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

RSA No.3458 of 2000

Date of Decision: 01.06.2016

**Punjab State though its District Collector, Faridkot and
others**

.....Appellants

Vs

Balvir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ajaib Singh, Additional A.G., Punjab.

Mr. G.S. Sandhu, Advocate
for the respondent.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J

[1]. Punjab State and others have filed the present regular second appeal against judgment and decree dated 06.03.2000 passed by Additional District Judge, Faridkot whereby judgment and decree dated 30.05.1998 passed by Civil Judge (Jr. Divn.), Faridkot was set aside and the suit of the plaintiff-respondent was decreed at appellate stage. Declaration was given to the effect that the plaintiff-respondent be reinstated in service from the date of discharge and be considered in continuous service

with all consequential benefits of pay etc. However respondents were held at liberty to proceed against the plaintiff-respondent by way of conducting inquiry and pass appropriate order after giving him opportunity of being heard.

[2]. Plaintiff-respondent filed suit for declaration to the effect that the orders dated 30.10.1992 passed by Senior Superintendent of Police, Faridkot and order dated 20.09.1993 passed by Deputy Inspector General of Police in appeal removing him from service were illegal, unjust, improper and based on no evidence. Those orders were claimed to be stigmatic, punitive and violative of principles of natural justice. The orders were claimed to be unconstitutional, null and void.

[3]. Brief facts as gathered from the record are that the plaintiff-respondent was appointed as Constable in the Punjab Police on 15.11.1989 and was put on probation for a period of three years. Plaintiff-Respondent was discharged from service under Rule 12.21 of Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules') on the basis of six monthly reports submitted by the Station House Office, Police Station Kotwali, Faridkot. The work and conduct of the plaintiff-respondent was not found to be satisfactory and it was held that he was not going to be good and efficient police officer. Therefore, Rule 12.21 of the Rules was pressed into service to discharge the

plaintiff-respondent from service. Plaintiff remained unsuccessful in departmental appeal which was dismissed by the Deputy Inspector General of Police on 20.09.1993.

[4]. The suit was contested by the defendants. It was contended that order of discharge was rightly passed under Rule 12.21 of the Rules on the basis of assessment reports submitted by the competent police officer i.e. Station House Officer, Police Station Kotwali, Faridkot. It was denied that plaintiff was discharged due to departmental inquiry initiated against him as having got enrolment on the basis of bogus matriculation certificate for which FIR No.9 dated 23.02.1992 under Sections 420/468/471 IPC was registered against him. It was stated that departmental inquiry was pending awaiting the order of the criminal court after registration of the case against the plaintiff. In fact order of discharge was passed simpliciter on administrative side and was not by way of punishment and had nothing to do with the pendency of the criminal case.

[5]. After filing replication, the parties went to the following issues:-

“1. Whether the orders dated 30.10.1992 & 20.9.1993 are illegal, unjust, improper, violative of natural justice, equity and conscience unconstitutional, null and void,

without jurisdiction? OPP.

2. *Whether suit is not maintainable in the present form?OPD.*
3. *Whether no valid notice u/s 80 CPC has been served? OPD.*
4. *Whether the suit of the plaintiff is pre-mature? OPD.*
5. *Whether the suit has been filed within limitation? OPP.*
6. *Whether the plaintiff is entitled to the declaration prayed for ?*
7. *Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. After appraisal of evidence, the trial Court dismissed the suit of the plaintiff with costs vide judgment and decree dated 30.05.1998. Plaintiff filed appeal before the Additional District Judge and the same was allowed vide judgment and decree dated 06.03.2000, whereby declaration was granted to the plaintiff and he was ordered to be reinstated in service from the date of his discharge and was ordered to be considered in continuous service with all consequential benefits of pay etc. However department was held entitled to proceed against the plaintiff-respondent by way of conducting inquiry and pass

appropriate order after giving opportunity of hearing to him.

[8]. I have heard learned counsel for both the parties.

