

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

RSA No. 297 of 2020 (O&M)

Date of Decision: 20.1.2020

State of Punjab and others

...Appellant

Vs.

Anita Devi

...Respondent

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Kumar, DAG Punjab.

Mr. D. K. Bhatti, Advocate.

RAJIV NARAIN RAINA, J. (Oral)

1. Mr. D.K. Bhatti, Advocate appears to oppose stay order, if any. He thinks he is on caveat. The file does not find a caveat. Office informs on a pass over that 90 days have expired from the date of its lodging and that is why it was not put up. He then prays he may be heard in case court is inclined to issue interim stay. He has been heard. The Law Officer has been heard on his appeal for disposal today with both parties consenting.

2. This is State's appeal against the judgments and decree of the Courts below in a suit for declaration and mandatory injunction allowing the suit of the plaintiff/respondent declaring that the orders of discharge from service passed under Rule 12.21 of the Punjab Police Rules, 1934 during probation are arbitrary and illegal and deserve to be set aside as null and void and the plaintiff reinstated to service.

3. The trial court and the lower appellate court have concurrently held on the merits that the impugned order of termination/discharge issued during probation is not legally sustainable on the facts. The suit has been decreed by determining pure questions of fact in favour of the plaintiff-respondent on the basis of evidence.

4. The background facts are that the plaintiff-respondent filed CWP No. 16896 of 2011, titled 'Anita Devi Vs. State of Punjab and others', which was dismissed on 16.04.2012 holding that the department in making allegations of fraud against the petitioner [Anita Devi] she has raised a pure question of fact, viz., whether the statement made by her before the inquiry officer was made voluntarily or under pressure. The Court held that it is not the province of this Court to go into the arena of disputed questions of fact. As a result it was held that Anita Devi did not clear the height in the High Jump to qualify in one of the physical efficiency tests and consequently the impugned order of termination cannot be faulted discharging her from service during probation.

5 The brief background facts are that selection of lady constables was conducted in the year 2011 by the Punjab police department. The plaintiff/respondent was a candidate in the process. The criteria adopted had, among other things, a requirement that a candidate must qualify the High Jump in three attempts. The respondent qualified the test and as a result of her merit, she was appointed as a

constable.

6. While she was on training during probation, a controversy was raked up as to her having actually qualified the High Jump test. Certain quarters complained that she had not cleared that essential physical test and had thus failed to qualify in the selection process which rendered her appointment a mistake. She was charged with misconduct in the field test in slipping surreptitiously into the group of successful candidates while she should have gone to the group of failures. A fact finding enquiry was ordered into the incident and based upon the findings recorded therein, she was discharged from service for cheating.

7. Against the order of the learned single judge dismissing her petition, Anita Devi carried an internal appeal [LPA No. 1438 of 2012] which was disposed of vide order dated 25.9.2012 modifying the order of learned Single Judge granting liberty to the petitioner to question the validity of the aforesaid findings in the inquiry by filing appropriate civil proceedings to resolve questions of fact disputed by her. Thereafter, Anita Devi and other similarly situated aggrieved lady constables who were also suspected of cheating applied for information under the Right to Information Act, 2005 from where they learnt that it was only Anita Devi and three other candidate lady constables who were made a scapegoat so as to give sanctity to the entire selection process of lady constables.

8. Armed with permission to approach the civil court, Anita Devi filed a civil suit which was allowed and the termination order was set aside. The State's appeal failed before the learned District Judge, Jalandhar by his judgment, order and decree dated 9.9.2019. The State is now before this court in regular second appeal assailing the judgments and decree of the courts below praying that they may be set aside.

9. In second appeal it is not for this Court to re-appreciate the evidence and findings of facts recorded by the court of first instance and endorsed by the first appellate court only to substitute them by its own view of the matter. This case is not based on appreciation of documentary evidence because of the nature of the allegation made by the State against Anita Devi accusing her of adopting unfair and deceitful means to secure a government job by clandestinely slipping into the group of successful candidates [rounded up or corralled from the unsuccessful for head count] at the end of the trials in the field test held in an open field having failed to pass the High Jump Test in three attempts.

