

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CM-5234-C-2022 in/and
RSA-4481-2000
Date of Decision : 08.05.2023

Ex. Constable Ashok Kumar

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sarbjit Singh Khaira, Advocate for the appellant.

Mr. Gurpreet Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-5234-C-2022

Present application has been filed for fixing the main appeal to an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Gurpreet Singh, learned Additional Advocate General, Punjab, who is present in Court, accepts notice on behalf of respondent-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, application is allowed and the RSA No. 4481 of 2000 is taken up for hearing today.

RSA-4481-2000

Additional affidavit on behalf of respondents No. 2 and 3 has been filed in Court today. The same is taken on record.

1. The present regular second appeal has been filed challenging

the judgment and decree of the lower appellate court dated 02.08.2000 by which, the judgment and decree of the trial court dated 12.12.1996 has been set-aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was appointed as a Constable on permanent basis with the Punjab Police on 16.11.1989. After being appointed, he absented himself from duty starting from 16.06.1992. As per Rule 12.21 of Punjab Police Rules, 1934 (hereinafter referred to as 'Rule 12.21 of 1934', in case an appointing authority is of the view that the employee appointed is not likely to become a good police official, the said official can be discharged from service. The said order of discharge is to be passed within a period of three years from the date of appointment.

4. In the present case, as before completion of period of three years, the appellant-plaintiff absented himself and did not resume his duty till the order of discharge was passed on 29.09.1992 by exercising powers under Rule 12.21 of 1934.

5. The appellant-plaintiff filed a departmental appeal against the order dated 29.09.1992 but the same was also dismissed and ultimately, he filed a civil suit challenging the said discharge order dated 29.09.1992. Keeping in view the evidence, which came on record, the trial Court held that even under Rule 12.21 of 1934, a show cause notice was required to be given and only thereafter, the action can be taken, hence, in the present case as no show cause notice was given, the impugned order of discharge cannot be sustained. The order dated 29.09.1992 was set-aside by the trial court

vide judgment and decree dated 12.12.1996 and a liberty was given to the department to proceed against the appellant-plaintiff in case, they so desire qua the unauthorized absence.

6. Feeling aggrieved against the decision of the trial court, an appeal was filed by the respondents-defendants, which came to be decided by the lower appellate court and the lower appellate court vide its judgment and decree dated 02.08.2000 set-aside the judgment and decree of the trial court dated 12.12.1996 and dismissed the suit of the appellant-plaintiff by holding that as per the settled principle of law settled by the Full Bench of this Court in CWP No. 5569 of 1992 titled as *Sher Singh Vs. State of Haryana*, decided on 02.02.1994, the competent authority has jurisdiction to discharge an employee from service within a period of three years in case, the said official is not likely to be a good police official, hence, the present regular second appeal.

7. Learned counsel for the appellant-plaintiff has argued that in the present case, the courts below fails to appreciate the fact that the impugned order of discharge from duty was passed on 29.09.1992, whereas, as per the judgment dated 02.08.2000 of the lower appellate court, in paragraph 3, it was mentioned that the appellant-plaintiff was appointed on 16.01.1989, hence, he had more than three years of service on the day when the impugned order was passed, which was beyond the jurisdiction of the respondent-department. In order to find out the truth, the respondents-defendants were directed to file an affidavit giving the exact date, wherein, it transpires that the fact recorded in paragraph 3 of the impugned judgment dated 02.08.2000 is a typographical error as instead of 16.11.1989, the same

was typed as 16.01.1989. Even the affidavit filed by the State confirms that the date of appointment of the appellant-plaintiff in the department is 16.11.1989, hence, it is clear that the impugned order was passed within a period of three years of the appointment of the appellant-plaintiff.

8. Further, learned counsel for the appellant-plaintiff has not been able to show that the judgment of the Full Bench of this Court in ***Sher Singh's case (supra)***, is not applicable in the facts and circumstances of the present case. In ***Sher Singh's case (supra)***, the Full Bench of this Court held that even where there are allegations of mis-conduct, the competent authority is well within its right to decide to pass an order simpliciter discharging an employee from service, who is yet to complete minimum three years of service by exercising powers under Rule 12.21 of 1934. Full Bench further held that it is only in case, where the charges are grave and even punishment is to be imposed, the regular enquiry is needed to be conducted. The relevant paragraph 39 of the said judgment is as under :-

“39. In view of the above it is held that -

(1) A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him;

(2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer, not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and (3) The provisions of Rule 16.24 and [Article 311](#) shall be

attracted only when the punishing authority decides to punish the constable.”

9. Learned counsel for the appellant-plaintiff has not been able to rebut that in the present case, an order simpliciter has been passed exercising powers under Rule 12.21 of 1934, hence, no show cause notice or enquiry proceedings were required to be conducted before taking action under Rule 12.21 of 1934.

10. Keeping in view the above, as learned counsel for the appellant-plaintiff has not been able to point out any perversity in the judgment and decree of the lower appellate court either to the facts, law or the evidence on record, no interference is called for by this Court in the judgment and decree of the lower appellate court dated 02.08.2000.

11. Dismissed.

May 08, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No