

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

Date of decision: 17.04.2017

RSA No.2078 of 1993

The State of Punjab

...Appellant

Vs.

Ajaib Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anil Sharma, Addl. AG, Punjab, for the appellant.

Mr. K.S.Sidhu, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

Rule 12.21 of the Punjab Police Rules, 1934 (for short ‘the Rules’) deals with “discharge of inefficient” policemen and prescribes that “a Constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment”. The rule further provides that “There shall be no appeal against an order of discharge under this rule”.

The Full Bench of this Court in Sher Singh Vs. State of Haryana, 1994 (1) PLR 456 held that a Head Constable has no right to the post for the first three years and his services can be terminated as it is basically a period of probation. The view of this Court was approved by the Supreme Court in State of Punjab Vs. Sukhwinder Singh, AIR 2005 SC 2960 and State of U.P. & others Vs. Rajender Kumar Singh & others, (1997) 10 SCC 682.

When Rule 12.21 of the Rules is invoked, regular procedure provided under Rule 16.24 of the Rules is not to be followed. The petitioner

was discharged during probation as a Constable. The order of discharge is simpliciter although the order says that Constable Ajaib Singh has been found unlikely to prove an efficient police officer and he is, therefore, discharged from service w.e.f. 12.01.1990 under P.P.R. 12.21. Nothing was mentioned in the order of discharge except to employ the language of the rule. But in defence of its action, the State of Punjab disclosed in its pleadings in the suit brought to assail the discharge order that the services of the Constable were terminated for having participated in activities of the All India Sikh Students Federation (AISSF) during the year 1985-86. AISSF was banned in June 1984.

Against the discharge order, the respondent filed a suit praying that the order be quashed being illegal and null & void. The suit was decreed by the Sub Judge III Class, Gurdaspur vide judgment and decree dated 18.01.1992. The appeal carried by the State of Punjab to the Court of Additional District Judge, Gurdaspur failed and the judgment and decree of the trial Court was upheld. The instant appeal was admitted on 20.10.1993 and the decree was stayed on 25.03.1994. The stay has continued. An order which on its face is innocuous and merely uses the language of Rule 12.21 without saying anything more it would not cast stigma. Merely because the State when faces litigation reveals its motive in discharging the Constable in probation it is always open to it by way of defence to justify its action by candidly sharing the truth and the real reason which had led the Police Department to discharge a police official. The truth revealed in a written statement does not cast stigma on the plaintiff since the State has right to defend its action and justify it. If the Police Department in the troubled times in 1990 thought they should not have a Constable in the police force, who came from the ranks of AISSF, then their view deserves to be respected, as

the question is one of maintenance of law and order and court should not sit in judgment over such a decision taken in the peculiar times it was passed and national security uppermost. Therefore, there can be two standards applicable i.e. one for the Police Department and one for other civil Departments, where such affiliation may not be seen as an impediment to the security of the State or an impediment in governance and administration. The police authorities went by a report of the Deputy Superintendent of Police, CID, Gurdaspur dated 28.12.1989 in which it was reported that the plaintiff Ajaib Singh had been taken part in the activities of AISSF.

Mr. K.S.Sidhu appearing for the plaintiff-respondent relies on the judgment of the Supreme Court in The State of Madhya Pradesh Vs. Ramashankar Raghuvanshi & another, 1983 (1) SLR 575 to submit that a police constable cannot be punished by a discharge order for his personal faith and political inclinations in a free country. This was a case involving a Teacher employed in a Municipal School taken over by the Government. The absorption order cited that the same would be subjected to verification of antecedents. The services of the Teacher were terminated, when it was discovered that he had taken part in RSS and Jan Sangh activities. His services were terminated for the reason that he was not a fit person to be entertained in Government service. The Supreme Court did not agree with the employer-State that the termination was valid reasoning that termination cannot be done on the basis of past political activities. The order though innocuous still was penal in character and Article 311 stood attracted. The termination was also in violation of Articles 14 & 16. Justice S. Murtaza Fazal Ali, who headed the Bench, agreed with the conclusion of his learned Brother Judge that the special leave petition filed by the State of Madhya Pradesh should be dismissed in limine on merits, but refrained from

