
(1977) 05 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 6243 of 1976

Jai Singh Ex-Constable No. 1441

APPELLANT

Vs

State of Haryana etc.

RESPONDENT

Date of Decision : 30-05-1977

Acts Referred:

Constitution of India, 1950 — Article 16, 311

Police Act, 1861 — Section 7

Punjab Police Rules, 1934 — Rule 12, 12.21, 12.22, 13.18, 19(21)

Citation : (1977) 2 ILR (P&H) 808

Hon'ble Judges : R.S. Narula, C.J.; R.N. Mittal, J.; P.C. Jain, J.; M.R. Sharma, J.; Gurnam Singh, J

Bench : Full Bench

Advocate : K.S. Saini, for the Appellant; H.N. Mehtani, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, C.J.—The order of the Superintendent of Police, Ambala, dated December 24, 1974 (Annexure R-1), discharging the Petitioner from the police force under Punjab Police Rule 12.21 with effect from the date of the order has been impugned by the Petitioner on four grounds. It is on account of the first ground taken up by the Petitioner that the case has been placed before the Full Bench, of five Judges. The argument in that behalf is that Rule 12.21 is Ultra vires Article 16 of the Constitution as there is no such drastic provision in the Service Rules of any other civil service as is contained in Police Rule 12.21, which reads as below:

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.

2. Though it cannot be disputed that the members of the State Police Force are as much members of a civil service as of any other, the argument of Mr. K.S.

Saini 1st based on the misapprehension that Article 16 requires that exactly similar rules must exist for all important matters in every civil service of the State. Article 16 does not envisage any such situation. Every Service is governed by its own rules. No service role can be struck down as being ultra vires Article 16 of the Constitution merely because it is more rigorous than the corresponding rule for some other Service of the State or because its equal cannot be found in any other Service. Equality of opportunity is guaranteed amongst equals. Inasmuch as the rule is the same for all the Constables in the Punjab Police Force, the argument of discrimination is wholly fallacious. We, therefore, find no force in the challenge to the constitutionality of Rule 12.21.

3. The second argument of Mr. Saini, learned Counsel for the Petitioner, is that once a certificate under Rule 12.22 of the Punjab Police Rules has been issued, the Superintendent of Police cannot invoke Rule 12.21 and cannot discharge a constable under the afore said provision. Reliance for this proposition is placed on the judgment of a Division Bench of this Court in Shri Dwarka Dass v. The Superintendent of Police. Ludhiana and Ors. 1968 S.L.R. 760. That case has no application to the facts of the present petition as Rule 12.21 had been invoked in Dwarka Dass's case after the expiry of the statutory period of three years. This has also been made clear in a subsequent Division Bench judgment of this Court in Karan Singh v. The State of Punjab and Ors. 1972 S.L.R. 624. Rule 12.22 is in the following terms:

(a) Every enrolled police officer shall be given a certificate of appointment in the form prescribed by the Police Act Form 12.22(1) and shall sign a receipt therefor in his character roll. Such certificate shall be signed by the gazetted officer empowered to make the appointment.

(2) Such certificates shall be in abeyance during periods of suspension and shall be surrendered on leaving the service.

In fact it is clear that the certificate under Rule 12.22 is given in the following words to a constable on the very date of his enrolment:

CERTIFICATE OF APPOINTMENT Police Department _____

_____ District or Range.

CONSTABULARY No. _____ has been appointed a member of the Police Force, under Act V of 1861 and is vested with the powers, functions and privileges of a Police Officer.

Appointed on the _____ 19. Superintendent of _____ Police, or Deputy Inspector-General of Police.

The argument that no constable can be discharged under Rule 12.21 after the grant of the prescribed certificate under Rule 12.22 to him is to say that Rule 12.21 is non-existent and can never come into effect. This argument was repelled by the Division Bench in Koran Singh's case and we are in full

agreement with the view taken by this Court in that case.

4. The next argument of Mr. Saini is that Rule 12.21 is ultra vires Section 7 of the Police Act as all rules which can be framed by the State Government u/s 7 are subject to Article 311 of the Constitution and Rule 12.21 violates Article 311. In other words the argument is that the impugned rule violates the provisions of Article 311. It is settled law that Article 311 does not apply if service of a probationer is terminated in accordance with the rules governing his service. We are fortified in this view of ours by the authoritative pronouncement of their Lordships of the Supreme Court in *S.P. Vasudeva Vs. State of Haryana and Others*, . Indeed Mr. Saini concedes that if the constable covered by Rule 12.21 can be equated to a probationer, he cannot press this argument. His submission, however, is that according to Rule 13.18 the constables are not governed by any rule as to probation. There is no doubt that Rule 13.18 which refers to probationary period neither has nor can have any application to constables, but the provisions of Rule 12.21 provide for some kind of probation and though this is not called a probationary period, it is in fact nothing short of making a special provision of that nature. Article 311 of the Constitution has, therefore, no application to this case.

5. The last submission of the learned Counsel for the Petitioner is that the Petitioner having once undergone a rigorous training and various tests provided by the various sub-rules of Rule 12 and Sub-rules (21) and (3) of Rule 19, there can be no question of his being declared to be not likely to be an efficient police officer. We are unable to find any force in this argument. Rules 19.2, 19.3 and 19.4 are succeeded by Rule 19.5 which by way of abundant caution makes it clear that all the provisions contained therein are subject to Rule 12.21. The initial training provided for in the various provisions of Rule 12 is in order to qualify a constable for enrolment. The period of three years during which a constable can be discharged under Rule 12.21 is in the nature of a probationary period. The fact that a constable undergoes training and rigorous tests before being-enrolled into the ranks does not in any manner come into conflict with Rule 12.21.

6. While making his submissions under Article 311 of the Constitution Mr. Saini referred to Annexure P. 2 which is an internal report on the basis of which the Petitioner was directed to report to the Police Lines, Ambala and argued that since it casts" a stigma on the Petitioner, the final order of discharge (Annexure R-11) should be held to violate Article 311. Relying on the judgments of the Supreme Court in *Jagdish Mitter Vs. The Union of India (UOI)*, and in *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*, , counsel submits that the Court should go behind the order Annexure R-1 even if it is ostensibly an innocuous one and find out if the impugned order visits the concerned official with evil consequences or casts a stigma on him or not. All these rulings apply to cases covered by Article 311. Besides in *Bishan Lal Gupta Vs. The State of Haryana and Others*, , a Division Bench of this Court has taken a view that it is

open to the appointing authority to hold an inquiry into the allegations against a probationer for finding out whether he should be retained in service or not. If as a result of such an inquiry, the service of a probationer is terminated, Article 311 of the Constitution is not attracted.

7. No other argument has been advanced by Mr. Saini. For the foregoing reasons this petition fails and is dismissed with costs.