



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1-1995
Date of decision : 27.01.2025

The State of Punjab and others ... Appellants

Versus

Manjinder Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.S.S. Hira, DAG, Punjab,
for the appellants.

Mr. Rahul Sharma-I, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

1. The present appeal has been filed under Section 41 of the Punjab Courts Act, 1918 by the defendants.

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CHALLENGE IN THE PRESENT REGULAR SECOND APPEAL

2. Challenge in the present Regular Second Appeal is to the judgment dated 15.02.1994 passed by the trial Court vide which the suit filed by the plaintiff-respondent (hereinafter referred to as “the plaintiff”) for declaration has been decreed and the order of Senior Superintendent of Police, Amritsar, dated 14.05.1991 discharging the plaintiff from the police



force has been held to be illegal, null and void and it has further been observed that the plaintiff would continue to be a Constable in the police force. Challenge is also to the judgment dated 13.08.1994 vide which the Ist Appellate Court has dismissed the appeal filed by the present appellant-defendants (hereinafter referred to as “the defendants”).

BRIEF FACTS OF THE CASE

3. Brief facts of the case are that the plaintiff (respondent) had filed a suit for declaration to the effect that the order dated 14.05.1991 passed by the Senior Superintendent of Police, Amritsar, discharging him from the police force was illegal, null and void. The said suit was filed on the plea that he was enrolled in the police department as a Constable in the month of November, 1989 and was allocated constabulary no.1719 and was deputed for duty from P.R.T.C. Jehan Khela to Police Station, Civil Lines, Amritsar and while being posted in Amritsar, he suffered from mental depression and was confined to bed twice in a short span of two months from 02.12.1990 to 14.01.1991 and from 20.01.1991 to 11.02.1991 and remained under treatment and after he had recovered, he resumed duty and it was further pleaded that without testifying the factum of ailment of the plaintiff, the plaintiff was discharged from service vide order dated 14.05.1991 and that no enquiry much less any charge sheet was issued to the plaintiff. It was pleaded that the plaintiff filed a representation before the Deputy Inspector General of Police, Border Range, Amritsar but the same was declined by the Deputy Inspector General of Police, Border Range, Amritsar vide order dated 18.07.1991 and thereafter a notice under Section 80 CPC was issued to the defendants and the said suit was filed.



4. In the written statement filed on behalf of the defendants, it was stated that the suit was not maintainable and that the plaintiff had joined the police department as a temporary Constable w.e.f. 11.11.1989 in Amritsar District and had absented from duty from 02.12.1990 to 19.01.1991 i.e., 47 days 19 hours and then from 19.01.1991 to 12.02.1991 i.e., 23 days 22 hours and 30 minutes and thus, his total absence period was 72 days (approximately) which was treated as leave without pay. It was averred that a show cause notice was given to the plaintiff to file a reply to which he had filed a reply and after considering all the facts and circumstances, the order of discharge was passed under Rule 12.21 of the Punjab Police Rules, 1934 and the said order was in accordance with law and had been passed within a period of 3 years from the date of his enrollment.

5. In the replication, the pleas taken in the written statement were denied and the averments made in the plaint were reiterated.

6. The trial Court framed the following issues:-

- “1. Whether the suit is not maintainable as alleged?OPD*
- 2. Whether the plaintiff has got no cause of action to file the present suit ?OPD*
- 3. Whether the notice U/S 80 CPC served upon the defendants before filing the suit is invalid?OPD*
- 4. Whether the order dated 14.5.1991 whereby the plaintiff was dismissed from service is illegal, null and void and is not binding on the rights of the plaintiff? OPP***
- 5. Relief.”*

7. The important issue on which the fate of the plaintiff hinged was, issue no.4. Under the said issue, the trial Court, after relying upon the

judgment of the Hon'ble Supreme Court of India in the case of “**Rajinder**



Kaur vs. State of Punjab and another” reported as *1986(4) SCC 141* had observed that the order of discharge had been passed without granting any opportunity of hearing to the plaintiff to show cause against his absence and no enquiry had been held and thus was illegal and not binding on the plaintiff and on the basis of the finding on the said issue, the suit of the plaintiff was decreed. Issues no.1, 2 and 3 were also decided against the defendants. The appeal filed by the appellants-defendants was also dismissed.

