

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

RSA No. 3016 of 1996 (O&M)
Date of Decision : 18.04.2024

The State of Punjab and another

...Appellants

Versus

Rajinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab
for the appellants.

None for the respondent.

Harsimran Singh Sethi J. (Oral)

1. The present regular second appeal has been filed challenging the judgments and decrees of the courts below dated 16.01.1995 and 27.03.1996 by which the suit filed by the respondent-plaintiff challenging the order dated 02.07.1992 discharging the respondent-plaintiff from service under Rule 12.21 of the Punjab Police Rules, 1934, has been set-aside.
2. Learned counsel for the appellants-defendants submits that the courts below have held that the order dated 02.07.1992 discharging the respondent-plaintiff from service under Rule 12.21 of 1934 Rules is punitive in nature as, the said order has been passed on the ground that the respondent-plaintiff was habitual absentee from duty, hence, the appellants-defendants are under obligation to hold an enquiry to prove the

said allegations before taking any action, whereas the said view of the courts below is contrary to the view 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 also dealt with the passing of an order under Rule 12.21 of the Punjab Police Rules, 1934.

3. No one has appeared on behalf of the respondent-plaintiff. It may be noticed that on the last date of hearing also, learned counsel for the respondent-plaintiff had taken an adjournment that he is not well.

4. I have heard learned counsel for the appellants-defendants and have gone through the record with his able assistance.

5. As per the settled principle of law as well as keeping in view the provisions of Rule 12.21 of the Punjab Police Rules, 1934, the department has a jurisdiction to form an opinion as to whether, an employee is likely to become a good police officer or not and in case, the department is of an opinion that the said employee is not likely to become a good police officer, he/she can be discharged from service within a period of three years of joining.

6. In the present case, within a period of five months of joining, keeping in view the performance of the respondent-plaintiff, an opinion was formed by the department that the respondent-plaintiff is not likely to become an efficient police officer and he was discharged from service by passing an order simplicitor. The courts below have held that the said order of discharge is punitive on the ground that the same has been passed

keeping in view the habitual absence of the respondent-plaintiff. The order passed on 02.07.1992 is as under :-

“ORDER

Constable Rajinder Singh No. 4536/TT of this district has been found unlikely to prove an efficient Police Officer. He is, therefore, hereby discharged from service under PPR 12.21 with immediate effect. He will deposit all the uniform articles including identity card issued by the Police Department.

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

*Sr. Superintendent of Police,
Tarn Taran”*

7. A bare perusal of the above order would show that a simplicitor order has been passed by the department under Rule 12.21 of the Punjab Police Rules, 1934. Nothing has been mentioned in the order dated 02.07.1992, which is stigmatic or proves that the same has been passed by way of punishment. As per the judgment in ***Sher Singh (supra)***, the department has the jurisdiction to pass an order simplicitor and take appropriate action after forming an opinion that the concerned employee is not likely to become an efficient police officer. The relevant paragraphs 32 and 39 of the said judgment are as under :-

“32. With utmost respect it appears that the view taken by their Lordships of the Division Bench is rather liberal. There appears to be nothing in the Rule which may debar the Superintendent of Police from discharging a constable, who is not only absent from duty, but is even found whistling or misbehaving with the public. Nor can it be said that such an act is minor or j trivial. The rule

does not enjoin upon the authority to wait from a constable to commit 'consistent lapses or misbehaviour'. 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. In this situation, it does not appear to be possible to accept the view taken by the Division Bench. It is, consequently over-ruled.

33. xxx xxx xxx xxx
34. xxx xxx xxx xxx
35. xxx xxx xxx xxx
36. xxx xxx xxx xxx
37. xxx xxx xxx xxx
38. xxx xxx xxx xxx
39. *In view of the above it is held that -*

(1) A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him;

(2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer, not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and (3) The provisions of Rule 16.24 and [Article 311](#) shall be attracted only when the punishing authority decides to punish the constable.”

8. Keeping in view the above, the findings recorded by the courts below that the order impugned dated 02.07.1992 has been passed by way of punishment is contrary to the facts and evidence, which have come on record and judgments and decrees of the courts below are also

perverse, hence, the judgments and decrees of the courts below cannot sustain and are liable to be set-aside and are accordingly set-aside.

9. The suit filed by the respondent-plaintiff is accordingly dismissed. It may be noticed that while issuing notice of motion, the judgments and decrees of the courts below had already been stayed.

10. Appeal is allowed in above terms.

Pending miscellaneous application, if any, also stands disposed of.

April 18th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No