

2024:PHHC:017638

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-3117-2002
Date of decision: 08.02.2024**

KULWANT SINGH AND ANOTHER **....PETITIONERS**
Vs.
STATE OF PUNJAB AND OTHERS **...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioners through the instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 23.11.2001 (Annexure P-6) whereby their claim for reinstatement as Special Police Officer has been rejected.

2. The petitioners vide appointment letter dated 27.08.1994 were appointed as Special Police Officers (for short 'SPO'). They were appointed by Deputy Superintendent of Police and their job was track patrolling. On the intervening night of 29/30.10.1997, they were on duty as members of escort party on Howrah Express, Amritsar. A commotion erupted between few passengers and escort party. An FIR No. 64 dated 30.10.1997 under Section 395 of IPC was registered at Police Station, Government Railway Police, Patiala against members of the escort party. The petitioners along with other accused were arrested and thereafter released on bail vide order dated 11.12.1997. The petitioners came to be discharged from service vide orders dated 01.11.1997

(Annexure P-1 and P-2 respectively). They faced criminal trial wherein they came to be acquitted at the stage of statement under Section 313 Cr.P.C. because trial Court formed an opinion that there was no incriminating evidence to be put up against them. The statement of co-accused namely Kuldeep Singh was recorded under Section 313 Cr.P.C. The trial Court after scrutinizing evidence led by both sides and considering their arguments vide judgment dated 03.05.2001 acquitted Kuldeep Singh on the ground of benefit of doubt.

3. The petitioners after their acquittal preferred CWP No. 16180 of 2001 before this Court seeking their reinstatement. The said petition came up for consideration before Division Bench of this Court which vide order dated 11.10.2001 disposed of with a direction to respondents to pass speaking order treating writ petition as representation of the petitioners. The relevant extracts of the prayer clause and order dated 11.10.2001 read as:

Prayer Clause

“PETITION under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction especially a writ in the nature of Certiorari quashing the action of Respondents in striking off the names of petitioners from the Rolls of S.P.Os on the ground that they have been involved in a criminal case and then not re-instating/restoring the petitioners to their original position inspite of the fact that they have honourably been acquitted by a Judicial verdict even though it involves quashing of the discharge orders No. 34679-80/SPO Cell dated 1.11.97 (P-2) and No. 34677-78/SPO CELL dated 1.11.97(P-3) which were prepared by respondents but not served upon the petitioners till date being illegal, arbitrary, discriminatory, in colourable exercise of authority, in violation of Articles 14 and 16 of the Constitution and in violation of law laid down by the Hon'ble High Court and Hon'ble Supreme Court.

It is further prayed that a writ in the nature of Mandamus may be issued directing the respondents to reinstate the

petitioners as S.P.Os and also to consider them for appointment as Constables and to issue them constable numbers as they had been duly selected for appointment as Constables but they could not be issued Appointment Letters because of prosecution launched against them in Criminal Court as now they have been acquitted from the criminal charges by judicial verdict (Annexure P-1), as has been done in case of other similarly situated persons after their acquittal.

It is further prayed that an interim direction may be given to the respondents to call back the petitioners on duty forthwith.

It is further prayed that the petitioner may kindly be held entitled to all the consequential benefits in form of pay, fixation of the salary, back wages etc. etc.. with interest.

It is further prayed that this Hon'ble Court may issue any other writ, order or direction which it may deem fit in the facts and circumstances of the case.”

Order dated 11.10.2001

“After hearing the learned counsel for the petitioner, we are of the opinion that the petitioner is required to approach the concerned authorities in respect of joining his duties on the basis of the order of the Court acquitting him in the criminal case.

Let this petition be treated as a representation and the same shall be duly considered and decided in accordance with law, by a speaking order, by the competent authority, expeditiously say within one month of the receipt of a certified copy of this order.

The petition stands disposed of.

On a separate request, a copy of the order be given dasti on payment of usual charges.”

4. The respondents vide impugned order dated 23.11.2001 has rejected representation of the petitioners. The Competent Authority has held that the petitioners do not have right of their post being daily wagers. It is apt to mention here that order dated 01.11.1997 whereby petitioners were discharged was never

set-aside and Division Bench of this Court had simply directed the respondents to consider representation of the petitioners. The said order till date holds the field.

