

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

(202)

RSA-2725-1995

Date of Decision : April 10, 2024

State of Punjab

.. Petitioner

Versus

Ashwani Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

Mr. Amandeep Singh Manaise, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court dated 22.07.1995 by which, the judgment and decree of the trial Court dated 09.02.1994 has been set aside and the suit filed by the respondent-plaintiff has been allowed.

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

3. The respondent-plaintiff was appointed as a Constable in the Punjab Police in March 1990. Within a period of three years, the competent authority vide order dated 03.08.1992, discharged the respondent-plaintiff from service while exercising power under Rule 12.21 of the Punjab Police Rules, 1934. The said order was challenged by the respondent-plaintiff by filing a civil suit. Keeping in view the evidence and facts which had come

on record, the trial Court vide judgment and decree dated 09.02.1994, dismissed the suit. Feeling aggrieved against the said judgment and decree of the trial Court, the respondent-plaintiff filed an appeal, which came to be decided on 22.07.1995. The judgment and decree of the trial Court dated 09.02.1994 was set aside and the suit filed by the respondent-plaintiff was allowed on the ground that the actual reason for discharge was absence from duty. Hence, the present regular second appeal.

4. Learned counsel for the appellant-State argues that once the authority has jurisdiction to decide as to whether, any Constable appointed will become an efficient Officer or not and order can be passed within a period of three years from the date of appointment and the order passed is in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934 and the said order is not stigmatic, the Court will not interfere. The reliance is being placed upon the judgment of 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***, which judgment has been followed by the Hon'ble Supreme Court of India in ***State of Punjab vs. Rajesh Kumar 2007 (1) SCT 459***.

5. Learned counsel for the respondent-plaintiff submits that where the order of discharge is stigmatic, the same cannot be sustained and the reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.3049 of 2000 titled as Prithipal Singh vs. State of Punjab and others, decided on 28.04.2000*** and ***SLP (C) No.9649 and 14881 of 1993 titled as State of Haryana vs. Jagdish Chander, decided on 13.01.1995***.

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

7. Keeping in view the settled principle of law settled in respect of Rule 12.21 of the Punjab Police Rules, 1934, the jurisdiction to discharge an employee from service within a period of three years of appointment, exist with the Department. In case, a bona fide decision has been taken by the Department to discharge an employee from service and that too by order simplicitor, no grievance can be raised by the employee and the Court will not interfere in such action taken against the employer. The judgment of the Full Bench of this Court in ***Sher Singh's case (supra)*** has already been relied upon by the Hon'ble Supreme Court of India in ***Rajesh Kumar's case (supra)*** is fully applicable in the facts and circumstances of the case and same supports the arguments of the learned counsel for the appellant-State.

8. The only question which the learned counsel for the respondent-plaintiff has raised is that in case the order of discharge under Rule 12.21 of the Punjab Police Rules, 1934 is stigmatic, then the same cannot be sustained. In order to appreciate the same, the actual order passed against the respondent-plaintiff is reproduced is as under:-

“ I have considered the rival arguments. After surgically examining the record, I have no reason to disagree agreeing with the learned counsel for the appellant. The impugned order is re-produced as under:-

“Constable Ashwani Kumar No.1441/GSP is hereby discharged from service with immediate effect under P.P.R 12.21 as he is unlikely to prove an efficient Police Officer.”

9. A bare perusal of the same would show that a totally innocuous an order simplicitor has been passed discharging the respondent-plaintiff from service keeping the power under Rule 12.21 of the Punjab Police Rules, 1934. No statement of any misconduct has been noticed in the said order. That being so, the order discharging the respondent-plaintiff from

service is not stigmatic. Hence, the judgment being relied upon by the learned counsel for the respondent-plaintiff will not come into operation in the facts and circumstances of the present case.

10. No other argument was raised.

11. Keeping in view the facts of the present case and the settled principle of law, the judgment of the lower Appellate Court vide order dated 22.07.1995 is perverse to the evidence as well as to the facts on record and law cited hereinbefore hence, cannot be sustained. Consequently, the judgment and decree of the lower Appellate Court dated 22.07.1995 is set aside and that of the trial Court is revived and the suit filed by the respondent-plaintiff is dismissed.

12. The present appeal is allowed in above terms.

April 10, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No