
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No. 2786 of 1988(O&M)

Date of decision: 31.07.2015.

State of Punjab and others

Appellants

Versus

Pardeep Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA.

Present: Mr. Ajaib Singh, Addl. Advocate General, Punjab
for the appellants.

Ms. Shikha Jaidka, Advocate for the respondent.

G.S.SANDHAWALIA, J.(Oral)

The State is aggrieved against the judgment and decree dated 8.10.1988 passed by the Additional District Judge, Patiala whereby the appeal of the plaintiff-respondent was allowed and the order of discharge dated 11.4.1984 was set aside on the ground that it was penal in nature as the service of the respondent had been dispensed with because of his mis-conduct on account of absence from duty without permission/sanctioning of leave.

The reasoning given by the Lower Appellate Court was that show cause notice dated 15.2.1984 was issued for resumption of duty and that the plaintiff had reported on 18.2.1984 but he has not been allowed to mark his presence by the DSP Sukhdev Singh, incharge-defendant no.3. It was noticed that the said defendant had not appeared in the witness box to refute the allegations regarding the allegations made by the plaintiff and had not denied the facts. Finding was recorded that the presence of the plaintiff was marked on 19.3.1984 and accordingly in the absence of

enquiry being conducted of the alleged misconduct, the impugned order was held to be bad. The suit was decreed by issuance of direction to allow the plaintiff to join his duty within 15 days from that day vide judgment dated 8.10.1988. The period of absence from 7.2.1984 to 16.3.1984 was ordered to be treated as leave of kind due after taking a decision whether or not he was entitled to grant of same. The salary, if any, was also ordered to be paid from the said date.

Initially operation of the judgment of the Lower Appellate Court was stayed vide order dated 2.12.1988 and thereafter on 24.1.1989 the stay was limited only to the extent of back wages.

The State thereafter filed an application for staying operation of the judgment in view of the execution filed by the plaintiff which was supported by affidavit wherein it was mentioned that the plaintiff was reinstated on 7.3.1989. This Court thereafter stayed the execution proceedings on 2.2.2000 as the plaintiff was seeking arrears in view of the judgment of the Lower Appellate Court.

A perusal of the record would go on to show that the order of discharge was challenged on the ground that it was violative of principle of natural justice and that the plaintiff had been illegally discharged. Specific allegations of malafide were levelled against defendant no.3-DSP Sukhdev Singh to show that the presence of the plaintiff was not being marked. There was allegation that the application for mutual transfer with Constable Rattan Singh at Patiala was not being processed. The plea taken in the written statement was that the plaintiff was appointed as temporary Constable on 17.12.1981 with the conditions that his services were likely to be terminated at any time without any notice and without assigning any reason and the plaintiff was not performing his duty

satisfactorily and efficiently and he was absenting himself from duty without any leave. Various instances of misconduct on account of remaining absent from 14.7.1982 to 5.2.1984 were given. It was pleaded that the plaintiff joined his duty on 6.2.1984 and applied for leave for 7.2.1984 which was rejected due to 'Panjab Bandh' on that day. However, he had absented himself from duty and did not join despite various communications being sent to him and he had only appeared on 19.3.1984 and not explained his long absence. The fact of letter dated 15.2.1984 was admitted but the plaintiff had been discharged from service on the basis of record and performances as he was not found likely to become an efficient police officer.

The fact remains that the plaintiff who was discharged under Rule 12.21 of the Punjab Police Rules, 1934 within three years of his employment and in view of the settled principle he had no right to the post as he was under surveillance of his superiors at that point of time. Reliance can be placed upon the Full Bench judgment of this Court in **Sher Singh Vs. State of Haryana and others 1994(1) PLR 456** wherein it was held as under:-

“39. In view of the above, it is held that -

- (1) A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him;
- (2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and
- (3) The provisions of Rule 16.24 and Article 311 shall be attracted only when the punishing authority decides to punish the constable.”

The said reasoning was approved by the Apex Court in **State of Punjab and others Vs. Sukhwinder Singh AIR 2005 SC 2960** wherein

it was held that being a probationer the police employee is on test. The relevant observations read as under:-

“18. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not make inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt CWP No.6281 of 1994 9 by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong.”

The relevant rule reads as under:-

“12.21. Discharge of inefficients - A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule.”

However, the facts in the present case are that the plaintiff had been reinstated on 7.3.1989 and he would have worked thereafter for a period of more than 2-1/2 decades and would have drawn salary also cannot be lost sight by this Court. At this stage, the plaintiff would have attained the age of superannuation or would be close to attaining it having been appointed in 1981. Under such circumstances, it would not be justified at this stage to uphold the order of discharge keeping in view the

various misconducts on part of the plaintiff of remaining absent which have been detailed in the written statement by the State. The efficiency of the plaintiff was thus doubted at the initial stage by his superiors and no fault can be found in discharge order of an inefficient employee. The findings thus recorded that there was absence of enquiry for the alleged misconduct was without any basis since in the case of the plaintiff/respondent he was still under the initial three years of appointment and could have been discharged solely on the basis of poor track record.

Though for the reasons noticed above, this Court is not inclined to interfere with the judgment of the Lower Appellate Court yet the fact remains that the plaintiff has not worked from the date of discharge i.e. 11.4.1984 to 7.3.1989 and in such circumstances he would not be entitled for any arrears of salary for the above mentioned period on the basic principle of 'no work no pay' and merely because he had chosen to litigate successfully he cannot be entitled for the above said financial benefits. However, the said period would be counted for the purpose of continuity of service and any other benefit which would accrue to the plaintiff.

Resultantly, the present appeal is partly allowed with the above said modifications.

July 31, 2015
Pka

(G.S.SANDHAWALIA)
JUDGE