8. It would be relevant to note that vide order dated 03.01.1995 passed by a Coordinate Bench of this Court, notice was issued in the present appeal as well as regarding stay and in the meantime, the execution of the judgment and decree of the lower Appellate Court was stayed. Thereafter, on 17.08.1995, the said interim order was ordered to be continued and the application for vacation of the stay order was also dismissed on 30.05.2003. The said interim order thus has been in operation since 03.01.1995.

ARGUMENTS ON BEHALF OF THE APPELLANTS

9. Learned counsel for the appellants has submitted that the judgments of the trial Court as well as of the Ist Appellate Court deserve to be set aside, inasmuch as, the order of discharge had been passed in accordance with Rule 12.21 of the Punjab Police Rules, 1934 and the order cannot even remotely be stated to be stigmatic. It is further submitted that in the order, it had been recorded that the respondent-plaintiff was not going to prove to be an efficient police officer and the said observations made in the impugned order are in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934. In support of his arguments, learned counsel for



the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case titled as "***State of Punjab and others Vs. Sukhwinder Singh***" reported as ***2005(5) SCC 569***. It is further submitted that in the said case, a similar order was passed against the respondent therein discharging his services, which was upheld by the Hon'ble Supreme Court.

ARGUMENTS ON BEHALF OF THE RESPONDENT

10. Learned counsel appearing for the respondent, on the other hand, has stated that the judgments passed by the trial Court and the Ist Appellate Court are in accordance with law and deserve to be upheld. It is submitted that the foundation for passing of the impugned order is an alleged misconduct and in case the veil is lifted and the averments made in the written statement are considered, then, it would be proved that the impugned order had its foundation to an alleged misconduct. In the said regard, learned counsel for the respondent has referred to paragraph 3(b) of the written statement filed by the appellants-State. In support of the said argument, learned counsel for the respondent has relied upon a judgment of the Hon'ble Supreme Court of India in the case titled as "***State of Punjab and others Vs. Balbir Singh***", reported as ***(2004) 11 SCC 743***, to contend that in order to determine whether the misconduct is motive or foundation of the order of termination, the test to be applied is to ask the question as to what was the basis of the order. It is further submitted that in case the basis of the order is an alleged misconduct, then, in that situation, it is incumbent upon the authorities to hold a regular inquiry under Rule 16.24 of the Punjab Police Rules, 1934. It is prayed that the said principle has been reiterated in the judgment passed by the Hon'ble Supreme Court in the case



titled as "*State of Punjab and others Vs. Jaswant Singh*", reported as **2023 (9) SCC 150**.

ANALYSIS AND FINDING

11. This Court has heard the learned counsel for the parties and has perused the paper book and is of the opinion that the judgment and decree of the trial Court as well as of the Ist Appellate Court deserve to be set aside and the present appeal being meritorious, deserves to be allowed.

12. The substantial question of law which arises for consideration in the present case is:-

“Whether the order dated 14.05.1991 vide which the plaintiff, who was on probation, had been discharged is in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934 or not and as to whether the said order is an order of discharge simpliciter or not?”.

13. The order dated 14.05.1991 passed by the Senior Superintendent of Police, Amritsar, vide which the plaintiff had been discharged, as reproduced in paragraph 10 of the judgment of the trial Court is reproduced hereinbelow:-

“Constable Manjinder Singh No.1719/Amritsar son of Shri Bhajan Singh r/o Fatehabad P.S. Verowal Police District Tarn Taran is being discharged from service from 10.5.1991 under Punjab Police Rules 12.21 as he is not going to prove efficient police official. The period of absence from duty from 2.12.1990 to 12.2.1991 i.e. 72 days is treated as leave without pay.”

