

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

101

RSA-3504-1997 (O & M)
Date of decision:29.01.2024

PUNJAB STATE & ANR.

... APPELLANTS

VS.

CONSTABLE KULWANT SINGH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab,
for the appellants.

Ms. Jayanti Singla, Advocate for
Mr. Prateek Mahajan, Advocate
for the respondent.

SUVIR SEHGAL J. (ORAL)

1. State-defendants are in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.
2. Pleaded case of plaintiff-respondent, Constable Kulwant Singh, is that he was working with the Punjab Home Guard before he was appointed as a Constable with the Police District Tarn Taran. As he fell sick, he could not attend office and by order dated 02.07.1992, he was discharged from service. He filed a suit for declaration to the effect that order dated 02.07.1992 is illegal, null and void violative of the principles of natural justice and that he is entitled to continue in service alongwith all benefits. Prayer was made for grant of mandatory

injunction directing the defendants to reinstate him in service.

3. Upon notice, defendants filed a written statement taking various preliminary objections. On merits, it was admitted that the appellant was appointed on temporary basis on 25.3.92 and he absented himself from duty from 01.04.1992 onwards. It was submitted that on the recommendation of the SSP, Tarn Taran, he was discharged from service in exercise of power under Rule 12.21 of the Punjab Police Rules, 1934 (for short "PPR").

4. Plaintiff controverted the stand of the defendants by filing a replication. After the issues were framed and parties led evidence, Trial Court by judgment dated 29.02.1996 decreed the suit. State-defendants remained unsuccessful before the First Appellate Court and their appeal was rejected on 13.06.1997 resulting in the institution of the present second appeal.

5. State counsel has placed reliance upon the judgments of the Supreme Court in *State of Punjab and others Versus Rajesh Kumar (2006) 12 SCC 418* and *State of Punjab and others Versus Jaswant Singh (2023) 9 SCC 150*, to submit that an order of discharge can be passed under Rule 12.21 of the PPR without holding an enquiry or issuance of any show cause notice, where the authorities are of the view that the police officer is not likely to prove himself to be an efficient officer.

6. Counsel for the respondent has opposed the appeal by submitting that the authorities were bound to consider all the material before passing the punitive order. She has placed reliance upon the judgments of Supreme Court in *State of Haryana Versus Jagdish*

Chander 1995 (2) SCC 567 and Prithipal Singh Versus State of Punjab and others 2002 (10) SCC 133.

7. I have heard counsel for the parties and examined the record with their able assistance.

8. At the outset, order dated 02.07.1992 by which the plaintiff-respondent has been discharged, deserves to be noticed and is reproduced as under:-

“Constable Kulwant Singh No.4578/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 D.O. and all concerned to note for necessary action.

Sd/-

*Sr. Superintendent of Police
Tarn Taran”*

9. A cursory look at the order shows that the order had been passed as it was found that the plaintiff-respondent was not likely to prove to be an efficient police official. The order has been passed within three years of the appointment. In ***Rajesh Kumar's case (supra)***, Apex Court has held that where a simpliciter order of termination has been passed in exercise of power under Rule 12.21 of the PPR, because of unauthorized absence from duty, order being not based on misconduct, no departmental enquiry is required to be held. Supreme Court has observed that the period of probation gives an opportunity to the

employer to watch the work, ability, efficiency, sincerity and competence of the servant and in case the departmental officials find the officer not suitable for the post, his services can be dispensed within the prescribed period of probation. Such an order is not punitive in nature. In ***Jaswant Singh's case (supra)***, a similarly worded order came up for consideration before the Supreme Court and the Court observed as under:-

“....From perusal of the said Rule, it is apparent that in case a probationary constable is found unlikely to prove an efficient police officer, he may be discharged by the Senior Superintendent of Police at any time within three years from the date of enrolment. The S.S.P. relying upon the recommendation of the supervising officer (S.P., Training Centre) formed an opinion that the probationary constable is found unlikely to prove an efficient police officer owing to his demeanour as reported and discussed herein above.

22. In our considered view, all the three courts misconstrued Rule 12.21 of PPR and decreed the suit filed by the respondent-plaintiff. Looking to the contents of the order of discharge, in the considered opinion of this Court, there is no foundation of misconduct alleged in the order and it is an order of simpliciter discharge of a probationer constable.....”

10. This Court is of the view that the matter is squarely covered by both the judgments of the Supreme Court. To be fair to the counsel for the plaintiff-respondent, it deserves to be mentioned that the judgment in ***Jagdish Chander's case (supra)*** will not come to her aid as the order of

discharge reproduced in the judgment shows that besides observing that the employee is “unlikely to prove an efficient police officer”, it has also been mentioned that he is a habitual absentee, negligent in his duty and indisciplined. In this background, Apex Court was of the view that as the order was stigmatic and an opportunity to show cause was required to be given to the discharged official. Still further, *Prithipal Singh's case* relied upon by the plaintiff-respondent has been noticed and discussed by the Supreme Court in *Jaswant Singh's case (supra)*, which has been reproduced hereinabove.

11. For the aforesaid reasons, this Court is of the view that the judgments and decrees passed by both the Courts below cannot be sustained.
12. Appeal is allowed. Judgments and decrees passed by both the Courts below are set aside and suit filed by the plaintiff-respondent is dismissed with no order as to costs.
13. Pending application(s), if any, shall stand disposed of.

29.01.2024

(SUVIR SEHGAL)
JUDGE

sheetal

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