expressing any opinion on the observations made by O.Chinnappa Reddy, J. The position here is different since RSS and Jan Sangh activities cannot be equated with AISSF. I would personally not have any trouble with AISSF, but then it is not for the Court to put on the spectacles of the competent authority under Rule 12.21 and view the landscape as it looked in Punjab 1989-1990. So long as they viewed the presence of Ajaib Singh not fit for retaining in service and terminating his services during probation it remains the subjective satisfaction of the Superintendent of Police. Everyone in free India has the liberty of thought, expression, belief, faith and worship, equality of status and opportunity, but the principles in *Ramashankar Raghuvanshi's* cannot automatically be merged to the Police Department and render its action void. The Supreme Court had dealt with a case of Teacher and therefore, he could not be sacked or refused to be absorbed like his other counter-part teachers in the municipal school only for his personal beliefs and activities which did not involve any threat or likelihood of breach of peace or injury to public. The case is, therefore, distinguishable.

Mr. Sidhu then relies on another judgment of Supreme Court in Rajinder Kaur Vs. Punjab State & another, 1986 (3) SLR 77 dealing directly with Rule 12.21, Vol.7 of the Rules. The wording in that case is identical to the wording in the present case while discharging the appellant Rajinder Kaur. The facts are of their own kind and bear no similarity with the present case. There an enquiry was made by the Deputy Police Superintendent, Garhshankar as to the character of the appellant into the allegation that she stayed at Mahalpur for 1 or 2 nights with one Constable Jaswant Singh. The enquiry was made at her back and she was neither given opportunity of hearing in the enquiry, nor an opportunity to cross-examine the witnesses was offered and such a report could cast a stigma on her service career. In

these circumstances, the Supreme Court held that the order was not innocuous, but is based on allegations of misconduct touching upon the character of a lady Constable. There was no threat to the police force or to the public at large by the nature of the allegation. The issue in *Rajinder Kaur's* was a personal issue involving no 3rd party. If the nature of allegation was so serious to make ground for discharge then an enquiry should have been made. The case of Rajinder Kaur is different from the case of Ajaib Singh. Though I repeat that the Court has nothing personal against any organization in free India, but much will depend on the facts as come from case to case. The ratio of a case depends on the facts and one additional fact may change the fate of another case even though contemplated under the same Rule i.e. 12.21 PPR. The case is distinguishable on facts.

The present is a case of simple discharge from service and does not amount to removal. It does not cast stigma and no enquiry was required. The exercise of power under Rule 12.21 is based on subjective satisfaction and so long as the decision is objective, then interference may not be called for. The motive is the real unrevealed object of the order. The foundation is the appointment or officially revealed object and thus comes inter-play the combination or separation between motive and foundation. Where both motive and foundation co-exist and inference of punishment is reasonable though not inevitable it would depend on the justification. Affiliation with AISSF was the unrevealed object and if the Police Department reached that conclusion as a deterrent to police service in its long term interest, then I do not find a case for interference.

There is another serious hurdle in the way of the appellant which is that the decree has remained stayed for the last 23 years and it

would neither be prudent nor practical even to consider a case for interference by sheer passage of time where the prayers of reinstatement keep getting diluted to vanishing point. The plaintiff was enlisted as a Constable on 10.11.1989 and was discharged on 12.01.1990. He had about two months of service to his credit at the time of discharge when the impugned order was passed. The period is far too brief to consider willy-nilly a case for relief. Actions of the Government have also to be viewed in the domains they were passed and the political climate of the past. The Court can't remain divorced from ground realities and past. Many Constables who were enlisted with the plaintiff must have by passage of time been promoted to the higher posts and in case relief of reinstatement is contemplated or granted, it would disturb 3rd party rights very seriously, which must have settled in different seniority lists, which must have been issued from time to time and endless recruitments to in the police department taking place meanwhile.

Both the Courts have taken too narrow and technical a view of Rule 12.21, PPR and the total case to decree the suit assuming that the order is stigmatic in nature. I believe it is not. Neither motive nor foundation of the order in suit is offensive, arbitrary or unconstitutional. Court cannot sit in appeal over the order. The Courts below have not looked at the case from top or what is the vantage point.

Accordingly, the instant appeal filed by the State of Punjab is allowed and the judgments and decrees of the Courts below are set aside.

17.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No