14. Rule 12.21 of the Punjab Police Rules, 1934, under which the said order has been passed, is reproduced hereinbelow:-



*“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.”*

15. The Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***“State of Punjab and others vs. Sukhwinder Singh”*** reported as ***2005(5) SCC 569*** while considering a similar case in which a similar order of discharge had been passed under Rule 12.21 of the Punjab Police Rules, 1934, had observed that the impugned order therein was in accordance with Rule 12.21 of the Punjab Police Rules, 1934 and the order of discharge was innocuous and could not be said to be punitive in nature and thus, set aside the judgment passed by the High Court as well as by the trial Court and the Ist Appellate Court and allowed the appeal filed by the State of Punjab. It had further been observed that the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, on account of which an enquiry was required to be conducted under Rule 16.24 (ix) of the Rules. Importantly, the judgment in the case of ***Rajinder Kaur (supra)***, which was relied upon by the trial Court to decree the suit of the present plaintiff was held to be bad law and it was observed by the Three Judges Bench of the Hon'ble Supreme Court that they were unable to agree with the view taken in the said case. It was also observed that it was the consistent view of the Hon'ble Supreme Court that even in case some kind of preliminary inquiry or fact-finding inquiry was required to be held, then also the order of discharge of probationer could not be treated to be an order of punishment, as the appointing authority has to



necessarily ascertain all the relevant facts before taking a decision as to whether the probationer should be retained in service or not.

16. It was also observed by the Hon'ble Supreme Court in the abovesaid case that the High Court had built an edifice on the basis of a statement made in the written statement to the effect that the respondent therein was a habitual absentee during his short period of service and had on the said basis concluded that it was his absence from duty that weighed in the mind of Senior Superintendent of Police to pass the order of discharge which was viewed to be punitive in nature by the High Court calling for a regular inquiry under Rule 16.24 of the Rules. After noticing the observations of the High Court, the Hon'ble Supreme Court in the abovesaid case had observed that the High Court had gone completely wrong in drawing an inference that the order of discharge dated 16.03.1990 was based upon misconduct and was therefore punitive in nature. The present case is similar to the case in the abovesaid judgment. The relevant part of the said judgment is reproduced hereinbelow:-

“.....The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for



arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong.

*20. In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in *Ajit Singh v. State of Punjab* the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the*



prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules.

21. For the reasons discussed above, we are of the opinion that the view taken by the High Court and also by the lower courts is wholly erroneous in law and must be set aside. The appeal is accordingly allowed and the judgment and decree passed by the High Court and also by the learned Sub-Judge and learned Additional District Judge are set aside. The suit filed by the plaintiff-respondent is dismissed.”

17. In the above said judgment, even the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others vs. Balbir Singh (supra)*, which has been relied upon by the learned counsel for the respondent, was considered and after considering the same, the appeal of the State of Punjab was allowed. The facts in the case of *Sukhwinder Singh (supra)*, as has been stated hereinabove, are similar to the facts of the present case. In the said case, the employee Sukhwinder Singh had joined on 04.08.1989 as Police Constable and he had absented himself from his duty w.e.f. 22.02.1990 and thereafter the Senior Superintendent of Police had passed the order dated 16.03.1990 discharging him from service. The order of discharge in the said case, which is similar to the order passed in the present case is reproduced hereinbelow:-

“Constable Sukhwinder Singh No. 644/ASR of this District is discharged from service w.e.f. 16-3-1990 under the Punjab



Police Rules 12.21 as he is not likely to become an efficient police officer.”

18. The Hon'ble Supreme Court in the said judgment had also referred to the Full Bench judgment of the Punjab and Haryana High Court in the case of ***Sher Singh vs. State of Haryana*** reported as ***(1994) 1 Punj LR 456*** in which scope and content of Rules 12.21, 19.3 and 19.5 had been examined and it had been observed that an employee appointed on probation has no right to the post and his services are terminable at any time during the period of three years and he can secure his position in the service only in case he convinces the Superintendent of Police that he is likely to prove to be an efficient police officer and that in case the Superintendent of Police finds that a particular constable is not active, disciplined, punctual, courteous etc., then he can reasonably form an opinion that he is not likely to prove to be an efficient police officer and thus can invoke his power under Rule 12.21 and can discharge the constable from the force. After recording the observation of the Full Bench in the abovesaid case, the Hon'ble Supreme Court had observed that they were in agreement with the view taken by the Full Bench of this Court.

19. The judgment of the Hon'ble Supreme Court of India in the case of ***State of Punjab and others vs. Sukhwinder Singh (supra)*** has further been referred to in the latest judgment of the Hon'ble Supreme Court of India titled as ***“State of Punjab and others vs. Jaswant Singh”*** reported as ***(2023) 9 Supreme Court Cases 150***. Even in the said case of ***Jaswant Singh (supra)***, the order of discharge was similar to the order of discharge as passed in the present case. The Hon'ble Supreme Court after considering

the entire law and the facts of the case, observed that all the three Courts



i.e., trial Court, Ist Appellate Court as well as the High Court had misconstrued Rule 12.21 of PPR and had decreed the suit filed by the plaintiff therein, although by looking to the contents of the order of discharge, there was no foundation of misconduct alleged in the order and the said order was an order simpliciter of discharge of a probationer constable. It was observed that the discharge order had been passed on account of prolonged absence from training which showed to the authorities that the Constable had no sense of responsibility and thus, could not prove to be a good and efficient police officer. The order of discharge in the said case, which was reproduced in paragraph 5 of the said judgment, as well as the relevant portion of the abovesaid judgment are reproduced hereinbelow:-

“5. In furtherance to the said recommendation, the SSP passed the order dated 28.03.1991, discharging the respondent-plaintiff. The said order is relevant and for ready reference is being reproduced as under:

“ORDER

Constable Jaswant Singh No. 1669/ASR s/o Shri Hazara Singh, caste Jat, R/o Village Thoba, PS Ramdass, Police District Majitha is hereby discharged from service under PPR 12.21 as he is not likely to become an efficient police officer. His absent period from 24.11.1990 to date is treated as non-duty non pay.

Issue orders in OB.

Sd/-
Sr. Superintendent of Police,
Amritsar

No. 11369 – 76/B Dated 28.3.1991”

xxx xxx xxx



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. The judgment in [Ratnesh Kumar Choudhary](#) relied upon by the respondent is of no help for the simple reason that in that case, the initial appointment was alleged to be illegal based on a vigilance report which was on record. Thereafter, notice was issued on the anvil of the said vigilance report which contained serious allegations and in the said peculiar situation, the Court found that the termination was not simpliciter, but it was punitive.”

20. Even in the above said case, it was on account of absence of the employee that the order of discharge had been passed. The argument of there being no detailed enquiry was accepted by the trial Court as well as the Ist Appellate Court and the High Court. However, the Hon'ble Supreme Court, after considering the entire law, set aside the judgment passed by all the three Courts and dismissed the suit filed by the employee therein.

21. In the present case, neither it is in dispute nor it is the case of the respondent before this Court that a bare reading of the order of discharge shows that it is punitive or stigmatic. No malafide against the competent authority who had passed the order has been alleged. The fact that the respondent-plaintiff was appointed on 11.11.1989 and was on probation is also not disputed. Even the power of the Senior Superintendent of Police under Rule 12.21 of the Punjab Police Rules to discharge an employee within a period of three years of his enrollment has also not been



duty without leave from 02.12.1990 to 19.01.1991 i.e., 47 days 19 hours and then from 19.01.1991 to 12.02.1991 i.e., 23 days 22 hours and 30 minutes and thus, there being absence for a period of 72 days (approximately) has also not been disputed. Thus, in the said circumstances and in view of the law laid down in the abovesaid judgments, it cannot be said that the order of discharge is either in violation of Rule 12.21 of the Punjab Police Rules, 1934 or is stigmatic or punitive. Reliance placed on behalf of the respondent, upon the averments made in the written statement to the effect that the plaintiff-respondent was stated to be a habitual absentee during his short period of tenure also cannot be made the basis to hold that the order of discharge was punitive or stigmatic. Reference in this regard may be made to the observations made in paragraph 20 of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Sukhwinder Singh (supra)*** (relevant portion of which is reproduced hereinabove), to the effect that the High Court had completely gone wrong in building up a case of the order of discharge being punitive on the basis of averments made in the written statement to the effect that the employee was a habitual absentee during the short period.

