

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

RSA-1495-1996 (O&M)

Date of decision: 19.01.2024

Reserved on : 08.01.2024

Vinay Chand

....Appellant

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Sandeep Kumar, Advocate for the appellant

Mr. Gurpreet Singh, Addl. AG, Punjab

ANIL KSHETARPAL, J

1. The plaintiff has filed this Regular Second Appeal to assail the correctness of the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The appellant (plaintiff in the suit) was appointed as a Constable in Punjab Armed Police at Jalandhar Cantt. on 13.06.1990. He claims that on oral permission from the Drill Inspector, he left the Punjab Armed Police Complex because his

wife and sister came and informed that his brother has been taken away by BSF after an encounter in the next village and he had no place to keep them at PAP Complex. On 20.11.1990, he came back and joined the duty, however, a show cause notice was issued to him on 25.01.1991, under Rule 12.21 of the Punjab Police Rules, 1934 (hereinafter referred to as '1934 Rules') to which reply was submitted by him. On 08.03.2019, he was discharged from the Punjab Police. Thereafter, he filed a civil suit on 04.06.1991, for the grant of decree of declaration that the order dated 06.03.1991, passed by the Commandant, 80th Battalion, PAP, Jalandhar Cantt actually amounts to his removal from service and therefore, it is illegal, unlawful, void and unconstitutional. He also sought declaration that the aforesaid order is not binding on him and he has continued to serve the department.

4. The defendants, while contesting the suit, asserted that the work and conduct of the plaintiff was not satisfactory and he earned two bad entries to his credit for remaining willfully absent from duty. He was also found absent on 19.11.1990, for which an entry in the daily diary was made. He left PAP complex without any permission from the Drill Inspector or any other competent officer and he has been discharged under Rule 12.21 after carefully watching his overall performance.

5. Replication was filed by the plaintiff and thereafter, the issues were framed. The trial court held that the impugned order is

not his simplicitor discharge and a detailed departmental inquiry into the allegations of misconduct was necessary. The State of Punjab filed the first appeal, which has been accepted by the First Appellate Court on the ground that the order of discharge casts no stigma on the appellant and he has been discharged in accordance with Rule 12.21 of the 1934 Rules. While relying upon a Full Bench judgment in **Sher Singh vs. State of Haryana (1994) 2 SLR 100** the First Appellate Court held that for a period of first three years, a Constable remains on a probation and he may be discharged by the Superintendent, at any time within, three years of enrollment if his work ethic and conduct is not satisfactory as per the police force's requirement.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record which is available in the digital form.

7. At this stage, it is considered appropriate to carefully examine the contents of the order passed by the Commandant 80th Battalion, Jalandhar on 06.03.1991. It has been noticed that the plaintiff was reported present on 20.11.1990, after having remained absent for one day. On earlier two occasions, he was found absent for a period of three days, which was subsequently treated as leave without pay, whereas on the second occasion he was found absent for three hours and fifteen minutes. The report sent by the Police

Captain/Incharge Training was also examined, wherein it was stated that this employee habitually remains absent. It was stated that on 18.02.1991, when he was given personal hearing, his uniform was dirty, not well maintained, not worn properly. Ultimately, the Commandant formed an opinion that he is not likely to become a good officer and therefore, he was discharged from 06.03.1991, and the period of his absence as leave without pay was ordered to be treated.

8. Rule 12.21 of the Punjab Police Rules, 1934 reads as under:-

“12.21 Discharge of Inefficients: 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.”

9. Learned counsel representing the appellant, while referring to Rule 19.3, 19.5 of 1934 Rules submits that the impugned order is a stigmatic order, which cannot be issued without holding a proper departmental inquiry. He further submits that this Court may kindly lift the veil and come to a conclusion that the order of discharge passed against the appellant is an order of dismissal in disguise. It is further submitted that in the show cause notice, only absence for a period of one day was pointed out and therefore, the reliance placed by the disciplinary authority on his dirty and untidy uniform could not be made the basis to pass an

order of discharge against the appellant. It is further contended that the procedure as prescribed in Rule 19.2 to 19.6 of the 1934 Rules has not been followed and his removal before completion of three years i.e the probation period is not appropriate.

10. It is further contended that under Rule 16.2 of the '1934 Rules' dismissal is to be awarded for grievous act of misconduct and one day's absence cannot be treated as a grievous act of misconduct.