[9]. No substantial question of law has been formulated in the appeal. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[10]. Keeping in view the change of interpretation given by different courts to Rule 12.21 of the Rules from time to time, this Court considered it appropriate to formulate following substantial questions of law:

(i). Whether order of discharge though couched in

innocuous terms was punitive in nature in view of allegations made against the plaintiff having obtained the enrolment on the basis of bogus certificate?

- (ii). Whether services of the plaintiff/probationer can be terminated without observing anything in the order of termination and that does not amount punishment?
- (iii). Whether order of discharge is the result of alleged misconduct, inefficiency and the same was violative of principle of natural justice?

[11]. Rule 12.21 of the Rules has undergone through a dynamic process of interpretation by different Courts from time to time. The interpretation of law on the subject as it stood earlier have gone sea-change now as on date. No abstract proposition of law can be laid down where the services of a probationer are terminated without saying anything more in the order except that services are terminated as the incumbent is not going to be proved an efficient police officer. The order is completely innocuous. Secondly, if the probationer is discharged on the ground of misconduct or inefficiency or for similar reasons without proper inquiry and without affording

adequate opportunity of hearing or showing cause against his proposed discharge, then such order of removal falls under the category of Article 311 (2) of the Constitution of India.

[12]. The view propounded in **P.L. Dhingra vs. Union of India, (1958) SCR 828**, **K.H. Phadnis vs. State of Maharashtra, (1971) SCR (Supp.) 118**, **State of Bihar & Ors. vs. Shiva Bhikshuk Mishra, (1971) 2 SCR 191 at 196**, **Shamsher Singh & Anr. vs. State of Punjab, (1975) 1 SCR 814** and **Anoop Jaiswal vs. Government of India, (1984) 2 SCC 369** was further considered in **Smt. Rajinder Kaur vs. Punjab State and another, 1986 AIR (SC) 1790** by the Hon'ble Apex Court and it was held that if, the order of discharge though couched in innocuous terms, but if the same was merely a camouflage for an order of dismissal from service on the ground of misconduct, then certainly Court can unveil the curtain. In such event, Court can go behind the form and ascertain the true character of the order. If the Court finds that the order is merely determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred merely because of the form of the order.

[13]. Full Bench of this Court in **Sher Singh vs. State of Haryana, 1994(1) PLR 456** after discussing on the subject held

that the competent authority can discharge a constable from service at any time within three years from his entry in service, even on specific allegation of misconduct. Even a single act of misbehavior with public or absence from duty can lead to his discharge from service. It was further held that even a single act of indiscipline can lead the competent authority to conclude that the constable is unlikely to prove an efficient police officer. It is not only on the basis of periodical reports, but the authority can consider any other relevant material to form its opinion. The Court while interpreting Article 311 of the Constitution of India viz-a-viz. Rules 16.21 and 16.24 of the Rules held that an employee has no right to the post and when the competent authority forms an opinion that his continuation in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it can either terminate his service in accordance with the terms of his employment or the Rules or may decide to take punitive action. Article 311 of the Constitution of India would attract only when the employee is to be punished.

[14]. The question arises as to whether the order of discharge in the instant case is punitive in nature or not?

The order of discharge simpliciter does not show any amputation, rather in view of **Sher Singh's** case (supra) it is not only on the basis of periodical reports, but the authority can

consider any other relevant material to form its opinion regarding discharge of the delinquent. The lower Appellate Court in the instant case by referring to the work and conduct of the respondent upto 23.02.1992 observed that no misconduct was committed by the delinquent upto this date and when FIR No.9 dated 23.02.1992 was registered against the delinquent under Sections 420/468/471 IPC involving him in a criminal case, the Senior Superintendent of Police, Faridkot made up his mind to remove the appellant from service by way of discharge under Rule 12.21 of the Rules and obtained three reports Ex.D-1 to Ex.D-3 against the delinquent in respect of his work and conduct to be unsatisfactory. The reports given by Sub-Inspector Swaran Singh were in respect of work and conduct of the delinquent which were allegedly not found good and in the column No.9 defect was noticed to the effect that the work and conduct of the official were not satisfactory. The report Ex.D-3 was recorded by SHO, Police Station Kotwali, Faridkot, who also recorded in the defect column No.9 that he was not satisfied with the work and conduct of the official. Lower appellate Court held that such remarks came very promptly within two months and, therefore, the order of discharge was not innocuous, but was based on the misconduct for which inquiry was required to be held and the punishment was punitive in

