

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

CWP 17652 of 2018 (O&M)

Date of Decision: October 12, 2020

Aslam KhanPetitioner
Versus
State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Ms. Harsh Rekha Kapoor, AAG, Haryana.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

Petitioner Aslam Khan was enrolled as a regular constable with the respondents on 02.04.2012 (though claimed to be 16.04.2013) and was allotted 4th Battalion. It was during his probation of two years when one Subhash Singh lodged FIR No. 413 dated 17.08.2013 under Sections 363, 366-A, 376, 406, 342, 506, 354 and 120-B IPC against the petitioner and others

for having enticed the daughter of the complainant. It is admitted fact that on 27.01.2014, the petitioner married the daughter of the complainant who was rechristened as Asma Khatoon from Akshma (who then was a major). The couple filed protection petition bearing **CRM M- No. 3495 of 2014** titled as **Asma Khatoon @ Akshma and another Vs. State of Haryana and others** and this Court passed interim directions through Annexure P-2.

The Commandant 4th Battalion Haryana Armed Police Madhuban discharged the petitioner under Rule 12.21 of Punjab Police Rules (hereafter to be referred as '**the Rules**') as applicable to the State of Haryana vide order dated 27.08.13 with effect from same date on the grounds that he is unlikely to prove an efficient police officer.

Aggrieved over this order of discharge, the petitioner has invoked the jurisdiction of this Court under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of *certiorari* for quashing the orders of discharge Annexure P-1 passed by the Commandant 4th Battalion Haryana Armed Police, Madhuban.

Ms. Harsh Rekha Kapoor, AAG, Haryana appearing on behalf of the respondents does not displace the facts and rather in their written response claimed that the petitioner without permission remained absent unauthorizedly in the

following manner:-

1. 12.04.2012 to 13.04.2012 for 01 day
2. 28.04.2012 to 30.04.2012 for 02 days
3. 20.08.2012 to 20.08.2012 for 01 day
4. 13.02.2013 to 14.02.2013 for 02 days
5. 02.07.2013 to 04.07.2013 for 02 days
6. 19.08.2013 to till date he is dismissed from duty.

and in terms of Rule 12.21 of the Rules was discharged as he was not likely to prove an efficient police officer and has sought to place reliance on **State of Punjab and others** Vs. **Sukhwinder Singh** (2005) 5 Supreme Court Cases 569 and **K. vidya Sagar** Vs. **State of U.P. and others** (2005) 5 Supreme Court Cases 581.

The respondent State claimed that since the period of probation was still continuing they had every right to simplicitor discharge the petitioner under these rules as per the settled law.

Heard Mr. Sunil K. Nehra, Advocate for the petitioner and Ms. Harsh Rekha Kapoor, AAG, Haryana and perused the records.

During the course of hearing the arguments, the Court had posed a question to the State as to the fact in the light of the claim of the respondents assuming the stand of the

State to be correct that the petitioner was in the habit of remaining absent without prior permission and which is detailed in their reply, why no action was initiated or report made by his seniors to this effect till the date of discharge which comes about after more than 01 year and 04 months. The learned State counsel accepts the fact that there is no such document on the record of the police file received by her. It is there that the petitioner happens to be from a different religion and has against wishes of family of Hindu girl married her and secured protection orders from this Court and FIR too was got registered by the father of the girl on 17.08.2013. It is exactly after 10 days of this, the petitioner has been thrown out of the job on a ground which by then had become quite stale.

No doubt, in cases where a probationer is packed off summarily the order is judicially not amenable to scrutiny and invariably is immune from interference by the Court. However, as a mark of caution certain principles and rules of guidance needs to be followed so as to lift the veil and see the real intent underlying it for which this Court seeks reference from the law laid down in **Shamsher Singh & Another Vs. State of Punjab** AIR 1974 SC 2192 whereby the Hon'ble Apex Court has held as under:-

“In some cases the rule of guidance has been stated to be the substance of the matter’ and the

foundation' of the order. When does motive' trespass into foundation'? When do we lift the veil of form to touch the substance'? When the Course says so. Those Freudian' frontiers obviously fail in the work-a-day world and Dr. Tripathi's observations in this context are not without force. He says "As already explained, in a situation where the order of termination purports to be a mere order of discharge without stating the stigmatizing results of the departmental enquiry a search for the substance of the matter' will be indistinguishable from a search for the motive (real, unrevealed object) of the order. Failure to appreciate this relationship between motive (the real, but unrevealed object) and from (the apparent, or officially revealed object in the present context has led to an unreal interplay of words and phrases wherein symbols like motive', substance' form or direct parade in different combinations without communicating precise situations or entities in the world of facts."

The need, in this branch of jurisprudence, is not so much to reach perfect justice but to lay down a plain test which the administrator and civil servant can understand without subtlety and apply

without difficulty. After all, between unsuitability' and misconduct' thin partitions do their bounds divide'. And, over the years, in the rulings of this Court the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling. The learned Chief Justice has in his judgment, tackled this problem and explained the rule which must govern the determination of the question as to when termination of service of a probationer can be said to amount to discharge simplicitor and when it can be said to amount to punishment so as to attract the inhibition of [Art.311](#). We are in agreement with what the learned, Chief Justice has said in this connection. So far as the present case is concerned, it is clear on the facts set out in the judgment of the learned Chief Justice that there is breach of the requirements of Rule 7 and the orders of termination passed against the appellants are, on that account liable to be quashed and set a side. In the result, we agree with the conclusion reached by the learned Chief Justice and concur in the order proposed by him”.

Thus, from this all, digging deep into very intent and

motive of the impugned order appears to be nothing but a camouflage to throw out the petitioner from service because he has dared to cross the line of social taboo by marrying a girl from another religion against the wishes of her family and immediately thereupon the authorities devised a way to unleash their powers under the Rules over which they earlier remained totally silent, in oblivion for a long period of time which is well corroborated from the own reply to the petition. This Court is fully satisfied the real intent and motive of this impugned order, which is more by way of punishment for this transgression of societal norms than of a real service in-discipline. The same is malafide to obviate the rigor of Article 311 (2) of the Constitution of India.

In the light of what has been detailed and discussed above, the present petition stands allowed. Impugned order dated 27.08.2013 (Annexure P-1) is set-aside and the petitioner shall be taken back in service and is entitled to continuity of service from the date of appointment with all service benefits which he is entitled under the Rules. The petition is allowed accordingly.

October 12, 2020

(FATEH DEEP SINGH)

amit rana

JUDGE

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