22. Even the judgment relied upon by the learned counsel for the respondent in the case of ***State of Punjab and others vs. Balbir Singh (supra)*** would also not further the case of the respondent. Apart from the fact that the said judgment has been duly considered in the subsequent judgment of the Hon'ble Three Judges Bench of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Sukhwinder Singh (supra)***, it would be relevant to note that even in the said case, it was observed that the



order of termination passed could not be held to be punitive in nature, as the preliminary inquiry done in the said case was done with a view to determine the suitability of the employee within the meaning of Rule 12.21 of the Punjab Police Rules, 1934 and that the termination was not founded on misconduct but was on account of misbehaviour of the employee with a lady Constable and of having consumed liquor in office, which factors were considered for determining the suitability of the respondent for the job, in light of the standards of discipline expected from a police personnel. For the said reasons, the impugned judgment of the High Court was set aside and the appeal filed by the State of Punjab and others was allowed. The impugned order of discharge in the said case was also similar to the impugned order passed in the present case and the order of discharge was challenged primarily on the ground that the same was passed without conducting any regular disciplinary enquiry. It is in the said background, that the Hon'ble Supreme Court had observed that in case an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, then such termination would be termination simpliciter and not punitive in nature. The Hon'ble Supreme Court thus, in a case where an employee is stated to have misbehaved with a lady constable and also consumed liquor in the office and subsequently discharged had held the said order of discharge to be not punitive. The facts of the present case are on a higher footing to uphold the order of discharge than the facts of the employee in the abovesaid judgment before the Hon'ble Supreme Court.

23. Thus, the substantial question of law which arises for consideration in the present case is answered in favour of the appellant



-State and against the respondent-plaintiff. It is held that the order dated 14.05.1991 vide which the plaintiff had been discharged during the probation period is in accordance with the provision of Rule 12.21 of the Punjab Police Rules, 1934 and the said order is an order of discharge simpliciter. Accordingly, the finding on issue no.4 of the trial Court as well as the Ist Appellate Court is liable to be set aside and is accordingly set aside.

24. As an ancillary point, it would be relevant to note that the respondent-plaintiff even as per his own case had filed a representation against the order dated 14.05.1991 to the Deputy Inspector General of Police and the Deputy Inspector General of Police, vide order dated 18.07.1991, had observed that after carefully going through the order and other relevant record as well as the representation, all the points raised were without any valid reason or legal justification and as such were not sustainable and the order dated 14.05.1991 called for no inference and accordingly, the representation was rejected. Although in the same order, it was also observed that no appeal lies against the order passed under Rule 12.21 but once the plaintiff had filed a representation and the higher authority had also passed an order after taking into consideration the relevant record, then a specific challenge to the said order was also required to be made in the said suit and a declaration regarding said order was also required to be prayed for, which admittedly has not been done. Although the said aspect is not the primary reason for allowing the present appeal.

25. At this stage, it would also be relevant to note that the Ist Appellate Court had observed that in the present case there was non-



compliance of Rule 19.5 of the Punjab Police Rules and thus the order of discharge deserves to be set aside. Rule 19.5 reads as under:-

“19.5. Further training of Constables. - (1) The fact that a recruit has been passed into the ranks under rule 19.3 shall not be taken to mean that he is a fully trained Constable. A Constable under three years’ service is at any time liable to discharge under rule 12.21. During the whole of this period he shall be kept under close supervision and reported on at intervals of six months in Form 19.5(1) by the Sub-Inspector or Inspector under whom he is working through his gazetted officer to the Superintendent of Police.

The orderly Head-Constable shall maintain a list of Constables under three years’ service. He shall submit the name of each man a month before he is due for confirmation to the Superintendent together with his personal file which shall contain the form 19.5(1) referred to in this rule.

Gazetted officers are expected to make themselves acquainted, as far as possible, with the characters and careers of all Constables under three years’ service and shall be responsible that the names of men unlikely to make efficient police officers are brought to the notice of the Superintendent.