nature. The reference was made to the precedents of **Smt. Rajinder Kaur's** and **Anoop Jaiswal's** cases (supra).

[15]. Having considered the interpretation of Rule 12.21 of the Rules from time to time, it is found that the Hon'ble Apex Court in a subsequent judgment in **State of Punjab and others vs. Sukhwinder Singh, 2005 AIR (SC) 2960** and **State of Punjab vs. Rajesh Kumar, 2007(1) SCT 459** has discussed the law on the point and ultimately over ruled the dictum laid down in **Smt. Rajinder Kaur's** case (supra) and upheld the view taken by the Full Bench of this Court in **Sher Singh's** case (supra) by holding that the view taken by the Full Bench of this Court is in consonance with the decision rendered by it in **Superintendent of Police, Ludhiana vs. Dwarka Das, 1979(1) SLR 299**. Therefore, the interpretation of law as exists today if, applied to the facts and circumstances of the present case would negate the claim of the plaintiff-respondent as order of discharge in terms of Rule 12.21 of the Rules can be passed on any other relevant material on which competent authority can form its opinion. Even a single act of indiscipline can lead the competent authority to conclude that the constable is unlikely to prove an efficient police officer. Though the order of discharge did not reflect any misconduct in terms of the involvement of the plaintiff in criminal case i.e. while obtaining employment on the

basis of alleged forgery for which FIR was registered against him, but during the course of hearing of this appeal, it was found in the order dated 21.05.2012 that during the course of hearing the learned counsel for the plaintiff did not dispute that in respect of charge of tampering, a criminal case was registered against the plaintiff-respondent and that ultimately resulted into his conviction as his correct date of birth was found to be 06.04.1966 instead of 06.04.1968. Leaving apart this fact, as it did not have any relevance in the context of order of discharge passed at the relevant time against the plaintiff. One thing is apparent that the plaintiff based his claim on his fraudulent conduct. Fraud vitiates all solemn acts and has no equities in law. The person committing fraud can be thrown out at any stage of litigation. The Hon'ble Apex Court in catena of judgments viz. **S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853; Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416; A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431; Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Sh. Raghunath Sahi, 2003(2) RCR (Rent) 148; Badami (deceased) by her LR vs. Bhali, (2012) 11 SCC 574; and Ramesh Kumar and another vs. Furu Ram and another, (2011) 8 SCC 613** has authoritatively

held that aforesaid propositions to the disadvantage of the person committing fraud.

[16]. In view of law laid down in **Sher Singh** and **State of Punjab and others vs. Sukhwinder Singh's** cases (supra) all the legal questions as formulated above would have their own answers in the context of controversy involved herein and it can be culled out from the interpretation that the order of discharge can be passed by the competent authority at any time within three years on specific allegation of misconduct. Even a single act of misbehavior of the delinquent can lead to his discharge from service. It is not only on the basis of periodical reports but the authority can consider any other relevant material to form its opinion.

[17]. In the instant case, it is not the criminal case which was considered while forming opinion, but it was the reports regarding unsatisfactory work and conduct of the delinquent that ultimately led the competent authority to form its opinion. No *mala fide* can be attributed in such a course.

[18]. In view of aforesaid, the appeal is allowed and the impugned judgment and decree dated 06.03.2000 passed by the Additional District Judge, Faridkot is hereby set aside. Accordingly, the judgment and decree dated 30.05.1988 passed

the trial Court is restored, dismissing the suit of the plaintiff with costs throughout.

June 01, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE