

(2000) 04 SC CK 0207

In the Supreme Court Of India

Case No : Civil Appeal No. 3049 of 2000 (Arising out of SLP (C) No. 12739 of 1998)

Prithipal Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Punjab Police Rules, 1934 — Rule 12.21

Citation : (2000) 8 JT 26 : (2002) 10 SCC 133

Hon'ble Judges : D. P. Mohapatra, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.P. Misra, J.—Leave granted.

2. Heard learned Counsel for the parties.

3. This appeal is directed against the order dated 27th February, 1998, wherein the High Court has dismissed the Writ Petition filed by the Appellant.

4. The Appellant was recruited as 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 Inefficient - 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. Thus he disobeyed the order of his seniOrs.

(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 exist of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves to no room of doubt that any consequential order, event 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. On the facts of this case, we are deliberately not going into the wider question, whether any opportunity is necessary or not before passing an order under the aforesaid Rule, but suffice it to say that on the facts of this case, as we have recorded above it was obligatory for the Respondent to have given an opportunity to the Appellant before passing the discharge order. Hence, the impugned order of discharge dated 22nd February, 1997 is unsustainable and is set aside.

8. The appeal is allowed with costs. However, it is without prejudice to the rights of the Respondents, if any, to proceed in accordance with law.