

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

RSA-1182-1997 (O&M)
Date of decision: 07.01.2022

Massa Singh Ex. ConstableAppellant

versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kapil Kakkar, Advocate
for the appellant.

Mr. Kanishth Ganeriwala, AAG, Punjab
for the official respondents-State.

FATEH DEEP SINGH, J.

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The appellant was recruited as a Constable in Punjab Police on 08.12.1988. During his posting in Police Lines, Hoshiarpur, the plaintiff proceeded on sanctioned leave from 05.10.1990 to 08.10.1990. During the course of his leave on 07.10.1990, the complainant fell ill and remained under medical treatment and applied for extension of his leave till 03.01.1991.

Upon return to his duty, he was on 03.01.1991 not allowed to join and was intimated the factum of his discharge from service by order dated 12.11.1990. The plaintiff then filed a representation before the DIG, Jalandhar, which was rejected vide orders dated 19.04.1991. It is after adopting due process of law, the plaintiff preferred a suit for declaration that the order dated 29.04.1991 passed by the DIG, Jalandhar Cantt., whereby, his representation dated 28.11.1990 was declined, sought setting aside of the same terming it to be illegal *malafide* against the Punjab Police Rules and hence the relief. The stand of the defendant was of total denial claiming that since, the plaintiff's service was three years and finding him unlikely to prove an efficient police official and based upon his overall assessment and close supervision stood discharged in terms of Punjab Police Rules 12.21 for his willful absence and termed the orders of the DIG to be legal and valid enforceable one.

Upon replication, Trial Court framed the following issues:-

1. Whether the plaintiff is entitled to declaration prayed for? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether this Court has no jurisdiction to try the suit? OPD.
4. Whether the plaintiff has no cause of action?
5. Whether the notice u/s 80 CPC is not legal and valid? OPD.

6. Whether the Court fee has not been properly valued? OPD.

7. Relief.

The plaintiff stepped into the witness box as PW-1 and reiterated his case and on behalf of the defendants examined DW-1-Mohinder Singh. The Court of the learned Sub Judge, 2nd Class, Jalandhar vide judgment/decreed dated 10.12.1992 decreed the suit of the plaintiff. Upon appeal, the Court of the learned Additional District Judge, Jalandhar, through impugned findings dated 08.11.1996 allowed the Appeal of the State and set aside the judgment/decreed of the Trial Court. It is in the light of this, the present regular second Appeal has come about.

In view of the recent pronouncement in 'Kirodi (since deceased) through his LR vs. Ram Parkash and others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard learned counsel of both the sides and perused the records.

Upon hearing at length, the submissions of Mr. Kapil Kakkar, Advocate for the appellant and that of Mr. Kanishth Ganeriwala, AAG, Punjab, for the respondents, what emancipates is the legal validity of order of discharge of the plaintiff/appellant. Though, much stress has sought to be laid by the State counsel on discharge of the appellant/plaintiff in terms of Punjab Police Rules 12.21 but a close perusal of the same shows that in spite of specific question having been posed to the State counsel, if there was any material on the record to prove that the plaintiff was not likely to prove a good police official which could lead to his discharge from service in terms of Punjab Police Rules 12.21, the State counsel was totally at loss. The interpretation of Punjab Police Rules 12.21 envisages that a Constable with less than three years of service has to be kept under close supervision in terms of Punjab Police Rules 19.5(1) and the form under the supervision has to be filled by his immediate superior Sub Inspector/Inspector under which, he is working to ensure that in spite of close supervision and representation, his conduct was not becoming of a good police officer. The defendants have miserably

failed to prove on record through their lone witness any such material to support their stand. Punjab Police Rules 19.5 ensures that a Constable under three years of service has to be kept under close supervision and reports of his conduct have to be submitted at intervals of six months. The police file Ex.P-4 by way of service rules of the plaintiff/appellant does not carry any such compliance of the aforesaid provisions of law. Though, the appellant had been posted at various places from 1988 till 1990, the lone incriminating document brought on the record by the defendant-Department is departmental inquiry file of Constable-Ajaib Singh and Massa Singh which pertains to vague allegations of having consumed liquor in the year 1988 and which is not at all supported by any medical evidence either blood or urine tests and does not holds good besides the fact it to be a stale allegation and after a long period of time such an allegation does not holds valid. None of the ACRs are suggestive of any undesirable conduct on the part of the plaintiff/appellant. The lone document Ex.D-1 on which order of discharge dated 28.11.1990 has been passed and is by way of form No.19.5, a six monthly report only finds against Column No.2, 3, 4, 5, 8, 9 & 10 shows that the official pertaining, to try to reform him, is lazy and has been warned on three to four occasions is of

bad character and does not have good public dealing are not supportive on the records by any independent evidence and particulars of any incident of misconduct. Rather, what one comes across, entry in Column No.10 shows that much after writing of this form, an entry has sought to be made afterwards and which overlaps the comments underneath rather creates a strong suspicion in the mind of the Court that there is a deceptive intent and keeping in view the pattern of these entries that it is an afterthought subsequent incorporation to strengthen the case of the Department for which the concerned police officials' conduct needs to be deprecated. The entries not only appears to be false and fabricated by cooking up the records to advance the case of the Department but are also *malafide* to achieve a motivated cause. Being penal in nature renders the orders of discharge without holding inquiry or there being substantial evidence based on these entries and total absence of any element of subjective satisfaction impugned orders needs to be set aside.

The learned Trial Court has rightly considered the fact that the allegation of misconduct by the plaintiff is on the basis of his alleged absence from duty and when it amounts to stigmatic order then resort cannot be held to provisions of Punjab Police Rules 12.21. More so, Punjab Police Rules 16.24 provides

procedure in departmental inquiry and being a stigmatic order based on injurious comments which are unsubstantiated on the basis of it necessitates holding of proper inquiry against the plaintiff/appellant. There is neither any element proved on the record of earlier instructions and warnings having been given to the plaintiff before his discharge or anything to substantiate the fervent arguments that are sought to be raised on behalf of the State. The learned Trial Court has rightly and correctly arrived at the decision on issue No.1.

No doubt under the law vests immense power to the Superintendent of Police to act against the a Subordinate Police Officer but that does not bestows upon him unbridled powers which are against the canons of justice more pregnated with egoistic and fraudulent approach. The impugned findings of the learned First Appellate Court shows that the same is not substantiated by any legally permissible reasoning and merely on the grounds that the impugned order of discharge dated 28.11.1990 is innocuous had upheld the same. The First Appellate Court had given much weight to the powers of the Superintendent of Police in discharging such an official and has wrongly interpreted that it was a simplicitor order of discharge without any stigmatic element

since the very exercise of powers of the Superintendent in passing the orders of discharge has to have some support from the service record which is not listed in the evidence of the defendant-Department and, therefore, to the mind of this Court, the First Appellate Court has certainly fell into an error.

In light of the foregoing discussions and reasons detailed above, the impugned judgment/decreed of the First Appellate Court is set aside and that of the trial Court, upheld and thus, the appeal stands allowed in those terms, however, no orders as to costs.

(FATEH DEEP SINGH)
JUDGE

07.01.2022

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No