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consideration of dissolution of Assembly has arisen. The distinction drawn by their Lordships in Moti Ram's case from the Loknath's case is the same which is between Moti Ram's case and this case.

(19) From all the above angles, this case is covered by the principle laid down in Loknath's case. This being the position, it will be wholly academic to proceed with the election petition further and I hold that the election petition has become academic and hence infructuous.

(20) In view of the above reasons, this Election Petition is dismissed as having become academic and hence infructuous.

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R.N.R.

*Before N. K. Sodhi and R. C. Kathuria, JJ*

PARVEEN KUMAR AND OTHERS—*Petitioners*

*versus*

STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 17571 of 1998

27th November, 2000

*Constitution of India, 1950—Arts. 226 and 311—Appointment of petitioners as S. P. Os on daily wage basis by a Standing order—Clause 12 of the Order provides as SPO whose work and conduct not found satisfactory can be discharged any time without the issue of any notice—Discharge from service on account of absence from duty/misconduct—whether the action of discharging the service of daily wagers without holding a regular enquiry and not affording them an opportunity of hearing is justified—Held, yes—Daily wagers have no right to hold the post—They can be discharged under the terms of contract.*

(Rakesh Kumar and others v. State of Punjab, 1999(4) RSJ 194, distinguished,

Sher Singh v. State of Haryana and others, 1994(2) S.L.R. 100 (F.B.), followed)

*Held that*, as is clear from the standing order which was circulated by the Director General of Police, Punjab, on 26th July, 1990,

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the petitioners on being appointed as SPOs were daily wagers and as such they had no right to hold the post. According to Clause 12 of this standing order an Auxiliary constable whose work and conduct is not found satisfactory can be discharged any time by the District Senior Superintendent of Police without the issue of any notice. In view of the complaints received by the S.S.P. Gurdaspur, against the petitioners the former did not consider their work and conduct satisfactory. It was, thus, open to him to discharge them from service without affording an opportunity of hearing to them. No fault can be found with the action of the competent authority.

(Para 7)

D. S.Brar, *Advocate for the Petitioner.*

Gurminder Singh, DAG, *Punjab for the Respondent.*

### JUDGMENT

*N. K. Sodhi, J.*

(1) Challenge in this writ petition is to the order, dated 21st July, 1998, passed by the Senior Superintendent of police, Gurdaspur, whereby the representations filed by the petitioners were rejected and the orders discharging them from service upheld. Brief facts necessary for the disposal of this writ petition may first be noticed.

(2) The State Government approved the proposal to appoint about 9000 Special Police Officer (SPOs) for raising five Auxiliary Battalions of 1000 SPOs each and 4160 SPOs for Special Police Pickets who are also called Auxiliary Constables. A Standing order pertaining to their appointment and further promotional avenues had been framed and a copy thereof was sent by the Director General of Police, Punjab, to all the Senior Superintendents of Police in the State and also to the Inspector Generals of Police. According to the Standing Orders an SPO is to be selected from the general public who is considered to be suitable for further induction as a constable and the selection is made by the Senior Superintendent of Police assisted by two Deputy Superintendents of Police, one of whom is a scheduled caste. Their educational qualifications, physical standards and the selection process are mentioned in the standing orders. The appointment is made on daily wages as fixed from time to time. As per the standing order, an SPO whose work and conduct is not found satisfactory can

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be discharged any time by the Senior Superintendent of Police without the issue of any notice. An SPO is eligible for enrolment as a constable after one year of service which period has now been reduced to six months provided his work and conduct is found satisfactory by the District Senior Superintendent of Police. The Senior Superintendent of Police selects Constables from amongst the eligible SPOs/Auxiliary Constables and after their selection as such they are governed by the Punjab Police rules. Petitioners were appointed as SOPs on daily wages on different dates some time between October, 1990 to October, 1993 on the dates mentioned against their names in Annexure P-1 to the writ petition. They worked as such for some time and thereafter they were discharged from service some time in the year 1995/1996. No order terminating their services had been communicated to them and they made several representations to respondent No. 3 to the effect that they be allowed to continue to work as SPOs and that their orders of discharge be revoked. It was alleged that they had been discharged in order to make room for some other persons whom respondent No. 3 wanted to appoint under political pressure. When no orders were passed on their representations they filed Civil Writ Petition 3819 of 1998 in this Court challenging their discharge from service. This petition came up for hearing before a Division Bench on 17th March, 1998, and the same was disposed of with a direction to respondent No. 3 to examine and decide the representations filed by the petitioners by passing a speaking order within two months from the date of receipt of a copy of that order. It is in pursuance to these directions that respondent No. 3 passed the impugned order, dated 21st July, 1998 rejecting the representations. A perusal of this detailed order would show that the Senior Superintendent of Police, Gurdaspur had discharged the petitioners from service on receipt of some complaints against them. Some of the petitioners are alleged to have remained absent from duty without leave for some time, whereas petitioners No. 1 and 7 are said to have misconducted themselves by stopping trucks with the intention of taking money from the drivers. Petitioner No. 4 is said to have been found medically unfit and yet he had been appointed.

