

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

**CWP No.10523 of 2016
Date of decision : 25.11.2019**

Bhupender Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. G.S. Gopera, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.

1. Prayer in the writ petition is for the issuance of a writ of Certiorari to quash order Annexure P/4 dated 22.03.2013 passed by respondent No.4, order Annexure P/6 dated 25.05.2013 passed by respondent No.3 and order Annexure P/9 dated 18.05.2015 passed by respondent No.2. Prayer is also for the issuance of a writ of Mandamus for directing the respondents to reinstate the petitioner in service with continuity of service and all consequential benefits.

2. Brief facts of the case as per averments in the writ petition are that the petitioner was appointed as Constable in the Haryana Police on 04.02.2012. While undergoing recruit basic training at the Haryana Police Academy, the petitioner proceeded on leave on 19.05.2012 for 23 hours but did not resume duty for a period of 164 days 4 hours and 30 minutes w.e.f. 20.05.2012 to 20.10.2012 and 21.10.2012 to 01.11.2012 purportedly on account of serious

illness and during the aforementioned period remained under treatment of various doctors and Govt. hospitals at Bhiwani, Madhuban, Karnal as well as Medanta at Gurgaon.

3. That in the circumstances, respondent No.4 issued order Annexure P/1 dated 26.10.2012 for initiation of a departmental inquiry against the petitioner for indiscipline, negligence and carelessness towards duties. Assistant Commissioner of Police, Mujesar, Faridabad was appointed as the Inquiry Officer and a direction was issued to him to complete the enquiry by holding day to day proceedings and submit enquiry report.

4. Pursuant thereto, the Inquiry Officer issued charge-sheet Annexure P/2 on 23.01.2013. Respondent No.2 also issued order Annexure P/3 dated 25.02.2013 directing the Commandant, 4th Battalion, Haryana Armed Police Madhuban to send the petitioner before the Inquiry Officer on 26.02.2013. Pursuant to the aforementioned orders, the petitioner reported before the Inquiry Officer on 26.02.2013 and requested for grant of time to enable him to file reply to the charge sheet. However, before the petitioner could submit reply to the charge sheet, order Annexure P/4 dated 22.03.2013 was passed by respondent No.4 discharging him from service under Rule 12.21 of the Punjab Police Rules, 1934 (for short 'PPR'). Relevant extract of order Annexure P/4 is reproduced as under :

“R/Ct.Bhupender Singh No.4/634 now 3414/FBD, is a habitual absentee and unlikely to prove an efficient police officer. Therefore, he is here-by discharged under PPR 12.21 with immediate effect. Orders be booked accordingly.

Sd/-

*Dy. Commissioner of Police
Hqrs, Faridabad.”*

5. Aggrieved against order Annexure P/4, the petitioner filed an appeal before respondent No.3 which was dismissed vide order Annexure P/6 on the ground that no appeal lay against order of discharge from service under PPR 12.21. The petitioner, thereafter, submitted a mercy petition before respondent No.2 and on failure of respondent No.2 to take a decision on the same, invoked the jurisdiction of this Court by way of CWP No.11724 of 2014 challenging orders Annexure P/4 dated 22.03.2013 as well as Annexure P/6 dated 25.05.2013. The writ petition was disposed of vide order Annexure P/8 dated 02.07.2014 by permitting the petitioner to pursue his mercy petition before respondent No.2. However, mercy petition filed by the petitioner was rejected by respondent No.2 vide order Annexure P/9 dated 18.05.2015 with the observation that the petitioner had joined as Constable on 04.02.2012 and since he had not completed three years of service, and was discharged from service under Rule 12.21 of PPR, no appeal lay against the order of discharge, therefore, his mercy petition was also not maintainable.

6. Learned counsel for the petitioner contended that a regular departmental enquiry was ordered by respondent No.4 against the petitioner on 26.10.2012 for indiscipline, negligence and carelessness on account of absenting from duties and an Inquiry officer was also appointed who initiated the proceedings by issuing charge-sheet along with list of witnesses and documents and while the proceedings were pending, order Annexure P/4 dated 22.03.2013 was passed discharging the petitioner from service under Rule 12.21 of the PPR Rules as applicable to the State of Haryana by recording that the petitioner was a habitual absentee and unlikely to prove to be an efficient police officer and in the circumstances, the order of discharge

being stigmatic, could not be termed as a discharge simplicitor, therefore, was legally unsustainable.

