



Product S.No.1889995037

*Extra Wages Working on Saturday & holidays**16**16***This judgement ranked 1 in the hitlist.**Municipal Employees Union v. State of Punjab, (SC) : **Law Finder Doc Id # 155696****2000(9) SCC 432****SUPREME COURT OF INDIA**

Before : - S.B. Majmudar and U.C. Banerjee, JJ.

Civil Appeals Nos. 8434 with 8435-8440 of 1997, 630, 631, 1715, 4196, 4197 of 1998, 1500, 2173, 2167, 2168, 2169 and 2172 of 2000 (arising out of SLP (C) Nos. 16401 of 1997 2015, 2017, 3232-3235 of 1998). D/d. 15.3.2000.

Municipal Employees Union and others - Petitioners

Versus

State of Punjab and others - Respondents

**Punjab Municipal Act, 1911, Section 240(1) - Punjab Municipal General Rules, 1979, Rule 3 - Industrial Disputes Act, 1947, Section 33C - Municipalities - Industrial Dispute - Working on holidays - Clerks and peons working at octroi check posts and barriers working on Saturdays and holidays - Their similarly situated colleagues in offices of Municipal Committee enjoying those holidays - They are entitled to extra wages for each of the working holidays - However, for getting said extra wages, the said employees shall seek remedy under Section 33-C of Industrial Disputes Act, 1947.**

[Para 18]

**ORDER**

Delay condoned.

All matters except C.A. No. 1500 of 2000

2. Leave granted in the Special Leave Petitions (C) Nos. 16401 of 1997, 2015 of 1998, 2017 of 1998 and 3232-3235 of 1998.

3. These appeals were heard finally and are being disposed of by this common judgment. The common question which arise for our consideration in these appeals runs as under :

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

4. This question is posed for our consideration though a larger challenge to the actions of the concerned Municipal Committees of denying the facility of enjoying national holidays and festival holidays was also on the anvil of scrutiny of the High Court. These questions were considered by a Full Bench of the High Court and a common decision was rendered in all these matters to the effect that as the clerks and peons working in the offices and not availed of the benefit of compensatory holidays in lieu of national holidays and festival holidays and had also not availed the benefit of cycle and uniform allowance which were available to the clerks and peons working at the octroi check-posts and barriers, there is no question of any discrimination inter-se these two categories of employees, though belonging to the same institution and having a common seniority and common pay scales and in common cadres. The grievances made by the writ petitioners before the High Court were rejected and the writ petitions were dismissed. That is how these appeals have been filed by the aggrieved writ petitioners.

5. Though a wider canvass was earlier placed for our consideration regarding the aforesaid grievances, ultimately, learned counsel for the appellants, the original writ petitioners, fairly stated that they are confining their grievance in the present proceedings only to the limited question as to whether, for the 52 Saturdays on which

they worked at the relevant time at the octroi check-posts and barriers while these 52 Saturdays were enjoyed by their similarly situated colleagues in the offices of the concerned Municipal Committees, the appellants were entitled to be paid extra wages for all those Saturdays on which they worked. It is this limited question which will be examined by us in this judgment.

6. We may mention at the outset that learned counsel for the appellants did not raise their contention regarding discrimination meted out to the appellants on the ground that they were not given the benefit of national and festival holidays as compared to their counterparts in the offices of the concerned Municipal Committees as there is a finding reached by the High Court and for which there is no dispute and also in view of the agreement between the parties, that compensatory leave was granted to them in lieu of non-availing of facility of festival and national holidays and also in view of other facilities like cycle allowance and uniform given to the octroi staff. Therefore, they concentrated on the grievance regarding non-grant of benefit of 52 Saturdays on which their counterparts in the offices of the Municipal Committees were not required to work and were enjoying these holidays. We may mention that this grievance was not expressly canvassed before that High Court and this would have required us to remand the proceedings for re-consideration of this point by the High Court but for the fact that learned counsel for the parties agreed before us that to put an end to this simmering controversy which is pending since years, this contention may be finally decided on the available material on record. It may also be mentioned that the writ petitions out of which the present proceedings arise were filed in the High Court as early as in the end of 1991 and in the beginning of 1992. Consequently, we proceed to consider the aforesaid solitary grievance which now survives for consideration.

7. We may mention at the outset certain well established and not disputable facts pertaining to the service conditions of the appellants.

