

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

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Regular Second Appeal No.2248 of 2014

Date of Decision: September 08, 2015

Swaran Singh

...Appellant

Versus

The State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jatinder Pal Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

In this appeal, an Auxiliary Constable is challenging the judgments and decree passed by the Courts below, whereby his suit for declaration to the effect that his order of discharge dated 29.06.2009 passed by the Senior Superintendent of Police, Ferozepur, respondent-defendant No.2 and the order dated 22.12.2009 passed in the appeal preferred by him rejecting the same by the Inspector General of Police, Border Range, Amritsar, are illegal, null and void, unconstitutional and *ultra vires* of the rules, principles of natural justice, stands dismissed.

2. It is the contention of the counsel for the appellant-plaintiff that the appellant-plaintiff was appointed as an Auxiliary Constable on 24.11.1992 and a DDR No.30 was recorded. Auxiliary Constable number was awarded to him on the same date as 12. Since the appellant-plaintiff had been working with the respondents continuously without any blemish, he could not have been discharged from service merely because of his absence from duty from 14.05.2008 to 29.06.2009, specially when he had initially taken leave and has been granted the same but thereafter he could not join

duties and remained absent. He had 17 years' service to his credit at the time when his order of discharge was passed. He contends that the said order of discharge is not sustainable as the same has been passed without holding any regular departmental inquiry against the appellant-plaintiff nor have the Punjab Police Rules, 1934, been observed/complied with/followed while passing the said order. He, therefore, contends that the dismissal of the suit by the Courts below cannot sustain and deserves to be set aside.

3. I have considered the submissions made by the counsel for the appellant-plaintiff and with his assistance have gone through the judgments passed by the Courts below.

4. A perusal of the same would show that the contention as raised by the counsel for the appellant-plaintiff cannot be sustained. The first contention, as has been raised by the counsel for the appellant-plaintiff, is that he has been treated and appointed as a special police officer and was thus appointed under Section 17 of the Police Act, 1861. Having been appointed under Section 17 of the Police Act, 1861, he was entitled to the protection as provided under Section 18 of the said Act, according to which every special police officer has the same powers, privileges and protection and is liable to perform the same duties and shall be amenable to the same penalties and be subordinate to the same authorities, as the ordinary officer of police. Since he has been appointed as a special police officer, he is entitled to the protection of the Punjab Police Rules, 1934 and since the disciplinary action taken against the appellant-plaintiff is not in consonance with the statutory rules governing his service, the order of discharge cannot sustain but the same cannot be accepted in the light of the fact that as per Section 17 of the Police Act, 1861, the appointing authority is the

Magistrate, whereas in the case of the appellant-plaintiff, his appointment has admittedly been made by the Senior Superintendent of Police, Ferozepur. The stand of the respondents is that the appointment and the terms of service of the special police officers is governed by standing order of the Director General of Police, Punjab, dated 05.10.1990. As per the said standing order, which has been reproduced in para 13 of the judgment of Lower Appellate Court. It is apparent that the Senior Superintendent of Police of the District is the appointing authority and also the discharging authority. The special police officer is to be paid an allowance of ₹30/- per day or such rate as may be fixed by the Government. He works to the satisfaction of the District Superintendent of Police, who has been conferred power to discharge an inefficient special police officer. Clause 9 of the said standing order dated 05.10.1990 reads as follows:-

“(9) Discharge of inefficient Special Police Officer:

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

A perusal of the same would show that where the work and conduct of a special police officer is not found satisfactory, he can be discharged at any time by the District Superintendent of Police without issuing any notice.

5. In the present case, the appellant-plaintiff was issued a show cause notice prior to taking action against him but to the said show cause notice, he has not responded. As per the admitted facts, the appellant-plaintiff remained absent from his duty for more than one year i.e. from 14.05.2008 to the date of his dismissal i.e. 29.06.2009. Although the reason for remaining absent from duty was that his mother was suffering from

cancer and thereafter he was taking care of her during treatment. His father also expired on 19.02.2009. His mother thereafter expired but even after the expiry of his mother, he did not report back for duty and had remained absent till the date of his dismissal. He did not inform the department what to say of seeking leave. It cannot thus be said that the appellant-plaintiff has not been given reasonable opportunity to clarify his position with regard to his absence from duty, specially when, a show cause notice was served upon him, to which he failed to respond. It is admitted that the appellant-plaintiff was working as a special police officer and if he is claiming privileges as a Police Officer, he need to be careful about his services and his conduct, regularity, punctuality and discipline which is a part of the police force, which are missing in the case of appellant-plaintiff as after proceeding on leave initially, he did not care to approach the department subsequent to the death of his mother for rejoining his duty till the date of his dismissal.

6. An argument has been raised by the counsel for the appellant-plaintiff that in the cross-examination, DW-1 Inspector Suresh Kumar has admitted that the appellant-plaintiff was appointed under Section 17 of the Police Act, 1861. This admission cannot be accepted in the light of the fact that if an appointment is to be made under Section 17 of the Police Act, 1861, the appointing authority is the Magistrate, whereas in the present case it is the Senior Superintendent of Police and as per the standing order dated 05.10.1990, the appointing authority is the Senior Superintendent of Police of the District. It, therefore, leaves no manner of doubt that the appointment of the appellant-plaintiff was not under the Police Act, 1861 but under the standing order of the Director General of Police dated 05.10.1990. The contention thus raised by the counsel for the appellant-plaintiff cannot be

sustained.

7. An argument has been raised that the appellant-plaintiff has worked for 17 years with the respondents and, therefore, a lenient view should have been taken while taking disciplinary action against him but this contention also cannot be accepted in the light of the fact that he has remained absent from duty for more than one year and in a disciplined force, even a day's absence without intimation cannot be ignored. The quantum of punishment thus cannot be said to be disproportionate to the misconduct attributed to him.

8. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 08, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE