State-respondent not to compel the petitioner (appellant herein) to attend his duties on Saturdays and other holidays notified as public holidays or in alternative to direct the State-respondent to pay extra wages to the petitioner for attending his duties on Saturdays and other notified public holidays.

2. Admittedly, the appellant-petitioner is working in the office of the Transport Department of the State of Haryana. Initially he was appointed as a Storeman on 27.11.1979.

Subsequently, he was promoted to the posts of Assistant Store

Keeper and Store Keeper in the years 1993 and 1997 respectively and thereafter he was promoted as Chief Store Keeper on 04.11.2011. Later on, he was promoted to the post of Store Purchase Officer on 30.03.2017. Various posts held by the petitioner in the Department fall in the category of ministerial staff. Placing reliance on the notification issued by the State of Haryana declaring all Saturdays and Sundays to have been notified as holidays, it was alleged that he is being asked to work and attend his duties on Saturday which has been declared as public holiday by the State of Haryana.

3. In reply to the legal notice issued by the appellant-petitioner, the fact has been admitted that he holds the post which falls in the category of ministerial staff and that Saturday has been declared to be a public holiday. However, since his duties are directly connected to public service and as such like other staff holding ministerial posts whose duties are linked to public service, he is also required to attend his duties on Saturdays.

4. Learned counsel for the appellant contends that the learned Single Judge without considering the aforesaid facts and the ratio of the decision rendered by the Hon'ble Apex Court in *Municipal Employees Union (Regd.) Sirhind and others Vs State of Punjab and others*, 2000(9) SCC 432 wrongly and illegally dismissed the writ petition.

5. Learned State counsel vehemently contends that since the appellant is not a workman, as he belongs to the cadre of ministerial staff and governed by Punjab Civil Services Rules, as applicable to the State of Haryana, he would not be entitled to wages for having worked on a public holiday.

6. We have considered the arguments advanced by learned counsel for the parties.

7. In our considered opinion, all these are disputed questions of fact which require adjudication on the basis of evidence and can be better gone into by a fact finding authority. Even the issue as to whether the appellant is a workman or not can also be considered and adjudicated upon by a fact finding authority.

8. In view of the above, we are of the considered opinion that the issue can be more effectively considered by Labour Court in exercise of powers conferred by Section 33-C(2) of the Industrial Disputes Act, 1947 (in short the Act). In identical facts and circumstances, the Hon'ble Apex Court in the case of *Municipal Employees Union (Regd.) Sirhind and others* (supra) relegated the petitioners therein to avail the remedy of Section 33-C(2) of the Act. Accordingly, we dispose of this appeal by making the following directions:-

(i) Appellant-petitioner may file appropriate application under Section 33-C(2) of the Act and on adjudication of the issue that he is covered under the definition of workman and if found entitled to extra wages for each of the Saturdays he might have worked while his other colleagues belonging to ministerial staff and holding technical and non-technical posts have enjoyed Saturdays as holiday, then he will be entitled to the same.

(ii) If it is shown by the State-respondent that at the relevant time any instructions were issued under which the working condition of the appellant-petitioner and other similarly situated ministerial staff were unilaterally prescribed to be six days in a week then the question of granting monetary benefit to the appellant-petitioner would not survive.

(iii) On fulfillment of all the conditions appropriate relief under section 33-C(2) of the Act may be granted to the

appellant-petitioner but the same has to be confined to three years immediately after preceding the filing of the instant petition and thereafter continuously upto date. Thus, the application is to be filed under section 33-C(2) of the Act and the appellant-petitioner has to restrict his claim accordingly.

(iv) If the appellant-petitioner makes any such application under section 33-C(2) of the Act within a period of three months from today, then the same be disposed of expeditiously as early as possible preferably within a period of one year from the date of filing of such application.

9. Accordingly, the appeal stands disposed of to the extent directed above and the impugned judgement and order of the learned Single Judge shall stand modified to that extent.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.12.2018
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No