10. The factual position is clearly explained by the learned District Judge. I wish to do no more than to reproduce the contents and endorse those findings. They are well reasoned in dealing with the testimony of DW-3 Raj Jit Singh, the person who held the fact finding enquiry and submitted report Ex.DW.2/3 against the petitioner. DW-3

Raj Jit Singh deposed in the witness box in his cross examination that he reached his conclusions in the report only after watching the Compact Disc (CD) of the physical test. The fact finding report was made during the probation period of Anita Devi and was made the sole basis for discharge on the ground that she played a fraud on the recruitment process. There wasn't any other evidence on record, both oral and documentary, in favour of the State to support the outcome of the adverse report. This is best explained by the learned District Judge in paragraph No.13 of the judgment [at page 57 of the paper-book] as follows:

“However, it appears that DW-3 Shri Raj Jit Singh has given his report Ex.DW.2/3 only after watching the CDs. There is absolutely nothing on the file that he has recorded the statement of any of the witnesses or of supervisory staff. The findings of DW-3 Rajjit Singh that respondent though failed in the high jump test but got mixed up with the candidates who have cleared the test by cheating the staff on duty, are not based on any evidence. As stated above, no statement of any member of the staff, who was on duty, has been recorded nor there is anything on the file if any action was taken against any of the duty staff for allowing the respondent to mix up with the passed candidates. There is absolutely nothing on the file that the photograph of the respondent is visible in CDs. No witness has been examined by the appellants, who was present when the respondent was appearing in the high jump test. In the absence of any such direct evidence, it cannot be said that the respondent has not cleared high jump test or she mixed up with the passed

candidates by cheating the staff on duty. Particulars of those cheating have not been disclosed as to in what manner and under what circumstances she mixed up with the passed candidates. No mark sheet or other record has been produced on the file which must have been prepared by the duty staff at the time of above said test as to which candidate has cleared the test and which has failed that test as well as attempts taken by those candidates. To discharge the respondent from her service only on the basis of unproved CD, is against principle of natural justice. Moreover CD, as observed by the learned trial Court, on the basis of which Inquiry Officer has given his findings, is not proved as per law. No certificate under Section 65-B of the Indian Evidence Act, which is mandatory, has been produced when the CDs in question were produced.” (emphasis added)

11. In my considered view, the courts below have not committed any error in appreciating the evidence in favour of the plaintiff-respondent while dealing with the electronic evidence and the requirements of Section 65-B of the Indian Evidence Act, 1872 that such evidence is inadmissible without following the procedure laid down in the Information Technology Act, 2000. The certificate purported to be in compliance of law can be considered to be a document only if the conditions specified in the Section are complied with to be read in evidence, which conditions are:

“Firstly, the information so produced by the computer was produced from such a computer which was used to regularly store or process the information.

Secondly, the computer was in possession of a person

having lawful control over the same.

Thirdly, the information so derived was regular fed into the computer in ordinary course of said activities.

Fourthly, throughout the material part the computer was operating properly or if it was not working properly the same was not under defective so that accuracy of its contends can be disturbed.

Fifthly, the information contained in the computer is reproduced in the ordinary course of the activities.

Lastly, if the statement in evidence regarding the content is to be given then one certificate of the following things is required that is:

(a) identification of the electronic record containing the statement.

(b) giving particulars of the device involved in the production of electronic record.

(c) certificate containing the conditions discussed above.

And such certificate is to be signed by the person occupying responsible official position in relation to the operation of the relevant device and management thereof.”

12. The certificate was given by an official in the rank of a constable which lends no authenticity to the document. In his cross-examination, DW-1 deposed that the procedure was breached, which is highly damaging to the State defence. The relevant part of the deposition is reproduced by the learned trial Judge in paragraph No.26 of her judgment, which deserves to be quoted:

“...I have joined as Computer Operator in the present post on 02.03.2018.....I do not now whether any CD has been played in the Court before my examination in chief

in the Court.....I cannot tell orally the date on which the plaintiff undertook the physical test.....”

The said official is not holding responsible official position. In section 65-B of Indian Evidence Act it is also mentioned that particulars of device involved in the production of electronic record is to be shown showing that electronic record was produced by computer. It is simply mentioned that original digital video cassettes are the record of SSP office but their size, shape is not mentioned. Even, the data in computer units/bytes like GB, TB etc. is not mentioned.”

Even the testimony of DW-3 Sh. Raj Jit Singh, SSP is silent regarding any such required certificate or any report by Expert.”

13. The trial Court has quite rightly observed that the Punjab Government had its own CFSL Laboratory where the record/CDs could have been sent for going into the root of the matter in proof of the video cassette, but no such attempt was made. If the police department relied upon a solitary piece of electronic evidence (CD), to support termination, which CD is in the form of electronic record, before proceeding further, it was imperative on their part to have at least sent the material to the Government forensic laboratory to get a scientific report regarding the truth of data contained in the CD, so that a view could be formulated on the electronic record as per Section 45-A of the 2000 Act.

14. Unfortunately, the services of the plaintiff-respondent were terminated on pure guess work taking undue advantage of her being on

probation.

15. Rule 12.21 of PPR, 1934 authorizes the appointing authority to discharge a probationer from police service who is found unlikely to prove to be an efficient police officer. There is no such finding available in this case, however hard one might look. The entire episode centers around the mistaken belief that Anita Devi had slipped into the ranks of the successful candidates and had therefore committed fraud during the field test. The episode, if it ever took place, must obviously have been under the keen eyes of a host of officials in the selection committee present on the spot while conducting the High Jump test, even one of whom or the competitors did not raise any hue and cry during and after the test nor were produced as witnesses for the prosecution.

16. The only evidence the department has tried to cling on to and clings even till today is a Compact Disc in which even the proponent viewer - DW-3 had failed to recognize the face of Anita Devi beyond doubt. The preponderance of probability theory will not work here, as a charge of fraud is quasi criminal in nature. No FIR was filed against Anita Devi on this account. The services of the respondent-plaintiff have been terminated ex facie on mere guess work with the greatest irresponsibility which is not expected from a Government servant who has power to inquire and discharge or recommend it to the competent authority.

17. The casual filing of this patently frivolous appeal is found

wholly misconceived and to press it is for a hearing even worse and is viewed seriously as an act of grave irresponsibility on the part of the police department to appeal with two courts against it, for good and proper reasons and with absolutely no substantial question of law to urge in second appeal. A second appeal does not lie against pure findings of fact properly arrived at and recorded by the courts *a quo* after appreciating the evidence available on record adduced by the parties and drawing proper conclusions. In all this, the plaintiff-respondent has lost eight years of life by the stroke of an uncaring pen.

18. For the reasons recorded above, the appeal is held to be completely devoid of merit and is dismissed with costs throughout in all the courts in favour of the respondent to be paid by the appellant State as calculated by the office. The judgments in appeal are endorsed. The suit is decreed as before.

19. As a result, the appointment of respondent-Anita Devi as Lady Constable is restored and she is ordered to be reinstated to service forthwith with all consequential benefits flowing therefrom including seniority, release of actual arrears of salary but notional increments from 2011 and promotions, if any, in case juniors have been promoted meanwhile. The arrears be calculated and paid to the respondent within 3 months.

20. It will be open to the State to take such action against DW-3 Raj Jit Singh as is considered fit by the Additional Chief Secretary

Home, Government of Punjab to inquire into the disservice done by him to the police department and for bringing untold misery and great harassment to the probationary lady constable discharged maliciously under rule 12.21 PPR, 1934. This act has also brought disrepute and shame to the police in investigation by DW-3 relying solely on inadmissible electronic evidence without any corroborative evidence to prove the CD in which even the face of the suspect is not clear, as found by the learned District Judge. He has acted prima facie unfair and inhuman to the plight of the plaintiff, apart from showing lack of probity in authoring a false fact finding report and succumbing while facing cross-examination in the witness box afraid of perjury, if he told a lie. It took years for the respondent to find her feet.

21. In case the departmental inquiry is held and DW-3 is indicted of making a false and fraudulent report, the cost to State arising out of reinstatement by the orders of the two courts below and affirmed by this Court today, be ordered to be shared by him in the proportion deemed fit by the competent authority. The result of the decision be placed on record of this case within 6 months, for the perusal of the Court.

(RAJIV NARAIN RAINA)
JUDGE

20.1.2020

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes/No*