11. While relying upon the judgment passed in **'Management of Express Newspapers (Pvt.) Ltd. Madurai vs The Presiding Officer, Labour Court, Madurai and another'** 1964 AIR (SC) 806, the learned counsel representing the appellant contends that removal before a period of three years is bad in law. While referring to Rule 16.2 of the 1934 Rules, he submits that dismissal is to be followed for grievous act of misconduct and one day's absence cannot be treated as grievous act of misconduct. In the end he submits that there is no finding in the impugned order establishing the fact that the appellant is unlikely to prove an efficient officer and the punishment of discharge is very harsh and disproportionate.

12. This Court has considered the submissions made by the learned counsel representing the parties.

13. It is evident from the reading of order of the discharge that it is not stigmatic and the disciplinary authority, after narrating

the facts available on the file, has formed an opinion that the appellant is not likely to become a good police officer. The impugned order nowhere indicates that the appellant has been discharged on account of misconduct. It is also evident that a report sent by the Police Captain/Training Incharge PAP, Jalandhar Cantt has also been kept in consideration. In fact, recently the Hon'ble Supreme Court in **State of Punjab and others vs. Jaswant Singh (2023) 9 SCC 150** while setting aside the judgment passed by all three courts held that there is no foundation of misconduct alleged in the order and it is an order of simplicitor discharge of a probationer Constable. The Court while relying upon **Sher Singh's case (supra)** has held that Rule 12.21 provides for 3 years probation period and it is permissible for the appointing authority to discharge the probationer after forming an opinion that the probationary Constable is unlikely to prove an efficient police officer. In these circumstances, the impugned order passed by the disciplinary authority is not stigmatic.

14. The second argument of the learned counsel also lacks substance because the disciplinary authority while passing the order made an observation and wrote as a passing reference that when the probationary Constable appeared for personal hearing, he was not dressed properly as his uniform was dirty and untidy. However, that reference has not been made the basis of the order of discharge passed by the disciplinary authority. In fact, the order of discharge

is based on his absence on three different occasions, within a short span of 9 months. In the show cause notice, the appellant was informed of his absence on three different occasions and his comments were sought for unauthorised absence.

15. The next submission of the learned counsel representing the appellant also does not have substance because Rule 19.2 of the 1934 Rules provides for the training of recruits. Similarly, Rule 19.3 provides for the examination of the recruits whereas Rule 19.5 provides for further training of the Constables. Rule 19.2 to 19.6 are independent of Rule 12.21. Rule 12.21 is not dependent upon Rule 19.2 to 19.6 of the Punjab Police Rules.

16. This Court has carefully studied the judgment passed in **Indian Express's case (supra)**. In the aforesaid case, the Chief Sub Editor was discharged six days before his probation period ended, on the ground that he has been elected as a President of Madurai Branch of Madras Union of Journalist. Though the High Court observed that discharge of an employee before a period of six months was wrong, however, the Supreme Court did not express any opinion. Hence, the aforesaid judgment with greatest respect as a ratio decidendi, does not lay down that the probationers cannot be discharged before completion of the probation period.

17. The next argument of the learned counsel representing the appellant based on Rule 16.2 that talks of act of grievous act of misconduct holds no firm ground as in this case, the appellant has

been discharged under Rule 12.2 and the said rule applies to the probationers.

18. The next argument of the learned counsel representing the appellant is also insubstantial as in the impugned order the disciplinary authority has specifically observed that the respondent is not likely to become a good police officer. It is not necessary that the exact expression used in the Rule must be reproduced. Basically, if an order of discharge of a probationer is based on subjective satisfaction of the appointing authority, the court in the absence of malafide or perversity is not expected to interfere.

19. There is also no substance in the next argument of the learned counsel representing the appellant that the period of absence, as leave without pay, has been regularized in the impugned order and therefore, the aforesaid misconduct stands condoned. This fact has also been examined by the Supreme Court in detail in **State of Punjab and others vs. Charanjit Singh, 2003 (8) SCC 458** wherein it has been held that the order treating the period of absence as leave without pay is only to regularize the record and it does not result in condonation of misconduct.

20. The last submission of the learned senior counsel also lacks substance as the disciplinary authority has passed no order of punishment. It's a simplicitor order of discharge. It is evident that within a period of 9 months, the appellant remained absent on three

different occasions, without seeking permission from the competent authority. Thus, this Court does not find it appropriate to interfere.

21. Hence, dismissed accordingly.
22. All the pending miscellaneous applications, if any, are also disposed of.

19.01.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE