

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

LPA No. 122 of 2021 (O & M)
Date of decision: 10.11.2021

220

State of Haryana and others

....Appellant(s)

Versus

Aslam Khan

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Shruti Jain Goyal, DAG, Haryana,
for the appellants.

Mr. Sunil K. Nehra, Advocate,
for the respondent.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S.SANDHAWALIA, J. (Oral)

The challenge by the State in the present appeal is to the judgment of the learned Single Judge in CWP No. 17652 of 2018 decided on 12.10.2020. By virtue of the impugned judgment, the order dated 27.08.2013 discharging the writ-petitioner from the Police Force with immediate effect i.e. 27.08.2013 F.N. under Rule 12.21 of the Punjab Police Rules, 1934 (in short 'the Rules') was set aside. Directions were issued that the petitioner would be taken back in service and would be entitled for continuity of service from the date of appointment with all service benefits, which he is entitled under the Rules.

The reasoning which prevailed with the learned Single Judge is that when a probationer is packed off summarily, the same is not amenable to judicial scrutiny and invariably, is immune from interference by the Court.

However, the learned Single Judge thought it necessary to lift the veil and see the real intent in the background of the case while placing reliance upon the

judgment of the Constitution Bench in ***Shamsher Singh and another vs. State of Punjab, 1974 AIR SC 2192***. Resultantly, the conclusion arrived was that on account of crossing the line of social taboo by marrying a girl from another religion, the petitioner had been thrown out of service and was more by way of punishment for transgression of societal norms than of any indiscipline in service.

Counsel for the State has vehemently submitted that the appeal is liable to be allowed and the order of the learned Single Judge needs to be set aside in as much as the writ petition was filed in the year 2018 after a delay of over 5 years from the date of discharge. Secondly that as per settled principle, the order of discharge, as such, from service under the Rules could be done at any time within three years of his enrollment, as per the law laid down by the Full Bench in ***Sher Singh vs. State of Haryana, 1994 (1) PLR 456***.

A perusal of the paper book would go on to show that the petitioner was enrolled as a regular constable on 02.04.2012. Apparently, while under going training at the Police Training College, Sunaria, Rohtak, on account of his absence from 19.08.2013, he had been repatriated from the Police Training College and sent back to Commandant 4th Battalion, Haryana Armed Forces, Madhuban, Karnal on 23.08.2013 (Annexure R-1). His absence was apparently on account of the fact that an FIR No. 413 dated 17.08.2013 had been lodged under Sections 363, 366-A, 376, 406, 342, 506, 354 and 120-B IPC and under Section 12 of the Protection of Children from Sexual Offences Act, 2012, P.S. Samalkha, District Panipat.

It is not disputed that on the date the discharge order was passed, on 27.08.2013 (Annexure P-1), a message had been received by the

Commandant 4th Battalion regarding the registration of the said FIR from the concerned SHO. This fact is crystal clear from para no. 5 of the written statement of the State itself. The writ petitioner apparently had performed the marriage with Asma Khatoon @ Akshma and had also approached this Court in Crl. Misc. M-3495 of 2014, in which, an interim order dated 30.01.2014 (Annexure P-2) had been passed that the writ petitioner alongwith Asma Khatoon would not be taken into custody by any of the respondents on the allegations that she had been kidnapped or abducted. The respondents in question were the State agency and the father and mother of the girl, who is now stated to be married and happily residing with the writ petitioner and has also born a child from the said wed-lock.

It is also pertinent to mention that one Ishe Khan, who was also serving as Constable, was a co-accused in the said FIR and was prosecuted and acquitted vide order dated 02.03.2015 (Annexure P-5) on account of the fact that the prosecutrix, as such, had not supported the case and rather stated that she had gone way with the present petitioner on her own in July, 2013. Thereafter, after 3 or 4 months, she had invited Aslam Khan after changing her name and was residing with him but her father had registered a case on account of an ulterior motive. Ishe Khan also suffered the same disciplinary action and he was also discharged by an order of even date, dated 27.08.2013. The same was challenged by filing ***CWP No. 10316 of 2015, Ishe Khan vs. State of Haryana and others*** which was allowed on 16.03.2017 (Annexure P-8) after placing reliance upon the same judgment of the Apex Court i.e. in *Shamsher Singh's case (supra)* and the judgment in ***Anoop Jaiswal vs. Government of India, (1984) 2 SCC 369***. The said co-conspirator of the petitioner was further successful in as much as the appeal of the State i.e. ***LPA No. 1917 of 2017***,

State of Haryana and others vs. Ishe Khan was dismissed on 17.01.2019 (Annexure P-11). It is not disputed that Ishe Khan was reinstated and allotted the regimental number vide order dated 24.06.2019 (Annexure P-12) and the intervening period from 27.08.2013 till then, was treated as period spent on duty for all purposes.

Thus, keeping in view the above, we are also of the considered opinion that the writ petitioner's case is covered in view of co-accused Ishe Khan having succeeded and the State having reinstated him. Therefore, the writ petitioner is entitled for reinstatement on the issue of parity also and it would not be fair in the facts and circumstances to take a different view in the case of the writ petitioner, more so when he had not even faced the prosecution as a main accused, which Ishe Khan had to undergo.

The only issue which would detain this Court, in as much as, is the delay as such in approaching this Court, which has some substance and as argued by counsel for the State.

It is not disputed that the order was passed on 27.08.2013 and the petitioner chose to file an appeal on 03.08.2017 (Annexure P-6) which was disposed of as not appealable under the Rules on 04.09.2017 (Annexure P-7). It is thereafter the writ petition was filed apparently after considerable delay from the order of discharge whereas, the case of Ishe Khan had already been decided on 16.03.2017.

In such circumstances, this Court is of the opinion that the writ petitioner had chosen not to agitate for his grievance between 27.08.2013 till 03.08.2017 and, therefore, cannot claim any benefits and, thus, cannot be held entitled for any financial benefits for the said period on the principle of '*no work no pay*'. This aspect has not been seriously contested and rather conceded

gracefully by Mr. Sunil Nehra, Advocate counsel for the respondent-writ petitioner.

Accordingly, the present letters patent appeal is partly allowed only to the extent that the writ petitioner would not be entitled for the financial benefits for the period from 27.08.2013 till 03.08.2017. However, he shall be entitled for all other consequential benefits regarding continuity of service.

(G.S. SANDHAWALIA)
JUDGE

10.11.2021
shivani

(VIKAS SURI)
JUDGE

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