5. Mr. Ashok Bhardwaj, Advocate submits that by instructions dated 14.05.2008, the respondents have decided to reinstate SPOs who have been acquitted in criminal trial and were dismissed on account of registration of FIR. The subsequent instructions dated 11.05.2009 stand quashed by this Court vide judgment dated 13.01.2016 passed in CWP No. 14975 of 2009 titled as '***Pawan Kumar (Constable) Vs. State of Punjab and others***'. The petitioners were acquitted in the criminal trial without recording their statement under Section 313 Cr.P.C., thus, they stood acquitted for all purposes and respondents were bound to reinstate them as SPO.

6. In support of his contentions Mr. Ashok Bhardwaj relies upon Single Bench judgment of this Court in '***Gurmeet Singh (deceased) through his wife Vs. State of Punjab and others 2023 SCC Online P&H 9488***', '***Pawan Kumar (Constable) Vs. State of Punjab 2016 SCC Online P&H 3515***', '***Baljit Singh Vs. Director General of Police, Punjab and others CWP No. 9848 of 2023***,' '***Palwinder Singh (deceased, now represented by LRs) Vs State of Punjab and others CWP No. 13287 of 2017*** and '***Surjit Singh Vs. State of Punjab 2013 SCC Online P&H 2925***' and of Bombay High Court in '***Ratnakar P.M. Vs. UCO Bank 2009 SCC Online BOM 877***' and judgments of Supreme Court in '***Jagdish Mitter Vs. Union of India 1963 SCC Online SC 75***' and '***Joginder Singh Vs. UT Chandigarh 2015(2) SCC 377***,'.

7. Per contra, Mr. Inderpreet Singh Kang, AAG, Punjab submits that petitioners joined as SPO on 27.08.1994 and they came to be implicated in FIR No. 64 registered on 30.10.1997 i.e. within 3 years of their appointment. They were never made part of police force as constables. They were daily wagers and

as per appointment letter dated 27.08.1994 could be discharged at any point of time without show cause notice. They have no vested or fundamental right to claim absorption. In view of different judgments of Supreme Court, no daily wager can claim absorption. The petitioners were found involved in commission of an offence punishable under Section 395 IPC, thus, they were rightly discharged from service. The petitioners at this belated stage cannot be reinstated especially when they were daily wagers.

In support of his contention, he relies upon Division Bench judgment of this Court in CWP No. 11962 of 2005 *titled as ‘Sucha Singh Vs. State of Punjab and others’*, CWP No. 13562 of 2000 titled as *‘Raminder Vs. State of Punjab and others’* and CWP 17571 of 1998 titled as *‘Parveen Kumar Vs. State of Punjab’*.

8. I have heard counsel for the parties and perused the record.

9. The conceded position emerging from record is that the petitioners were appointed SPO in 1994 as daily wagers. The appointment was made by DSP in exercise of power conferred by Section 17 of Police Act. They were arrested in an FIR under Section 395 of IPC. They were dismissed from service in 1997 and they did not challenge order of dismissal till 2001. The trial Court acquitted the petitioners and after their acquittal, they approached this Court by way of CWP No. 16180 of 2001 which was disposed of by way of direction to respondents to decide their representation. The respondents turned down, by impugned order dated 23.11.2001, claim of the petitioners.

10. The petitioners were appointed vide letter dated 27.08.1994 wherein it was specifically mentioned that they may be discharged at any time without issuing show cause notice. The relevant extracts of the appointment letter dated 27.08.1994 read as:

“In compliance of order No.2598-2602/B-5, dt. 9.6.94 from Policy of Punjab, Chandigarh. The following Candidates are hereby appointed as daily wages S.P.Os in Govt. Railway Police, Punjab for Track Patrolling duties and allotted SPOs number mentioned against each their names, subjected to their medical fitness and character Verifications. They can be discharged at any time without the formalities of show cause notice etc.”

11. While on duty, an FIR No. 64 dated 30.10.1997 came to be registered against the petitioners. In the said FIR, the petitioners were acquitted vide judgment dated 03.05.2001. The relevant extracts of the judgment are reproduced as below:-

“6. After the close of prosecution evidence, statement of accused Kuldeep Singh was recorded under Section 313 Cr. P.C. The statements of other accused under Section 313 Cr.P.C. were dispensed with as there was no incriminating evidence to be put to them. The material witnesses examined by the prosecution had not identified the remaining accused.

