

(2004) 10 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18083 of 1998

Surinder Pal Kaur

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2005) 139 PLR 521

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : G.C. Gupta, for the Appellant; Ashok Bhardwaj, AAG, for the Respondent

Final Decision : Allowed

Judgement

Rajive Bhalla, J.—Prayer in the writ petition, filed under Articles 226/227 of the Constitution of India, by the petitioner is for quashing the order dated 17.4.1996, Annexure P-8, as also for the issuance of a writ of certiorari quashing the orders dated 19.2.1998 and 2.9.1998. Annexures P-12 and P-13 respectively. Another prayer, made in the writ petition, is to direct the respondents to promote the petitioner as a Constable with effect from the date when her Junior Special Police Officers were promoted.

2. The petitioner was appointed as Special Police Officer in Ludhiana District by the Senior Superintendent of Police, Ludhiana, vide order dated 23.11.1993. She was, however, discharged on 29.1.1994 and thereafter appointed again as S.P.O. by respondent No. 4, vide order dated 15.9.1994, Annexure P-2. The petitioner received five commendation certificates and her case for promotion to the post of Constable was recommended by the Deputy Inspector General of Police, Ludhiana Range on 30.9.1994, Annexure P-3.

3. On 16.4.1996, while the petitioner was posted at DPO Security, she became un- well and was advised 3 days rest by a doctor and, therefore, applied for

three days leave, which was declined. She was transferred from DPO Security to Police Station City, Khanna. One Sukhdev Singh, C1 relieved her at 3 P.M. (Annexure P-6). The petitioner joined her new place of posting at 3 P.M. on the same day. Thereafter, Sukhdev Singh submitted a complaint against the petitioner levelling allegations of mis-behaviour and man-handling. In the said complaint, it was stated that the petitioner, a lady Constable, caught hold of him, started dragging him after holding his belt, bit him on his shoulder and left the spot after abusing and threatening him that she would report against him to the Deputy Inspector General of Police.

4. Counsel for the petitioner contends that the impugned order, Annexure P-8, dated 17.4.1996, as also the orders rejecting her representation are illegal, arbitrary, violative of Articles 14 and 16 of the Constitution of India, as also violative of the principles of natural justice. The impugned order is stigmatic and punitive, passed as a measure of punishment for alleged misconduct/misbehaviour and, therefore, could have been passed only after serving a show cause notice, holding an inquiry and affording an opportunity to the petitioner to rebut the allegations levelled against her.

5. It is further contended that the impugned order is not one of discharge simpliciter. It is not based upon an assessment of the work and conduct of the petitioner. The impugned order specifically refers to and is founded upon an alleged mis-behaviour and mis-conduct. The foundation of the order being the alleged misconduct, of the petitioner, the impugned order is liable to be set aside.

6. Counsel for the petitioner has placed reliance upon two judgments of this Court rendered in C.W.P. No. 17572 of 1997, Mohan Lal v. State of Punjab and Anr., decided on 19.1.1999, Annexure P-15 and R.S.A. No. 798 of 2001, State of Punjab and Ors. v. Manjit Singh, decided on 6.3.2001. It is contended that the petitioner's case is squarely covered by the aforementioned judgments. In the aforementioned judgments, it has been held that in case an order of discharge is punitive and stigmatic i.e. based upon allegations of misconduct, which have been arrived at, without holding an inquiry, the order of discharge would be violative of the principles of natural justice.

7. It is further contended that the State of Punjab preferred an SLP No. 10717 of 2001, against the judgment passed in R.S.A. No. 798 of 2001, which has been dismissed by the Hon"ble Supreme Court, vide its order dated 16.7.2001.

8. Counsel for the respondents, on the other hand, while not denying the facts of the case, contends that the petitioner was appointed as a SPO under standing order Endst. No. 29322-52/E-3 dated 30.10.1998, issued by the Director General of Police, Punjab. Paragraph 7 of the said order states that an SPO shall be paid daily wages. In para 9 of the said order, it has been mentioned that an SPO, whose work and conduct is not found satisfactory, can be discharged at anytime, without issuing any notice. The petitioner has been discharged from service, as her work and conduct was found to be unsatisfactory and merely because her

misconduct is referred to in the impugned order, it cannot be said to be stigmatic or punitive in nature. It is further contended that the petitioner was discharged for an act of in-discipline and mis-behaviour, which act forms a part of her work and, therefore, the punishing authority was empowered to take into consideration the misbehaviour and pass the impugned order.

9. Counsel for the respondents has placed reliance upon a Division Bench judgment of this Court, passed in C.W.P. No. 17571 of 1998, Parveen Kumar v. State of Punjab and Ors. to contend that the petitioner, being a daily wager, can be discharged from service at any time, without holding an inquiry, An assessment of the work and conduct cannot be held to be stigmatic or punitive in nature.

10. I have heard the counsel for the parties, perused the pleadings, as also the respective judgments, relied upon by the counsel for the parties.

11. Before I proceed to decide the present controversy, a brief reference of the afore- mentioned judgments, as also other judgments, relevant to the present controversy, would be appropriate.

12. The Hon''ble Supreme Court in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, while deciding a controversy, as to whether the order of termination was founded on misconduct and was stigmatic, held as follows :-

"If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

13. It is, thus, apparent that in an order of discharge, the Court is required to determine whether the alleged misconduct is the foundation or the motive for the order. If the order is founded upon an alleged misconduct, the said order would obviously be punitive and stigmatic. However, if the order, is not founded upon, allegations of misconduct but is passed merely on an assessment of the work and conduct, the said order would not be punitive or stigmatic. The said controversy has also been considered in another judgment of the Hon''ble Supreme Court reported as Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, . After taking note of various judgments of the Hon''ble Supreme Court, it was held as follows:-

"29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

14. Another judgment of the Hon^{ble} Supreme Court in Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Others, after noting the aforementioned judgments, held as under :-

"From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so-called order of termination simpliciter of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simpliciter, but the real face behind it is to get rid of the services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct."

