

(2013) 01 P&H CK 0257

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2814 of 1996

Punjab State and Others

APPELLANT

Vs

Lakhwinder Singh

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2013) LabIC 2849 : (2013) 3 SCT 317

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Baljinder Singh Sra, A.A.G., Punjab, for the Appellant; O.S. Batalvi, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—This is State's regular second appeal against the judgment of reversal dated 16.05.1996 passed by the Additional District Judge, Amritsar. Lakhwinder Singh, plaintiff-respondent (hereinafter referred as "the plaintiff") joined as temporary constable in Punjab Police on 26.05.1990 and was discharged from service on 12.06.1991 by the Senior Superintendent of Police, Tarn Taran under Rule 12.21 of the Punjab Police Rules, before completion of his probation period. The plaintiff has challenged the order of his termination dated 12.06.1991 on the ground that it being a stigmatic order, was illegal and null & void. He had preferred an appeal before the appellate authority, but the same was rejected on 10.10.1991.

2. The suit was contested by the defendants-appellants (hereinafter referred as "the defendants") on the ground that the Civil Court had no jurisdiction to try the same; the suit was not maintainable; it was pre mature and the suit is barred by the principles of resjudicata. On merits, it was admitted that the plaintiff had joined on 26.05.1990, however, it was stated that he was found habitual absentee. While under training at P.R.T.C. Jahan Khelan, he absented for 35 days. A letter dated 22.02.1991 was written by the Superintendent of Police.

Jahan Khelan regarding this fact and recommending his discharge from service under Rule 12.21 of the Punjab Police Rules, eventually he was discharged from service on 12.06.1991, as he was unlikely to prove efficient police official.

3. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the order dated 12.06.1991 passed by the SSP, Tarn Taran and recommendation dated 22.02.1991 and endorsement dated 06.06.1991 are illegal, null and void and unconstitutional? OPP

2. Whether the order dated 24.09.1991 passed by the DIG of Police, Border Range, Amritsar, is also illegal, null and void? OPP

3. Whether the Civil Court at Amritsar has got no jurisdiction to try this suit? OPD

4. Whether the suit is not maintainable? OPD

5. Whether the suit is premature? OPD

6. Whether the suit is barred u/s 11 CPC? OPD

7. Whether the plaintiff is entitled to the declaration as prayed for? OPP

8. Relief.

4. The trial Court, while holding that the order dated 12.06.1991 passed by the Superintendent of Police, Tarn Taran, was not stigmatic, dismissed the suit. However, the first Appellate accepted the appeal; decreed the suit of the plaintiff and the orders dated 12.06.1991 and 24.09.1991 were declared as illegal. It was further ordered that the plaintiff was deemed to be in continuous service and was entitled to all the consequential benefits attached to the post.

5. Heard. The substantial questions of law, which arise for determination in the case are, (i) whether the order dated 12.06.1991 discharging the plaintiff from service, was stigmatic one; (ii) what is the true interpretation of the "stigmatic order" and (iii) whether the plaintiff was liable to be provided an opportunity of hearing before discharging him from service during the period of probation.

6. Before I proceed to decide the aforesaid questions, so framed, some facts needs to be reiterated. The plaintiff was appointed as a constable on 26.05.1990 in Police District, Tarn Taran and was assigned Constable No. 3213/T.T. On purely temporary basis. Subsequently, he was discharged vide order/letter dated 12.06.1991 passed by the Superintendent of Police, Tarn Taran. The relevant extract of the said letter is reproduced as under:-

Rect/Constable Lakhwinder Singh, No. 3213 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.

7. Before the passing of the aforesaid order, a letter dated 06.06.1991 issued by the Superintendent of Police, Jahan Khelan, was also received, which also informed the authority that the plaintiff went absent for 35 days without permission; he had committed gross indiscipline and created an example for the other trainees and he has no interest in the training/service. Besides this absence, the orders dated 07.02.1991 and 27.04.1991 passed by the Superintendent of Police, Tarn Taran, indicate the plaintiff also remained absent from duty w.e.f. 21.10.1990 for 6 days, 23 hours & 30 minutes, and also from 24.02.1991 to 26.02.1991. In nutshell, he remained absent three times during the short period of about one year.

8. Rule 12.21 of the Punjab Police Rules, relating to the discharge of inefficient police officer, reads as under:-

12.21. Discharge of Inefficients.- A constable who is found unlikely to prove an efficient police officer maybe 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.

9. Admittedly, the plaintiff had not completed three years of service before he was discharged by the competent authority and he was also duly heard by the Appellate Authority as well as the Superintending Authority, but his appeals and representations were dismissed.

10. A Full Bench of this Court in case Shagan Lal v. State of Punjab, 1996 (3) SCT 796, justified the discharge of a constable under this Rule, if he had not completed three years of service and he was not likely to be proved as efficient police officer. The relevant observations could be read as under:-

(1) A constable can be discharged from Service under Rule 12.21 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.

