

our view, therefore, the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment."

The apex Court, however, awarded compensation to the workmen in the light of the dictum laid down in *O. P. Bhandari v. Indian Tourism Development Corporation Ltd.* (6).

(13) On the facts and circumstances of the instant case, the order of the Labour Court ordering reinstatement of the workmen was wholly unwarranted. The workmen were entitled to compensation for loss of future employment, in the light of the judgment of the apex Court in *O. P. Bhandari's case* (supra).

(14) For the reasons aforesaid, C.W.P. Nos. 3774 and 3853 of 1985 and 1278 and (filed by the workmen) are dismissed and C.W.P. Nos. 2584, 2585 and 2586 of 1985 (filed by the Management) are allowed. The order of the Labour Court to the extent to which the reinstatement of the workmen has been ordered is quashed. Since there is no material available on the record as to what pay and allowances were last drawn by the workmen, it would not be possible to determine the compensation payable to them. For the limited purpose of determining the compensation payable to the workmen in the light of the dictum of the Apex Court in *O. P. Bhardwaj's case* (supra), the case is remitted to the Labour Court. The parties through their counsel are directed to appear before the Labour Court on January 12, 1991, which will determine the compensation payable to the workmen in lieu of reinstatement after permitting them to lead evidence and thereafter fix the time within which the compensation is to be paid to the workmen by the management. In the circumstances of the case, I make no order as to costs.

S.C.K.

Before:—*Jawahar Lal Gupta, J.*

**KRISHAN LAL AND OTHERS,—Petitioners.**

*versus*

**THE STATE OF PUNJAB AND OTHERS,—Respondents.**

*Civil Writ Petition No. 5829 of 1988.*

23rd April, 1991.

*Constitution of India, 1950—Art. 226—Writ of Mandamus—Employees of same employer—Some posted in office and some on octroi side—Such posts interchangeable—Employees on octroi duty discriminated in matter of holidays—Such discrimination—Invalid.*

(6) 1986 (4) S.C.C. 337.

*Held*, that the employees working in the octroi branch and those working in the office form one cadre. Being members of the same service under one employer, no *inter-se* discrimination can be made only on the basis of the place of posting. It appears that the clerks and Peons working under the same employer have been treated differently without any reasonable basis. The action of the respondent cannot be sustained on any ground whatsoever. In this situation, the petitioners cannot be treated differently and that they are entitled to all those privileges which the persons working in the office of the Committee are enjoying. In case, the petitioners are denied holidays which their counterparts in the office of the Committee are getting, they have a right to be compensated by payment of wages or such allowances as may provide adequate compensation to the petitioners.

(Para 3)

*Civil Writ Petition under Articles 226/227 of the Constitution of India, praying that after summoning the complete record of the case,—*

- (i) a Writ of Mandamus may kindly be issued to the authorities for granting to the petitioners the same benefits as are being granted to the office staff. These benefits are in the shape of Saturdays and Sundays off, granting of two restricted holidays granting of lunch break and granting of national and festival holidays and other holidays as per government notifications.
- (ii) In the past, the octroi staff has not been granted equal benefits. The authorities be, therefore, kindly directed to give credit in the earned leave account equal to the holidays on which they worked in the past;
- (iii) a direction be kindly issued to the respondents that the petitioners should be granted earned leave or overtime allowance if they are ordered to work on the holidays, etc. in future.
- (iv) an interim direction is prayed for from this Hon'ble Court thereby directing the authorities that during the pendency of this writ petition the benefits of holidays etc. should be granted as per notification at Annexure P-9 in future or the ones issued by Punjab Government from time to time. These benefits are being granted to the staff on office side;
- (v) the arrears of salary becoming due and payable on this account be ordered to be released with interest @ 18 per

*cent per annum from the date these arrears were withheld till the date their payment is made in favour of the petitioners.*

(vi) *issuing of advance notices to the respondents, as required under the High Court Rules and Orders, be kindly dispensed with.*

(vii) *filing of certified copies of the annexures be dispensed with;*

(viii) *any other appropriate writ order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case, may be issued;*

(ix) *this petition may be accepted with costs.*

K. L. Arora Advocate with R. K. Gautam Advocate, for the petitioners.

Randhir Singh, AAG Punjab, for Respondent State.

Ravi Sodhi Advocate, for Respondent No. 3.

#### JUDGMENT

*J. L. Gupta, J.*

Krishan Lal and 34 other employees who are working as Clerks and Peons in the Notified Area Committee, SAS Nagar, Mohali, have filed this petition claiming a writ of *mandamus* directing the respondents to give them holidays on Saturdays and Sundays and other national holidays etc. in the same manner as is being given to the other staff. In the event of the holidays not being granted, the petitioners claim that the respondents should grant over time allowance etc. so as to compensate the petitioners for the extra work that they are called upon to do.

