



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 1689 OF 2016

**THE SECRETARY, PUBLIC WORKS
DEPARTMENT & ORS.**

....APPELLANT(S)

VERSUS

**TUKARAM PANDURANG SARAF
& ORS.**

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.
2. The present appeal by special leave is preferred on behalf of the appellants-employer, challenging the impugned judgment dated 15th November, 2014 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Writ Petition No. 3425 of 2010 (Civil), whereby the High Court dismissed the said writ petition filed by appellants-employer and upheld the judgment and order dated 31st October, 2009 passed by the Industrial Court, Yavatmal,

Maharashtra (hereinafter being referred to as 'Industrial Court') in Complaint (A.K.P.) No.38/2006. The Industrial Court had allowed the complaint filed by the respondent-employees upholding their claim for entitlement of holidays on 2nd and 4th Saturdays and for payment of salary equal to one and a half times salary for the work done by them on 2nd and 4th Saturdays as per the Kalelkar Award.

3. The facts of the case, in a nutshell, are that the respondent-employees were appointed on the positions of Mailmujar and Mali between 1982 and 1997 under the Executive Engineer, Public Works Department, Pusad, Tq. Pusad, District Yavatmal and the Sub-Divisional Officer, Public Works Department, Pusad, Tq. Pusad, District Yavatmal. For the sake of brevity, the details of the respondent-employees with reference to their date of initial employment, post held, and date of appointment are illustrated in a tabular form below: -

Name of the Respondent/ Employee	Date of the Initial Employment	Post Held	Work on the temporary establishment	Date of Appointment
Shri Tukaram P. Saraf	1 st November 1984	Mailmujar	Phone Attendant	1 st November 1989
Shri Subhash	13 rd April 1988	Mailmujar	Room	1 st April

T. Waghmare			Attendant	1993
Shri Mahadeo R. Jadhao	1 st October 1986	Mailmujar	Phone Attendant	1 st January 1991
Shri Kabirdas S. Kamble	1 st June 1976	Mailmujar	Khan Sama	1 st June 1981
Shri Anil S. Chavhan	1 st January 1986	Mailmujar	Room Attendant	1 st January 1997
Mehboob Khan Baba Khan	1 st April 1981	Mailmujar	Room Attendant	1 st April 1986
Shri Ashok V. Alane	15 th April 1988	Mailmujar	Room Attendant	1 st April 1993
Shaikh Nisar Sk. Mahboob	1 st January 1986	Mailmujar	Room Attendant	15 th January 1991
Shri Laxman J. Gabhane	1 st August 1974	Mali	Mali	18 th May 1982
Shri Chhagan B. Somwal	1 st January 1986	Mali	Sweeper	21 st January 1991
Shri Sanjay S. Reddi	1 st January 1985	Mali	Room Attendant	1 st January 1990
Shri Ananda Champat Lodhe	1 st September 1977	Mali	Room Attendant	2 nd April 1982
Shri Himmat Ramkrishna	1 st February 1985	Mali	Room Attendant	1 st February 1990
Saiyyad Pashu Sy. Isak	20 th January 1984	Mali	Chowkidar	20 nd January 1989

4. On 27th February, 2004, the respondent-employees were placed on the Converted Temporary Establishment in accordance with the Kalelkar Award, which came into effect in the year 1967, determining the service conditions of the workers working in the Public Works Department at various places or districts under different projects. Under the Kalelkar award, the Public Works Department workers or the staff are entitled to get the benefits of public holidays as well as holidays on the 2nd and 4th Saturdays of each month.

5. On 10th January 1974, the Government of Maharashtra, Irrigation and Power Department, Sachivalaya, Bombay, issued a Government Resolution No. PAS-1070/741883-E(2)(2), wherein the benefits of public holidays as well as holidays on the 2nd and 4th Saturdays of each month, were purported to be withdrawn as far as the field staff is concerned. According to the said Resolution, which was purported to be a clarification of the Kalelkar award, the 'field staff' was not held entitled to public holidays as well as holidays on the 2nd and 4th Saturdays of each month. The relevant portion of the Resolution is reproduced as under:-

“Resolution

Orders have been issued from time to time in the Government Resolution mentioned below in regard to grant of Gazetted

Holidays and holidays on second and fourth Saturdays to various categories of staff working under the Irrigation and Power Department:-

- i) Government Resolution, Irrigation and Power Department No. LAB-1967-L, Dt. the 20th December, 1967.
- ii) Government Resolution, Irrigation and Power Department No.LAB-1568/769-L, Dtd. the 21st September,1970.
- iii) Government Resolution, Irrigation and Power Department No.LAB-1071/7539 5-L, dated the 19th May, 1972.