8. The appellants are employees of the respondent-Municipal Committees being peons belonging to Class-IV service and clerks belonging to Class-III service. It is also well established on record that there is a common seniority of clerks and peons maintained by the concerned Municipal Committees and their pay scales are also the same. It is now found by the High Court and for which there cannot be any controversy that the octroi staff could be rotated vis-a-vis the staff in the offices of the concerned Municipal Committees. Therefore, the only grievance is that when the clerks and peons are required to work at the octroi check-posts and barriers they are not given the benefit of closed Saturdays, which according to them, results in discrimination or denial of their right which accrues to all the staff members similarly situated and who have the common employer, namely, the concerned Municipal Committees.

9. So far as this grievance is concerned we may mention that our attention was invited to a Government notification dated 11th December, 1986 issued by Government of Punjab, Department of Personnel and Administrative Reforms (General Establishment Branch) which stated that the holidays enumerated in the Schedule below (as mentioned in the Notification) shall be observed as public holidays in public office under the Punjab Government during the calendar year 1987. This Schedule shows that 52 Saturdays, amongst others, were to be observed as holidays. We are told that similar such Government notifications were issued from time to time in different calendar years. Result was that Punjab Government servants working in public offices under the State enjoyed 52 Sundays and 52 Saturdays as mentioned in the aforesaid Notification, which was filed as a specimen one. Placing reliance on this notification and other identical notifications as were issued from time to time by the State authorities, according to the appellants, all the State Government servants enjoyed the benefit of 52 closed Saturdays, meaning thereby, they had to work only for five days in a week. If that was so, this benefit would automatically accrue to the Municipal employees working in the Municipal Committees. In support of this contention our attention was invited to Rule 3 of the Punjab Municipal General Rules, 1979 (for short '1979 Rules') which reads as under:

"3. General Principles [Sections 236 and 240(1)], - Every committee shall observe such general principles of administration as are followed in the departments of the State Government."

10. A mere look at the said rule shows that it was promulgated by the State Government in exercise of powers under Sections 236 and 240(1) of the Act. When we turn to these two provisions of the parent Act we find that Section 236 deals with power of the State Government and its officers over committees. Sub-section (1) thereof lays down that the State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules in force under any enactment for the time being, applicable to Punjab generally or the area over which the committees have authority.

11. It is obvious that this general provision, dealing with the proceedings of the committees, may strictly have no connection with the regulation of the duty hours or the

holidays to be observed by the staff members. But so far as Section 240(1) of the Act, which deals with power of State Government to frame forms and make rules is concerned, sub-section (1) thereof lays down that the State Government may frame forms for any proceeding of a committee and may make any rules consistent with this Act to carry out the purposes thereof and in particular and without prejudice to the generality of the foregoing power may make rules as laid down by clauses (a) to (zzz) of sub-section (1) of Section 240 of the Act. One of the topics of the rule-making power listed therein is found in clause (nn) of sub-section (1) of Section 240 which reads as under :

"(nn) the manner of constitution of municipal services, the classification, method of recruitment and the conditions of service of persons appointed to such services."

12. The submission of learned counsel for the appellants was that Rule 3 of the 1979 Rules would squarely cover the topic of regulation of general principles of administration of the Municipal Committees and consequently, the general principles regarding regulation of working days to be observed by administration could be promulgated by the State authorities even by executive orders like the aforesaid Government Circular/Notification. And such orders would automatically apply to the Municipal Committees and its staff, meaning thereby, the staff members of the Municipal Committees also will be entitled to enjoy 52 Saturdays in a year as holidays and no further adaptation of the Government circulars/notifications in the concerned years is required to be resorted to by the committees to enable its staff members to enjoy these benefits.

13. Learned counsel for the respondents, on the other hand, submitted that Rule 3 which deals with general administration would obviously deal with procedure to be followed by the committees in their day-to-day administration of its functioning for regulating the terms and conditions of the services of the staff members of the committees for which separate rules are already framed in exercise of powers under Section 240(1)(nn) of the Act. Our attention was invited to Punjab Municipal Services. (Recruitment and Conditions of Service) Rules, 1975 (for short '1975 Rules'), especially Rule 15 thereof, which reads as under :

"15. Leave, travelling allowance, joining time, suspension, medical facilities, fees and honoraris and other matters. - In respect of leave, travelling allowance, joining time, suspension, medical facilities, fees honoraries, house rent allowance, dearness allowance, fixation of pay, grant of increment, crossing of efficiency bar, deputation and other matters not expressly provided in these rules, members shall be governed by the corresponding provisions contained in the rules applicable to Punjab Government employees. The authority competent to sanction casual leave, earned leave, increment, efficiency bar will be as indicated against each category of service in appendix 'D':

Provided that a person on transfer shall draw his travelling allowance and joining time benefit from the Municipal Committee to which he is transferred....."