(3) In response to the notice of motion issued by this Court, respondent no. 3 has filed a reply and it is averred that the petitioners were not working faithfully and diligently and, therefore, they were not, found suitable to continue to work as SPOs. According to the respondents, they were discharged from service and each one of them had been informed of the grounds of

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discharge. It is also averred that after their discharge the petitioners filed applications for fresh appointments as SPOs. The allegations that the Senior Superintendent of police wanted to enroll his own men under political pressure has been denied.

(4) We have heard counsel for the parties.

(5) Mr. D. S. Brar, the learned counsel for the petitioners strenuously urged that since the services of the petitioners had been terminated on account of their absence from duty or on the basis of some misconduct alleged against them, it was incumbent upon respondent no. 3 to have afforded to them an opportunity of being heard and that their services could not be terminated without holding a regular inquiry as according to him the termination amounted to dismissal from service. He has placed reliance on a Division Bench judgment of this Court in *Rakesh kumar and others vs. State of Punjab* (1), The learned State counsel on the other hand contended that the petitioners were daily wagers and, therefore, they had no right to the post and that they could be discharged from service at any time if their work and conduct was not found satisfactory and this could be done in terms of the standing order under which they were appointed. The action of respondent no. 3 in terminating the services of the petitioners is sought to be justified on the grounds mentioned in the impugned order.

(6) From the rival contentions of the parties, the question that arises for our consideration is whether the petitioners who were daily wagers could be discharged from service for the reasons mentioned in the impugned order without holding a regular inquiry and whether it was necessary for respondent no. 3 to afford to the petitioners an opportunity of hearing.

(7) Having given our thoughtful consideration to the rival contentions of the parties, we do not find any merit in the submissions made by Shri Brar. As is clear from the standing order which was circulated by the Director General of Police, Punjab, on 26th July, 1990, the petitioners on being appointed as SPOs were daily wagers and as such they had no right to hold the post. According to clause 12 of this standing order "an Auxiliary Constable whose work and conduct is not found satisfactory can be discharged any time by the District Senior Superintendent of

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Police without the issue of any notice.” In view of the complaints received by respondent no. 3 against the petitioners the former did not consider their work and conduct satisfactory. It was, thus, open to him to discharge them from service without affording an opportunity of hearing to them. The petitioners were temporary employees working on daily wages. When the competent authority received complaints against them, it had two options before it could discharge the petitioners in terms of the Standing Orders under which they were appointed or take disciplinary/punitive action against them for the alleged misconduct. In the present case, the competent authority chose the first option and discharged the petitioners from service. The question of affording any opportunity of hearing to them did not, therefore, arise and the competent authority was rather lenient towards them as it was not taking any punitive or disciplinary action against them though it was open to it to do so. If the competent authority had chosen the second option then in that event an opportunity of hearing would have been afforded to the petitioners and even a regular inquiry would have been held. In our opinion, no fault can be found with the action of the competent authority in choosing the first option. The view that we have taken finds support from the observations of the Constitution Bench of the Apex Court in *Jagdish Mittar vs. Union of India* (2), wherein Justice Gajendragadkar speaking for the Bench observed as under :

“...The appropriate authority possesses two powers to terminate the services of a temporary public servant; it can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, it would be straight forward and direct case of discharge and nothing more ; in such a case. Article 311 will not apply. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in a straight forward way; in such a case Article 311 will apply. This simple position is sometimes complicated by the fact that even while exercising its power to terminate the services of a temporary servant under the contract or the relevant rule, the authority may in fairness enquire whether the temporary servant should be continued in service or not.”

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(8) Again, in *State of Uttar Pradesh and another vs Kaushal Kishore Shukla* (3), their Lordships of the Supreme Court made the following observations in paragraph 7 of the judgment :

“A temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month’s notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants. A temporary Government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the Government servant in accordance with the provisions of Article 311 of the Constitution.”