It is, however, observed that the position in this respect is not quite clear. In amplification modification of the orders referred to above Government is therefore, pleased to issue to following comprehensive orders in the matter:

(1) The Office staff in the office of Circle Office, Divisional Office, Sub-Divisional Office etc. should be allowed all the Public Holidays Notified by Government and the holidays Holidays notified by Government and the holidays on Second and Fourth Saturdays of every month.

(2) The staff working in the field which comprises staff borne on regular establishment, the staff converted to regular establishment from work-charged and daily, rated establishments and the staff on work charged and daily rated establishments should not be held eligible for the Public Holidays and Holidays on Second and Fourth Saturdays of each month. In other words, the days of such holidays should be working days for them. They should, however, be granted 15th August and fourth optional holidays on festival days of their choice, in each year, besides of course one weekly holidays either on Sunday or any other convenient day on which the fieldwork is closed.

(3) The orders regarding grant of holidays on Second and Fourth Saturdays issued in –

(a) Government Resolution, Irrigation and Power Department No. LAB-107 2/1027709-L, dated the 7th September, 1972.

(b) Government Memorandum, Irrigation and power Department No. LAB-1072/102795-L, dated the 11th October, 1972;

And

(c) Government Memorandum, Irrigation and Power Department No. LAB-1072/60093-L, dated the 8th of December, 1972.

Applicable to the workers respectively in (a) the Dapodi Workshop at Poona, (b) the Workshops, Research Divisions and the Civil Sub-Division under the Maharashtra Engineering Research Institute, Nasik and (c) the Regional Workshops at Akola and Nanded and other workshops excluding the project workshops under the Control of the superintending Engineers of Mechanical Circles will stand.

(4) Compensatory holidays should be granted to those who will work on holidays that are admissible, to them. This should be done only if they are asked in writing to work on holidays. As rainy season is usually a slack season, it could be possible to give them as many compensatory holidays during that season-as would be necessary.

(5) Compensatory holidays should be allowed to be accumulated but must be availed of in the particular year and cannot be carried forward in the succeeding year. For this purpose, the year shall be reckoned from October to September. Such, compensatory holidays may be allowed to be joined with leave of any kind.

No payment in lieu of the compensatory holidays should be made.

2. These orders apply to the staff in the Irrigation and Power Department and Buildings and Communications, Department.

By order and in the name of the Governor of Maharashtra.”

6. On 12th September 1980, the Government of Maharashtra Irrigation Department in consultation with the General Administration Department and the Finance Department, issued a Government Resolution No. LAB-1080/1047(119)-A(14), wherein the Government revoked all previous orders related to holidays for workmen in the Irrigation Department and replaced them with a set of consolidated and revised guidelines which provided that employees working in zonal, divisional, sub-divisional, and other related offices were eligible for public holidays as well as holidays on the 2nd and 4th Saturdays of each month, as sanctioned by the Government. Additionally, the workmen employed in the specific regional workshops, such as those in *Dapodi (Pune)*, *Satara*, *Wardha*, *Ahmadnagar (Kedgaon)*, *Ashti*, *Khadakwasala*, *Nashik*, and *Nanded*, along with the Government Central Workshop and Store at Nagpur,

were also made eligible for these holidays. However, due to the unique nature of their work, 'regional workmen' were only granted public holidays on the 26th of January and the 15th of August. They were also given the option to take four additional holidays per year on festival days of their choosing, subject to prior approval from the concerned official. The Resolution further provided that employees or workmen who were required to work on designated holidays, as instructed through written orders, were entitled to compensatory leave. The Government Resolution is reproduced herein below: -

Holidays- Irrigation Department

Government of Maharashtra
Irrigation Department

Government Resolution No. LAB-1080/1047(119)-A(14)
Mantralaya, Mumbai- 400 032 Date- 12th September, 1980

Read: -

- 1) Government Resolution Irrigation and —No. PAS-1070/741883-Aa (9) (2), dated January, 1974
- 2) Government Resolution, Irrigation Department No. 1-AB/Aa (14), dated 20th September 1979.