7. Learned Sr. DAG, Haryana, on the other hand, contended that the impugned order was passed in exercise of the powers under Rule 12.21 of PPR within three years of the date of joining of the petitioner as the competent Authority was of the view that the petitioner was unlikely to prove to be an efficient police officer on account of the petitioner being undisciplined and irresponsible person who continuously remained away from his duty willfully and intentionally without prior permission of the higher authorities or without intimation and the act of absence of the petitioner and his conduct was of gravest kind being a member of disciplined force. The petitioner had remained absent from service without sanctioned leave or prior permission of the competent Authority from 25.05.2012 to 20.10.2012 i.e. 153 days and 3 hours, 21.10.2012 to 01.11.2012 i.e. 11 days 1 hour 30 minutes, 15.11.2012 to 25.12.2012 i.e. 39 days & 14 hours, 03.05.2012 to 10.05.2012 i.e. 6 days 23 hours 45 minutes, 23.04.2012 to 25.04.2012 i.e. 1 day 23 hours 35 minutes and 08.04.2012 to 09.04.2012 i.e 23 hours 35 minutes.

8. It needs noticing that although the petitioner was issued a charge-sheet Annexure P/2 for willful absence from duty from 15.11.2012 to 25.12.2012 for 39 days 14 hours and the services of the petitioner were discharged on account of his being a habitual absentee, therefore, unlikely to prove to be an efficient police officer vide order Annexure P/4 dated 22.03.2012, reply filed by the respondents records the petitioners absence from duty without any sanctioned leave or prior permission from the competent Authority on the following occasions :

- “(i) 25.05.2012 to 20.10.2012 = 153 days and 3 hours,
- (ii) 21.10.2012 to 01.11.2012 = 11 days 1 hour 30 minutes,
- (iii) 15.11.2012 to 25.12.2012 = 39 days & 14 hours,
- (iv) 03.05.2012 to 10.05.2012= 6 days 23 hours 45 minutes,
- (v) 23.04.2012 to 25.04.2012 = 1 day 23 hours 35 minutes
- (vi) 08.04.2012 to 09.04.2012 = 23 hours 35 minutes.”

Thus, the short point for consideration is whether the impugned order of discharge has been passed in terms of Rule 12.21 PPR or is stigmatic and could not have been passed without compliance with the principles of natural justice.

9. Learned Sr. DAG, Haryana has relied upon the decision of a Division Bench of this Court in **Ex-Constable Mukesh Kumar versus State of Haryana and others** 2009 (1) SCT 568, decision of Hon’ble the Supreme Court in **State of Punjab and others versus Sukhwinder Singh (2005) 5 SCC 569** as well as **State of Punjab and others versus Constable Avtar Singh 2008(7) SCC 405**.

10. I have considered the submissions of learned counsel.

11. In **Mukesh Kumar’s** case (supra), the impugned order was an order of discharge simplicitor under PPR 12.21. Hon’ble the Division Bench by relying upon the decision of a Full Bench of this Court in the case of **Sher Singh versus State of Haryana and others** 1994(1) PLR 456 as also the decision of Hon’ble the Supreme Court in **Sukwinder Singh’s** case (supra) and Constable **Avtar Singh’s** case (supra) wherein the Full Bench decision of this Court in **Sher Singh’s** case (supra) was upheld and it was held that the language of the order of discharge under Rule 12.21 did not reflect anything which would debar the employee from future employment therefore, the order

of discharge had to be termed as an order of discharge simplicitor, held that since the order as passed in the case was based only upon the provisions of Rule 12.21 of PPR as applicable to the State of Haryana and had been passed in accordance with the rules applicable, the same could not be termed to be punitive in nature, consequentially, the writ petition was dismissed.

12. In **Sukhwinder Singh's** case (supra) the order of discharge was also an order of discharge simplicitor. Hon'ble the Supreme Court held that the impugned order set aside by the High Court on the basis of a statement made in the written statement that the respondent was a habitual absentee, consequently, there was direct nexus between the order of discharge of the respondent from service and his absence from duty, therefore, the order of discharge from service was punitive in nature calling for regular enquiry under Rule 16.24 of the Rules was unsustainable because the respondent was on probation having been appointed about 8 months ago and only a simple order of discharge had been passed and mere holding of preliminary enquiry where explanation was called from an employee would not make an otherwise innocuous order of discharge or termination from service punitive in nature. Relevant extract of the decision of Hon'ble the Supreme Court in **Sukhwinder Singh's** case (supra) is reproduced as under :

“20. In the present case neither any formal departmental inquiry nor any preliminary fact finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed

*as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon the misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in **Ajit Singh and others etc. v. State of Punjab and another** (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules."*

13. In **Constable Avtar Singh's** case (supra), Hon'ble the Supreme Court allowed the appeal filed by the State of Punjab by rejecting the plea that although the impugned order of discharge was apparently innocuous but in fact it had been passed on the ground of misconduct i.e. continued absence from duty, therefore, amounted to an order of dismissal, therefore, it was obligatory upon the appointing Authority to hold a formal departmental enquiry.

