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

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RSA-1980-1995 (O&M)
Date of Decision: 30.04.2024

Punjab State and others

... Appellants

Vs

Romesh Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Chaudhary, DAG, Punjab
for the appellant.

Mr. R.S. Joshi, Advocate
for the respondent.

SUVIR SEHGAL, J.

1. Defendants are in second appeal before this Court assailing the concurrent findings recorded by both the courts below.
2. Pleaded case of the plaintiff-respondent is that he was enlisted as a Constable with the Punjab Police on 08.05.1986 and vide order dated 03.01.1989, he was discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 (for short 'the Rules'). He challenged the order by filing a suit for declaration on the ground that it has been passed by way of punishment in breach of the principles of natural justice, as he is alleged to have remained absent from duty.

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3. Upon notice, defendants appeared and filed a written statement wherein they took various objections. It was averred that the order of discharge does not cast any stigma on the plaintiff and it has not been passed by way of punishment. Defendants further stated that the plaintiff remained absent from duty from 04.11.1988 to 23.11.1988 and again from 25.11.1988. A specific stand has been taken that there was no necessity of holding a full fledged inquiry. On the basis of the pleadings, issues were framed and after the parties led evidence, trial Court by judgment dated 13.05.1992 decreed the suit. Defendants remained unsuccessful before the first appellate Court and an appeal filed by them was dismissed by judgment dated 14.01.1995, resulting in the institution of the present appeal.

4. I have heard counsel for the parties and considered their arguments, besides examining the record with their able assistance.

5. It is apposite to reproduce the orders passed by the defendants in order to gauge their nature and to arrive at a conclusion whether they meet the mandate of Rule 12.21 of the Rules. Order dated 03.1.1989, Ex.P-8, passed by the Senior Superintendent of Police, Amritsar, is reproduced hereunder-

"Constable Ramesh Kumar No.631 is discharged under PPR 12.21 w.e.f. 03.01.1989 forenoon as he is unlikely to become an efficient police officer.

Issue orders in O.B. and all concerned to note for necessary action."



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6. This order was challenged by the plaintiff-respondent in appeal and while dismissing it, the Deputy Inspector General, passed an undated order, Ex.P-5, which reads as under:-

"Ex Constable Ramesh Kumar 631/ASR has preferred an appeal against the order of SSP/ASR dated 03.01.1989 discharging him from service under PPR No. 12.21.

The allegation against him is that he absented himself from duty for 27 days i.e. from 04.11.1988 to 23.11.1988 and 25.11.1988 to 01.12.1988 without leave or proper permission.

I have carefully gone through the contents of the appeal and scrutinized the record of the case. The appellant has not been able to put forth any cogent or convincing facts in his favour. The order of SSP/Amritsar, is commensurate with the mis-conduct of the appellant and I do not find any reason to interfere with it. The appeal is, therefore, rejected being devoid of any force.

A copy of the order be supplied to the appellant free of costs."

7. Rule 12.21 of the Rules came up for interpretation in the ***State of Punjab and others Versus Jaswant Singh*** (2023) 9 SCC 150. Supreme Court held that from a perusal of the rule it is apparent that in case a probationary Constable is found unlikely to prove an efficient



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police officer, he may be discharged at any time within 3 years from the date of enrollment. The discharge order which was in question before the Supreme Court is reproduced hereunder:-

"ORDER

Constable, Jaswant Singh No. 1669/ASR S/o Shri Hazara Singh, caste Jat, R/o Village Thoba, PS Ramdass, Police District Majitha is hereby discharged from service under P.P.R. 12.21 as he is not likely to become an efficient Police Officer. His absent period from 24.11.1990 to date is treated as non-duty non pay.

Issue orders in OB.

SD/-xxxxxxxxxxx

*Sr. Superintendent of Police,
Amritsar*

No.11369-76/B Dated 28.03.1991”

8. Upon examining the above order, Supreme Court held that after relying upon the recommendation of the supervising officer, SSP formed an opinion that the probationary constable is unlikely to prove an efficient police officer owing to his demeanour. In the opinion of the Supreme Court, there is no foundation of mis-conduct alleged in the order and it is an order of simplicitor discharge of a probationer Constable.

9. Applying the observations of the Supreme Court to the facts of the present case, it is evident that the discharge order Ex.P-8 is a



simplicitor order of discharge of the plaintiff-respondent. The mere use of the words that “he is unlikely to become an efficient police officer”, which is the express language of the Rule, does not make the order stigmatic. There is no reference to the absence of the respondent from duty nor any misconduct or transgression has been alleged against him. Therefore, findings to the contrary recorded by both the courts below insofar as the discharge order Ex.P-8 is concerned, are set aside.

10. However, the situation is entirely different when the appellate order Ex.P-5 is examined. A perusal of Ex.P-5 passed by the Deputy Inspector General of Police shows that the Appellate Authority formed an opinion that due to the continued absence from duty, the plaintiff-respondent has misconducted himself. The foundation of the appellate order is misconduct which is beyond the scope and purview of Rule 12.21 *ibid*. On this premise, the order passed by the Appellate Authority cannot be sustained and the finding recorded by the courts below, setting aside the appellate order are upheld.

11. Consequently, the findings recorded by the courts below under issue No.1 qua the discharge order Ex.P-8 are set aside whereas findings recorded qua the appellate order are affirmed. As a consequence, the departmental appeal filed by the respondent deserves to be reheard by the Appellate Authority.

12. Instant appeal is disposed of. Matter is remitted to the Appellate Authority to pass a fresh order after hearing the parties.



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13. Parties are directed to appear before the Deputy Inspector General of Police, Amritsar on 10.07.2024 for further proceedings in accordance with law.
14. Pending application, if any, is disposed of.

30.04.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No