

Before Surya Kant, J.

NIRANJAN DASS & OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

C.W.P. No. 1539 of 1987

29th March, 2006

Constitution of India, 1950—Arts. 14, 16 & 226—Employees working in the Directorate/District Industries centres and the petitioners posted at the facilities centres governed by the same set of statutory service rules and their posts inter se transferable—Punjab Govt. extending benefit of observing Saturdays as public holidays to employees posted in the Directorate/District Industries Centres—Whether petitioners, similarly situated employees, posted in Facilities Centres entitled to be paid extra wages for working on Saturdays—Held, yes—Petitioners entitled to be paid extra wages as per the rules/government policy for working on such extra days.

Held, that the employees working in the facilities centres and/or those working in the Directorate/District Industries Centres are governed by the same set of statutory service rules and their posts are *inter se* transferable. The employees posted in the Directorate or District Industries Centres are admittedly extended the benefit of Notifications like 11th December, 1986 issued by the Government of Punjab in terms whereof the Saturdays have been declared as 'public holidays'. The petitioners, though, are similarly situated employees, however, they have been denied the benefit of observing Saturdays as 'public holidays' and are required to work on all Saturdays (except second and last of the month) due to incidence of their service, namely, their transfer and posting in the facilities centres.

(Para 10)

Further held, that there can be no doubt that the State Government, in the larger public interest and keeping in view the very object for which the facilities centres have been opened, is well within its right to command that such centres shall remain open and work on Saturdays also so that the industrial units can avail the facilities

which these centres are meant to provide, however, the State Government is also obligated not to discriminate amongst its similarly situated employees. It can achieve both the objects successfully by granting extra wages for each of the working Saturday.

(Para 11)

T. S. Dhindsa and Som Dutt Sharma, Advocates, *for the petitioners.*

Jayender S. Chandail, Assistant Advocate General, Punjab, *for the respondents.*

JUDGMENT

SURYA KANT, J.

The petitioners, who are working against different kinds of ministerial/technical posts in the Department of Industries, Punjab and at the relevant time were posted at the Facilities Centres, like Quality Marking Centres/Industrial Development Centres/Punjab Test Houses, seek a writ in the nature of *certiorari* for quashing the order, dated February 20, 1987 (Annexure P-11), and a direction to the respondents to implement the Government Notification, dated 11th December, 1986 (Annexure P-10), and consequently, to allow them to observe all Saturdays as public holidays like other similarly situated employees of the Industries Department and/or to pay them 'extra remunerations' for the additional number of working days.

(2) The facts, which have given rise to this petition, are as follows :—

(2-a) *Vide* Notification, dated 7th April, 1980 (Annexure P-1), the Government of Punjab notified that "all Saturdays of every month, instead of second and last Saturdays only of each month, as earlier notified, shall be observed as holidays in government offices throughout the State of Punjab till further orders." The Industries Department, however, issued an order, dated 9th June, 1980 (Annexure P-2) directing that keeping in view the object/aim of establishing different facilities centres run by it, their timings cannot be linked completely with the timings of the government offices, therefore, "the present timings be continued". The afore-mentioned order followed detailed instructions, dated 7th July, 1980 (Annexure P-3), sent by the Director

of Industries to all the facilities centres explaining that these centres shall remain open on Saturdays also (except the second and the last Saturday of every month) and their timings will be from 8 a.m. to 5 p.m. with a lunch-break from 1.30 p.m. to 2 p.m.

(2-b) The petitioners having felt aggrieved at the above stated government order (Annexure P-2) and the instructions (Annexure P-3) represented against the same. Their representation was favourably recommended by the Director of Industries to the State Government on 5th August, 1980 (Annexure P-4) on the premise that since services of the employees working in the facilities centres "and the employees working in other offices of the government are governed by the same CSR rules", the timings of the facilities centres be also suitably changed like other government offices. In another communication (Annexure P-5) sent to the State Government, the Director of Industries explained that as per the total working hours in a month, the employees posted in the facilities centres were required to work for 176 hours as against 160 hours by employees of other offices. It appears that these recommendations did not find favour with the State Government. Meanwhile, the Punjab Government issued another Notification, dated 11th December, 1986 (Annexure P-10) notifying the 'public holidays' to be observed in the public offices under the Punjab Government during the calendar year 1987. As per the 'schedule' appended to this Notification all Saturdays, i.e., a total of 52 in the said year, were to be observed as 'public holidays'. The Industries Department, however, issued an order, dated 20th February, 1987 (Annexure P-11) which was sent telegraphically to the facilities centres, directing that notwithstanding the Government Notification, dated 11th December, 1986 (Annexure P-10), "all Saturdays should be observed working days as usual".

(3) Aggrieved at the afore-mentioned order (Annexure P-11) that the petitioners have approached this Court.

(4) Notice of motion was issued and in response thereto, the respondents have filed their written statement in which their decision, under challenge, is sought to be justified on the following premise :—

"It is further submitted that these centres have been set up in the State of Punjab for the development of industry by imparting technical guidance/testing and common

facilities in the factory premises of the industrial units as well as in these centres itself having direct links with industrial productive activities which is only possible if these centres are kept open on the days when generally the industry is working. It may also be mentioned that the State Govt. is fully competent to fix any working hours of its offices/centres. It is further submitted that the timings and holidays of the centres were fixed in 1980 and have been continuing since then. The petition having been filed in 1987, is liable to be dismissed as being unduly belated."

