

**264 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.9961 of 2021 (O&M)
Date of decision : 01.02.2023**

Sukhdev Singh

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. K.S.Dadwal, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioner is aggrieved of the order dated 15.01.2021 (Annexure P-6) passed by respondent No.2. He further seeks writ in the nature of Mandamus in the form of directions to the respondents to count service rendered by the petitioner as Special Police Officer (SPO) w.e.f. 04.03.1993 to 21.04.1997 and to grant him all benefits including that of seniority, fixation of pay etc.

The petitioner joined respondent-department as SPO on 04.03.1993 and was later on recruited as Constable on 21.04.1997. The petitioner represented to the respondents to count his services as SPO.

Learned counsel for the petitioner submits that the case of the petitioner would be fully covered by ratio of law laid down by this Court in

Constable Rajesh Kumar & ors. Vs. State of Punjab & anr., passed in ***CWP***

No.24472 of 2015, decided on 07.01.2016 wherein a Constable was granted

relief of his earlier service on daily wages as SPO in terms of the law laid down

by Division Bench of this Court in the case of ***Harbans Lal Vs. The State of Punjab & others*** passed in CWP No.2371 of 2010 decided on 31.08.2010 holding that :-

“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.

Learned State counsel is not in a position to dispute the aforesaid fact.

Resultantly, the present writ petition is allowed in terms of ratio of law laid down in *Harbans Lal's case supra* as followed in *Constable Rajesh Kumar's case supra*.

Order dated 15.01.2021 (Annexure P-6) passed by respondent No.2 denying the claim of the petitioner is hereby set aside. Petitioner is held to be entitled to get his service rendered as SPO from 04.03.1993 to 21.04.1997 towards pensionary benefits.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

01.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No