

(2001) 08 P&H CK 0173

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3214 of 1999

Punjab State

APPELLANT

Vs

S. Buta Singh, Ex-Constable

RESPONDENT

Date of Decision: Aug. 27, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Constitution of India, 1950 - Article 311
- Punjab Police Rules, 1934 - Rule 12.21

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. A.G. Masih, DAG, for the Appellant; Mr. K.S. Dadwal, for the Respondent

Final Decision: Allowed

Judgement

R.L. Anand, J.

Present is a case which will show how the miscarriage of justice has taken place both at the level of the trial Court as well as the first appellate Court.

2. State of Punjab has filed the present Regular Second Appeal and it has been directed against the judgment and decree dated 17.3.1999, passed by the Court of Additional District Judge, Jalandhar, who affirmed the judgment and decree dated 13.6.1997 passed by the Court of Civil Judge (Senior Division), who decreed the suit, of the plaintiff-respondent holding that the impugned order dated 17.3.1994 and the order dated 6.7.1994 are illegal and void.

3. Some facts can be noticed in the following manner. Shri Buta Singh plaintiff filed a suit for declaration that the order dated 6.7.1994, passed by the Inspector General of Police and the earlier order passed by the Commandant on 17.3.1994, are illegal, void and he be deemed to be continue, in service. It is alleged by the plaintiff that he was enrolled as a constable on 17.8.1992 in PAP at Jalandhar. He had been doing his work to the satisfaction of his superiors. It is alleged that on 11.10.1993, he went to

see his mother and returned on 12.10.1993. He again received a message that his mother was seriously ill and he left on 18.10.1993. For this, the plaintiff made an application for the grant of leave and further applied for extension till 19.11.1993. On 22.2.1994, he received a notice under Rule 12.21 of the Punjab Police Rules as to why he should not be discharged from service. This notice was on the allegation that he remained absent from duty for seven days and further absented for thirteen hours on 11/12.10.1993 and he remained absent for thirty one days from 18.10.1993 to 19.11.1993 and that the plaintiff was not taking any interest in the performance of his duty. The plaintiff submitted his reply to the show cause notice but vide order dated 17.3.1994 he was discharged from service under Rule 12.21 of the Punjab Police Rules. The plaintiff filed an appeal against the order of discharge which was dismissed on 6.7.1994 by the D.I.G. According to the plaintiff, his discharge from service amounts to removal from service by way of punishment and this order was passed by the defendant without resorting to the procedure laid down in the Punjab Police Rules. He was given no opportunity of hearing. So, the impugned orders have been challenged by the plaintiff on the allegations that Rule 12.21 is not applicable to a case of absence from duty and Rule 16.24 of the said rules is applicable.

4. Notice of the suit was given to the defendants and the stand taken up by the defendants was that a constable can be discharged from service within a period of three years if it is found that the constable would not prove to be a good police officer. It was contended that plaintiff remained absent for 7 days at one time, one day at another and thirty two days on the third time. He was a habitual absentee, therefore, he could not prove to be a good police officer. It was further pleaded by the defendants that Rule 16.24 is not applicable. The order of discharge has been validly passed by the competent authority. With this prayer, the defendants have prayed for the dismissal of the suit.

5. The plaintiff filed a replication in which he reiterated the allegations made in the plaint by denying those of the written statement and from the pleadings of the parties, the trial Court framed the following issues :-

1. Whether the suit is not maintainable in the present form ?
2. Whether a legal and valid notice u/s 80 CPC was served upon the defendants before filing the present suit, if so its effect ? OPD
3. Whether the order dated 6.7.1994 rejecting the representation of the plaintiff and the order dated 17.3.1994 vide which the plaintiff was discharged from service under the provisions of Rules 12.21 of Punjab Police Rules and the period of absence of the plaintiff was treated as non-duty period are illegal, void and inoperative against the rights of the plaintiff ? OPD
4. Whether the plaintiff is entitled to the declaration and consequential relief as prayed for ? OPP

5. Relief.

The parties led evidence in support of their case and on the conclusion of the proceedings, the suit was decreed by the trial Court and the appeal of the State was also dismissed by the first appellate Court holding that the orders dated 17.3.94 and 6.7.1994 are illegal and void and the plaintiff is emitted to be deemed in service with the benefit of continuity. It was also observed by the first appellate Court that it will be open to the defendants to proceed against the plaintiff according to rules after holding a regular inquiry.

6. Not satisfied with the judgments and decrees of the Courts below, the present appeal has been filed by the State of Punjab.

7. I have heard Shri A.G. Masih, learned DAG, Punjab, appearing on behalf of the appellant and Shri K.S. Dadwal, learned counsel appearing on behalf of the respondent and with their assistance have gone through the record of this case.

8. Rule 12.21 of the Punjab Police Rules lays down as follows :-

"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.

