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

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Date of decision:21.05.2024

THE STATE OF PUNJAB & ORS.

...APPELLANTS

VS.

AMAR SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Brijesh, AAG, Punjab,
for the appellants.

Mr. Deepak Agnihotri, Advocate
for the respondent.

SUVIR SEHGAL J.

1. State-defendants are in second appeal before this Court challenging the concurrent finding recorded by both the Courts below.
2. Pleaded case of plaintiff-respondent, who was working as a police constable, is that after completion of training, he was sent on deputation with the Dog Squad at Ferozepur. Vide order dated 12.09.1986, Ex.P7, he was discharged from service by the SSP, Faridkot. He filed an appeal, which was rejected vide order dated 24.02.1987, Ex.P8. He filed a writ petition before the High Court, which was dismissed in limine before challenging both the orders by filing a suit for

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declaration and consequential relief.

3. Upon being served, defendants filed a written statement taking various preliminary objections. On merits, it was submitted that the plaintiff had produced a matriculation certificate and on verification, it was found that he had interpolated the date of birth in the certificate from 15.08.1961 to 15.08.1964. He was issued a show cause notice and sent two messages, but he did not appear before the SSP, Faridkot. By order dated 12.09.1986, Ex.P7, he was discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 (for short “the Rules) by the competent authority and the appeal filed by him, was rejected by order dated 24.02.1987, Ex.P8 as it was not maintainable. Plaintiff filed a replication reasserting the claims set up in the plaint. Issues were framed from the pleadings of the parties and after they led evidence, Trial Court by judgment dated 08.06.1993, decreed the suit and both the impugned orders were set aside. Plaintiff was granted all the consequential benefits of pay and seniority. Defendants remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Faridkot, by judgment dated 04.04.1995, resulting in the institution of the present appeal.

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

5. It is imperative to examine the nature of the order dated 12.09.1986, Ex.P7, passed by the authorities in order to determine as to



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whether it meets the mandate of Rule 12.21, *ibid*. The order reads as under:-

“ *Order*

Constable Amar Singh No.237/FDK of this District is hereby discharged under P.P.R. 12.21 with immediate effect, as he is found unlikely to prove an efficient Police Officer.

Book and issue.

Sd/-

*Senior Superintendent of Police,
Faridkot.*

10.09.86

No.8444-46/B dtd. 12.9.86”

6. From a perusal of the above reproduced order, it is evident that order Ex.P7 is a simpliciter order of discharge. No allegation of misconduct has been levelled against the plaintiff nor is there any allegation of misconduct or transgression. It merely reproduces the language of the rule, which cannot be said to be stigmatic. Both the Courts below have not appreciated the tone and tenor of the order, rather they have been influenced by the stand taken by the defendants in their written statement and the evidence led by them.

7. Rule 12.21 of the Rules came up for discussion before the Supreme Court in **State of Punjab and others versus Jaswant Singh (2023) 9 SCC 150** and it was held that from an examination of the Rule, it is apparent that in case, a probationary constable is found unlikely to prove an efficient police official, he may be discharged at any time within three years from the date of enrollment. A Full Bench of this



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Court in **Sher Singh versus State of Haryana 1994 (3) SCT 1**, as held that there is nothing in the Rule, which may de-bar the Superintendent of Police from discharging a constable who is absent from duty or has been found whistling or misbehaving with the public. It cannot be said that such an act is minor or trivial. The Rule does not enjoin upon the authority to wait for a constable to commit consistent lapses or misbehavior and a single act of indiscipline can lead the competent authority to conclude that the constable is unlikely to prove an efficient police officer and to discharge him from service.

8. In **Punjab State Versus Anil Kumar 2002 (3) SCT 339**, a Coordinate Bench of this Court came to the conclusion that the termination of service of a constable by way of discharge under Rule 12.21 of the Rules cannot be held to be stigmatic or punitive merely on the basis of the explanation given in the written statement. The relevant extract of the judgment is reproduced here-under:-

“10. In my opinion, the courts below committed serious illegality by declaring the order of discharge simpliciter to be punitive simply because in the written statement filed on behalf of the appellants, the respondent's absence from duty was cited as the cause for exercise of power by Senior Superintendent of Police, Amritsar under Rule 12.21 of the Rules. The absence of the respondent might have been taken into consideration by Senior Superintendent of Police, Amritsar for forming an opinion that a person, who had twice absented from duty within a short span of



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four months, would not prove to be an efficient police officer but, by no stretch of imagination, this could be taken into consideration for declaring an order of discharge simpliciter as punitive.

11. I am further of the view that the averments contained in the written statement cannot always be made basis for recording a finding on the true nature of the termination of service. If an employee challenges the order of termination simpliciter by asserting that it is arbitrary and capricious, the employer is bound to place material before the Court to show that the power vested in him was exercised in good faith and the action was founded on cogent reasons. At times, this is done by making averments in the written statement. If such averments were to be relied upon for recording a finding that the order of discharge or termination simpliciter is punitive, then in a majority of cases, the action taken by the employer to terminate the services of the employees in accordance with the terms and conditions of employment or the relevant rules would be rendered punitive. However, that is not a correct approach. In my considered view, the Court can examine the order of the termination of service along with attending facts and circumstances for taking the view that it is punitive but the averments contained in the written statement cannot, ordinarily, be made basis for granting such a declaration.”

9. When examined in the light of the above settled position, this Court is of the view that the Courts below have committed a serious

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irregularity by declaring the order to be punitive on the basis of the evidence led by the defendants/appellants and the stand taken by them in the written statement. The factual position is squarely covered with the judgment passed by this Court in *Anil Kumar's case (supra)*. As both the Courts below have committed serious irregularity in decreeing the suit, the impugned judgments and decrees cannot be sustained.

10. Ergo, appeal is allowed. Judgments and decrees passed by the Courts below are set aside and the suit filed by the plaintiff/respondent is dismissed throughout with no order as to cost.

21.05.2024

(SUVIR SEHGAL)

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JUDGE

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