

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1935 of 2004 (O&M)

Date of decision : 24.4.2015

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State of Punjab and others

.....Appellants

Versus

Dharam Pal

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vaibhav Sharma, DAG, Punjab.

Mr. O.P Sharma, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This regular second appeal has been filed against the judgment dated 14.1.2004, whereby the learned Additional District Judge, Gurdaspur has set aside the order of learned Additional Civil Judge (Senior Division) Gurdaspur dated 5.12.2001, whereby the suit of the plaintiff for declaration to the effect that the impugned order passed by Senior Supdt. of Police, Gurdaspur by virtue of which the plaintiff was discharged from service w.e.f from 23.10.1996 was dismissed.

The plaintiff was appointed as Special Police Officer on 31.12.1989 by Board with assurance that he will be absorbed as a

Constable on completion of six months. He worked as a SPO for about 7 years but was not absorbed as a Constable. The plaintiff proceeded on 18 days leave on 4.10.1996. He was to report back on 21.10.1996, but due to serious illness of his aunt and her death on 22.10.1996, he could not return and he made a phone call to Head Constable Manvinder Singh, Incharge on 22.10.1996. The plaintiff was allowed by him to come after funeral ceremony. On 22.10.1996 absence of plaintiff was got recorded on a checking carried out by Senior Superintendent of Police, Gurdaspur. He was discharged from service w.e.f 23.10.1996. The order of discharge was passed without giving an opportunity of hearing in violation Article 311 of the Constitution of India. After giving notice under Section 80 of the Civil Procedure Code, the suit was filed.

On notice, defendants filed written statement admitting that plaintiff was appointed SPO w.e.f 8.1.1990 on daily wages. They denied that at the time of appointment, he was given assurance that he will be absorbed on permanent basis after completion of six months as Constable. The plaintiff was posted at Security Highway Naka duty at Police Station Dhar Kala. He proceeded on leave but did not report back on 23.10.1996. He absented himself without any information or leave. He was therefore discharged from service w.e.f. 23.10.1996 vide impugned order dated 8.11.1996 on the basis of recommendation made by Deputy Superintendent of Police.

After recording the evidence and after hearing the counsel for the parties, the suit of the plaintiff was dismissed by the trial Court.

The service of the plaintiff was governed under the Standing Order Ex. D-1 and he was not entitled to protection of show cause notice or personal hearing unless and until he was absorbed as Constable in the Punjab Police. The plaintiff remained absent from duty till 31.10.1996 the date of report Ex. D-4 and Senior Superintendent of Police was competent to discharge the plaintiff from service under clause (9) of the Standing Order Ex. D-8 dated 5.10.1990.

On appeal, the Lower Appellate Court held that the Senior Superintendent of Police was competent to pass an order of discharge simpliciter but in case it was held that the plaintiff was discharged from service because he remained absent from duty then S.S.P was required to take disciplinary proceedings against him. The order of discharge being stigmatic in nature could not have been passed without affording opportunity of hearing as held by the Supreme Court of India in the ruling given on 7.4.2003 in case titled as **'Jaspal Singh vs. State of Punjab and others'** in **Civil Appeal No. 3007 of 2003**. In that case Jaspal Singh who was appointed as an SPO was discharged from service by SSP, Gurdaspur on the allegations that case FIR No. 155 dated 2.10.1997 was registered against him under Section 376/34 IPC at Police Station Dinanagar on the complaint by Smt. Srista Devi wife of Baljit Raj. He was acquitted

by the trial Court. Jaspal Singh filed writ petition under Article 226 of the Constitution challenging the order discharging him from service. The said writ petition was dismissed. It was held by Hon'ble the Supreme Court of India that order of discharge is, in fact an order of removal from service. Under such circumstances, it was incumbent upon the respondents to have given opportunity of show cause to the appellant as provided under Article 311 of the Constitution.

The Lower Appellate Court partly allowed the appeal and gave liberty to respondent no. 2, Senior Superintendent of Police to pass fresh order of discharge simpliciter or to take disciplinary proceedings against the plaintiff.

