

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

(210)

CWP-9073-2017

Date of decision: - 20.10.2023

Jagbir Singh**....Petitioner****Versus****State of Haryana and another****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Ramesh Hooda, Advocate
and Mr. Robin Singh Hooda, Advocate, for the petitioner.

Ms. Palika Monga, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order of discharge dated 21.06.2011 (Annexure P-2). A further prayer has been made for the issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner with continuity of service with all consequential benefits.

2. Learned counsel for the petitioner has submitted that in pursuance of the advertisement (Annexure R-1), the petitioner was appointed as a Temporary Constable Driver (LMV), vide appointment letter dated 06.05.2011 (Annexure R-2). It is further submitted that in pursuance of the said appointment, the petitioner was issued an Identity Card dated 06.05.2011 (Annexure P-1) and that respondent No.2 without holding any departmental inquiry has discharged the petitioner under Rule 12.21 of the Punjab Police Rules (as applicable to the State of

Haryana) (hereinafter referred as 'the Rules'), vide order dated 21.06.2011 (Annexure P-2). It is stated that immediately after passing of the order of discharge, an FIR No.345 dated 17.10.2011 under Sections 420, 467, 468, 471 and 120-B IPC was registered at Police Station City, Sonipat against the petitioner on the allegation that the driving licence produced by him was fake. It is submitted that during the course of evidence, the investigating officer had not appeared and PW-3/Rajiv Kmar could not explain the entry and thus, keeping in view the said facts and circumstances, the petitioner was acquitted, vide judgment dated 28.10.2016 (Annexure P-3) by the learned Judicial Magistrate 1st Class, Sonipat. It is further submitted that the petitioner had made a representation to the respondent No.2 after acquittal with a prayer for reinstatement. It is argued that the impugned order is illegal and against law, inasmuch as, no departmental inquiry was conducted prior to the passing of the said order of discharge and moreover, as per Rule 12.21 of the Rules conduct of the police official has to be seen during the service. It is submitted that the issue with respect to the driving licence was an issue which was prior to the appointment of the petitioner and the same cannot be made as a ground to discharge the petitioner. It is further argued that once, the petitioner has been acquitted of the criminal charges, then, at any rate, the order of discharge deserves to be recalled.

3. Learned State counsel, on the other hand, has opposed the present petition and has submitted that the present petition deserves to be dismissed on the following grounds.

(i) It is submitted that the impugned order was passed on

21.06.2011, whereas, the petitioner has challenged the same by filing the present writ petition in the year 2017 after a delay of more than 5 years and 10 months and thus, the same deserves to be dismissed on the ground of delay and latches.

- (ii) It is submitted that a perusal of the order dated 21.06.2011 (P-2) would show that the same is non-stigmatic and has been passed in accordance with Rule 12.21 of the Rules and has submitted that as per the said rule, it is open to discharge a police official if he is found unlikely to prove to be an efficient Police Officer at any time within a period of 3 years from the date of his enrollment and that no appeal lies against the said discharge. It is submitted that since the petitioner was appointed vide appointment order dated 06.05.2011 (Annexure R-2) and the impugned order has been passed on 21.06.2011, the same is within a period of 3 years as is mandated under Rule 12.21 of the Rules.
- (iii) Learned State counsel has referred to the appointment letter dated 06.05.2011 vide which the petitioner had been appointed as a Temporary Constable Driver (LMV) to highlight that it has been specifically mentioned in the said appointment letter that the appointment is subject to the verification of the educational certificates and driving licence of the petitioner. It is submitted that the respondent authorities had sought information from the Regional Transport Officer, Agra Region, Agra, in order to verify the driving licence submitted by the petitioner at the time

of his appointment and as per the information provided by the said office vide letter dated 21.05.2011 (Annexure R-3), it was stated that from a perusal of the photocopy of the licence itself, it is apparent at the first glance that it could not have been issued legally because the age of the licensee Jagbir Singh was less than 18 years (16 years, 8 months, 16 days) on the date of issuance of the driving license i.e. 26.05.2001 as his date of birth mentioned in the driving license is 10.09.1984 and as per the rules of Motor Vehicle Act, license of MC/LMV (PVT) cannot be issued to a candidate below the age of 18. It is further submitted that even as per the advertisement (Annexure R-1) in pursuance of which the petitioner was appointed, there was a specific requirement that a candidate must have a valid driving licence to drive a heavy or light motor vehicle. It is submitted that the words used in the said advertisement is “valid driving licence” and the licence submitted by the petitioner on the face of it was not valid.