15. In the light of the principles, laid down by the Hon^{ble} Supreme Court, while examining the order of discharge, a Court is required to scrutinize whether the conclusion, arrived at by the punishing authority, is founded upon allegations of

misconduct. In case, the Court arrives at a conclusion that the order is founded upon allegations of misconduct, the order would obviously be punitive and stigmatic. Thereafter, the Court is required to examine whether the order was passed, after affording an opportunity of hearing and/. or the conduct of an inquiry. In case, no show cause notice is issued and/or inquiry conducted, the order, being violative of the principles of natural justice, would not be an order of discharge simpliciter and would, therefore, be liable to be set aside. For the above proposition, reliance has been rightly placed by counsel for the petitioner upon the judgment of a Division Bench of this Court in Mohan Lal's case (supra) and a judgment of Single Bench of this Court in State of Punjab and Ors. v. Manjit Singh" case (supra), against which the SLP filed by the State of Punjab, has also been dismissed. In these judgment, the order of discharge was set aside on the ground of its being stigmatic and punitive and had been passed, without issuance of show cause notice and/or conduct of an inquiry. If, however, the order of discharge is not based upon allegations of misconduct but upon an unsatisfactory assessment of the work and conduct of an employee, the said order would neither be stigmatic nor punitive and, thus, being an order of discharge simpliciter, the delinquent employee could be discharged, in accordance with the terms and conditions of appointment.

16. Counsel for the respondents has relied upon a judgment, rendered by a Division Bench of this Court in Parveen Kumar's case (supra) to contend that an SPO can be discharged from service at any time, as he has the status of a daily wager. The said judgment was based upon an order of discharge simpliciter, the order of discharge was not founded upon any allegation of misconduct and, therefore, it was held that the order was neither punitive nor stigmatic and even if no show cause notice had been issued, the order, having been passed, in accordance with the terms and conditions of appointment, was not liable to be set aside, being an order of discharge simpliciter. The aforementioned judgment is obviously not applicable, where the order of discharge is founded upon an allegation of misconduct and the said order has been passed, without affording an opportunity of hearing/conduct of an inquiry.

17. The impugned order, in the present case, reads as follows :

"ORDER

Lady SPO Surinder Pal Kaur No. 5/T who had come on temporary duty in DPO Security, Police Station City, Khanna, was ordered to be transferred to City Police Station because her behaviour was not good. When she was posted in DPO Security, she misbehaved and man-handled C-I Sukhdev Singh No. 82/Khanna and for using abusive language is discharged from Police Department today on 17.4.1996 (FN). The order be registered."

18. A perusal of the above order reveals that the petitioner has been discharged from service, pursuant to specific allegations of mis-behaviour and misconduct, levelled by another police officer. The impugned order specifically accuses the

petitioner of mis-behaviour, man-handling of the said officer, as also the use of abusive language. The conclusions, arrived at by the punishing authority, are based upon a complaint filed by a police official.

19. The very tenor of the order, the language and the specific allegations levelled therein leave no manner of doubt that a specific misconduct has been attributed to the petitioner. The specific misconduct is the foundation of the order of discharge. The impugned order does not even attempt to camouflage the alleged misconduct/misbehaviour by the use of words that the work and conduct of the petitioner was unsatisfactory. It is, thus, apparent that the impugned order is founded upon specific and categoric allegations of misconduct which, the punishing authority accepted as the last word on the matter, without calling upon the petitioner to show cause in response to the allegations of misconduct.

20. Admittedly, no show cause notice was ever issued to the petitioner and none was served. No inquiry was held to provide an opportunity to the petitioner to rebut the allegations levelled against her. The punishing authority accepted these allegations as the last word on the matter and proceeded to discharge the petitioner, founding its order upon the allegations of misconduct.

21. The contention of counsel for the respondents that the petitioner's services, being governed by the standing order, which permits the discharge from service at anytime, whatsoever for unsatisfactory work and conduct, would have been accepted, had the impugned order confined itself to the work and conduct of the petitioner. As the impugned order concludes that the petitioner misconducted herself/misbehaved with another Officer, the punishing authority was required to hold an inquiry and on the basis of evidence, led for and against the allegations and, thereafter, arrive at an independent conclusion. In the absence of any such procedure having been adopted, and in view of the settled law, as referred to in the preceding paragraphs, I have no hesitation in holding that the impugned order being founded on an alleged misconduct is not only punitive but also stigmatic. As no show cause notice was ever issued, nor any explanation sought or any inquiry conducted, the impugned order, being violative of the principles of natural justice has to be set aside. Merely because the petitioner was an S.P.O. appointed on daily wages, would be no reason to dispense her services on allegations of misconduct, without issuance of a show cause notice or holding of an inquiry.

22. In view of what has been stated above, the present writ petition is allowed. Order dated 17.4.1996, Annexure P-8, as also the order dated 19.2.1998 and 2.9.1998, Annexure P-12 and P-13 respectively, are quashed. The respondents are directed to reinstate the petitioner within three months from the date of receipt of a certified copy of this order with all consequential benefits. However, in case the respondents deem it appropriate, they would be at liberty to proceed against the petitioner afresh, in accordance with law.

There shall be no order as to costs.