14. Constitution Bench of Hon'ble the Supreme Court in **The State of Uttar Pradesh versus Shri Madan Mohan Nagar 1967 SLR(SC) 147** quashed the order of compulsory retirement on the ground that the same was in derogation of Article 465-A of the Civil Service Regulations which gave the Government the right to retire any Government Servant after he had completed 25 years qualifying service without giving any reasons. In said

case, the order of compulsory retirement passed in public interest under Article 465-A of the Civil Service Regulations applicable recorded Sh. Madan Mohan Nagar to have outlived his utility. Article 465-A of the Civil Service Regulations reads as under:

"Government retains the right to retire any Government servant after he has completed 25 years qualifying service without giving any reasons, and no Claim to special compensation on this account shall be entertained.

This right shall only be exercised by Government in the Administrative Department when it is in the public interest to dispense with the services of Government servant who has outlived his usefulness."

Hon'ble the Supreme Court rejected the submissions of the learned Solicitor General that the mention of the words in the order of compulsory retirement that the employee had outlived his utility did not amount to an order of dismissal or removal because in every case of compulsory retirement it was implied that the person who was compulsory retired had outlived his usefulness. Hon'ble the Supreme Court held that there was no question of implication and a clear statement appeared on the face of the order that the respondent had outlived his utility, in other words he was incapacitated from holding the post of Director, State Museum, Lucknow, therefore, the order clearly attached a stigma to him and any person who read the order would immediately consider that there was something wrong with him or his capacity to work.

15. Hon'ble the Supreme Court also referred to its decision in **Jagdish Mitter versus Union of India AIR 1964 SC 449 i.e.** the case of a Clerk who was discharged from service by passing an order that he was undesirable to

be retained in Government service. Hon'ble Gajendragadkar, J., as his Lordship then was, speaking for the Court held as under :

"No doubt the order purports to be one of discharge and as such can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in government service, it expressly casts a stigma on the appellant and in that sense must be held to be an order of dismissal and not a mere order of discharge."

Later, he observed:

It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal."

16. Relying upon the aforesaid observations of His Lordship, Hon'ble Justice Gajendragadkar, the Constitution Bench of Hon'ble the Supreme Court held that the same tests as was devised by the Supreme Court in **Jagdish Mitter's** case (supra) would be applicable in the case of compulsory retirement namely, whether the order of compulsory retirement cast an aspersion or stigma to the officer when it purported to retire him compulsorily and that in view of the order of compulsory retirement mentioning that the employee had outlived his utility, there was no doubt that the order did cast a stigma on the employee.

17. Judgment of Hon'ble, the Division Bench in **Ex-Constable Mukesh's** case (supra) as relied upon by the learned Sr. DAG, no doubt mentions that Hon'ble the Supreme Court in **Sukhwinder Singh's** case (supra) and

Constable Avtar Singh's case (supra) had held that if the language of the order of discharge under Rule 12.21 PPR did not reflect anything which would debar the appointment of the employee for future employment, the same had to be termed as an order of discharge simplicitor. However, the order of discharge in the instant case categorically mentions the petitioner to be a habitual absentee therefore, casts a stigma and any person who reads the order would immediately consider that there is something wrong with the capacity of the petitioner to work. In view of the decision of Hon'ble the Supreme Court in **Jagdish Mitter's** case (supra) as followed in the Constitution Bench decision of Hon'ble the Supreme Court in **Madan Mohan Nagar's** case (supra), a stigmatic order has to be held to be an order of dismissal and not mere order of discharge. The impugned order having been passed without complying with the principles of natural justice is liable to be set aside and is accordingly, set aside. The matter is remitted to the competent authority while granting it liberty to take action in accordance with law. Issue with regard to consequential benefits would be subject to the outcome of fresh orders to be passed by the competent authority in accordance with law.

18. Writ petition allowed in aforementioned terms.

November 25, 2019

ps

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(B.S. WALIA)
JUDGE