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

RSA No. 907 of 1999

Date of Decision: June 10, 2016

BALDEV SINGH

-APPELLANT

VERSUS

PUNJAB STATE AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Khehar, Advocate
for the appellant.

Mr. B.M. Vinayak, DAG, Punjab.

RAJ MOHAN SINGH, J.

{1}. Plaintiff Baldev Singh has filed this Regular Second Appeal against concurrent judgment and decrees passed by the Courts below, dismissing his suit for declaration, challenging the order of termination of his services w.e.f. 08.07.1994.

{2}. Plaintiff filed suit for declaration to the effect that the action of Principal, Industrial Training Institute, Budhlada in issuing order of termination dated 08.07.1994 on the basis of Character and Antecedent Report issued by Deputy

Commissioner, Mansa was illegal, arbitrary, malafide and against the principles of natural justice. Plaintiff sought all the consequential service benefits. Plaintiff joined the post of Chowkidar on 26.07.1993 after all due formalities. He was selected by defendant No.2 after holding interview and upon recommendation from the Employment Exchange, Mansa, plaintiff was issued an Identity Card and his work and conduct remained unblemished throughout. No complaint whatsoever was made by anyone and he worked to the entire satisfaction of his superiors. The services of the plaintiff were terminated on 08.07.1994 on the basis of an adverse Character Antecedent report issued by the Deputy Commissioner, Mansa which was claimed to be illegal in the suit.

{3}. Plaintiff alleged that his services could not have been terminated arbitrarily without conducting regular inquiry under the rules as he was permanently appointed on the said post. It was also alleged that period of probation was not a disqualification for such service and report regarding his Character Antecedent was wrong. Plaintiff could not have been terminated on the basis of such wrong report without establishing his guilt. Representation filed by the petitioner remained unanswered and after getting a legal notice issued under Section 80 of CPC on 15.10.1994, the suit ultimately

came to be filed.

{4}. Defendants contested the suit on the ground of locus standi, maintainability, non-joinder of necessary parties and the order being innocuous could not be assailed in service jurisprudence. The work and conduct of the plaintiff were found to be unsatisfactory, negligent and objectionable. The explanation of the plaintiff was called by defendant No.2 on 30.03.1994 for attending the duties in a drunken state. He was given warning by defendant No.2 on 10.05.1994. The District Magistrate, Mansa was requested for police verification by defendant No.2 on 22.03.1994. The Senior Superintendent of Police, Mansa sent his report regarding verification of Character and Antecedent of the plaintiff to the Deputy Commissioner, Mansa on 04.06.1994. The Deputy Commissioner, Mansa sent his report on 07.07.1994. Keeping in view the plaintiff being on probation, his services were terminated as per para No.7 of his appointment letter. All the averments of the plaint were denied altogether.

{5}. After filing of replication, following issues were framed:-

1. Whether the impugned order no.1332 dated 8.7.94 terminating the services of the plaintiff w.e.f. 8.7.94 is illegal null and void? OPP.

2. *Whether the plaintiff has no locus standi to file the present suit? OPD.*

3. *Whether the suit of the plaintiff is not maintainable? OPD.*

4. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.*

5. *Whether the plaintiff has no cause of action? OPD.*

6. *Relief.*

{6}. Plaintiff got himself examined as PW1 and closed his evidence.

{7}. Defendants examined as many as two witnesses namely Mukhtiar Singh, Principal, ITI Budhlada as DW1 and Balwant Singh, Hostel Superintendent-cum-PTI as DW2.

{8}. Trial Court vide judgment and decree dated 02.05.1997 dismissed the suit. Plaintiff remained unsuccessful before the lower Appellate Court as well, who dismissed the appeal vide judgment and decree dated 24.10.1998.

{9}. Though no substantial questions of law have been framed, however, keeping in the view the controversy involved in the appeal, this Court proceeded to consider following substantial questions of law:-

1. *Whether the order of termination though couched in innocuous terms, was in fact punitive in nature?*

2. *Whether services of the*

plaintiff/probationer could have been terminated without holding an inquiry as the termination was on some mis-conduct?

3. Whether the order of termination was the result of unsatisfactory work, mis-conduct and inefficiency and the same was violative of principles of natural justice?

{10}. I have heard learned counsel for the parties and have also considered the record.

{11}. Admittedly, plaintiff was on probation for one year of his service. He was appointed as Chowkidar by defendant No.2 on 20.07.1993 and was put on probation for a period of one year as per appointment letter. During this period of one year, his work was not found satisfactory, rather it was objectionable. Explanation of the plaintiff was called by defendant No.2 on 30.03.1994 for attending the duties in a drunken condition. Warning was given to the plaintiff and District Magistrate, Mansa was requested for police verification of the character of the plaintiff. The police verification was found to be negative. Since the plaintiff was on probation, therefore, his services were terminated.

{12}. Learned counsel for the plaintiff submitted that character verification was not reported by the Deputy Commissioner. Since the allegations of mis-conduct were made, therefore, it was imperative on the part of authorities to

go into the allegations in order to bring out the truth.

