

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

CWP-19467-2016 (O&M)
Date of Decision: 24.11.2023

MUNICIPAL CORPORATION, PATIALA

...Petitioner

Versus

JASPAL SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

Respondent No.1 already proceeded against *ex-parte*.

HARSH BUNGER, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 30.03.2016 (Annexure P-4); whereby, the learned Presiding Officer, Industrial Tribunal, Patiala allowed the claim of respondent No.1-Jaspal Singh for wages for working on Saturdays for the preceding three years from the date of filing of the claim application.

Respondent No. 1-Jaspal Singh was proceeded against *ex-parte* vide order dated 08.12.2022 passed by a Co-ordinate Bench of this Court.

2. Briefly, Respondent No.1-Jaspal Singh filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the 1947 Act') before Industrial Tribunal, Patiala (for short, "the Tribunal") contending that he was working as Flying Squad Beldar at Rs. 8,928/- p.m. and he was entitled to wages for working on Saturdays, as the employees working in the offices have enjoyed five days week. On that account, the

respondent No.1–Jaspal Singh claimed an amount of Rs. 99,234/- alongwith interest @ 18% per year.

3. The stand of the present petitioner before the Tribunal was that the application under Section 33-C(2) of the 1947 Act itself was not maintainable because the respondent No. 1–Jaspal Singh had no existing right and as such the Tribunal had no jurisdiction to adjudicate upon the application. The petitioner-department also took the stand that the judgment rendered by Hon'ble Supreme Court of India was in respect of Octroi department; whereas the Municipal Act and Rules were applicable upon respondent No. 1–Jaspal Singh. It was stated that the post of Sewerman/Fireman/Beldar/Pump Driver/Assistant Pump Driver/Foreman/Mechanical Fitter/Coolie/Skilled Beldar/Mali/Mate Chowkidar-cum-Mali are not inter-transferable posts. It was also stated that the notification regarding five days week is only applicable to office staff. It was next stated that the field staff was getting the benefit of uniform, washing allowance, shoe allowance and conveyance allowance, which is not given to the office staff. It was categorically mentioned that respondent No. 1–Jaspal Singh was performing his duty as per the prevailing rules and no extra work has been taken by the department from the employees.

4. Learned Tribunal below decided the aforesaid application under Section 33C(2) of 1947 Act vide the impugned order dated 30.03.2016 (Annexure P-4) in favour of respondent No. 1–Jaspal Singh by holding him entitled to the amount due on account of work done on Saturdays for the preceding three years from the date of filing of the application, subject to departmental calculations within five months from the date of passing of the

order; failing which respondent No. 1 – Jaspal Singh was also held entitled to interest @ 6 % per annum on the ordered amount till actual realization.

5. Feeling aggrieved by the impugned order dated 30.03.2016 (Annexure P-4), the petitioner-Municipal Corporation, Patiala has filed the present writ petition.

6. Learned counsel representing the petitioner contends that learned Tribunal has erred in law and facts in passing the impugned order. It is submitted that the learned Tribunal had completely ignored the basic facts involved in this case because the notification with regard to five working days in a week was applicable to the employees working in the offices only and that was not for the field staff. Notification (Annexure P-5) reads as under:-

“J.M/ANKA(2)74/9775 dated 02.03.1994

Sub: Regarding performing of government duty by the field staff on gazette holiday

According to the Punjab Government letter No.6/10/93-6PP 111/20107 dated 3.11.93, the office staff working under the Punjab State government offices are entitled to holiday on Saturday & Sunday. The employees who are working in the fields, they are entitled only for Sunday holiday. Thus, the field staff is not entitled for two days holiday in a week as per abovesaid letter of Punjab Government.

Regular Work Charged and work charged establishment are entitled for holidays as per Rule 1.132 of PWD Code and the staff on regular work charged establishment is entitled holidays as per Rule 1.132 of PWD Code and establishment on regular work charged are entitled for holidays as per Rule 1.16 of the following draft service rules which are sent to the Government for approval :-

1.16 Leave Pension & other matters.

Punjab Public Services Rules shall be applicable to the regular work charged employees except notified Govt. Public Holidays schedule for offices. However they are entitled one rest after every six working days alongwith 3 National Holidays & two restricted holidays during respective calendar years.”

Learned counsel for the petitioner has referred to the cross-examination of respondent No.1-Jaspal Singh, who submits that he was posted in the Field and he always worked in the Field and was never posted in the office. He further admitted that the Field Staff gets separate allowances i.e. Uniform, Washing allowance and other allowances but these allowances are not paid to the Office employees. While referring to the cross-examination, learned counsel for the petitioner further contends that respondent No.1 had clearly admitted that the rules of Municipal Corporation were applicable to him and he further admitted that the Octroi staff can be transferred to Office; however, the Field Staff cannot be posted. It is contended by learned counsel for the petitioner that undisputedly, respondent No. 1–Jaspal Singh was working as a Flying Squad Beldar and claim in the application under Section 33-C(2) has been raised by him seeking parity with other employees who are working in the offices of the Municipal Corporation, Patiala; whereas there is no parity and the claim was not sustainable. Accordingly, prayer has been made for quashing the impugned order dated 30.03.2016 (Annexure P-4).

