

---

Before Viney Mittal, J

SURJIT SINGH,—*Appellant*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

R.S.A. NO. 2279 OF 2001

The 12th August, 2003

*Punjab Police Rules, 1934—Rl. 12. 21—Constitution of India, 1950—Art. 226—Wilful absence from duty—SSP finding the constable not likely to prove a good police official—Discharge from service under Rl. 12.21—Whether order of discharge based upon an alleged misconduct is valid—Held, yes—Merely because while forming an opinion on the issue of suitability of the constable his absence from duty taken into consideration is no ground to declare the order of discharge stigmatic—Appeal dismissed while upholding the order of discharge.*

*Held*, that while passing the order of discharge, the Senior Superintendent of Police was bound in law to make an overall assessment of the work of the plaintiff. When on such an assessment he found that immediately after the completion of training on 29th April, 1990, the plaintiff had been absenting himself from duty, then he was absolutely justified in taking recourse to the provisions of Rule 12.21 of the Rules. Hence, I do not find that the plaintiff has been able to prove that the order dated 4th May, 1991 passed by the SSP was, in any manner, defective or was liable to be declared null and void. The view taken by the learned first appellate Court is absolutely justified as per law on this subject. I find no infirmity in the same.

(Paras 20 & 22)

J.S. Verka, Advocate, *for the appellant.*

Ms. Radhika Suri, Deputy, Advocate General, Punjab *for the respondents.*

---

JUDGMENT

**VINEY MITTAL, J**

(1) The plaintiff is in appeal. He filed a suit for declaration. It was claimed by him that he was recruited as a Constable with the Punjab Police Force in July, 1989. There was no complaint against him. Due to some unaboidable circumstances and due to some reasons beycnd his control, he reamined absent from duty for some time. An order dated 4th May, 1991 was passed by the Senior Superintendent of Police, Tarn Taran, whereby the plaintiff was ordered to be discharged from Police Force under Rule 12.21 of the Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules'). The palintiff complained that before inflicting the aforesaid extreme punishment, he was not heard. No inquiry was held and no show cause notice was served upon him. Defendant No. 3, Senior Suprintendent of Police, had recorded that plaintiff was unlikely to prove an efficient police official. According to the plaintiff, the aforesaid observation was stigmatic in nature and, therefore, the order of his discharge was not valid. It was further maintained by the palintiff that the order of his discharge was passed on the basis of his absence from duty and, therefore, since it was being based upon an alleged misconduct of the palintiff, the procedure for holding an inquiry should have been followed. A revision petition was filed by the plaintiff to the Inspector General of Police, Border Range but its fate was also not known. With these averments, the plaintiff approached this Court to declare the order dated 4th May, 1991 as illegal, bad, null and void and not binding upon his rights.

(2) The defendants contested the suit. Besides claiming that the suit was barred by limitation, they also maintained that the order passed by the Senior Suprerintendent of Police on 4th May, 1991 was absolutely legal and valid. It had been found that the plaintiff was unlikely to prove a good police official and since he was a temporary government employee having less than three years of service, therefore, the order was passed.

(3) The parties led their evidence. It came on record that the plaintiff, after obtaining training from 13th October, 1989 to 29th April, 1990, was posted on guard duty with Deputy Superintendent of Police Bhikhiwind on 6th July, 1990. On that day, he ws entrusted with case file NO. 92/86 under Section 25 of the Arms Act and was asked to appear before the Deputy Superintendent of Police, Patti, in

---

connection with the said case. The defendants produced a copy of DDR, Ex. D.1, on record to prove the said fact. The plaintiff did not come back and report for duty. He remained absent till 11th October, 1990. A report No. 331 was recorded with Police Station, Bhikhiwind as Ex. D. 2. Thus, the plaintiff was found to be absent from duty for a period of 43 days, 17 hours. Again the plaintiff wilfully absented himself from 9th December, 1990 to 7th March, 1991 for a period of 2 months and 28 days. A report, Ex.D.4, was recorded in this regard.

(4) The Senior Superintendent of Police, Tarn Taran, while considering the aforesaid wilful absence from duty of the plaintiff, ordered his discharge from service exercising his powers under Rule 12.21 of the Rules. Order dated 4th May, 1991 was passed as Ex.P.1.

(5) The learned trial Court decreed the suit filed by the plaintiff. It was held that the order passed by the Senior Superintendent of Police was founded on the basis of a misconduct and as such the authorities were required to issue a show cause notice or a charge-sheet. Since the aforesaid procedure was not followed, therefore, the order was held to be unsustainable in law. The suit filed by the plaintiff was accordingly decreed.