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17. P.W.9 Ravinder Singh deposed that two years ago he had boarded Punjab Mail 3006 bound for Hawra. He was to go to Patna. The train started at 6.30 P.M. from Amritsar. He was travelling in the ordinary class. When the train reached near Railway Station Rajpura, two police officials in uniform armed with weapons entered their compartment and started pressurising the passengers as to why they were carrying heavy load of luggage. They started demanding money on one pretext or the other and started beating the passengers. The police officials had also demanded bribe from him but he had not paid. One of the passengers pulled the chain. The officials were under the influence of liquor. The moment the train stopped, the police officials rushed out of the compartment. One of the said persons was present in the Court. The witness pointed out towards Kuldeep Singh accused. The passengers started raising slogans against Punjab Police.

Thereafter the train started and stopped at Railway Station Rajpura. The matter was reported to the police. His complaint was Ex. PG. In his cross-examination this witness deposed that he had not mentioned the description of Kuldip Singh in complaint Ex. PG. Some of the details given by him were not mentioned in Ex. PG. He did not meet the Railway Station Master. He did not participate in any identification parade and did not know the accused earlier. He could not tell as to from how many persons Kuldip Singh had received the money.

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20. Again P.W. 11 Ushesha Ram deposed that on 29.10.1997, he alongwith 14 other persons were going from Amritsar to Bihar in a train. They had purchased the tickets. when the train left Ludhiana, five police men came in the compartment and asked them to show tickets. The said police men demanded money from them but they had not paid the same. When they resisted their demand the said police officials started beating them. The police officials then alighted from the train at Rajpura. They had made hue and cry. The said police men did not snatch any thing from them . The accused present in the Court were not the police men referred by him in his statement today. The said witness was declared hostile but nothing-fruitful could be elicited by the Addl. Public Prosecutor for the State during cross-examination.

21. P.W. 12 Khatar Ram deposed that on 29.10.1997, he alongwith 14 other companions were travelling in Hawra Mail. When the train left Railway Station Amritsar; six police officials came in their compartment under the influence of liquor. they were armed with weapons. They started checking their tickets and said that their tickets were invalid and demanded Rs.50/- from each of them. Some of the passengers had given them Rs.50/- each. When the train left Ludhiana Station, the said officials had asked them to give the said amount. They refused to give them the amount as their tickets were valid. Upon this an altercation took place between the police officials and passengers and they had beaten them. Thereafter one of the police men pulled the emergency chain and the train halted and they alighted from the train. They reported the

matter to the Guard. When the train reached at Rajpura, they started raising slogans against the police. He had seen the accused present in the court but none of them were the culprits who had snatched the articles from them in the train.

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25. P.W. 11 and P.w. 12, the persons who were allegedly beaten and from whom money was snatched by the police officials have not supported the prosecution story and have failed to identify the accused, P.W.5 Sham Raj, Guard has also not supported the prosecution story. In these circumstances it would not be safe to rely upon the sole testimony of Ravinder Singh P.W.9. This witness did not know Kuldip Singh and had identified him for the first time in Court. He had not participated in any identification parade. In his cross-examination he further deposed that he had come to the Court 2/3 times but had not seen the accused in the Court earlier than the day when his statement was recorded in the Court. He could not tell specifically as to from how many persons accused Kuldip Singh had received money. This witness has also not specifically deposed as to what particular weapon was being carried by accused Kuldip Singh and what particular role he had played at the time of commission of offence. P.W.9 had not given the description of accused Kuldip Singh in his complaint Ex. PG. There is no documentary evidence on record with regard to the injuries inflicted by the accused to any of the passengers. None of the witnesses examined by the prosecution has deposed that they had paid Rs.50/- to accused Kuldip Singh. Thus, it would not be safe to rely upon the sole testimony of P.W.9 with regard to the conviction of accused Kuldip Singh. So far as the other accused are concerned, there is absolutely no evidence against them with regard to their involvement in the commission of the crime.

26. Accordingly, in view of my above discussion, I hold that the prosecution has failed to prove its case. Accused Kuldip Singh is acquitted by giving him benefit of doubt whereas the remaining accused are acquitted of the charge framed against them. File be consigned to the Record Room."