- (iv) Learned State counsel has submitted that the petitioner had remained absent from duty for 22 days on four different occasions without any reasonable cause during the short period of his service from 06.05.2011 to 21.06.2011. It is further submitted that the said averment had been specifically made in paragraph 3 of the preliminary submissions of the written statement and the same has not been rebutted by way of any replication. It is also submitted that a show cause notice was

issued to the petitioner, but no reply was filed to the said cause notice and the said facts have been specifically mentioned in paragraph 3 of the preliminary submissions, which facts have also not been rebutted by filing a replication. It is, thus, submitted that the exercise of power by the authorities under Rule 12.21 of the Rules cannot be stated to be illegal or against law.

- (v) With respect to reliance placed upon the order of acquittal in the criminal case by the petitioner, it is submitted that even as per the case of the petitioner on the date of the passing of the impugned order dated 21.06.2011, the FIR was not in existence as the FIR was registered on 17.10.2011 i.e. subsequent to the passing of the said order. The impugned order was not passed on account of the fact that an FIR had been registered and thus, the acquittal in the said FIR would be irrelevant. It is argued that a perusal of the judgment would show that the investigating officer did not appear in the criminal case and that a regular departmental inquiry had been ordered by the Superintendent of Police dated 13.02.2017 (Annexure R-5) against the said investigating officer. It is submitted that at any rate, the criminal proceedings are on a completely different footing, than, the exercise of power by the competent authority under Rule 12.21 of the Rules and acquittal in a criminal case cannot be the reason for setting aside an order of discharge. It is submitted that it is an established principle that with respect to the employment of an

employee, the essential certificates including a valid driving licence are necessary for being in employment, whereas, the question as to whether the licence, is forged or fabricated so as to call for criminal action is distinct and separate. It is submitted that there is no rule/regulation, judgment or provision of law which provides that in case the petitioner is acquitted in an FIR registered subsequent to the discharge order, then the petitioner is required to be reinstated. It is argued that for exercising the power under Rule 12.21 of the Rules, no regular departmental inquiry is required and in the present case, a show cause notice was issued vide diary No.9065 dated 08.06.2011, but no reply was submitted by the petitioner to the same. It is, thus, prayed that the present petition deserves to be dismissed.

4. This Court has heard learned counsel for the parties and has perused the paper-book and is of the opinion that the present writ petition is meritless and deserves to be dismissed on the following grounds:-

- (i) The impugned order (Annexure P-2) discharging the petitioner with immediate effect under Rule 12.21 of the Rules was passed on 21.06.2011. The present petition has been drafted on 24.04.2017 after a delay of more than 5 years and 10 months. It has been repeatedly held by the Hon'ble Supreme Court of India that in case the petitioner has approached the Court after substantial delay, then, the petition deserves to be rejected solely on the ground of delay and latches. Reference in this regard, is made to the judgment of the Hon'ble Supreme Court of India in

Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu, reported as 2014(4) SCC 108 in which one of the grounds for setting aside the judgment of the High Court was the fact that the petitioner therein had approached the High Court after a delay of 4 years and it was observed by the Hon'ble Supreme Court that it was the duty of the Court to scrutinise whether such an enormous delay is to be ignored without any justification and the Hon'ble Supreme Court came to the conclusion that interference by the High Court after a lapse of 4 years was unjustified and that the writ petition should not have been entertained. The Hon'ble Supreme Court of India in the case "**State of Uttaranchal and another vs. Sri Shiv Charan Singh Bhandari and others**", reported as 2013(12) SCC 179 had observed that repeated representations or reply to such representations cannot furnish a fresh cause of action or revive a stale or dead claim and that the issue of limitation or delay should be considered with reference to the original cause of action and not with reference to the date on which an order was passed in compliance of Court's directions and neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. In **Chairman, U.P. Jal Nigam and Anr. vs. Jaswant Singh & Anr.**, reported as 2006(11) SCC 464, the Hon'ble Supreme Court had rejected the

claim of the persons who were guilty of delay and had approached the Courts after some years and had sought to raise a plea that similarly situated persons, who had filed the writ petitions earlier, had been granted relief.

- (ii) The sole ground raised by the petitioner to explain the delay is the acquittal granted vide judgment dated 28.10.2016 in FIR No.345 dated 17.10.20211 under Sections 420, 467, 468, 471 and 120-B IPC registered at Police Station City, Sonipat. In the said regard, it is relevant to note that the said FIR has been registered on 17.10.2011 which is subsequent to the passing of the order of discharge, as is apparent from a bare reading of Annexure P-2. The cause of action to challenge the impugned order of discharge arose on the date when the said order was passed and thus, the cause of action to challenge the order had arisen on 21.06.2011. No rule has been referred to by the learned counsel for the petitioner to the effect that in case of a subsequent acquittal with respect to an FIR which is registered subsequent to the passing of the impugned order, the authorities are duty bound to reconsider the matter. Thus, the plea raised by the learned counsel for the petitioner has no legs to stand on and is accordingly rejected.

- (iv) The impugned order dated 21.06.2011 (P-2) reads as under: -

“No. /OSI, dated (Discharge)

R/Ct. Jabir Singh No.3/86 is hereby discharged from service with immediate effect under Rule 12.21 of PPR Vol-II as he is found unlikely to prove an efficient Police Officer (.).

sd/

*Commandant,
3rd Battalion, HAP, Hisar*

A perusal of the same would show that the same is non-stigmatic and no reference to any criminal proceedings has been made in the same and has been passed under Rule 12.21 of the Rules, which specifically empowers the authorities to discharge a constable who is found unlikely to prove an efficient Police Officer, within a period of three years of his enrollment and also further provides that there shall be no appeal against an order of discharge. The said Rule 12.21 of the Punjab Police Rules as reproduced in para 6 of the petition is reproduced as under: -

“12.21 Discharge or inefficient: A constable who is found unlikely to prove an 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 rule.”

The petitioner was admittedly appointed as Temporary Constable Driver (LMV), vide appointment order dated 06.05.2011 (Annexure R-2) and was discharged vide order dated 21.06.2011 (Annexure P-2) and thus, the said discharge was within the period of three years.

- (v) It is the specific case of the respondent-State in the written statement (paragraph No.3 of the preliminary submissions) that a show cause notice bearing No.9065 dated 08.06.2011 was issued by the Commandant, 3rd Battalion, Haryana to the petitioner, but the petitioner failed to reply to the said show cause notice. The said specific averment in the reply has not been rebutted by filing a replication and thus, the principles of natural justice

were followed. No rule/regulation or law has been referred to by learned counsel for the petitioner to show that in the case of discharge under Rule 12.21 of the Rules, a departmental inquiry is required to be conducted, more so, when the principles of natural justice have been complied with by the respondent-State before passing the impugned order.

- (vi) It is the specific case of the respondent-State, as has been averred in para 3 of the preliminary submissions at page 30 of the paper-book, that during a very short span of service period for which the petitioner was on duty, he remained absent from duty for 22 days on four different occasions without any reasonable cause and even to the said specific averment there is no denial as no replication to the same has been filed. Thus, the exercise of power under Rule 12.21 of the Rules discharging the petitioner on the ground that he is unlikely to prove to be an efficient Police Officer cannot be stated to be illegal and against law. Additionally, it is relevant to state that it is not in dispute that the petitioner was appointed in pursuance of the advertisement dated 20.07.2008 (Annexure R-1) and as per the Condition 3(C) of the said advertisement, it was mandatory for a candidate to hold a valid driving licence to drive a heavy or light motor vehicle. Even in the appointment letter (Annexure R-2) by which the petitioner was appointed as a Temporary Constable Driver (LMV), it was specifically mentioned that the same would be subject to the verification of his educational

certificates & driving license. The respondent authorities had sought information from the office of the Regional Transport Officer, Agra Region, Agra, with respect to the validity of the license of the petitioner and vide letter dated 21.05.2011 (Annexure R-3), the Regional Transport Officer, Agra Region, Agra had informed the authorities that a perusal of the photocopy of licence of the petitioner would show that the licence could not have been issued legally because the age of licensee Jagbir Singh was less than 18 years (16 years, 8 months, 16 days) on the date of issuance of driving license i.e. 26.05.2001 as his date of birth mentioned in the driving license is 10.09.1984 and as per the rules of Motor Vehicle Act, the license of MC/LMV (PVT) cannot be issued to a candidate below the age of 18 years. There is no rebuttal to the said averment and document. It is thus apparent that even as per the document produced by the petitioner, the petitioner did not have a valid driving license and thus, the petitioner did not have the essential certificate required for the post for which the petitioner had applied.

(vii) Reliance sought to be placed upon the judgment of acquittal dated 28.10.2016 (Annexure P-3) to seek setting aside of the discharge order dated 21.06.2011 (Annexure P-2) is misconceived for the following reasons: -

(a) As it has been stated herein above, the order of discharge dated 21.06.2011 has not been passed on the basis of

the fact that the said FIR has been registered. The FIR was registered on 17.10.2011 i.e., subsequent to the passing of impugned order dated 21.06.2011.

(b) The argument of the State to the effect that the parameters to be considered at the time of discharge by the employer of his employee are completely different from the parameters which the criminal Court has to consider while convicting the accused of the offences committed under the IPC and that the driving licence may not be valid for the purpose of a person continuing their appointment as a driver, but the issue as to whether the prosecution is able to prove before the criminal Court the fact that the same is forged and fabricated or is fake is a different issue, altogether, is weighty. Further a perusal of the judgment of acquittal would show that the investigating officer had not been examined in the said case and the prosecution was not able to prove the case beyond reasonable doubt. A regular departmental inquiry was ordered against the said investigating officer by the Superintendent of Police dated 13.02.2017 (Annexure R-5). Moreover, at any rate, it is not in dispute that the petitioner had absented himself for 22 days within a short period of 1½ months and thus, the exercise of power under Rule 12.21 of the Rules cannot be faulted with and deserves to be upheld. Moreover, no rule/regulation, judgment or provision of law has been shown to this Court to the effect that in case an employee is discharged while exercising power under Rule

12.21 of the Rules, then, on a subsequent acquittal with respect to an FIR, which is subsequent to the date of the order of discharge, the authorities are required to reconsider the matter.

(vii) Even the argument raised by learned counsel for the petitioner to the effect that the conduct of the police officer has to be seen during his service and since the issue with respect to the driving licence was prior to his joining the service, is also misconceived and deserves to be rejected. As has been stated above, the fact that the petitioner was absent for a period of 22 days in his service period of 1½ months, is not disputed and the said conduct is without doubt subsequent to the petitioner having been appointed. Moreover, no law has been shown to this Court to support the argument that Rule 12.21 of the Rules can be exercised only with respect to an incident subsequent to the employment or that words “unlikely to prove an efficient Police Officer” could only be on the basis of a subsequent act and not on the basis of an invalid driving license produced by the candidate at the time of his appointment, more so, when the said appointment is subject to the verification of the said driving license as per the appointment letter itself.

6. In view of the above, the present writ petition is dismissed with the above-said observations.

October 20, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes