

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

RSA No.1097 of 1991

Date of Decision:22.11.2016

State of Punjab and others

... Appellants

Vs.

Gamdoor Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. T.N. Sarup, Addl. A.G. Punjab.

None for the respondent.

P.B. BAJANTHRI J. (Oral)

The appellants have questioned the validity of the appellate court order dated 2.3.1990 passed in Civil Appeal No.278 of 29.11.1988.

The respondent while working as a constable, his services were discharged on 6.12.1979 by the Assistant Inspector General of Police, G.R.P. Patila vide order No.19022-26/AO-2 dated 6.12.1979. Feeling aggrieved by the order of discharge, he preferred an appeal before the Deputy Inspector General of Police, G.R.P. Patiala. However, the same was rejected. Thus, he filed a suit before the trial court. Trial court rejected the suit on 29.9.1988. The trial court framed the following issues:

“1. Whether the plaintiff is entitled to other declaration as prayed for? OPP

2. Whether the suit is not properly valued for the purposes of court fees? OPP

3. Whether the plaintiff has no cause of action as alleged? OPD

4. Whether the suit is not maintainable in the present form?

OPD

5. Whether no legal notice U/s 80 CPC was served was alleged? OPD

6. Relief.”

The respondent preferred an appeal against the order of the trial court order dated 29.8.1988 before the appellate court. The appellate court allowed the appeal while holding that the order of discharge is illegal, null and void on the score that there is no compliance of Article 311 of the Constitution of India since opportunity of cross examination etc. has not been given. The State of Punjab presented this appeal while questioning the appellate court order dated 2.3.1990.

Learned counsel for the appellant submitted that there is inordinate delay in filing suit for the reasons that order of discharge was passed in the year 1979 whereas suit was filed in the year 1988. Therefore, the suit should have been rejected on the ground of limitation. The same has not been taken note of by the appellate court. It was further contended that in the matter of discharging a government employee question of violation of Article 311 of the Constitution of India would not arise. Therefore, the appellate court has erred in allowing the appeal of the respondent.

Heard learned counsel for the appellant.

Perusal of discharge order reveals that no reasons have been recorded for discharging the respondent. It is merely stated that under Punjab Police Rules 12.21, the respondent is unlikely to become a good police officer. Reading of discharge order reveals that it is only conclusive decision of the authority that the respondent is unlikely to become a good police officer, which is not supported by any reason. In this regard, on the

last occasion, the appellants were directed to produce relevant note relating to passing of order of discharge on 6.12.1979. Whereas an affidavit of Hardip Singh, PPS, Deputy Superintendent of Police (Administration), Government Railway Police Punjab, Patiala has been filed on behalf of appellants No.1 to 3. Para-4 of the affidavit reads as under:

“4. That in compliance with the above order the whole record of the office was searched, but the said file has not been found. Therefore, it is evident from office record that while passing the discharge order dated 6.12.1979 no noting was put up by the concerned dealing hand. Moreover, original discharge order dated 6.12.1979 is available in the Character Roll of the respondent which is tagged with the court file.”

Even in the case of order of discharge, the Court is required to lift the veil to find out the reasons, therefore, appellants were directed to produce noting relating to order of discharge. However, the same was not made available. Thus, an inference can be drawn that no reasons were recorded in the file and so also in the order of discharge. Delay would not be hurdle if the order of discharge is highly arbitrary and illegal. Consequently, no interference is called insofar as appellate court order is concerned.

The appeal is, accordingly, dismissed.

22.11.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No