12. From the reading of judgment dated 03.05.2001 passed by Additional Sessions Judge, Patiala, it comes out that FIR was registered on account of illegal demand made by petitioners from a few passengers. All these passengers were labourer and they hailed from State of UP or Bihar. The victims appeared before the trial Court and confirmed that illegal demand was made by police officials. One of them even identified co-accused Kuldeep Singh. The victims belonged to poor strata of the society. It is well known fact that stray witnesses in such cases come to Court and dare to depose against police officials. They in so many words confirmed their version. Despite this fact, it was unfortunate that all the accused were acquitted. This Court cannot set-aside judgment of acquittal while deciding present writ petition, however, as per recent judgment of Supreme Court in ***Ram Lal Vs. State of Rajasthan, 2023 SCC online SC 1618*** is supposed to look into findings of the trial Court and not to simply examine last paragraph wherein accused are acquitted on the ground of benefit of doubt or otherwise. The relevant extracts of the judgment of Supreme Court in ***Ram Lal (Supra)*** are reproduced as below:

“28. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.”

13. From the perusal of findings recorded by trial Court and deposition of witnesses, this Court is of the considered opinion that petitioners were acquitted taking a very liberal opinion and their acquittal cannot be considered as acquittal for the purpose of reinstatement in service. This Court is at pain to notice that State did not assail aforesaid judgment before Appellate Court though poor labourer dared to come to Court and deposed their woes. This attitude of State compels the witnesses to stay away from Court proceedings despite suffering at the hands of goons or police officials behaving like goons.

14. The petitioners are relying upon instruction dated 14.05.2008 which is reproduced as below:-

"Subject : Policy decision to take SPOs back in service who have been acquitted in Criminal Cases by the Courts.

Please refer to your office memo No. 18313/CB-PC dated 31.8.2007 on the subject cited above.

2. The case has been examined in this office in respect of those SPOs against whom criminal cases (s) were registered and they were discharged from service. Some of them have been acquitted. Clarification has been sought from time to time whether they are to be taken back in service or otherwise.

3. After thorough consideration, it has been decided that as a policy, as far as this issue is concerned SPOs should be treated at par with Punjab Police personnel. Therefore, those SPOs who were earlier discharged due to registration of criminal cases against them but subsequently either discharged or acquitted by the Courts may be taken back as SPOs or be enlisted as constable (in the case of eligible SPOs in list 'A') as the case may be. Fresh verification of antecedents may be carried out before taking them back. They should be discharged, if they come to adverse notice."

The above instructions do not advance cause of the petitioners. The instructions were issued in 2008 whereas they were dismissed in 1997 and even impugned order was passed in 2001. There was discretion of authority to take back as SPO or Constable. It is apt to mention here that SPO(s) were enlisted as constable on the compliance of conditions jotted down in the policy circulars. The instructions are simply re-iteration of judgments of Courts where it has been held that if an employee has been dismissed from service due to criminal proceedings, he may be re-instated in case of acquittal in criminal trial. The instructions do not create right of re-instatement as soon as acquittal takes place. The authorities are supposed to apply their mind and in a suitable case may re-instate dismissed employee. In the present case, the competent authority has not found it suitable to re-instate the petitioners.

15. The respondents removed petitioners in 1997 and they approached this Court in 2002. They did not challenge their order of discharge till the conclusion of trial. Their claim since 2002 is based upon judgment of acquittal. It is settled proposition of law that standard of proof in departmental proceeding and criminal trial is different. A person cannot be re-instated on the sole ground of acquittal in the criminal proceedings.

In *Kendriya Vidyalaya Sangathan and others vs. T. Srinivas, 2004 (7) SCC 442*, the Apex Court while setting aside the order, passed by Tribunal and upheld by the High Court whereby disciplinary proceedings had been ordered to be stayed till the criminal trial is over, has observed that approach and objective in the criminal and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is whether the employee is guilty of such conduct whereas in the criminal proceedings the question is whether an offence registered against him is established and if established what sentence should be imposed. The relevant extracts of the judgment read as:

“This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different.”

In ***Stanzen Toyotetsu India P. Ltd. vs. Girish V., 2014 (3) SCC 636***, the Apex Court has held that departmental inquiry is aimed at maintaining discipline and efficiency in service while criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society and both operate in separate and different spheres and intending to serve totally different purposes. The relevant extracts of the judgment read as:-

“9. In A.P. SRTC v. Mohd. Yousuf Miya [(1997) 2 SCC 699 : 1997 SCC (L&S) 548] this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes.”

The Supreme Court in *Noida Entrepreneurs Assn. v. Noida*, (2007) 10 SCC 385, while discussing its catena of judgments has held that criminal proceedings are launched for an offence for violation of a duty, which the offender owes to the society, whereas, the departmental enquiry is to maintain discipline in the service and efficiency of public service. The relevant extracts of judgment read as:

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh) [Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh), (2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [Kendriya Vidyalaya Sangathan v. T. Srinivas, (2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry, (2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [Uttaranchal RTC v. Mansaram Nainwal, (2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

‘8. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be

expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act, 1872 [in short “the Evidence Act”]. The converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.’ [Ed. : As observed in A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699, pp. 704-05, para 8.] ”

16. The Supreme Court in **State of Madhya Pradesh and others vs. Bhupendra Yadav, 2023 SCC Online SC 1181** while dealing with appointment in Armed Forces has held that standard of rectitude to be applied to any person

seeking appointment in Law Enforcement Agency must always be higher and more rigorous. The Court has held:

“24. The aforesaid aspects were rightly factored in by the appellant-State Government while issuing the communication dated 24th August, 2017⁸ and declaring that the respondent was unfit for appointment to the said post. The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy. One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service.”

17. The petitioners are claiming reinstatement on the ground of parity and acquittal in criminal proceedings. In all the cases cited by the petitioners, the employees were working for quite long time and they were working even during the pendency of the trial whereas petitioners were dismissed within 3 years from their appointment.

17.1 The petitioners in support of their claim of parity have relied upon judgments of this Court in ***Palwinder Singh (Supra)***, ***Gurmeet Singh (Supra)*** and ***Pawan Kumar (Supra)***.

In **Palwinder Singh's** case, the petitioner joined as SPO in 1988 and he was dismissed in 2007 meaning thereby he worked for 19 years as SPO.

He, pursuant to 2002 policy of the State, was considered for the post of constable. He even participated in the test.

In **Gurmeet Singh's** case, the petitioner served respondent-department as SPO for 18 years. He was absorbed as constable. His order of absorption was later on withdrawn. He was never dismissed or suspended from service. He continued to work during the pendency of trial as well for more than 5 years after acquittal.

In **Pawan Kumar's** case, the petitioner was appointment in 1994 and he was absorbed as constable. He was discharged in 2002 but reinstated in 2004 after his acquittal in criminal case. He was again discharged in terms of policy of 2009. The Court set-aside policy dated 06.05.2009 and allowed writ petition.

17.2 The facts of all the above-noted cases were totally different from the present case, thus, petitioners cannot take advantage of those cases. The petitioners herein had worked for minuscule period of 3 years and they were dismissed even prior to introduction of policy of 2002.

18. The petitioners were appointed as daily wagers and in the appointment letter it was specifically mentioned that they can be discharged at any time without the formalities of show cause notice. Neither the petitioners being daily wagers have vested nor fundamental right of absorption or continuity of service.

18.1 A Division Bench of this Court in **Sucha Singh (Supra)** has held that SPOs are appointed under Section 17 of Punjab Police Act, 1934 and they are daily wagers. Unless and until they are absorbed, they can be removed from service without giving an opportunity of hearing. The relevant extracts of the judgment read as:

*“7. There is no dispute that a public servant can not be dismissed or removed from service as a measure of punishment without holding a due and proper enquiry. However, the petitioner cannot claim the status of a Constable as he was never absorbed as such and therefore, the Punjab Police Rules do not apply. The SPO is appointed under Section [17](#) of the Police Act which allows the police Authorities to appoint the residents of neighbourhoods where the threat to peace is contemplated and the police force ordinarily deployed is considered not sufficient. Therefore, the nature of enlistment of the petitioner was such that he cannot claim to be a member of the service. Since he was a daily wager and has been discharged, no opportunity of hearing is required, especially when the Appointing Authority has passed the order of discharge on the receipt of report from D.S.P. The judgments cited by the State counsel in the cases of Raminder Singh (supra) and Parveen Kumar (supra) squarely covers the facts of this case against the petitioner. Thus, we do not find any merit in this petition and the same is dismissed without order as to costs.
Petition dismissed.”*

