
(2001) 01 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4104 of 1999

Jhirmal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 04-01-2001

Acts Referred:

Punjab Police Rules, 1934 — Rule 12.21

Citation : (2001) 01 P&H CK 0023

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Navneet Kaur, for the Appellant; A.S. Grewal, DAG, for the Respondent

Judgement

Swatanter Kumar, J.—Learned counsel appearing for the appellant, while impugned the judgments under appeal contended that the learned courts below could not have dismissed the suit of the plaintiff either on merits or for lack of territorial jurisdiction.

2. On the other hand, learned counsel appearing for the State submitted that the learned courts below have rightly dismissed the suit filed by the plaintiff on the following grounds :- (a) the learned trial court has no jurisdiction to entertain and decide the suit, as no cause of action or part thereof had arisen within the territorial jurisdiction of the said court. In support of his contention, he relied upon the judgment of the learned Single Judge of this Court in the case of Ex-Major Gurnam Singh v. Union of India 1994(3 SCT 3S6 (PH) : 1994(4) S.L.R. 76, (b) the order discharging the appellant-plaintiff in the suit was an order of discharge simplicitor under the Punjab Police Rule 12.21 and, as such, the finding recorded by the learned courts below are correct. Reliance was placed upon Full Bench of this Court in the case of Sher Singh v. State of Haryana and Ors. 1994(3) SCT I (PH) : 1994(2) S.L.R. 100.

3. In order to appreciate the merits of these contentions, reference to basic facts would be necessary.

The plaintiff, who was appointed as constable in the Punjab police against the permanent post, was discharged from the service by the Senior Superintendent of Police, Majitha, vide order dated 31st August, 1992. The plaintiff challenged the said order as illegal, null and void and contrary to the principle of natural justice by filing a civil suit for declaration. According to the plaintiff, the order was malicious and even the Senior Superintendent of Police had no jurisdiction to pass the impugned order under the Punjab Police Rules 12.21.

The suit was contested by the State. According to the State, the plaintiff had not completed three years of service and he could be discharged by the Senior Superintendent of Police, while exercising his powers under the said rules. The objection by the State was also taken with regard to maintainability of the suit and that the court had no territorial jurisdiction. The learned trial court, vide its order dated 15.9.1994 framed the following issues :-

1. Whether the impugned order dated 31.8.1992 is illegal ? OPP.
2. Whether the plaintiff is entitled to all the service benefits with interest ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the court has no territorial jurisdiction to try the instant suit ? OPD
5. Whether no cause of action accrued to the plaintiff to file the suit ? OPD
6. Whether no legal and valid notice has been served upon the defendants ? OPD
7. Relief.

After affording the parties to lead evidence in support of their respective case, the learned trial court vide its-judgment and decree dated 2.8.1996 dismissed the suit filed by the plaintiff. The learned trial court decided the issue on merits as well as on the question of jurisdiction against the plaintiff.

On appeal filed by the plaintiff, the judgment and decree passed by the learned trial court was affirmed while dismissing the appeal with costs, giving rise to the filing of the present regular second appeal.

It has been noticed by the learned first appellate court that admittedly the plaintiff had not completed three years of service in the Punjab Police. This fact is not even disputed before this Court. There is no doubt that the above rule vests the respondent/competent authority with ample power to discharge a police official/officer simplicitor if he had not completed three years of service and was not likely to prove an efficient officer.

4. The rival contentions raised on behalf of the parties revolve around the language and effect of rule 12.21 of the Punjab Police Rules, which reads as under-

"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."

5. A pertinent legal question that has fallen for determination in this appeal is whether the impugned order was stigmatic in its language, contents and effect or not and secondly whether the courts have fallen in error in law in dismissing the suit of the plaintiff on the ground that it had no territorial jurisdiction to entertain and decide the suit.

