

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208)

RSA-3310-1997 (O&M)

Date of Decision : 15.04.2024

Maninder Singh

...Appellant

Versus

The Punjab State and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sudeep Mahajan, Advocate with
Ms. Sachi Mahajan, Advocate for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgments and decrees of the courts below dated 03.04.1996 and 24.07.1997 by which the suit filed by the appellant-plaintiff challenging the order dated 27.05.1992 by which he was discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 as well as subsequent order dated 08.01.1993 by which his appeal against the said dismissal order was dismissed, has been dismissed.
2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.
3. It may be noticed that the appellant-plaintiff was appointed as a Constable on 04.08.1989. While working on the said post, a complaint was registered against the appellant-plaintiff on 30.04.1992 on

the ground of misconduct. Thereafter, a show cause notice dated 08.05.1992 was issued and after considering the reply of the appellant-plaintiff to the said show cause notice, an order dated 27.05.1992 was passed discharging the appellant-plaintiff from service under Punjab Police Rules, 1934. It may be noticed that keeping in view Rule 12.21 of the Punjab Police Rules, 1934 (hereinafter referred to as '1934 Rules'), the State Government is within its jurisdiction to form an opinion and decide as to whether, a Policeman is likely to become an efficient Police Officer or not. Thereafter, the appellant-plaintiff filed an appeal before the higher authorities against the said dismissal order, which came to be dismissed on 08.01.1993. The said orders were impugned by the appellant-plaintiff by filing a civil suit, which suit was dismissed by the trial court keeping in view the evidence and facts, which had come on record, vide judgment and decree dated 03.04.1996 and even the appeal preferred against the judgment and decree of the trial court was dismissed by the lower appellate court on 24.07.1997, hence, the present regular second appeal.

4. Learned counsel for the appellant-plaintiff argues that the order dated 08.01.1993 is stigmatic in nature and observations have been made against the appellant-plaintiff, hence, the same should have been set-aside by the courts below keeping in view the settled principle of law, hence, the judgments and decrees of the courts below are perverse.

5. Learned counsel for the appellant-plaintiff further submits that as the order dated 27.05.1992 of discharge got merged with the order

dated 08.01.1993 passed by the higher authorities, both the orders should have been set-aside by the courts below.

6. Learned counsel appearing on behalf of the respondent-State submits that keeping in view the rules governing the service, there is no appeal provided against an order, which has been passed by the Government while exercising the power under Rule 12.21 of 1934 Rules, hence, any appeal/representation preferred against the order dated 27.05.1992 was against the statute and any order passed by the authority concerned on the said representation will not merge with the initial order of discharge dated 27.05.1992. Learned counsel further submits that once, an order simplicitor discharging the appellant-plaintiff was passed, no grievance can be raised by the appellant-plaintiff keeping in view the settled principle of law settled by 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.

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

8. It may be noticed that the appellant-plaintiff had challenged two orders by filing civil suit. First was the order of discharge from service dated 27.05.1992 and the order of 'appeal' dated 08.01.1993 which order was passed by the higher authorities. It may be noticed that an appeal against an order can only be preferred in case, the same is provided under the statute and as per the Rule 12.21 of 1934 Rules, no appeal lies against the order of discharge. Once, any remedy undertaken

before the higher authorities can only be treated as representation and not as an appeal, hence the argument that the order dated 27.05.1992 will merge with the order dated 08.01.1993, cannot be accepted.

9. Now, the question which arises as to whether, the order dated 27.05.1992 and 08.01.1993 are stigmatic in nature so as to be set-aside or not.

10. The order dated 27.05.1992 by which the appellant-plaintiff was discharged from service is as under :-

“Constable Maninder Singh No. 1234/GRP is discharged from service with immediate effect under Rule 12.21 of Punjab Police Rules, 1934 as he is not likely to prove an efficient police officer. Order be booked and all concerned be informed accordingly.

*Sd/-
Assistant Inspector General
Govt. Railway Police, Punjab,
Patiala.”*

11. A bare perusal of the said order would show that the same is totally cryptic and non-speaking as no allegations have been made in the said order discharging the appellant-plaintiff from service, hence, the said order cannot be treated as stigmatic order in any way so as to be set-aside. In the absence of any allegation, the order simplicitor passed to discharge the appellant-plaintiff from service needs no interference at the hands of this Court.

12. Now, the question arises as to whether, the order passed dated 08.01.1993 on the 'Representation' against the order dated 27.05.1992 is stigmatic or not.

13. I have read the said order. Certain allegations have been made against the appellant-plaintiff in the order dated 08.01.1993. It may be noticed that once, the allegations have been made, the same can only be made in case there is an enquiry conducted by the authorities and in the said enquiry those allegations are proved, But as the appellant-plaintiff was discharged from service under Rule 12.21 of 1934 Rules and under rules governing the service, before discharge of an employee under Rule 12.21 of 1934 Rules, no enquiry is required to be conducted, even if there is a misconduct committed by the concerned employee. The view is supported by the decision of the Full Bench in ***Sher Singh's case (supra)***.

The relevant paragraph Nos. 32 and 39 of this 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.”*

14. Even if the enquiry is not required to be conducted before passing the order of discharge under Rule 12.21 of 1934 Rules but still, while deciding any representation filed, authorities cannot allege allegations against the employee. As the representation is not a statutory remedy, even if the order dated 08.01.1993 is stigmatic, only the said order can be set-aside but the original order dated 27.05.1992, which is

perfectly valid and is in accordance with 1934 Rules and judgment of the Full Bench in *Sher Singh's case (supra)* was rightly upheld by the courts below.

15. As it has already been held that the order dated 08.01.1993 has been passed on the representation, the same will not merge with the order dated 27.05.1992, especially, when there is no appeal provided under the Rule 12.21 of 1934 Rules, hence, the order dated 27.05.1992 is upheld, hence no benefit can be given to the appellant-plaintiff so as to bring him back in service.

16. No other argument was raised.

17. Keeping in view the above, the judgments and decrees of the courts below are modified to the extent that the order dated 27.05.1992 discharging the appellant-plaintiff from service is upheld, whereas the order dated 08.01.1993 deciding representation is set-aside and the suit filed by the appellant-plaintiff is partly allowed as indicated here-in-before.

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

Disposed of accordingly.

April 15th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No