

**127 RA No.143 of 2016 (O&M) in
CWP No.24472 of 2015**

Constable Rajesh Kumar and others Vs. State of Punjab and another

Present: Mr.Harkesh Manuja, Addl.AG, Punjab
for the applicant-State.

CM No.5407 of 2016

Notice of the application to the non-applicant/petitioners.

Mr.B.S.Patwalia, Advocate who is present in the Court, accepts
notice on behalf of the non-applicant/petitioners.

Delay of 88 days in filing the review application is condoned
for reasons stated in the application which is accompanied by an affidavit.
The prayer has not been opposed.

RA No.143 of 2016

Heard Mr. Manuja and the learned senior counsel Mr.
D.S.Patwalia at some length for final disposal of the application for review.
Right to file reply to the application is waived by Mr.B.S.Patwalia on behalf
of the respondents.

This is an application filed by the State of Punjab in the Police
Department for review of the order dated 7.1.2016 allowing the writ petition.
The principal ground for review is that the factual position of the case could
not be placed before the Court [see assertion in para. 12]. The inference is
that the order was based on a concession without actually saying as much.
However, this is not the correct position on the judicial file. While issuing
notice to the State on 20.11.2015 on the contention of the petitioners that the

matter was covered by the judgment in *Harbans Lal* case, the learned State Counsel was asked to obtain instructions whether the case was covered by the citation pressed into service. It was recorded ad interim on the order sheet as follows: *“If the case is covered, a mere statement is sufficient. In case, the state wishes to file reply, they would have liberty to file the same for which the period can be enlarged.”* The case was adjourned to 21.12.2015. The case could not be taken up for want of time and was adjourned by order to 07.01.2016. On 07.01.2016, the learned law officer made statement on instructions from the department that the case was indeed covered by the decision of the Supreme Court. That was not all or the end of the matter. This Court also considered three judgments where the principle was reiterated and applied.

I unable to see my way to distinguish in principle the judgment in *Harbans Lal* case in the context of the present one, only on the specious plea that *Harbans Lal* case dealt with Pump Operators and the present one deals with Special Police Officers (SPOs) and the difference appears too wide to reconcile which can never be the yardstick when both categories were no more than daily wagers performing different duties. The sole issue before the Court in the main petition was regarding rights to pension and no other service benefit was involved therein nor was claimed or granted on 17.01.2016. It was also not necessary in retrospect to have recorded the statement of Mr. Manuja in the order that the case was covered by the ratio of decision of the Supreme Court. Opportunity to make out a case was granted to elicit the view of the respondent State before proceeding further. In fact, I would reaffirm that not only a fair but a conscionable and correct stand was taken by Mr. Manuja in relation to the principle involved and adjudicated till the Supreme Court in Review Petition (C) No 2038 of 2013

in SLP (C) No 23578 of 2012, State of Punjab & Ors. Vs. Harbans Lal & connected petitions which petitions were dismissed on 4.11.2015. Quite apart from the ostensible concession given by State counsel, the case on the other hand was in fact decided on merits based on applying principles in *Harbans Lal* case by analogy in the case of SPOs even though not articulated in as many words. In the present order, I would without any hesitation reassert the reasoning adopted in *Harbans Lal* case as relevant to this case when the Court applied reasoning, inter alia, contained in the Full Bench decision of the High Court rendered in Kesar Chand v. State of Punjab, 1998 (2) PLR 223 handed down by the Division Bench in CWP 2371 of 2010 and connected cases decided on 31.08.2010 from which decision appeals were carried to the Supreme Court by the State of Punjab unsuccessful. Therefore, the instant order relieves Mr. Manuja of the burden of the statement made in Court, as the decision, it is clarified, did not depend entirely on any concession made while this court only followed the law declared in *Harbans Lal* to a somewhat different but similar fact situation involving daily wage SPOs who had served for years together before their cases were considered favourably by the Police Department for regular recruitment/absorption as Constables in Punjab Police.

There appears to be no reasonable classification in daily wage service rendered by Pump Operators or SPOs before regularisation. The present SPOs were appointed by due authority of law under Section 17 of the Police Act, 1861 read with the Standing Order dated 30.10.1990 and supplemented by executive instructions dated 19.11.1991 and on those premises recruited as regular Constables in Punjab Police by stipulating a selection based on fitness and suitability on “reduced standard of suitability” [with reference to process-2000] which provisions of law in Section 17

themselves justify the initial entry into service as legal and valid and not de hors the law. The entry of the SPOs was most definitely not through the back door of service. They were in continuous service albeit as SPOs on daily wages paid monthly, and all of them shouldering the duties and responsibilities and suffering posting/deputing orders just like regular Constables working shoulder to shoulder with each other during times of stress when State Government had banned direct recruitment directing: “There should be no recruitment of Constable[s]. Appointment should first be made as SPO and minimum period for their absorption as Constable is reduced to six months. However, the absorption shall be in accordance with their seniority and suitability”; [as per para No. 2 (I) of DGP Instructions dated 19.11.1991]. The distinction now sought to be drawn in the review application is not only novel but artificial and wholly fallacious. The State Government instead of honouring the ex SPOs with pension conveniently forgets the sacrifice made by them during the dark days of Punjab when the forces were short of manpower in the Police department to contain militancy in Punjab. Their role cannot be undermined oblivious of the labour admittedly [see para.2 of application] since the period 1990-95 during the days of terrorism.

Good and sufficient grounds are not made out to review the order. However, it is modified to the extent the order will no longer be treated as one based on a concession but on the legal principle that the issue involved is no longer *res integra* but is covered by analogy by the binding ratio in *Harbans Lal* case. There is no rational basis or intelligible differentia to hold the two groups dissimilar for purposes of pension. The Pump Operators in *Harbans Lal* had work-charged service to their credit while the SPOs were also daily wagers appointed as per Section 17 of the Act, 1861

before they were recruited as regular Constables vide policy decisions of the Government. The decision in *Harbans Lal* case is thus *stare decisis* and its ratio serves as a reliable short-cut to relief for SPOs in the present case without using a microscope to explore the different strains in the DNA of the two categories to count past service for pension spent prior to making them permanent public servants. The end result will be no different from the point of view of liability of State Government towards payment of pension counting previous service as qualifying service for pension and pensionary benefits.

Moreover, none of the judgments and orders relied upon by the State in the review application have any bearing on the present case. Having gone through them I find they were meant for different purposes and causes of action and in none of them the present claim for pension has been agitated by counting the period before regularisation as qualifying period of service for pension. Even remotely the issue was neither considered nor dealt with and decided independently. The cases relied on are clearly distinguishable on facts and causes of action and do not furnish ground for review within the parameters of Section 114 of the Code of Civil Procedure, 1908 read with the provisions of Order 47 Rule 1 thereof and the three grounds provided therein, that is, discovery of new evidence, existence of some mistake/error or an analogous ground are present.

Besides, when a concession based statement made is found rooted in law declared by the Courts, no review lies only to take a different view or for this court to change its opinion.

The review application filed by the State is wholly misconceived in the artificial distinction it seeks to strike between the two

groups and is found without any merit and the same is hereby ordered to stand dismissed.

[RAJIV NARAIN RAINA]
JUDGE

09.05.2016
sd/Vimal