6. As I have already noticed that there is hardly any dispute in regard to the facts giving rise to the present controversy. The impugned order, which was undisputedly served upon the plaintiff at his village Ud-howali Kalan in District Gurdaspur reads as under :-

"Recruit Constable Jhirmal Singh No. 5249/MJA while duty at Kakar Hospital, Amritsar subsented himself without any leave at 4 p.m. on 29.4.92. He returned back at 6.15 p.m. on 9.7.92 after remaining 70 days absent. From where it proved that he cannot become good police officer therefore, he is discharged under PPR 12.21 from the police department with immediate effect. His absence period will be treated as non duty period. He will not be entitled for any benefit for the absence period. Issue orders in OB and alt concerned to note for necessary action.

Sd/- Parmjit Singh Gill Sr. Superintendent of Police, Majithia.

No. 18417-22/MJA dt. 31.8.92"

If the impugned order is held to be stigmatic and an order violative of principle of natural justice in that event the order has to be set aside. No doubt, the Full Bench of this Court in the case of Sher Singh (supra) squarely helps the case of the State in regard to contention that under rule 12.21, the above order has to be construed as an order of discharge simplicitor, but the law laid down by the Full Bench of this Court in the case of Sher Singh (supra) does not appear to be the view which has prevailed with the Hon'ble Apex Court in the case of Prithipal Singh v. State of Punjab and Ors 2000(2) RSJ 736 : 2001(1) SCT 459 (SC). I do not consider it necessary to discuss this issue at any greater length, in view of the judgment of the Hon'ble Apex Court. Prithipal Singh's case (supra) squarely applies to the case of the plaintiff-appellant as the impugned order in that case that similar to the order passed in the present case. In Prithipal Singh's case their Lordships of the Supreme Court held as under :-

"4. The appellant was recruited the Constable in Punjab Police on 21st July, 1988. It is also not in dispute that he is a temporary employee. By an order dated 22nd February, 1997, he was discharged from the service under Rule 12.21 of the Punjab Police Rules as in the opinion of Senior Superintendent Police, the appellant was unlikely to prove efficient as police officer. That order was sustained by the High Court. Aggrieved by that the appellant has filed the present appeal. The short question raised in this appeal is whether respondents

should have been given an opportunity before passing an order of discharge under the aforesaid Rule 12.21. The said Rule 12.21 is quoted herein :

"Rule 12.21. Discharge or 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."

5. Under this Rule when a Constable is found unlikely to prove an efficient police officer within a period of three years of his appointment he may be discharged from service.

6. In the present case, the counter affidavit filed by the Respondents discloses the record of the appellant during this period of his service. The relevant portion of the same is reproduced below :

"(i) That the petitioner remained absent from 12.12.88 to 15.12.88 without any leave or permission from the Competent Authority. This period of absence was sanctioned Leave without Pay and warned to improve accordingly.

(ii) that on 1.6.89, he again remained absent and was sanctioned one day's Leave Without Pay. He was warned to eradicate the habit of remaining absent.

(iii) That the petitioner was transferred from Police Lines to Police Control Room on 17.11.90 vide this office Order No. 34410-23/B dated 17.11.90, but he failed to report at his new place of posting without any reason. He had disobeyed the order of his senior.

(iv) That the petitioner remained continuously absent without any leave or permission from the Competent Authority w.e.f. 11.12.90 till the impugned order was passed i.e. on 22.2.1991."

7. The aforesaid record plainly reveals recording of misconduct of the Appellant. It records, he has disobeyed the orders of his superiors. Once this is recorded in the service record, which is disclosed by the Respondent, it cannot be said there is no stigma attached to the order of discharge. Once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an order of discharge looks innocuous, but on close scrutiny, by looking behind the curtain, and if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room of doubt that any consequential order, even of discharge would be construed as stigmatic:

Then opportunity has to be given. It is also not in dispute that no opportunity was given to the respondent before passing the impugned order of discharge".

