

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.20427-CAT-2003 (O&M)

Date of decision: 25.03.2019

Sushil Kumar & others

.....Petitioners

versus

The Union Territory and others

.....Respondents

CORAM: Hon'ble Mr.Justice Rajiv Sharma
Hon'ble Mr.Justice Kuldip Singh

Present: None for the petitioners
Mr.Ashish Rawal, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Petitioners have invoked the writ jurisdiction of this Court under Articles 226/227 of Constitution of India for issuing the writ in the nature of certiorari for quashing the order dated 30.04.2003 (Annexure P12) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "Tribunal") in O.A. No.321-CH of 2003 filed by the petitioners and also for quashing the earlier order passed by the Tribunal in O.A. No.1151-CH-2002 dated 28.03.2003 as the order dated 30.04.2003 is based on the earlier order dated 28.03.2003. Petitioners have further sought declaration that they are entitled to the benefit of law laid down by the Hon'ble Supreme Court in Civil Appeal No.8434 of 1997 titled as Municipal Employees Union vs. State of Punjab and others decided on 15.03.2000 (Annexure P2) by granting them benefit of five working days as

given to their counterparts working in the office or in the alternative grant them wages for the work done on the sixth day in terms of the said judgment of Municipal Employees Union (supra).

Brief facts of the case are that the petitioners are working in the department of Public Works on the various posts of Carpenter, Work-Munshi, Beldar, Chowkidar, Sweeper, White-washer, Masson etc. for the last so many years. Some of them are made to work in the offices and remaining are working in the fields/ sub-divisions under the same employer. The Class-III and Class-IV employees working in the office are being granted benefit of five days a week with every Saturdays and Sundays holidays, which is being denied to the petitioners, who have to work six days in a week without extra wages. Their O.A. before the Tribunal was dismissed in limine on the basis of the earlier judgment passed in O.A. No.1151-CH-2002 dated 28.03.2003 titled as Darshan Lal and others vs. Union Territory.

Since, none has appeared for the petitioners, we have considered the case of the petitioners and have heard learned counsel for the respondents and have also carefully gone through the file.

Basically, the petitioners claimed the benefit of judgment passed by Apex Court in Municipal Employees Union (supra). In the said case, the petitioners were working in Octroi post on Class III and Class IV posts. Their postings were interchangeable with those working in the office. The Apex Court examined the following question:-

“Whether the Clerks and Peons working at Octroi check posts and barriers run by the concerned respondent-Municipal Committees constituted and functioning under the Punjab Municipal Act, 1911 (for short the Act) are entitled to be paid

for each of the Saturdays on which they worked at the octroi check-posts and barriers while their colleagues in the offices of the concerned Municipal Committee were permitted to enjoy those Saturdays as holidays.”

In the said case, it was pleaded before Supreme Court that the compensatory leave is granted in lieu of non-availing of facility of festival and national holiday and also other facilities like cycle allowance and uniform given to the octroi staff.

The Apex Court, after examining the entire matter, observed as under:-

“In our view, in the facts of the present case and in the light of the order which were 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 the offices of the Municipal Committees, as the case may be, depending upon the exigencies of services 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.

So far as this question is concerned unless there is any express provision in the Municipal Bye-laws requiring all the staff members to have six days working per week, in our view, it would not be open to the Respondent-Municipal Committee to deny the benefit of non-working Saturdays only to those staff members who have because of the exigencies of service to discharge their duties at octroi check-posts or barriers rather than in the offices. But that would require a further question as to whether, at the relevant time at which the concerned employee like the appellants have actually worked on Saturdays, their colleagues in the offices had enjoyed such holidays and further whether the bye-laws of the concerned Municipal Committees required the employees, by way of their service conditions, to discharge their duties for six days in a week and, therefore, it was open to the Municipal authorities, looking to the exigencies and pressure of work, to give some additional concession to only those office staff members who would have been permitted not to come for work on any Saturdays. Therefore, all that we can lay down in the present proceedings is to the effect that if the appellants, at the relevant time at which they claim to have earned the right to enjoy holidays falling on Saturdays were made to work while their colleagues similarly situated like them, working in the offices of the Municipal Committees, were given the benefit of such holidays and when there were no by-laws requiring the employees to work for 6 days in a week, then they would be entitled to be given monetary compensation for the working Saturday by grant of extra wages for each of the working Saturday on which they are shown to have discharged their duties.”

In the said case, the petitioners were relegated to file appropriate application under Section 33-C(2) of the Industrial Disputes

Act, 1947.

The Tribunal examined the said judgment and found that it is not applicable to the present petitioners. It was found that the petitioners are industrial staff governed by the industrial laws. The Tribunal has observed that if there are by-laws or the statutory rules providing for six days' working in a week, the concerned employee cannot claim the benefit of judgment of the Apex Court. It was held that the petitioners are industrial workman. They are governed by Section 51 and 52 of the Factories Act, 1948. They are required to work for 48 hours in a week. Section 51 of Chapter VI provides for working hours of Adults. It is specified that no adult shall be required or allowed to work in a factory for more than 48 hours in a week. It was further found that during summer period i.e. from 16th April to 15th October, the duty hours are 7 AM to 12 Noon and 3 PM to 6 PM and in winter from 8 AM to 12 Noon and 1 PM to 5 PM. There is slight change in the timings of duty in Hilly areas though the working hours are eight in every case. It was further observed that Industrial Workers have a different calendar of holidays. They are allowed National Holidays of whole day on 26th January (Republic Day), 15th August (Independence Day), 2nd October (Gandhi Jayanti). They are allowed four (five, for Haryana) holidays in any festivals specified in the schedule appended to Punjab Industrial Establishment (National and Festival holidays and casual and sick leave) Act, 1965. Therefore, it was found that since they are governed by the industrial law, as referred to above, they are not entitled to benefit of judgment of Municipal Employees Union (*supra*).

We are of the view that the judgment of Municipal Employees Union (*supra*) cannot be applied to the case of the present petitioners, for which, different rules are applicable, as stated above. It was held in the said

judgment itself that if there are separate rules or by-laws, governing service conditions which required them to work for six days in a week, they cannot claim extra wages. Here the petitioners are required to work for 48 hours in a week. Therefore, the said judgment of Municipal Employees Union (*supra*) is not applicable to the facts of the case of the present petitioners.

There are no merits in the present writ petition.

The same is hereby dismissed accordingly.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

25.03.2019

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes