

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

**Regular Second Appeal No.3372 of 2003 (O&M)
Date of decision:18.03.2015**

The State of Punjab and others

.....Appellants

Versus

Sukhwinder Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab,
for the appellants.

None for the respondent.

Ritu Bahri, J.

State of Punjab-defendant has come up in regular second appeal against the judgment of reversal dated 29.03.2003 passed by the Additional District Judge (Adhoc), Fast Track Court, Gurdaspur, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 08.09.1999 passed by the Addl. Civil Judge (SD), Gurdaspur, had been accepted and his suit for declaration had been decreed to the effect that he was entitled to all the consequential benefits.

Sukhwinder Singh-plaintiff was appointed as Special Police Officer (SPO) No.252 w.e.f. 01.03.1992 in District Gurdaspur on daily wage basis. During the period of probation, he was found guilty of disclosing secrecy of Police Department. He had links with bootleggers. He was also involved as an accused in Criminal Case No.212 dated 08.09.1991, under Section 326 IPC, registered at Police Station, Sadar, Gurdaspur. Ultimately, the Senior Superintendent of Police, Gurdaspur, discharged/terminated the services of the plaintiff-respondent w.e.f. 28.03.1994. The plaintiff alleged

that he was not afforded any opportunity of hearing before passing the impugned order of discharge. After filing a representation before the DIG, Border Range, Amritsar on 26.04.1994, the plaintiff filed the civil suit.

Upon notice, the defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff. It was submitted that the impugned order of termination was legal, valid and justified. No show cause notice was required to be given to the plaintiff before passing of the said order.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether no legal notice was served? OPD
4. Whether the plaintiff has no cause of action and he was appointed as temporary S.P.O. on daily wages? OPD
5. Whether the suit of the plaintiff is under valued or the purpose of Court fee? OPD
6. Relief.

The trial Court took a stand that the he was not a regular employee and he could be discharged any time by the Senior Superintendent of Police without notice. His services were governed by Para 9 of Standing Order for appointment of Special Police Officers, circulated vide Endst. No.20322-52/E-3 dated 30.10.1990. On these grounds the trial Court dismissed the suit and accepted the enquiry report dated 21.03.1994 submitted by SI Balwant

Singh, which was proved on record as Ex.D1 by Tarsem Singh (DW-1). As per enquiry report, Ex.D1, the plaintiff had extracted illicit liquor and was having illicit relations with the wife of bootlegger namely Davinder Singh. A criminal case under Sections 323, 324, 326 read with Section 34 IPC was also registered against the plaintiff-respondent. The SHO had recommended dismissal of the plaintiff vide his report, Ex.D1. Moreover, as per the standing order governing the service conditions of Special Police Officers, there was no illegality and infirmity in passing the impugned order, Ex.P6, whereby the plaintiff was discharged from services w.e.f. 28.03.1994. Trial Court held that in view of service conditions governing the SPOs, the order, Ex.P6, was passed by the competent authority i.e. Senior Superintendent of Police, Gurdaspur.

However, on appeal, the lower appellate Court, while referring to the judgment passed by this Court in **Raj Kumar and another Vs. State of Punjab**, RSJ 1999 (2) 151, held that the order of discharge had been passed on the basis of enquiry report, Ex.D1, vide which it was held that the plaintiff had illicit relations with the wife of Davinder Singh, bootlegger and he used to help the accused. He also used to leak the secrecy of the police. It was a simple case of discharge from the service. As per the aforesaid judgment passed by this Court, he should have been given an opportunity of hearing before the order of discharge was passed. Ultimately, the appeal was accepted and the judgment of the trial Court was set aside. Hence, this appeal.

Learned counsel for the appellants has referred to the judgment passed by a Division Bench of this Court in **Parveen Kumar and others Vs. The State of Punjab and others**, 2001 (3) SLR 290. A perusal of this

judgment shows that in this case, the SPOs who were working on daily wages, were found absent from duty, therefore, they were discharged from service without holding any enquiry. Their service conditions were governed by the standing order dated 26.07.1990 and they had not been enrolled as constable, hence, they were not governed by the Punjab Police Rules. After receiving a number of complaints during the pendency of probation period, the services of the SPOs had been discharged. They challenged the said order by filing Civil Writ Petition No.3819 of 1998, which was disposed of by giving a direction to the respondents to decide the representation(s) made by the SPOs. While rejecting the representation(s), the Senior Superintendent of Police had stated that the reason for discharge of the SPOs was the nature of complaints received against them. After disclosure of the reasons, the writ petition was dismissed. While dismissing the said petition, the Division Bench of this Court held that even disclosing of the reasons for discharge would not make the termination punitive.

The service conditions of the plaintiff-respondent were governed by Para 9 of the Standing Orders dated 30.10.1990, which reads as under:-

“(9) DISCHARGE OF INEFFICIENT SPECIAL POLICE OFFICERS:-

Special Police Officer whose work and conduct is not found satisfactory can be discharged any time by the District Senior Superintendent of Police without the issue of any notice.”

The aforesaid condition clearly shows that if, the work and conduct of a Special Police Officer is not found satisfactory, he can be discharged without issuing any notice. As per the judgment delivered by the Division Bench of this Court in **Parveen Kumar's** case (supra), even if any reason is disclosed to the plaintiff-respondent while rejecting the representation, the order of termination would not amount to be punitive. In

paragraph 8 of the aforesaid judgment, it was held as under:-

“8. Now coming to the judgment of this Court in Rakesh Kumar's case, [1994 (4) SLR 518 (Pb. & Hry.)] (supra) on which strong reliance has been placed by the learned counsel for the petitioners. This judgment no doubt supports the case of the petitioners but with utmost respect to the Hon'ble Judges we do not agree with the observations made therein in view of the binding observations of the Apex Court in Jagdish Mitter's case (supra) and Kaushal Kishore Shukla's case [1991 (1) SLR 606 (SC)] (supra) which were not brought to the notice of the learned Judges of the Division Bench. The Full Bench judgment in Sher Singh's case (supra) too had not been brought to the notice of the learned Judges and we feel bound by the observations made therein. In the normal course, we would have referred the matter to a larger Bench but in view of the aforesaid binding decisions of the Supreme Court and a Full Bench of this Court, it is not necessary for us to adopt that course.”

Applying the ratio of aforesaid judgment of the Division Bench of this Court to the facts of the present case, this Court is of the view that the plaintiff-respondent was appointed as Special Police Officer (SPO) on 01.03.1992 and was discharged by the competent authority on 28.03.1994. He was not a permanent employee and his services were governed by Para 9 of the Standing Order, circulated on 30.10.1990. Even if there were some complaints against him and an enquiry, in that regard, had been conducted, the order of discharging his services would not be treated to be punitive in nature.

In the light of the above discussion and the law laid down by the Division Bench of this Court in **Parveen Kumar's** case (supra), the impugned judgment dated 29.03.2003 passed by the lower appellate Court is set aside and the suit of the plaintiff-respondent is dismissed.

Present regular second appeal stands allowed accordingly.

(RITU BAHRI)
JUDGE

18.03.2015
ajp