The bare reading of the impugned order 31st August, 1992 not only records a finding of the kind recorded in Prithipal Singh's case (supra) but it also refers to an act of misconduct or indiscipline on the part of the delinquent police official, in remaining unauthorisedly absent for 70 days. These two factors render the

impugned order stigmatic in view of the law laid down by the Hon''ble Supreme Court. The order would be violative of principle of natural justice as well as would offend the principle of law afore-referred.

7. At this stage, reference can be made to another case of State of Haryana and Anr. v. Jagdish Chander 1995(2) SCT 427 (SC) : J.T. 1995(2) S.C. 108, where the Hon''ble Supreme Court, while considering the same rule and order of discharge of the present kind held as under :-

"It would thus be clear from the order of discharge that it is not an order of discharge simplicitor. On the other hand, the S.P. considered the record and found him to be habitual absentee, negligent to his duty and undisciplined. The findings of habitual absence and indiscipline necessarily against stigma on his carrier and they would be an impediment for any of future employment elsewhere, Under those circumstances, the principles of natural justice do require that he should be given an opportunity to explain the grounds on which the S.P. proposes to pass an order of discharge and then to consider the explanation submitted by the police officer. Then the S.P. is competent to pass appropriate orders according to the rules. Since this part of the procedure had not been adopted, the order of discharge is vitiated by manifest error of law."

In view of the above well settled principle of law, this Court has to hold that the impugned order dated 31.8.1992 is stigmatic and also violative of principle of natural justice and is therefore, liable to be set aside.

8. Accordingly, issues Nos. 1 and 2 are answered in favour of the plaintiff and against the defendants and findings recorded by the courts below in that regard are set aside.

9. Now coming to the question of jurisdiction of the courts below to entertain and decide the present suit reliance was placed on the judgment of the learned single Judge of this Court in the case of Maj. Gurnam Singh (supra). Again the said judgment would not be applicable to the facts of the present case, as it would be squarely covered by the judgment of a Division Bench of this court in the case of State of Haryana and another Vs. Jagdish Chander, . While determining the similar objection taken with regard to territorial jurisdiction based upon cause of action and part thereof having not been arisen within the territorial jurisdiction of this Court, the Division Bench held as under :-

"As has already been seen, the petitioner was posted at Talbahat, near Babina, Uttar Pradesh, and he was court-martialled also at that place. However, the matter did not end there and the petitioner after receiving the order of dismissal from service, came down to his home town in the State of Haryana and thereafter filed a statutory appeal u/s 164 of Army Act. Since he sent his appeal from his home town and received the order of rejection of appeal from the Central Government at this home town, the cause of action definitely arose to the petitioner in the State of Haryana. The view taken by this Court in the earlier two cases (supra) is not found to be applicable to the facts of the present case.

In those two cases, the petitioners had only settled down at the time of filing of the writ petition in the State of Punjab and no cause of action had arisen from there. In the case of the present petitioner, the facts are distinguishable. The petitioner pursued his remedies from his township, Thancsar, in the State of Haryana, and filed statutory appeal from that place. The result of the appeal was communicated to him at that place. Therefore, the plea taken by the respondents about the lack of jurisdiction of this Court is found to be not sustainable and is rejected."

"A similar matter had been examined by the Kerala High Court also in *Union of India and Ors. v. P. Kunhabdulla* 1984(3) SLR 426. It was held that the High Court, within whose jurisdiction the order was communicated, i.e., received by the employee, had jurisdiction to entertain the writ petition against the order of removal."

No other judgment of the Division Bench of this Court or Hon''ble Supreme Court taking contrary view has been relied upon or brought to the notice of this court by the State.

Resultantly, issue No. 4 is also answered in favour of the plaintiff and against the defendants.

10. Once this court has set aside the impugned order, necessary corollary thereto is that the respondents have to be permitted to take action against the appellant in accordance with law, if they so choose. Such observation is necessitated in view of the judgments of the Hon''ble Supreme Court in *Jagdish Chander's* case (supra) as well as in the case of *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,* .

11. Consequently, the suit of the plaintiff is decreed to that extent. Decree be drawn in terms thereof.

12. Appeal allowed.