{13}. Learned counsel for the plaintiff further submitted that the principle invoked for terminating the services of the plaintiff was somewhat analogous to Rule 12.21 of Punjab Police Rules. Learned counsel for the plaintiff submitted that no exact proposition of law can be laid down where the services of a probationer were terminated without commenting anything in the order except that the services were terminated on account of his not being proved as good employee. The order was couched in an innocuous term but the same was merely a camouflage for an order of dismissal from service on the ground of mis-conduct. If the termination was based on mis-conduct, the Court should have unveil the curtain in order to know the true character of the order. The Court was obligated to know the real nature of the order whether it was a cloak for an order of punishment or was merely a termination based on condition of employment and satisfaction of the Competent Authority that the employee was not likely to become a good employee. All the aforesaid three questions are to be considered jointly as these questions are inter-se related to each other. The order of termination was based on an innocuous term though the conduct of the plaintiff was sought to be scrutinized by defendant No.2 in view of his mis-conduct

in attending the duties in a drunken condition during probation. He was warned by the Principal and District Magistrate, Mansa was requested to report regarding his character verification. The Senior Superintendent of Police recorded adverse report regarding character antecedent of the plaintiff. The conduct of the plaintiff was not found to be up to mark during probation and his retention in service was not found conducive to the system.

{14}. The proposition of law as highlighted 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, Shamsher Singh & Anr. vs. State of Punjab, (1975) 1 SCR 814, Anoop Jaiswal vs. Government of India, (1984) 2 SCC 369 and Smt. Rajinder Kaur vs. Punjab State and another, 1986 AIR (SC) 1790** was on the subject that if order of termination was couched in an innocuous terms, but if the same was merely a camouflage for an order of dismissal from service on account of mis-conduct, then Court was competent to unveil the curtain in order to know true character of the order.

{15}. In **Sher Singh vs. State of Haryana, 1994(1) PLR 456**, Full Bench of this Court held that the Competent Authority can discharge a Constable from service at any time within three

years of his entry into service, even on specific allegations of mis-conduct. Even a single act of misbehavior with public or absence from duty can lead to his discharge from service. It was 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.

{16}. In **Sher Singh's case** (supra), it was held that it was not only on the basis of periodical reports of the employee, but the opinion of the competent authority, if based, on any other material, the same was appropriate enough to order discharge of the employee. It was also held that the employee has no right to the post when the competent authority forms an opinion that his continuation in service is not in public interest on account of his unsuitability, mis-conduct or inefficiency. Termination of his services in terms of his appointment cannot be termed to be punitive in nature. The dictum laid down by Full Bench in **Sher Singh's case** (supra) was upheld by the Hon'ble Apex Court in **State of Punjab and others vs. Sukhwinder Singh 2005 AIR (SC) 2960** and **State of Punjab versus Rajesh Kumar 2007 (1) SCT 459**. The view laid down in Smt. **Rajinder Kaur's case** (supra) was overruled and the view taken by Full Bench of this Court in **Sher Singh's case** (supra) was upheld as the same was found in consonance with the

decision rendered by the Hon'ble Apex Court in **Superintendent of Police, Ludhiana versus Dwarka Das 1979(1) SCR 299.**

{17}. Learned counsel for the appellant referred to **Sat Narain versus Haryana State Cooperative Apex Bank Ltd. 1994(4) SCT 424** to contend that the order of termination was not simplicitor order/termination but the same was based on allegations of mis-conduct and therefore holding of inquiry was imperative. The principles as discussed in **Sher Singh's case** (supra) which were further upheld by the Hon'ble Apex Court are the complete answer to the arguments raised by learned counsel for the appellant.

{18}. Admittedly, the plaintiff was involved in two cases under Opium Act. In one of the case, he was granted probation and in another case, he was acquitted. The forming of opinion by the competent authority during probation of an employee even if based on some instances of mis-conduct as observed in **Sher Singh's case** (supra), was sufficient to record satisfaction that the employee was not likely to become a good employee and therefore without meaning anything more in the order of termination, the same could have been passed simplicitor without attributing anything punitive in nature. Therefore, order passed against the plaintiff during probation was totally

innocuous order and no interference by the Court is warranted, therefore, the judgments and decrees passed by the Courts below cannot be faulted with. The questions as formulated need to be answered in the light of aforesaid discussion that the order of termination was not punitive in nature as the opinion formed by the competent authority was in consonance with the dictum laid down by this Court in **Sher Singh's case** (supra) which was further upheld by the Hon'ble Apex Court in **Sukhwinder Singh's case** (supra) and **Rajesh Kumar's case** (supra).

{19}. Having considered the controversy in the light of aforesaid precedents, this Court is of the opinion that the impugned judgments and decrees passed by the Courts below are not the result of any mis-reading of evidence or having suffered with any perversity. Consequently, finding no merit in the appeal, the same is dismissed.

June 10, 2016

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**