7. Having considered the submissions made by learned counsel for the petitioner and appraisal of the file, this Court is of the considered view that that there is no dispute about the fact that respondent No.1 – Jaspal Singh was working as a field staff (Flying Squad Beldar). His job was not in the office and as such, he was not entitled for five days' week with two

off days in a week, rather he was entitled to get one weekly off with six working days in a week. Respondent no.1-Jaspal Singh had clearly admitted in his cross-examination that he was posted in the field and he always worked in the field and was never posted in office. He further admitted that the Field staff was getting separate allowances which are not paid to office staff. Further, the Tribunal below has not referred to any material to indicate that any of the employee in the cadre of respondent No.1-Jaspal Singh and being on same seniority list was working in the office enjoying Saturday as a holiday.

The Tribunal below allowed the claim of respondent No.1-Jaspal Singh by simply placing reliance upon the judgment rendered by Hon'ble Supreme Court in the case of *Municipal Employees Union and others Versus State of Punjab and others 2000(9) SCC 432*; however, the Tribunal below has failed to notice that there was no parity in the controversy as raised in the present case with that of the decision rendered by Hon'ble Supreme Court in *Municipal Employees Union* case (*supra*).

8. A similar matter was before Hon'ble Division Bench of this Court in *LPA No. 1178 of 2015, Nagar Council, Samrala v. Ram Sanjeevan and others, decided on 26.4.2016*, wherein Hon'ble Division Bench observed as under:-

"..... If the aforesaid principles of law are applied in the case of the respondent-workmen, the only conclusion which can be reached is that 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."

9. In **Review Application No. 110 of 2003 in CWP no. 647 of 2003 titled Virsa Singh and others v. Punjab State Electricity Board and others**, Hon`ble Division Bench of this Court passed the following order on 11.03.2003:-

"The issues 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, T-Mate, 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, (notices above). The posts occupied by the petitioners are

only in the field. There is no such 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 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 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 grievances 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.

No other argument was advanced on behalf of the petitioners.

We, therefore, find no merits, in the contention of the petitioners in their claim for additional wages. The instant petition is accordingly dismissed."

10. Similar view was taken by a Hon`ble Division Bench in ***Municipal Corporation, Patiala through its Commissioner v.***

Presiding Officer, Labour Court, Patiala and another, 2018 (1) SCT 478,

by observing as under:-

"53. As a result of the above discussion, I hold in precis as under:

(i) It is declared that the Field Staff have no existing right to claim wages for work done on Saturdays as they work in a six day per week schedule as per law with the advantage of additional casual leave and other benefits etc. not available to the Office Staff, which compensate them adequately and beneficially and it is held that they have no claim as against the Office Staff to either work for 5 days a week or claim wages for Saturdays as overtime or extra work done because the nature and duties of work are totally different as between the two categories of employees when their services are not interchangeable. It is also held that there is no commonality in the work profile of Office Staff and Field Staff in the State of Punjab. They are reasonably classified with the objects sought to be achieved by the moot notifications in the exigencies of administration and the precepts of good governance linked with what is desirable to keep citizens happy with their daily lives.

(ii) In the present scheme of things and in the facts and circumstances of these cases, Article 14 of the Constitution has no place and is not violated when the Field Staff and Office Staff bear their separate birthmarks of service and belong to different cadres and separate seniorities, which cannot be interchanged by transfers and postings much like a two way street bound by rules or bye-laws governing the services in the cases under consideration. There is no inter service discrimination practiced of an unfair kind even though the administrative department in Government or local body and its controlling authority may be common to

both when the cadres and seniority lists are admittedly maintained separately with separate channels of promotion between the two types of employees, one with tools in hand, the other paper; and,

xxx xxx xxx "

11. In yet another identical matter i.e., ***Babu Lal v. Sub Divisional Engineer, Sub Division Horticulture, PWD (B&R), LPA-913 of 2019, decided on 24.07.2019.***, it has been held as under: -

4. Learned Single Judge finding that the notification issued by the Punjab Government with regard to its employees, on which reliance was being made, was applicable only to the office staff or employees working in the office and was not applicable to the employees working in the field. There is no dispute about the fact that the appellant herein was working as a field staff and was claiming parity with the employees who are working in the offices of the State Government. Learned Single Judge also took notice of the fact that no member belonging to the cadre of the workmen was ever granted the benefit of Saturdays and Sundays. Accordingly, since the workmen never worked in the office, as such, they were not required to work only five days a week with two off. Learned Single Judge also placed reliance upon a Division Bench judgment of this Court, rendered in Nagar Council, Samrala v. Ram Sanjeevan and others (LPA No. 1178 of 2015, decided on 26.04.2016), wherein in an identical situation the view taken was that since none of the employees in the cadre of workmen were working in the office, rather they were working in the field, hence, could not equate themselves with the office staff, and, thus, there was no discrimination.

5. We see no reason to take a view different than the one taken by the learned Single Judge while relying upon a Division Bench judgment in the matter of Ram Sanjeevan

(supra), which was rendered in identical facts and circumstances. Even during course of arguments, learned counsel for the appellant has failed to point out any rule or regulation which requires him to work only for five days in a week. Likewise, he also failed to demonstrate that his cadre can be equated with the office staff. Thus, there is no infirmity in the view taken by the learned Single Judge. The notification upon which reliance has been placed by the appellant, is not applicable in his case.

6. In view of above, the impugned judgment and order passed by the learned Single Judge does not require any interference. Accordingly, the appeal fails and stands dismissed.

12. In view of the above discussion and considering the view taken by this Court in the above cited judgments, the impugned order 30.03.2016 (Annexure P-4) passed by learned Tribunal, Patiala is patently illegal and is accordingly set aside.

13. Resultantly, the writ petition stands allowed in the above terms.

14. All pending application/s, if any, shall stand closed.

November 24, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No