

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

CWP-3159-2023
Reserved on: 16.02.2023
Pronounced on: 22.02.2023

Deepak and others

....Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Deepak Vashishth, Advocate, for the petitioners.

HARNARESH SINGH GILL, J.

The petitioners seek issuance of a writ in the nature of Mandamus directing the respondents to grant them Gazetted holidays/compensatory leave, night allowance and weekly rest for two days as notified by the State/Central Government and also allotment of duties and grant of service benefits at par with other selected candidates of Group-D, vide advertisement No. 04/2018.

Learned counsel for the petitioners would contend that pursuant to an advertisement issued on 29.08.2018, the petitioners had applied for and been appointed Group-D, Peon-cum-Chowkidars, in 2019 and since then they have been working as such. It is further submitted that the petitioners are not being granted Gazetted holidays and compensatory leave, as is granted to the other employees and only one weekly rest is being granted to them; that the other employees appointed in pursuance of the same advertisement, are being given the

benefit of all Gazetted holidays, compensatory leave and overtime allowances; that there are no guidelines stipulating the grant or admissibility of holidays to the petitioners; that the petitioners have obtained information under the Right to Information Act, to the effect that the Peon-cum-Chowkidars will get only one weekly day off as per letter No.27/31/78, GS-II dated 11.12.1981 issued by the Chief Secretary, Government of Haryana; that the said letter has wrongly been made applicable to the petitioners as the same pertains to Chowkidars only, whereas the petitioners are working as Peon-cum-Chowkidars and that the unjustified, arbitrary and unreasonable classification by the respondents is against Article 14 of the Constitution of India.

I have heard learned counsel for the petitioner.

There is no denying the fact that the petitioners are being granted one day weekly off. It is the case of the petitioners themselves that such weekly off is being granted to them as per letter dated 11.12.1981 issued by the Chief Secretary, Government of Haryana. The only distinction pleaded for inapplicability of said letter to the petitioners, is that the said letter is applicable to the Chowkidars, and not to the petitioners, who are working as Peon-Cum-Chowkidars.

The said argument is not tenable. In the recent past, it has become a common employment trend in various departments that the Group-D employees are being appointed with the nomenclature of MUS (Multi-Utility Services) and such MUS may include Peon-cum-Chowkidar's duties as well.

Therefore, it cannot be said that the instructions as regards weekly off relating to the Chowkidars would not be applicable to the petitioners.

Apart from that, the petitioners had accepted the terms of employment with open eyes. The duties of Peon-cum-Chowkidars, cannot be equated with the duties of the other set of employees and owing to the exigencies of their duties, the respondent-employer is granting them one weekly rest.

The petitioners have, apart from praying for grant of Gazetted Holidays and compensatory leave, also sought equal pay and allowances as granted to the other set of the employees. It is settled law by now that the task of job evaluation is best to be left for the determination of the expert bodies and the Courts should not ordinarily interfere in such process.

The Hon'ble Supreme Court in State of Madhya Pradesh Vs. R.D. Sharma and another, 2022(3) SLR 361, while considering the concept of equal work for equal pay, has held that the same is not a Fundamental Right. It has further been held that ordinarily Courts will not enter upon the task of job evaluation which is generally left to the expert bodies. The relevant part of the judgment would read as under:-

“...14. The High Court in the impugned orders passed in Writ Petition as well as in the Review Petition had thoroughly misdirected itself by applying the principle of “equal pay for equal work” placing reliance on the decision of this court in case of State of Punjab and Ors. Vs. Jagjit Singh and Ors., 2017 SCC 148, which had no application to the facts of the present case. It may be noted that

this court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in case of Secretary, Finance Department Vs. West Bengal Registration Service Associations and Ors., 1993 Supl. 1 SCC 153 be made. As held in State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal Staff Association, 2002 (06) SCC 72 "equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government."

The petitioners are being provided with one day weekly rest. The tasks assigned and the nature of the duties of the petitioners, are to be decided by the employer and this Court cannot go into such determination. It is not the case of the

petitioners that they are not being provided with any kind of holidays. Moreover, there is no cogent material on record to draw a firm conclusion that a glare error has been committed while fixing the pay scale of the posts on which the petitioners have been working since 2019.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

22.02.2023
ds

(HARNARESH SINGH GILL)
JUDGE

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