It is a common case of the parties that the plaintiff-respondent was employed in such a service which is a disciplined force. The order of discharge is at page 53 of the departmental file which forms part of the record of the trial Court. This record I have perused independently. The same would show that plaintiff-respondent remained absent from duty without intimation to his superiors. Before the order of discharge was passed, the plaintiff was given a reasonable opportunity to furnish an explanation regarding his absence. Notice was received by the plaintiff on 23.2.1994. He sought time for ten days to reply to the notice. The reply to the notice was perused by the punishing authority. The punishing authority was of the opinion that the excuse propounded by the plaintiff has not legs to stand and therefore, such a person should be discharged from the police service. The entire reading of the order dated 17.3.1994 would show that this order is neither stigmatic nor punitive in nature. It is well settled that there cannot be smoke without fire. While dealing with such cases, I have to see whether the past conduct of the Government employee has been made the basis for the order or it is only a motive. If the order of discharge has been passed making the past conduct of the employee as an integral portion of the order itself, it can be said that the order is stigmatic in nature but if the order of discharge has only a motive than in such a situation, it is difficult for this Court to hold that the order was stigmatic or punitive in nature.

9. Faced with this difficulty, the learned counsel for the respondent relied upon the judgment reported as 2000(4) SCT 1049, Major Singh v. State of Punjab. The judgment is distinguishable. In para No. 6 off his cited judgment, Hon"ble Judges of

the Supreme Court, while interpreting the provisions of Rule 12.21, were pleased to hold as follows :-

"If any order under Rule 12.21 has to be passed which can stand scrutiny of Court and can be said to be legal, valid and falling within the four corners of the said Rule without casting any aspersion or stigma on the person concerned, simplicitor mentioning that his work as constable is found not satisfactory, can suffice."

10. In the cited case in the termination order, aspersions regarding the conduct of the appellants have been cast. Not only that, the order of termination consisted of five pages and their Lordships were pleased to hold on reading the entire order that it was completely stigmatic. So, in these circumstances, we can say that every order has to be read in its own context. In the present case, there is nothing to suggest that the order of discharge was punitive or stigmatic in nature. Of course, it makes a mention that plaintiff did remain absent from duty. By mere mentioning of absence of duty, will not constitute this order as stigmatic.

11. Counsel for the respondent then relied upon 1996(2) SLR 17 : 1996(2) SCT 758 (SC), *Malklat Singh v. State of Punjab and others*. This judgment is against distinguishable on facts. There is nothing on the record to show that the mother of the petitioner suffered ailment. Also there is nothing on record to show that the plaintiff submitted documentary evidence in support of his alleged explanation before the punishing authority.

12. Yet reliance was also placed upon [Smt. Rajinder Kaur Vs. State of Punjab and Another](#). Again, I have gone through this judgment very carefully. Cited case is a case of a lady constable against who the allegations were that she spent two nights with a constable. The order of discharge in those circumstances was held innocuous and it amounted to dismissal on the ground of misconduct. Therefore, the order was held to be violative. There is nothing on the record to show that the case of the present respondent is similar to the cited case.

13. The learned counsel for the respondent also cited 1999(2) RSJ 455 : 1999(2) SCT 636, *Punjab State and another v. Resham Singh*. This judgment is against not helpful to the respondent. It was observed by the Hon'ble Supreme Court that the impugned order of discharge is not an order simplicitor but it was stigmatic in nature. So, point for determination would always be whether the particular order is stigmatic in nature or a simple order of discharge.

14. The counsel for the respondent then also relied upon 1995(2) RSJ 569 : 1995(2) SCT 427 (P&H), *State of Haryana and another v. Jagdish Chander*. In this case the Hon'ble Supreme Court was pleased to hold that principles of natural justice do require that opportunity should be given to explain the grounds on which the punishing authority proposes to pass an order of discharge. In the present case the notice was given to the plaintiff- respondent before passing the impugned order. Yet reliance was placed on 1996(1) SLR 195 : 1996(4) SCT 382 (P&H), *Suresh Kumar*

Constable and others v. The State of Haryana and others. This judgment is again not helpful. In the cited case, the petitioners were accused of having participated in the procession and Dharna and also in the union activities. The order of discharge was based on the alleged misconduct. In these circumstances, it was observed by the High Court that it is open to the Court to go behind the form of the order to ascertain its true character. On facts, it was held that the order of discharge was punitive in nature and could not be passed without affording any opportunity as envisaged under Article 311 of the Constitution. In the present case, the order, of discharge only makes a mention of the past facts as to how the plaintiff remained absent and thereafter, the punishing authority has said that on account of the repeated absence, the plaintiff will not be able to become an efficient police officer. The power has been used under Rule 12.21 of the Punjab Police Rules in a right manner.

15. In these circumstances, the appeal of the State is hereby allowed; impugned judgments and decrees passed by the Courts below are hereby set aside and the suit of the plaintiff-respondent Shri Buta Singh is hereby dismissed with no order as to costs.

16. Appeal allowed.