The workmen working in the Irrigation Department and Public Works Department and Housing Department are getting holidays as per demand Number 5 in the Kalelkar Award. But in the said demand, there was no provision regarding working applicable to the workmen of Technical Union working in the workshops the holiday on Second and Fourth Saturday which are admissible to the other employees working on these establishments. Hence, after considering the issue regarding making applicable the said holidays to the workmen working in the workshops at Dapodi, Satara, Wardha and some other

regional workshops, the orders were issued declaring the concerned workmen entitled to the said holidays. Similarly, the Government issued the orders to grant, compensatory holidays to these workmen for the work done on holidays. However, these orders were not implemented for the regional workmen due to the peculiarity of their work. Now, it has come to the notice of the Government that as these orders have been issued by different Government Resolutions and there is uniformity in them, number of times it creates confusion in the minds of local authorities while granting leave to the workmen. Similarly, it has also come to the notice of the Government that the holidays on Second and Fourth Saturday are not admissible to the workmen working in the Regional Workshops at Ahmadnagar (Kedgaon), Ashti, Khadakwasala and Nashik like workmen working in other regional workshops. Hence, the question of giving the benefit of these holidays to the concerned workmen was under the consideration of the Government.

Resolution:

Now, the Government is pleased to direct that the orders issued time to time till date for making applicable holidays to the workmen in Irrigation Department should be considered as cancelled and instead, the following consolidated and revised orders should be implemented.

- a) The employees working in the Zoned, Divisional, Sub Divisional, etc. offices should be considered eligible for getting Public Holidays and holidays on Second and Fourth Saturday of each month, sanctioned by the Government from time to time.
- b) The holidays on Second and Fourth Saturday of each month should be made applicable to the workmen working in the workshops at Dapodi (Pune), Satara and Wardha, Regional Workshops at Akola, Ahmadnagar (Kedgaon), Ashti, Khadakwasala, Nashik and Nanded, Government Central Workshop and Store at Nagpur.
- c) Due to the peculiar nature of work and duties of the regional workmen. Public Holidays on 26th January and 15th August only should be granted. Similarly, they should be given liberty to avail as per their choice additional 4 holidays on any festival day in a year approved by the Government. The workmen should avail such option leave with the prior sanction of the concerned official.

d) (i) The employees/ workmen, who will work on the days of leave applicable to them, shall be entitled for getting compensatory holiday. But in this regard, such employees/workmen should have been directed by issuing writing orders to work on the day of holiday. As rainy season hampers the pace of regional and other work, as far as possible maximum compensatory leave, should be granted in rainy season (period from -16th June to 15th October) to the workmen who have become entitled for compensatory leave.

(ii) The liberty to accumulate compensatory leave should be given on the condition of availing leave in the same year itself. For any reason, permission should not be granted to avail such leave in the next year. For the purpose of counting of leave, period of a year should be considered from the month of October to September.

(iii) Compensatory leave should not be compensated monetarily.

- 3) The Resolution issues with the informal reference of the General Administration Department dated 14th July, 1980 and with the concurrence of Finance Department vide its informal reference No. 1213/80/EXP- 6, dated 17th July, 1980.

By order and in the name of the Governor of Maharashtra.

Sd/-
(S.G.Khale)
Assistant Secretary to the
Government.

7. Despite the new Government Resolution revoking all the previous orders and revising the guidelines, the respondent-employees were not granted access to all Government holidays and holidays on 2nd and 4th Saturday under the Kalelkar Award. Instead, the respondent-employees were compelled to work on these holidays

without any additional compensation. Despite submitting multiple letters and representations to the appellants-employer requesting enforcement of their rights under the Kalelkar award, no positive action was taken and instead, their complaint was dismissed *vide* communication dated 27th May 1996. Consequently, the respondent-employees filed a complaint under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter 'Maharashtra Act') before the Industrial Court, seeking enforcement of their rights under the Kalelkar Award. They sought direction to the appellants-employer to cease the unfair labour practices and grant them the holidays as per their entitlement under the award, along with back wages for the work performed on these holidays.