14. In our view, in the facts of the present case and in the light of the order which we 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 service 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.

15. 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 Committees 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 employees 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 bye-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 Saturdays by grant of extra wages for each of the working Saturday on which they are shown to have is charged their duties.

16. These questions cannot be resolved in the present proceedings and for that the appellants, if so advised, will have to be relegated to the remedy under Section 33-C(2) of the Industrial Disputes Act, 1947 wherein all these questions of fact can be thrashed out.

17. But this claim of the appellants will be subject to the further rider that at the relevant time the Government employees working under the different departments of the Punjab State had got the benefit of 52 closed Saturdays in a given year as declared by the State Government in exercise of its administrative powers. It is not in dispute between the parties that if in a given calendar year the Punjab State employees had not enjoyed benefit of 52 closed Saturdays then the appellants would not be entitled to make any such claim.

18. Under these circumstances, the relief which is granted to all these appellant-employees by modification of the High Court's order will be as under :-

1. The appellants, by filing appropriate applications under Section 33-C(2) of the Industrial Disputes Act, 1947 may, on proper computation, be entitled to get extra wages for each of the Saturdays of which they might have worked while their colleagues in the offices of the Municipal Committees had enjoyed benefit of Saturdays provided- the 52 Saturdays in a given calendar year were enjoyed by the employees of the State Government.

2. Even if the State Government employees had enjoyed the said benefit during the relevant calendar year but if the Municipal Committees had promulgated, at the relevant time, any bye-law under which the working conditions of the staff members were uniformly prescribed to be six days in a week, then, the question of granting any monetary benefit to the appellants would not survive. On the other hand if there was no such bye-law at the relevant time, then the appellants would be entitled to claim wages for the Saturdays on which they have actually worked when their colleagues in the offices had not worked and had enjoyed benefit of closed Saturdays.

19. If all these conditions are satisfied, then appropriate relief under Section 33-C(2) of the Industrial Disputes Act can be granted to the appellants in appropriate proceedings.

20. It is made clear that in the writ petitions which were filed in the High Court either at the end of 1991 or in the beginning 1992 the writ petitioners cannot get any more monetary benefit, save and except, for the period of three years immediately preceding the filing of such petitions and thereafter continuously up-to-date, subject to aforesaid conditions being satisfied by them. In the petitions under Section 33-C(2) the appellants, therefore, have to restrict their claims to the aforesaid extent.

21. It is also made clear that if any of the appellant-employees has retired in the meantime then the benefit which may be required to be computed would obviously be available to him or her till the date of retirement. All these questions are kept open for consideration of appropriate authority in appropriate proceedings.

22. It is also directed that if such applications under Section 33-C(2) of the Industrial Disputes Act are moved by the appellants, the same may be disposed of, after hearing the parties concerned, as expeditiously as possible and preferably within a period of six months from the date of filing of such applications.

23. The Civil Appeals are partly allowed as aforesaid.

24. No costs.

*Civil Appeal No. 1500 of 2000*

25. Before parting with this judgment we may mention that in Civil Appeal No. 1500 of 2000 which is being disposed of along with other matters by the present order the Municipal Council, Dharmkot is the appellant and the employees are the respondents. This situation has arisen because the learned single Judge had decided against the appellant-Municipal Council and on the basis of the Full Bench judgment the appeal was

moved by the appellant which was dismissed as time barred by the Division Bench of the High Court and, therefore, the learned Single Judge's order against the appellant-Municipal Council remained operative. Now when the delay is condoned and this appeal is tagged with other appeals, this appeal also will stand disposed of in the light of the directions issued by us and the learned single Judge's judgment shall stand modified accordingly.

26. No costs.

Order accordingly.

---

© *Chawla Publications (P) Ltd.*