(5) I have heard S/Shri T. S. Dhindsa and Som Dutt Sharma, learned Counsel for the petitioners and Shri Jayender S. Chandail, learned Assistant Advocate General, Punjab on behalf of the respondents and have perused the record.

(6) In order to make out a case of "hostile discrimination", it is contended on behalf of the petitioners that notwithstanding the fact that the service conditions of the petitioners as well as of those posted in the Directorate and/or District Industries Centres and governed by the same set of Rules, known as the Punjab Industries Department (State Service) Class III Rules, 1956, their similarly situated counterparts referred to above, unlike the petitioners, are not required to work on Saturdays, which are observed as 'public holidays'. Relying upon a few transfer/posting orders (Annexures P-6 to P-9), it is also contended that the services of the incumbents whether posted at the facilities centres or at the Directorate/District Industries Centres are *inter se* transferable and, thus, there is no separate and exclusive cadre meant to serve in the facilities centres. On the strength of these facts, learned Counsel for the petitioners vehemently contended that the petitioners are also entitled to observe the Saturdays as public holidays, at par with the employees of the Industries Department, or in the alternate, are entitled to be paid 'extra wages' in lieu thereof. Reliance has been placed on a judgment by the Supreme Court in the case of **Municipal Employees Union (Regd.) Sirhind and others versus State of Punjab & Others, (1)**.

(7) On the other hand, learned State Counsel, on the basis of the stand taken in the reply, contended that the facilities centres are meant to provide certain facilities to the industrial units in the State

of Punjab and since no holidays are observed on Saturdays in these industrial units, the facilities centres are also required to remain open on such Saturdays. According to him, the nature of duties to be performed in the facilities centres is altogether different to those being performed in the Head Office and/or District Industries Centres, therefore, the differential treatment meted out to the employees posted in the facilities centres is based upon "reasonable classification" and, thus, is not hit by Articles 14 or 16 of the Constitution of India.

(8) In **Municipal Employees Union (Regd.) Sirhind and others** (*supra*), their Lordships of the Supreme Court dealt with the following common question which arose for consideration :—

"Whether the Clerks and Peons working at octroi checkposts and barriers run by the respondent Municipal Committees concerned 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 checkposts and barriers while their colleagues in the offices of the Municipal Committees concerned were permitted to enjoy those Saturdays as holidays."

(9) The aforesaid question has been answered in para 15 of the report, which reads as follows :—

"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 checkposts or barriers rather than in the offices. But that would require a further question as to whether, at the relevant time at which the employees concerned 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 Municipal Committees concerned 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 Saturdays on which they are shown to have discharged their duties." (emphasis applied).

(10) Reverting to the facts of the case in hand and having regard to the principles laid by the Apex Court, referred to above, it may be noticed that the respondents do not dispute the fact that the employees working in the facilities centres and/or those working in the Directorate/District Industries Centres are governed by the same set of statutory service rules and their posts are *inter se* transferable. The employees posted in the Directorate or District Industries Centres are admittedly extended the benefit of Notifications like 11th December, 1986 (Annexure P-10) issued by the Government of Punjab in terms whereof the Saturdays have been declared as 'public holidays'. The petitioners, though, are similarly situated employees, however, they have been denied the benefit of observing Saturdays as 'public holidays' and are required to work on all Saturdays (except second and last of the month) due to incidence of their service, namely, their transfer and posting in the facilities centres.

(11) While, there can be no doubt that the State Government, in the larger public interest and keeping in view the very object for which the facilities centres have been opened, is well within its right to command that such centres shall remain open and work on Saturdays also so that the industrial units can avail the facilities which these centres are meant to provide, however, the State Government is also

obligated not to discriminate amongst its similarly situated employees. It can achieve both the objects successfully by following the dictum of the Supreme Court in **Municipal Employees Union (Regd.) Sirhind and others** (*supra*), namely, by granting extra wages for each of the working Saturday.

(12) For the reasons aforementioned, though, I decline to quash the order as contained in the telegram, dated 20th February, 1987 (Annexure P-11) however, allow this writ petition in the following terms :—

- (i) The writ petition having been filed in March 1987, the respondents are directed to calculate as to on how many Saturdays the employees posted in different facilities centres have been required to work from 1st April, 1987 onwards. The aforementioned exercise shall be carried out within a period of three months from the date of receipt of a certified copy of this order.
- (ii) All those employees posted in the facilities centres and, who are found to have actually worked on Saturdays which were otherwise observed 'public holidays' in the Head Office/District Industries Centres of the Department, shall be paid extra wages as per the rules/Government policy for working on such extra days. The arrears of extra wages shall be paid to them within two months of the completion of the exercise required to be undertaken in terms of direction No. (i) above.
- (iii) It will be open for the respondents to continue with their policy of keeping the facilities centres open on Saturdays, if so required in the public interest. However, the employees working in such facilities centres shall be entitled to be paid extra wages for working on these extra days.

(13) No order as to costs.