(6) The matter was taken up in appeal by the defendants-State of Punjab and others. The learned first appellate Court reappraised the entire evidence. Besides the facts of the case, the learned first appellate Court also took into consideration the various pronouncements on the question of law. The learned first appellate Court relied upon the Full Bench judgment of this Court in **Sher Singh versus State of Haryana and others (1)**, on the basis of the aforesaid judgment as well as on the facts and circumstances of the case, the learned first appellate Court found that the order of discharge dated 4th May, 1991, was not stigmatic in any manner and had been validly passed by the competent authority under the provisions of Rule 12.21 of the Rules. Accordingly, the appeal filed by the defendants was accepted and the judgment of the learned trial Court was set aside. The suit of the plaintiff was dismissed.

(7) I have heard Shri J.S. Verka, learned counsel appearing for the appellant and Ms. Radhika Suri, learned Assistant Advocate General, Punjab, appearing for the respondents at considerable length and with their assistance, I have also gone through the record of the case.

---

(8) Shri J.S. Verka, learned counsel appearing for the plaintiff-appellant has submitted that the judgment of the learned first appellate Court was not only contrary to the settled proposition of law but was also contrary to the facts and circumstances of the case. Learned counsel has submitted that an order under Rule 12.21 of the Rules could only be passed if there was no allegation of misconduct against the police official. However, since the order had been passed on the basis of the absence of the plaintiff from duty, therefore, the order being based upon a misconduct of the plaintiff, the order of discharge could not have been passed.

(9) On the other hand, Ms. Radhika Suri, learned counsel appearing for the respondents has submitted that the order dated 4th May, 1991 was passed by the Senior Superintendent of Police by taking an overall view of the facts and circumstances of the case. The Senior Superintendent of Police had passed the aforesaid order by taking into consideration the absence of the plaintiff from duty and also the fact that he being a member of the disciplined force had absented himself. On that basis, the Senior Superintendent of Police had come to the conclusion that the plaintiff was not likely to become a good police officer and as such the said order had been validly passed. According to Miss Suri, the law laid down by this Court in *Sher Singh's* case (*supra*) was wholly applicable to the facts of the present case.

(10) I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

(11) Before proceeding any further in the matter it might be relevant to notice the order dated 4th May, 1991, passed against the plaintiff whereby the plaintiff was ordered to be discharged under Rule 12.21 of the Rules. The order reads as follows :—

“Order

Constable Surjit Singh NO. 3859 of this district has been found unlikely to prove an efficient police officer. He is, therefore, hereby discharged from service under P.P.R. 12.21 with immediate effect. He will deposit all the uniform articles including identity card issued by the Police Department.

---

Issue orders in the O.B. and all concerned to note for necessary action.

(Sd.) . . . ,

Sr. Superintendent of Police,  
Tarn Taran.”

(12) For facility of reference, Rule 12.21 of the Rules may also be noticed at this stage :—

“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 appeal against an order of discharge under this rule.”

(13) Shri J.S. Verka has relied upon the judgments of Single Bench of this Court in **Punjab State versus Shri Satinder Singh (2)** and **Constable Ram Niwas versus State of Haryana (3)** to contend that when an order has been passed on the ground of wilful absence from duty of a police official then aforesaid order was liable to be set aside being based upon a misconduct. According to the learned counsel, it has been laid down in the aforesaid authorities that the order of discharge in such a situation amounted to an order of dismissal from service on the ground of misconduct and, therefore, if the procedure of serving a show- cause notice and holding an inquiry was not followed, then the order was in contravention of Article 311 (2) of the Constitution of India.

(14) It is no doubt true that in Ram Niwas's case (*supra*), it had been held that if an order of discharge had been passed on the ground that the person was absenting himself from duty habitually and no charge-sheet had been served and no explanation had been called nor any inquiry had been conducted then the order of discharge could not be sustained. However, in the case of **Satinder Singh (supra)** although this Court had dismissed the appeal filed by the State of Punjab but had made the following observations :—

“A perusal of the above rule shows that Superintendent of Police is competent to discharge any constable “who is

---

(2) 1993(2) S.C.T. 372

(3) 1998 (4) S.C.T. 493

---

found unlikely to prove an efficient police officer." The constable is on trial. He is as if on probation. His suitability for continuance in service is being judged. During this period of 3 years if his performance is found to be satisfactory, he would normally be allowed to continue in service. However, if it is found that he is unlikely to prove an efficient police officer, the Superintendent of Police is entitled to discharge him from service. It is equally clear that nobody is discharged from service without any reason. It is only on account of the availability of some material indicating a deficiency in performance of duty or some other lapse which forces the authority concerned to order the discharge of a constable. Consequently, if in a given case, the Superintendent of Police finds that a constable has remained absent and thereafter, is not disciplined and is thus unlikely to make a good police officer, he in my view, will be fully entitled to pass an order in exercise of the power under rule 12.21. The intention while passing such order is not to punish the person. It is only to get rid of the person who in the opinion of the Superintendent of Police, is not likely to make an efficient police officer."

(15) Shri Verka has also relied upon a judgment of the Hon'ble Supreme Court of India in **Smt. Rajinder Kaur versus Punjab State and another (4)**, in support of the proposition canvassed by him. However, the question involved in the present case has been authoritatively answered by a Full Bench of this Court in **Sher Singh versus State of Haryana and others (supra)**. The question before the Full Bench was as follows :—

"Can a constable 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 is a specific allegation which may even amount to misconduct against him ?"

---

(16) The aforesaid question was answered by the Full Bench in the affirmative. The following observations made by Full Bench may be noticed with advantage :—

“Another fact which deserves to be mentioned is that every police officer wields wide and varied powers. A man in uniform is the embodiment and symbol of Government’s authority. It is through him that the Government acts to assert its power and can deny a citizen even his right to life and liberty. It is thus of utmost important that he possesses the qualities enumerated in Rule 19.1 in ample measure. However, if on account of one reason or the other, the Superintendent of Police, who is the head of the force in the district forms an opinion that a constable is not likely to become an efficient police officer, he has been given the power to discharge him from service. This opinion can be formed not only on the basis of the periodical reports recorded on the performance of a constable, but also on any other data or information which may be available to the Superintendent of Police. This is, of course, subject to the condition that the Superintendent of Police cannot act arbitrarily. The opinion should not be whimsical. The opinion, though subjective, has to be formed on some objective date. So long as this requirement is fulfilled, the action would normally be within the ambit of Rule 12.21.

In this context, it is reasonable to assume that no employer terminates the services of an employee, who is good and 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 Art. 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 cases, 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 Art. 311 of the Constitution of India have to be complied with. However, if the employer decides not to punish the employee and to merely take action in accordance with the terms of appointment, the procedure as laid down under Rule 16.24 or Art. 311 of the Constitution of India is not required to be followed.”

(17) Their Lordships of the Full Bench had also considered the judgment of the Supreme Court in **Rajinder Kaur's** case (*supra*). After considering the aforesaid judgment, their Lordships found that in **Rajinder Kaur's** case a specific finding had been given that the orders of discharge have been passed by way of punishment.

(18) At this stage, a recent judgment of the Apex Court in **State of Punjab versus Bhagwan Singh (5)**, be noticed with advantage. The Hon'ble Apex Court has held that when a probationer is discharged during the period of probation and if for the purpose of discharge a particular assessment of his work is to be made and the authorities referred to such an assessment of his work, while passing the order of discharge, that cannot be held to amount to stigmatic.



---

(19) In view of the authoritative pronouncement made by the Full Bench of this Court in **Sher Singh's** case (*supra*) and by the Supreme Court in **Bhagwan Singh's** case (*supra*), the order of discharge noticed above, cannot be held to be defective in any manner.

(20) In my considered view, while passing the order of discharge, the Senior Superintendent of Police was bound in law to make an overall assessment of the work of the plaintiff. When on such an assessment he found that immediately after the completion of training on April 29, 1990, the plaintiff had been absenting himself from duty, then he was absolutely justified in taking recourse to the provisions of Rule 12.21 of the Rules :—

(21) The following observations made by the Full Bench in **Sher Singh's** case (*supra*) may also be noticed with advantage :-

“It has also contended that the Superintendent of Police can determine the suitability or otherwise of a constable only on the basis of the periodic reports recorded under Rule 19.5. We find no basis for such a contention. As already observed, the reports under Rule 19.5 have to be recorded and submitted by the Sub-Inspector or the Inspector under whom the constable is working. The assessment recorded by these officers is not binding on the Superintendent of Police. Furthermore, even in a case where the periodic reports are good, some material can come to the notice of the authority which may show that the concerned constable is not likely to become a good police officer. There may be a complaint against a constable which may show that his integrity is doubtful or that he is not disciplined. If on the basis of such a material, the Superintendent of Police forms an opinion that the constable is unlikely to become an efficient police officer, there is nothing which debars him from passing an order of discharge under Rule 12.21.”

(22) In view of the aforesaid discussion, I do not find that the plaintiff has been able to prove that the order dated May 4, 1991 passed by defendant no. 3 was, in any manner, defective or was liable to be declared null and void. The view taken by the learned first appellate Court is absolutely justified as per law on this subject. I find no infirmity in the same.

(23) Accordingly, the present appeal is without any merit and the same is dismissed. There shall be no order as to costs.

---

R.N.R.