(9) In *Sher Singh vs State of Haryana and others* (4) the question that arose before the Full Bench of this court was whether a Constable could be discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 at any time within three years of his enrolment in spite of the fact that there was a specific allegation against him which may even amount to misconduct. While answering this question in the affirmative and holding that the provisions of Rule 16.24 for the purposes of holding departmental inquiry and the provisions of Article 311 of the Constitution shall be attracted only when the punishing authority decides to punish the Constable, the learned Judges made the following observations in paragraph 23 of the judgment which are pertinent to the case in hand :

“In this context, it is reasonable to assume that no employer terminates the services of an employee, who is good and

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(3) 1991(1) SCC 691.

(4) 1994 (2) SLR 100

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efficient. It is only when an employee is found to be wanting that an order of termination is passed. If a Superintendent of Police gets reports/complaints that a Constable is not straightforward or that his integrity is suspect or that he is not courteous or that he has failed to acquire any of the qualities noticed above, he can pass an order under Rule 12.21. It cannot be said that merely because an allegation has been made against the employee that the procedure as laid down under Rule 16.24 for the purposes of holding regular departmental enquiry and the provisions of Article 311 of the Constitution have to be followed. When an employee is working on temporary basis or is on probation, he has no right to the post. His services can be terminated at any time. Even in a case where the work and conduct of the employee have remained satisfactory for a certain duration of time, but suddenly a complaint is received against him, the employer has the two-fold choice. The employer can either proceed to terminate the services of the employee in accordance with the terms of appointment and the rules governing the service or if the employer feels that the allegations are serious and the employee does not deserve to be merely discharged from service and should be punished so that he is unable to join any other service, it can proceed in accordance with the Rules to take penal action. In the latter case, if the employer decides to impose a major penalty, the procedure prescribed in Chapter 16 and more particularly Rule 16.24 and the requirements of Article 311 of the Constitution of India have to be complied with. However, if the employer decides not to punish the employee and to take action in accordance with the terms of appointment, the procedure as laid down under Rule 16.24 or Article 311 of the Constitution of India is not required to be followed.”

(10) In the case before us, as already observed, the petitioners are daily wagers having no right to the post and according to the Standing Order dated 26th July, 1990 they would be governed by the Police Rules only after their enrolment as Constables. Since they have not been enrolled as Constables, they are not governed by those Rules. It is true that while rejecting the representations filed by the petitioners the Senior Superintendent of Police has

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mentioned reasons for their discharge giving the nature of the complaints against the petitioners but this he did only under the directions issued by this court in civil writ petition 3819 of 1998 filed by the petitioners though the orders of discharge did not cast any stigma. In such a situation, the communication of reasons in pursuance to the directions issued by this court will not make their termination punitive. We thus do not find any infirmity in the impugned order passed by the Senior Superintendent of Police.

(11) Now coming to the judgment of this court in *Rakesh Kumar's* case (supra) on which strong reliance has been placed by the learned counsel for the petitioners. This judgment no doubt supports the case of the petitioners but with utmost respect to the Hon'ble Judges we do not agree with the observations made therein in view of the binding observations of the Apex Court in *Jagdish Mitter's* case (supra) and *Kaushal Kishore Shukla's* case (supra) which were not brought to the notice of the learned Judges of the Division Bench. The Full Bench judgment in *Sher Singh's* case (supra) too had not been brought to the notice of the learned Judges and we feel bound by the observations made therein. In the normal course, we would have referred the matter to a larger Bench but in view of the aforesaid binding decisions of the Supreme Court and a Full Bench of this Court, it is not necessary for us to adopt that course.

(12) In the result, there is no merit in the writ petition and the same stands dismissed leaving the parties to bear their own costs.

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**R.N.R.**

*Before Jawahar Lal Gupta and N.K. Sud, JJ*

RAVINDERPAL SINGH—*Petitioner*

*versus*

U.T. CHANDIGARH AND OTHERS—*Respondents*

C.W.P. No. 9749 of 1998

16th January, 2001

*Constitution of India, 1950—Art. 226—Allottees failed to pay the instalments of the premium—Estate officer ordering cancellation of the lease and resumption of the site after giving several opportunities to them—Appellate Authority dismissing the appeal as they failed to pay the outstanding amount—Long and unexplained*