8. The Industrial Court, *vide* Order dated 31st October 2009, allowed the complaint and held that the complainants (respondent-employees), who were employed in a Converted Temporary Establishment are entitled to Government holidays, including those on the 2nd and 4th Saturdays, and to overtime compensation for work performed on such holidays as per the Kalelkar Award. The Industrial Court confirmed that these entitlements are in line with the Kalelkar

Award's provisions, which mandate Government holidays and overtime allowances. Overruling the objections raised by the appellants-employer, the Industrial Court found that the Circular issued by the Government on 27th May 1996 did not exclude the complainants (respondent-employees) from these benefits as the said Circular only concerns the issue involved in the disposed of cases and in the cases pending before the Industrial Court at Bombay. The Industrial Court directed the appellants-employer herein to grant all entitled holidays and to provide appropriate overtime payments to respondent-employees, within a month.

9. Aggrieved by the Industrial Court's award, the appellants-employer herein filed Writ Petition No. 3425 of 2010 before the High Court of Bombay, Nagpur Bench. After hearing both the parties and taking into consideration the material available on record, the High Court dismissed the writ petition upholding the Industrial Court's decision that employees covered under the Kalelkar Award are entitled to Government holidays and overtime pay for working on the 2nd and 4th Saturdays. The High Court affirmed that the State Government's Circular issued on 27th May 1996, excluding certain employees from these benefits was invalid, as it contradicted the

Kalelkar Award's provisions and the High Court's earlier precedents. The order dated 15th November, 2014 passed by the High Court dismissing the writ petition of the appellants-employer is subjected to challenge in this appeal by special leave.

Submissions on behalf of the Appellants: -

10. Learned counsel representing the appellants-employer, vehemently and fervently contended that although the respondent-employees were appointed to the establishment and were given monthly salaries regularly as per the Kalelkar Award, however, this by itself would not entitle them to the same facilities and leave benefits as permanent employees. These privileges including additional holidays and overtime wages, which apply to permanent employees cannot *pari passu* be extended to respondent-employees, given their status as temporary workers. Thus, this logical distinction invalidates any claims for benefits exclusive to permanent staff, as the respondent-employees' conditions of employment are totally different.

11. Learned counsel further urged that the respondent-employees' demand for holidays and reimbursement of back wages for duties performed on holidays, as well as other benefits typically reserved for

permanent staff, is unjustified and untenable in the eyes of law. To buttress this submission, learned counsel referred to the Government Circular issued on 27th May, 1996 and urged that the respondent-employees are not entitled to the benefits under the Kalelkar award.

12. Learned counsel further contended that the demand of the respondent-employees for holidays on the 2nd and 4th Saturdays and additional compensation is based on a misinterpretation of the Kalelkar Award and relevant regulations. He laid emphasis on the fact that some of the respondent-employees being temporary employees were deputed to work as Khansama and for incidental work at Guest House at Pusad, where their presence is imperative as important dignitaries such as Chief Minister, other Ministers, Judges of the High Court, Judges of other courts and other Senior Officers visit thereat. These employees are getting one week off regularly.

13. On these grounds, learned counsel for the appellants-employer implored the Court to accept the appeal, quash the proceedings, and set aside the impugned judgment and order.

Submissions on behalf of the Respondents: -

14. Learned counsel representing the respondent-employees, vehemently and fervently opposed the submissions advanced by the learned counsel for the appellants-employer. Learned counsel asserted that the respondent-employees were rightfully entitled to claim the benefits under the Kalelkar Award, including Government holidays, holidays on the 2nd and 4th Saturdays, and overtime pay at a rate of one and a half times salary for the work done by them on 2nd and 4th Saturdays as per the Kalelkar Award.

15. Learned counsel further urged that the appellants-employer had engaged in unfair labour practices by denying these rightful benefits and by compelling the respondent-employees to work on these designated holidays without paying appropriate overtime compensation.

16. It was further urged that the appellants-employer also failed to issue the notice as mandated under Section 9A of the Industrial Disputes Act, 1947, when altering the service conditions of the respondent-employees. Thus, the appellants-employer clearly violated the provisions of the Kalelkar Award, and the Industrial Court was justified in granting relief sought for by the respondent-

employees. He urged that the order of the Industrial Court has also been affirmed by the High Court after detailed deliberation on facts as well as in law.