18.2 A Division Bench of this Court in **Raminder Singh (Supra)** while relying upon another Division Bench Judgment of this Court in **Praveen Kumar (Supra)** has held that a discharge of a SPO is a discharge of a daily wager and the provision of Punjab Police Rules are applicable only when a person is absorbed as a constable. The relevant extracts of the judgment read as:

“4. There is no dispute with the proposition of law that a public servant cannot be dismissed or removed from service as a measure of punishment without holding a due and proper enquiry. A public servant can only be dismissed or removed by way of punishment after complying with rules of natural justice. However, in the present case the petitioner could not claim the status of a Constable as he was never absorbed as such. The provisions of Punjab Police Rules would become applicable only after absorption of the petitioner as a Constable. In Parveen Kumar's case (supra), the Division Bench was considering the case of some SPOs who had

been discharged from service on the basis of complaints and without affording any opportunity of hearing to him. The Division Bench held that the discharge of the SPOs was one of the two options open to the respondents. The SPOs could have been either discharged or subjected to disciplinary proceedings. In the present case also, the name of the petitioner has been merely removed from the roll. It is, therefore, a case of discharge of a daily wager. In the written statement, it is categorically stated that the activities of the petitioner were such that he was not found fit for the job of SPO. In other words, the work of the petitioner was not found satisfactory. That being so, the matter is squarely covered by the Division Bench judgment of this Court in the case of Parveen Kumar (supra). The petitioner was working on temporary basis. Therefore, he has no right to the post.

5. Consequently, we find no merit in the writ petition and the same is hereby dismissed. No order as to costs.

Petition dismissed.”

19. A Division Bench of this Court in **Lokesh Rana (Supra)** has held that a contractual employee has no right to get his contract renewed which was for a limited period. The relevant extracts of the said judgment read as:-

“The facts of the present case undisputedly establish that the contractual appointment of the appellants has come to an end in 2019 and that fresh appointments have also been made pursuant to the impugned advertisement in which the appellants had also participated and two of them have also been selected and appointed. In the backdrop of the aforesaid admitted facts, the law is settled that once the period of contractual appointment is over, the High Court, in exercise of its extra ordinary power under Article 226 of the Constitution of India, cannot direct continuance of service beyond the contractual period as that would amount to grant of an open ended permanent appointment by the High Court even in the absence of any order of appointment or engagement on the part of the employer. The

direction seeking continuation after the contractual period is over, therefore, cannot be granted and has rightly been rejected. In view of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed.”

20. The respondents have granted constabulary number to various SPOs in view of its policies or multiple orders passed by different benches of this Court. Nevertheless, there was no fundamental or vested right of anyone to claim absorption. It was only policy of the State to appoint SPOs as constables because of their nature of service, performance, medical condition and experience. SPOs were absorbed post 2002 and petitioners were discharged in 1997, thus, they were not entitled to benefit of any policy of absorption.

21. There is another aspect of the matter which needs to be considered. The petitioners joined respondents as SPO in 1994 and they were discharged from service within a short span of 3 years. A long period of 3 decades has passed away. The petitioners were discharged in 1997, thus for last 27 years, they are not in service. They were not regular employees and if an order of reinstatement is passed, they would at the best be reinstated as daily wagers. At the time of their appointment as well as dismissal, there was no provision in Punjab Police Rules to absorb SPOs. It was from 2002 onwards the State Government by way of different policy circulars and in view of judgments of this Court absorbed SPOs. There was no absorption of SPOs prior to 2002 and before that date petitioners had already been discharged from service. The petitioners, at this stage i.e. after 26 years from their discharge, cannot be reinstated especially when they were daily wagers and were found involved in criminal activity. Neither were they regular employees nor dismissed because of

fault on the part of respondents. The reinstatement of daily wagers at this belated stage neither would be justified nor in public interest.

22. In view of above discussions and findings, this Court is of the considered opinion that the present petition deserves to be dismissed and accordingly dismissed.

08.02.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No