(2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer not only on the basis of the periodic reports contemplated under rule 19.5 but also on the basis of any other relevant material; and

(3) The Provisions of Rule 16.24 and Article 311 shall be attracted only when the punishing authority decides to punish the constable.

11. In this case, it was not an order of punishment, which was passed against him, but it was a discharge simpliciter leaving all the future gates of employment open for him and the Superintendent of Police i.e. competent authority could pass such order after applying his mind keeping in view the circumstances and on assessment of his work performance.

12. The order passed by the competent authority cannot be said to be stigmatic

one, as the stigmatic order has been duly interpreted by the Hon''ble Apex Court in case Rajesh Kumar Srivastava Vs. State of Jharkhand and Others, wherein it was observed as under:-

10. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore, he was not suitable for the job. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

13. The order of termination, if passed, is the result of unsatisfactory service adjudged on the basis of overall service and the manner in which it has been conducted, such decision cannot be said to be stigmatic or penal in nature.

14. Having scrutinized this order, the same cannot be termed as stigmatic in any manner. After all the competent authority had decided to terminate his services on the basis of some material, which has already been referred above and mere mentioning of the fact that he did not impart satisfactory service or he is not likely to be proved to be an efficient police officer, is sufficient to hold that the order was not stigmatic. Similar observations were made by the Hon''ble Apex Court in case Chaitanya Prakash and Another Vs. H. Omkarappa, , wherein it was observed as under:-

21. It was brought to our notice during the course of argument by the counsel appearing for the respondent that the order of dismissal of the respondent dated 29.11.1999 was stigmatic is also proved from the fact that subsequent to his termination, the respondent was called for interview for the post of Managing Director of M/s Spices Trading Corporation Ltd. and that when he reached the venue of interview, he was informed by the Selection Board that he was not

required to attend the interview because the appellants informed the said company that the service of the respondent was terminated due to his unsatisfactory service performance. Referring to and relying on the same, it was submitted by the counsel appearing for the respondent that it indicated and fortified the vindictive attitude of the 1st appellant herein from issuance of the aforesaid letter. We have perused the relevant records and on the basis of the same we are of considered opinion that the appellants informed M/s Spices Trading Corporation Ltd. company on being specifically asked by the said company about the performance of the respondent and consequently it was informed that his service was terminated due to unsuitability, which is a fact. If, they would have not intimated the same to the company despite their specific query then they would have been suppressing the material fact. In our considered opinion the aforesaid aspect does not in any manner support the case of the respondent.

15. Actually, the orders which could be treated as punitive were classified in a case titled as Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, wherein after considering various earlier decisions, the Hon''ble Apex Court observed as under:-

21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

16. No doubt, if the order of termination is stigmatic, penal and malafide then the employee having certain rights under the Constitution, could be called upon to explain the same, but in cases of simpliciter discharge, no opportunity of hearing was required to be provided. However, in the case of a temporary employee having been discharged on account of his unsatisfactory performance, an order of termination simpliciter stating that the services were not satisfactory, would not if so facto mean a stigmatic one. Similar observations were made by the Hon''ble Apex Court in case Union of India (UOI) and Others Vs. Mahaveer C. Singhvi,

17. Now while discussing the argument with regard to the justification of discharging the plaintiff from service merely on the ground of unauthorized absence, it may be observed that the plaintiff did not commit only a single default, but he went absent from duty without prior permission three times. The Hon''ble Apex Court in case State of Punjab and Others Vs. Constable Avtar Singh (dead) through LRs., observed as under:-

We have heard learned counsel for the parties. We are in total agreement with the submission of the learned counsel for the State of Punjab that the

controversy involved in this case is no longer *res integra*. Learned counsel appearing for the respondent had drawn our attention to a two-judge bench decision of this Court in *Prithipal Singh Vs. State of Punjab and Others*, . The Court held that 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 a close scrutiny, by looking behind the curtain 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 for doubt that any consequential order, even of discharge, would be construed as stigmatic. The decision in *Sukhwinder Singh* (supra) was given by a three-judge bench and in view of that decision in 2005, there is no scope for this Court to take a different view. We are squarely bound by the said decision.

18. The instant order merely records that the plaintiff was not likely to prove efficient police officer. The order may be based on his past performance, which may be a foundation for passing such order, but the order, if read, is not even remotely indicative of such performance which may place stigma so as to debar his future career. Thus, the impugned order cannot be said to be stigmatic.

19. No other argument has been raised.

20. The first Appellate Court appears to have not taken into consideration the aforesaid facts and circumstances while passing the impugned judgment, as such, the same is rendered as perverse and deserves to be reversed. Resultantly, this appeal is accepted; the impugned judgment and decree is set aside and the suit of the plaintiff is dismissed.