Counsel for the appellants has referred to a Division Bench judgment passed by this Court in **Parveen Kumar and others vs. The State of Punjab and others, 2001 (3) SLR 290,** where SPOs who were appointed on daily wages were discharged from service on the ground of absence and misconduct without holding enquiry. The Division Bench referred to Clause 12 of the Standing Orders which was circulated by Director General of Police, Punjab on 26.7.1990 which enables the District Senior Superintendent of Police to discharge an auxiliary Constable whose work and conduct is not found satisfactory without the issue of any notice. The SPOs were appointed on daily wages having no right to the post and according to the Standing Order dated 26.7.1990 they would be governed by the Police Rules only after their enrollment as Constables. Since they have not been enrolled as Constables they

are not governed by those Rules. The writ petition was dismissed by the Division Bench by observing as under in paragraph 8:-

8. Now coming to the judgment of this court in Rakesh Kumar's case, [1999(4) SLR 518 (Pb.& Hry.)] (supra) on which strong reliance has been placed by the learned counsel for the petitioner. 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 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 herein. 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 not necessary for us to adopt that course.

Counsel for the appellant referred to the Co-ordinate

Bench of this Court in the case of **Darshan Lal vs. State of Punjab and others, 2006(4) SCT 245** had examined the case of discharge of Special Police Officer. It was held that order of discharge simpliciter saying the petitioner would not prove an efficient police officer cannot be called punitive or stigmatic. Authority who had to take work from the employee are the best people to judge whether an employee should be continued in service or not. In paragraph 24, it was observed as under:-

24. In a latest pronouncement i.e. *Abhijit Gupta vs. S.N.B National Centre, Basic Sciences and Others* JT 2006(5) SC 12, it has been held by the Hon'ble Supreme Court that while the employee was on probation and the termination during that period was in the legitimate exercise of power of the employer and not stigmatic and punitive and therefore, did not call for any interference. The Hon'ble Supreme Court was dealing with a case wherein the order passed against the employee on probation was somewhat in the following terms:

“Your performance ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have. The governing body is of the view that your performance

was unsatisfactory and you are not suitable for confirmation.”

This order was challenged on the ground that it was stigmatic and the termination was by way of punishment for the alleged misconduct. The learned Single Judge of the High Court allowed the writ petition and quashed the order of termination directing reinstatement of the appellant with full back wages. The Division Bench of the High Court, however, allowed the Letters Patent Appeal and held that the order was not stigmatic and, it was a legitimate exercise of assessment of probationer's services by the employer and therefore, there was no scope for judicial interference therewith. The order of the Division Bench came to be challenged before the Hon'ble Supreme Court. A reference may be made to para-14, which reads as under:

“14. The real test to be applied in a situation where an employee is removed by an innocuous order of termination is:

*Is he discharged as unsuitable or is he punished for his misconduct? In **Allahabad Bank Officers Association and another vs. Allahabad Bank and others**, this Court was considering a*

challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (vide para 17) observed that if the order of compulsory removal from the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like “want of application”, “lack of potential” and “found not dependable” when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.”

The appeal was dismissed by the Hon'ble Supreme Court and the order of termination was not interfered with.

Reference can now be made to the Standing Orders dated 5.10.1990 issued by the Director General of Police, Punjab which govern the provisions of discharge of an inefficient Special Police Officer. Clause 9 is reproduced 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.

Heard counsel for the parties.

Reference can be made to a judgment of this Court in the case of **Tarsem Lal vs. State of Punjab and another (RSA No. 3997 of 2001) decided on 17.12.2003** whereby the appeal filed by the plaintiff-appellant was allowed by observing that Clause (9) of the Standing Order gives power to the respondents to discharge the Special Police Officers, whose work and conduct has been found to be not satisfactory without issuing any notice to him. However, a perusal of the order dispensing with the services of the appellant shows that it is stigmatic in nature. It is not an order of removal simpliciter. The removal of the services of the appellant is on account of his having been found absent from duty. An order passed with a stigma attached thereto could be passed only after affording an opportunity of hearing to the official under Article 311 of the Constitution of India. The opportunity of hearing was denied to the appellant in that case. The order of removal from service was held not sustainable in law.

In view of all that has been discussed above, no question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

24.4.2015
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(**RITU BAHRI**)
JUDGE