

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10316 of 2015(O&M)
Date of Decision:-16.03.2017.

Ishe Khan

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. Hitesh Pandit, Additional A.G. Haryana.

P.B. BAJANTHRI, J. (Oral)

CM No.14110-CWP of 2016

CM for placing on record Additional Affidavit of the petitioner is allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

CWP No.10316 of 2015

1.) In the instant writ petition, the petitioner has questioned the validity of the discharge order dated 27.8.2013 (Annexure P-1). The petitioner was appointed as a Constable on 16.4.2012. While discharging the duties of the post of Constable, he was subjected to criminal proceedings and an FIR was filed on 17.8.2013. Based on the filing of FIR against the petitioner, the respondents have framed an opinion on 20.8.2013 which

reads as under:-

“In my opinion, the Competent Authority may kindly be taken action against defaulter u/r 12.21 of PRR. But before passing the discharge order, he must be served S.C.N. With detail facts of the circumstances.”

2.) Pursuant to the opinion, the competent authority – Commandant passed the order of discharge on 27.8.2013 (Annexure P-1) which is under challenge.

3.) Learned counsel for the petitioner submitted that even though the order dated 27.8.2013 is silent about the filing of FIR against the petitioner and the petitioner is involved in criminal proceedings, therefore, passing order of discharge is with reference to FIR and opinion formed by the Department. Thus, order of discharge is based on the ground of alleged misconduct committed by the petitioner. Therefore, in the absence of holding disciplinary proceedings, the petitioner cannot be discharged from service as held by this Court as well as Supreme Court in number of decisions. In the Supreme Court decision **Shamsher Singh and another Vs. State of Punjab, 1974 (2) S.L.R. 701**, it is crystal clear that an employee cannot be discharged on the ground of allegations/misconduct without holding an inquiry or without being heard in the matter.

4.) Per contra learned counsel for the respondents submitted that the petitioner has been discharged from service having regard to the serious allegations made in the FIR dated 17.8.2013 and after obtaining necessary opinion from the Department officials, the Commandant has proceeded to pass order of discharge on 27.8.2013. Thus, there is no infirmity in the order of discharge. He has also contended that this Court has held that

employee. Therefore, no interference is called for insofar as order of discharge dated 27.8.2013.

5.) Heard learned counsel for the parties.

6.) Crux of the issue involved in the present case is whether order of discharge passed on allegations that the petitioner is involved in criminal proceedings vide FIR dated 17.8.2013 would be in consonance with the Rule 12.21 of the Punjab Police Rules, 1934 or not. The above Rule empowered the competent authority to found whether a Constable is unlikely to prove an efficiency Police Officer or not before discharging the post of Constable. Admittedly, the respondents while passing the order of discharge they have taken note of the FIR and allegations. In other words, based on the alleged misconduct, the petitioner has been discharged from service. Therefore, in the absence of holding an inquiry, the petitioner cannot be discharged from service. Supreme Court in the case of Anoop Jaiswal Vs. Government of India, 1984(1) SLR 426 SC held that the service of the appellant therein had been terminated during the period of probation on the materials on record it was held that the order of termination really amended to punishment because the real foundation of the action against the appellant therein was act of misconduct. In present case also respondents are not disputing that order of discharge passed on account of petitioner's involvement in a criminal proceedings. Therefore, it is crystal clear that orders of discharge passed on account of alleged criminal misconduct. Supreme Court held that if the order of discharge do not disclose the reason Court can lift the veil and found the reason for discharge. Perusal of the record and the opinion formed by the Department read with reply statement,

the allegations that he is involved in FIR dated 17.8.2013. Therefore, the order of discharge is liable to be set aside. Accordingly, order dated 27.8.2013 vide Annexure P-1 is set aside. The petitioner be taken back to duty and regulate the intervening period of duty for all purposes. Reserving liberty to the respondents to initiate necessary proceedings and complete within a period of six months before holding that the petitioner is unlikely to prove an efficient Police Officer.

7.) With the above observations, petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

March 16, 2017.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.