17. On these grounds, the learned counsel for the respondent-employees implored the Court to dismiss the appeal and affirm the impugned judgment and order.

Discussions and Conclusion: -

18. We have given our thoughtful consideration to the submissions advanced at a bar and have perused the impugned judgments. With the assistance of learned counsel for the parties, we have thoroughly examined the material available on record.

19. The fundamental issue before us is whether the respondent-employees who are working in Public Works Department as a Converted Temporary Establishment and fall within the domain of Kalelkar Award, are entitled to get the benefits of public holidays as well as holidays on the 2nd and 4th Saturdays of each month.

20. It is not in dispute that the respondent-employees have been taken on Converted Temporary Establishment from 27th February, 2004 as per the Kalelkar Award. Under the Kalelkar Award, there is a specific agreement between the parties i.e., the employer and

employee in respect of “holidays” under caption demand No. 5 which reads as under: -

“Demand Number 5:- **The employee in the work charged, regular temporary and permanent category shall be entitled for the Government Holidays approved by the Government.** The employee on daily wages shall be; entitled for the three paid leave in a year that is on 1) 26th January, 2) 15th August and 3) 2nd October as per the existing practice”. Similarly additional four optional paid; leave shall be granted to these employees by taking into: consideration the exigency of work. The employee shall avail these leave on any day of festival as per their: choice. But they are required to make an application in. advance for availing these optional leave.

Demand number 6 :- All the employees shall be paid overtime allowance as per the provisions of section 14 (Annexure:-8) of the Minimum Wages Act, 1948. The employees, who are being paid overtime allowance at present, shall be paid overtime allowance at the double rate of minimum wages or at one and a half time rate of the actual salary of the employee whichever rate is higher, as prescribed in the Government notification issued as per the provisions of the Minimum Wages Act, 1948.”

(emphasis supplied)

21. It is thus clear that except the daily-wage employees, all other categories of employees are entitled to get such public holidays as are sanctioned by the Government for these categories of employees. The respondent-employees in the present factual matrix fall under the category of temporary employees and not as daily-wage employees. As of 27th February 2004, they have been placed on the Converted Temporary Establishment in accordance with the Kalelkar Award.

Therefore, the respondent-employees are entitled to all the holiday benefits and other emoluments stipulated under the Kalelkar Award.

22. The contention advanced by the learned counsel for the appellants-employer that the respondent-employees are not eligible for Government holidays, including the 2nd and 4th Saturdays, based on the Circular issued by the Government on 27th May 1996, is fundamentally flawed. The Circular, as referred to by the learned counsel for the appellants-employer, pertains specifically to the issues involved in disposed of cases and those pending before the Industrial Court in Bombay. The instructions in this Circular were related to the cancellation of facilities and concessions granted through interim orders in those particular cases. However, the above stated Circular does not govern the employees who were shifted to the Converted Temporary Establishment under the Kalelkar Award, neither it stated that the said employees would be ineligible for the benefits outlined in the Award, such as Government holidays and overtime allowances.

23. In fact, the provisions of the Kalelkar Award explicitly state that all employees, except those on daily wages, are entitled to these

benefits. The appellants-employer's reliance on the 27th May, 1996 Circular to deny the complainants their rightful entitlements is misguided and does not withstand scrutiny when compared to more specific and comprehensive provisions of the Kalelkar Award. Consequently, the Circular does not negate the eligibility of the respondent-employees for Government holidays and overtime allowances, and they were rightly granted the relief sought for by the Industrial Court and affirmed by the High Court.

24. The Industrial Court assigned strong unassailable reasons while granting relief sought for by the respondent-employees in terms of the Kalelkar award. The findings arrived at by the Industrial Court have been reaffirmed by the High Court with the dismissal of the writ petition filed by the appellants-employer against the Industrial Court's award. Thus, the impugned judgment dated 15th November, 2014 does not suffer from any infirmity warranting interference.

25. The appeal is dismissed accordingly. No costs.

26. The appellants-employer are directed to comply with the order passed by the Industrial Court, and later affirmed by the High Court, within a period of eight weeks.

27. Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANDEEP MEHTA)

.....**J.**
(R. MAHADEVAN)

New Delhi;
September 19, 2024.

