

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105+206)

RSA-3861-1999(O&M)

Date of Decision : 04.05.2023

State of Punjab

...Appellant

Versus

Ex. Constable Nishan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab
for the appellant.

Mr. Amandeep Singh Manaise, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-3942-C-2003

As the main appeal is listed for today, the present application for fixing the main appeal to an early actual date of hearing, has become infructuous.

CM-4505-C-2023

Present application has been filed for placing on record synopsis along with the list of dates and events as well as documents as Annexures A-1 to A-5.

Application is allowed and synopsis along with the list of dates and events as well as documents as Annexures A-1 to A-5 is taken on record.

RSA-3861-1999

1. The present regular second appeal has been filed against the judgment and decree of the trial court dated 03.05.1997, by which the suit filed by the respondent-plaintiff challenging the order dated 23.04.1993 has been allowed as well as against the judgment and decree of the lower appellate court dated 27.04.1999 by which appeal preferred by the appellants-defendants has been dismissed.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. The respondent-plaintiff was appointed as a Constable with the Punjab Police and an action was taken against him under Rule 12.21 of Punjab Police Rules, 1934 (hereinafter referred to as 'Rule 12.21 of 1934') vide order dated 23.04.1993. According to Rule 12.21 of 1934, in case an appointee, who is not likely to become a good police officer, can be discharged from service within a period of three years of his/her appointment.

4. The order dated 23.04.1993 passed against the respondent-plaintiff was challenged by the respondent-plaintiff by filing a civil suit. Keeping in view the evidence, which came on record, the trial Court allowed the civil suit vide judgment and decree dated 03.05.1997 on the ground that in the impugned order, it has not been mentioned that the respondent-plaintiff is not likely to become a good police officer, hence, the order dated 23.04.1993 cannot be sustained in the eyes of law. Even though the impugned order was set-aside, the trial court gave the liberty to the department to conduct a regular enquiry against the respondent-plaintiff and thereafter pass an appropriate order. An appeal was preferred by the

appellant herein against the said judgment and decree of the trial court dated 03.05.1997, which also came to be dismissed vide judgment and decree dated 27.04.1999, hence, the present regular second appeal.

4. Learned State counsel argues that in the present case, once a show cause notice was issued to the respondent-plaintiff and the reply was considered and it was found that the respondent-plaintiff is not likely to become a good police officer, thereafter, an appropriate order was passed, which needed no interference at the hands of the Court as, within a period of first three years of appointment, even without holding an enquiry, action can be taken against an employee in case the appointing authority is of the view that the officer concerned is not likely to become a good police officer hence, setting-aside the impugned order passed under Rule 12.21 of 1934 has wrongly been interpreted to mean that the order under Rule 12.21 of 1934 can only be passed after holding an enquiry in case, there is an allegation of absence and the order should also recite that the respondent-plaintiff was not likely to become a good police officer.

5. Learned counsel for the respondent-plaintiff submits that once even in the order, the main thrust for passing of the order under Rule 12.21 of 1934 is the alleged absence, for which due explanation was also given, in case the action was required to be taken, the same could have only been done after proving the allegation of alleged absence and not otherwise, hence, once the absence is not proved by holding proper enquiry, no action could have been taken against the respondent-plaintiff.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. A bare perusal of the impugned order would show that the

same has been passed after giving a show cause notice dated 29.03.1993. In the show cause notice also, it was mentioned that the respondent-plaintiff is absenting himself from duty time and again for which the department is contemplating action. As per the impugned order, the reply was submitted by the respondent-plaintiff giving a justification for the absence that due to pain in his back, he was admitted in hospital but while passing the impugned order, the said explanation was not considered to be satisfactory and the respondent-plaintiff was dismissed from service by resorting to Rule 12.21 of 1934.

8. The question, which arise for consideration is that once the thrust of taking action against the respondent-plaintiff was his alleged absence, whether the respondent-plaintiff was entitled to prove that the said absence was un-intentional and was not voluntary and was due to forced circumstances. Keeping in view the facts and circumstances of the present case, where even in the show cause notice, the reason given to the proposed action is the alleged absence, the absence was required to be proved that the same was unauthorised and voluntarily before any action could have been taken even under Rule 12.2(1). To record the said finding, the reliance is placed upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos. 1088 and 1089 of 1995 titled as ***State of Haryana Vs. Jagdish Chander***, decided on 13.01.1995, wherein the Hon'ble Supreme Court of India held that where action has been taken under Rule 12.21 of 1934 on the ground of absence/negligence or indiscipline, the said order becomes punitive and cannot be passed without holding an enquiry. Relevant part of the said judgment is as under :-

“5. It would thus be clear from the order of discharge that it is

not an 1 order of discharge simplicitor. On the other hand, the S.P. considered the record and found him to be habitual absentee, negligent to his duty and undisciplined. The findings of habitual absence and indiscipline necessarily cast stigma on his carrier and they would be an impediment for any of future employment elsewhere. Under those circumstances, the principles of natural justice do require that he should be given an opportunity to explain the grounds on which the S.P. proposes to pass an order of discharge and then to consider the explanation submitted by the police officer. Then the S.P. is competent to pass appropriate orders according to the rules. Since this part of the procedure had not been adopted, the order of discharge is vitiated by manifest error of law.”

9. In the present case, in the order dated 23.04.1993 itself, the reason has been given for passing an order under Rule 12.21 of 1934, which is absence from duty and, therefore, the trial Court was perfectly within its jurisdiction to set-aside the order being punitive in nature.

10. Further, a bare perusal of the order would show that the respondent-plaintiff was dismissed from service. The question arise whether, while taking action against under Rule 12.21 of 1934, an employee can be dismissed from service or not. The Rule 12.21 of 1934 reads as under :-

“A constable who is found unlikely to prove and efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rules.”

10(a) The word used in the Rule 12.21 of 1934 is 'discharged' and not 'dismissal'. Once, an employee is dismissed from service, the said order is to be treated as a punitive in action whereas, the discharge is not punitive.

11. In somewhat similar circumstances, a Co-ordinate Bench of this Court while passing order in CWP No. 4401 of 1991 titled as ***Paramjit Singh Vs. State of Haryana and others***, decided on 14.08.1991, it was held that where in the order passed under Rule 12.21 of 1934, the employee concerned was 'dismissed' instead of being 'discharged', the same order is to be treated as a punitive, especially, once the allegations have been mentioned in the order itself.

12. Learned counsel for the appellant-defendant has not been able to dispute the settled principle of law settled by the Hon'ble Supreme Court of India in ***Jagdish Chander's case (supra)*** or by the Co-ordinate Bench in ***Paramjit Singh's case (supra)*** and has also not been able to differentiate the case of the respondent-plaintiff so as to be covered by these decisions in his favour. Keeping in view the above, no interference is called for by this Court in the present regular second appeal.

13. Appeal is dismissed. Decree sheet be prepared accordingly.

CM-6787-C-1999, CM-798-C-2001 and CM-8978-C-2001

As the main appeal is dismissed, present applications also stand disposed of.

Any other civil miscellaneous application, if pending, is also disposed of.

May 04, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No