(2) It is stated by the petitioners that on appointment as Clerks and Peons, certain persons are posted in the office of the Committee while others are posted on the Octroi side. All the employees whether working in the office or on the Octroi side carry the same designation, identical conditions of service, and are borne on a common seniority list. The posts are inter-changable and persons working in the office are frequently transferred to Octroi side and vice versa. In spite of everything also being identical, the

petitioners are being illegally denied the following benefits which have been enumerated by them in para 7 of the petition :

Sr. No.	Nature of benefit	For Office Staff	For Octroi Staff
1.	Saturdays & Sunday Off.	Yes	No Sunday.
2.	24 national, festival and gazetted holidays, etc. in a year as per notification P-9.	Yes	No.
3.	2 restricted holidays as per notification P-9	Yes	No.
4.	Lunch break	Yes	No.
5.	All holidays declared by the Government from time to time on account of urgent needs.	Yes	No.

The petitioners made repeated representations which have not met with any results. Consequently they have filed the present petition. In the written statement, the stand taken by the respondents is summarised in para 3, which reads as under :

“The contents of para No. 3 are wrong and denied. The petitioners are entitled for weakly rest plus festivals and National holidays as per instructions of Local Government Department. The nature of their duties is entirely different than that of the staff working in office. The octroi staff can be transferred to the office on administrative grounds. It has been agreed by the department that uniform may be allowed to staff on Octroi duty subject to the condition that as and when an employee is transferred to office he will surrender the uniform and given to his successor. The norms for supplying of uniforms to the octroi staff is under consideration to the Government as and when the norms are finalized the uniform will be provided to the Octroi staff. The staff working in office is not entitled for any uniform.”

Other averments made by the petitioners were also controverted. Petitioners have also filed a replication specifically denying the averments in the written statement. Instances have also been given to show the frequent transfers made from the office to the octroi branch and from octroi branch to the office. Mr. K. L. Arora, appearing for the petitioners has vehemently contended that all the employees working under the Committee form one cadre. They are posted in the office or in the octroi branch, in view of the exigencies of the service. The learned counsel submits that they are entitled to parity of treatment and cannot be discriminated against in any manner whatsoever. He has also pointed out that certain persons working in different Municipal Committees in similar capacities had approached the labour Court by applications under Section 33(c) (2) of the Industrial Disputes Act and claimed wages in lieu of national and other holidays. Their claims were allowed by the Labour Court. He has brought to my notice that two writ petitions were filed by Municipal Committee Bhuchho against the orders of the labour court. C.W.P. No. 6987 of 1988 and No. 6988 of 1988 were filed by the Committee and both these writ petitions were dismissed by the Division Bench *in limini*. Relying upon these two orders, he contends that the petitioners have approached this Court for the issue of a direction to the respondents to treat the petitioners who are working in the octroi branch at par with those who are working in the office. For the period that has already elapsed, he claims that compensation in terms of wages be given to them. As against this, the stand of the learned counsel for the respondents was that the petitioners were being given weekly rest and also holidays in accordance with the "instructions of local government department". He also contended that the nature of duties being entirely different, the petitioners could not claim parity of treatment with the staff working in the office.

(3) I have heard the learned counsel for the parties. Nothing has been produced before me to show that the Clerks and Peons working in the office of the Notified Area Committee form a separate cadre and are in any way different from those working in the octroi branch. Nothing has been produced to show that their conditions of service were governed under different rules. Even separate seniority lists do not appear to have been maintained by the Committee. The averments of the petitioners suggesting that *inter se* transfers were frequently made also could not be successfully rebutted. No material was brought to my notice to show that the instances quoted by the petitioners in their replication were

false. This being the position. I am driven to the conclusion that the employees working in the octroi branch and those working in the office form one cadre. Being members of the same service under one employer, no *inter-se* discrimination can be made only on the basis of the place of posting. It is not unthinkable that a senior person may be sent to the octroi branch while his junior may be allowed to continue working in the office. While the junior would be given the right to enjoy all national holidays, the senior who is posted in the octroi branch is denied those benefits. The averments in the written statement suggested that weakly rests or compensatory holidays were given to the petitioners but it could not be proved by respondents by adducing any evidence whatsoever. It thus, appears that the Clerks and Peons working under the same employer have been treated differently without any reasonable basis. The action of the respondents cannot be sustained on any ground whatsoever. No record was produced to show that the duties in the octroi branch were in any way less onerous. In this situation, I have no alternative but to hold that the petitioners cannot be treated differently and that they are entitled to all those privileges which the persons working in the office of the Committee are enjoying. In case, the petitioners are denied holiday which their counterparts in the office of the Committee are getting, they have a right to be compensated by payment of wages or such allowances as may provide adequate compensation to the petitioners. The labour Court in the two cases mentioned above held the employees entitled to different amount of money. The petitioners are also entitled to a similar relief and the only way in which they can be compensated is by payment of wages for the days on which they are not allowed to avail of the holidays.

(4) I, therefore, allow this petition and direct the respondents to grant the petitioners the same benefits like holidays etc. which are granted to those working in the office of the Committee. The petitioners are also entitled to be compensated by payment of wages for the past. The Committee shall work out the amounts to which the petitioners are entitled and pay them the wages accordingly. I am, however, not awarding any interest on the amount found due to the petitioners. The writ petition is accordingly disposed of. There will be no order as to costs.

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