(2) On being transferred from the lines after completion of his training in the first reserve, a Constable under three years’ service shall be instructed in the practical duties of a Constable by the Inspector or Sub- Inspector under whom he is serving. He shall be sent out of beat, patrol, traffic and other duties with a selected senior Constable who shall be made to feel his responsibility for the instruction of the younger man.”

26. A perusal of the plaint would show that no reference had been made to there being any violation of Rule 19.5 or that the proceedings / order of discharge was required to be set aside on account of non-



Court had been made without any pleading. The trial Court had not taken into consideration the said aspect while decreeing the suit of the plaintiff-respondent. Thus, the Ist Appellate Court, for the first time considered the said aspect in the appeal filed by the appellant-State. The Division Bench of this Court in the case of *Ex-Constable Ravinder Singh vs. State of Punjab* reported as **2003(3) SCT 269** had observed that the provision of Rule 19.5 was regulatory in nature and was meant only for internal management and supervisory control of the superior police officials over the trainee constables and had rejected the argument raised on behalf of the employee therein that on account of non-compliance of the provision of Rule 19.5, the order of discharge would stand vitiated. Even in the said case, the employee therein was absent for 13 days 4 hours and 25 minutes and was discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 and the plea taken by the employee was that he had fallen sick. The challenge to the order of discharge was made on two grounds, one of them being that the said order of discharge had been passed in violation of the provision of Rule 19.5 of the 1934 Rules and as such was vitiated and the said ground of challenge was rejected as has been stated hereinabove. Thus, the basis of decreeing the suit and dismissing the appeal filed by the appellant-defendants in the present case by the Ist Appellate Court was primarily in view of the alleged non-compliance of Rule 19.5 of the 1934 Rules which is against the law as laid down by the Division Bench of this Court in the abovesaid case.

27. Moreover, a reading of the abovesaid Rule does not even remotely suggest that the competent authority can base its discharge order



under Rule 12.21 of the 1934 Rules solely on the basis of the report / information as stated in Rule 19.5. The Full Bench of this Court in the case of *Sher Singh vs. State of Haryana* reported as **1994(1) PLR 456** had held that a Superintendent of Police can form his own opinion regarding the likelihood or otherwise of a constable making a good police officer and the said opinion need not be made on the basis of the periodic reports contemplated under Rule 19.5. It had further been observed that a single act of indiscipline can lead the authority to conclude that the constable is unlikely to prove to be an efficient police officer and to discharge him from service. The said judgment of the Full Bench as has been stated hereinabove has been approved by the Hon'ble Supreme Court in the case of *State of Punjab and others vs. Sukhwinder Singh (supra)*. It is also relevant to note that a close scrutiny of the facts in the case of *State of Punjab and others vs. Sukhwinder Singh (supra)* would show that the order of discharge was held to be valid by the Hon'ble Supreme Court, even though there was nothing to show that the said order of discharge had been passed in pursuance of the report / information as mentioned in Rule 19.5 given to the competent authority. No contrary judgment has been cited on behalf of the respondent on the said aspect.

28. In the present case the execution of the judgment and decree of the Ist Appellate Court has been stayed by the Coordinate Bench of this Court vide order dated 03.01.1995 and the said order has been in operation till date and it is not disputed before this Court that the judgments have not been given effect to.

29. The present Regular Second Appeal has been filed under



Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon’ble Supreme Court in the case of *Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters* reported as *(2016) 6 Supreme Court Cases 157*, it was observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground, i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. The finding of the trial Court and also of the Ist Appellate Court, as has been discussed hereinabove, is found to be contrary to the settled law and the substantial question of law as framed in paragraph 12 of the present judgment has also been held in favour of the appellants and thus, the impugned judgments deserve to be set aside.

CONCLUSION

30. Keeping in view the abovesaid facts and circumstances, the impugned judgment and decree passed by the trial Court as well as the Ist Appellate Court are set aside and the present appeal being meritorious, is allowed and the suit filed by the plaintiff is dismissed.

(VIKAS BAHL)
JUDGE

January 27, 2025.
Davinder Kumar