

(7) The petitioner has secured admission and has attended classes for 15 days. The consideration for the bond we have already examined is only for the stipend that is paid by the State and the services by the student on completion of the course at future date. The petitioner has also paid ₹40,000/- as tuition fee. The amount of ₹40,000/- which has been paid already by the petitioner will stand forfeited. However, there shall be a mandate against the respondents for return of all the original documents which she had submitted along with transfer certificate from the college within a period of four weeks from the date of receipt of copy of this order.

(8) The writ petition is allowed on the above terms.

---

A. Aggarwal

*Before Ms. Jaishree Thakur, J.*

**THE PUNJAB STATE AND ANOTHER** —*Petitioner*

*versus*

**EX.CONSTABLE SARABJIT SINGH** —*Respondent*

**RSA No.1575 of 1997 (O&M)**

November 28, 2014

*Punjab Police Rule, 1934 – Rl. 12.21 – Discharge from service – Respondent a police constable on probation – simpliciter discharged from service without regular inquiry on ground that he did not attend work and was away from duty on certain occasions – Held, that respondent on probation –remained absent from duty and was served with punishment of censure twice – Despite censure, he again remained absent from duty – Period of probation gives time and opportunity to employer to watch work and efficiency of employee – Respondent was not found suitable for post – Dispensation with his services was just and proper.*

*Held*, that before the competition of the three year period of probation he was discharged from service as the authorities did not find him suitable to be retained in service. The record plainly reveals that the Constable remained absent from duty and it was on this count, he was served with punishment of censure twice. Despite the censure he again remained absent from duty. As has been held in *Sher Singh's*

*case (supra)* a departmental inquiry is not required before passing an order under Rule 12.21 of the Punjab Police Rules 1934 to discharge a Constable on the ground of his unauthorized absence and being a habitual absentee. The same view has been reiterated in later judgments of the Hon'ble Supreme Court reported as ***State of Punjab versus Rajesh Kumar 2006(12) SCC 418 and State of Punjab versus Sukhwinder Singh 2005(5) Supreme 68.***

(Para 12)

*Further held*, that in the instant case, a simple order of discharge has been passed. It is not in dispute that the respondent was on probation and remained absent from duty on several occasions. The period of probation gives time and opportunity to the employer to watch the work and efficiency of the employee. In the instant case, it was found that the respondent was not suitable for the post and, therefore, order dated 2-11-1992 was issued dispensing with his services is just and proper. It is also not in dispute that the respondent is out of service and was never reinstated after he was discharged.

(Para 13)

*Further held*, that in view of the above the appeal filed by the appellants is allowed and the judgment and decree passed by the Additional District Judge, Jalandhar is set aside.

(Para 15)

Manoj Bajaj, Addl. Advocate General, Punjab *for the appellants.*

KDS Sodhi, Advocate *for the respondent.*

### **JAISHREE THAKUR, J.**

(1) The present regular second appeal has been preferred against the judgment and decree dated 03.01.1997, passed by the learned Additional District Judge, Jalandhar which in turn set aside the judgment and decree dated 11.03.1995, passed by the Sub Judge Second Class, Jalandhar dismissing the suit filed by respondent- Ex. Constable Sarabjit Singh.

(2) The respondent – plaintiff filed a suit for declaration to the effect that the impugned order dated 02.11.1992 passed by the Commandant PAP, Jalandhar Cantonment dismissing him from service was illegal, null and void and that he should be entitled to reinstatement along with all the consequential benefits.

(3) The case of the plaintiff was that he was unable to attend work and was away from duty on certain occasions and on this account the Commandant discharged him from service by invoking Rule 12.21 of the Punjab Police Rule 1934 without conducting a regular inquiry.

(4) On notice, appellants/defendants appeared and filed the written statement stating therein that the respondent was under probation and that he had earned three bad entries during his service. He was awarded punishment of censure vide OB No. 65/91 and again awarded punishment of censure vide OB No. 202/92. In this regard a show cause notice dated 10.10.1991 was issued to the respondent requiring him to show cause as to why he should not be discharged from service as he was found unlikely to prove to be an efficient police Officer. To this show cause notice, no reply was submitted by the respondent and as such, the competent authority after assessing his overall work and conduct, passed the impugned order.

(5) Replication was filed to the written statement and from the pleadings of the parties, the following issues were framed.

1. Whether the plaintiff is entitled to declaration, as prayed for?  
OPP
2. Whether the notice u/s 80 CPC is not legal and valid? OPD
3. Whether the suit is not maintainable? OPD
4. Relief

(6) The evidence was adduced by the both the parties and after appreciating the evidence on record, the learned trial Court dismissed the suit.

(7) The respondent preferred an appeal against the said order and judgment before the Additional District Judge, Jalandhar who allowed the appeal holding that the order of discharge was passed without giving the Constable adequate opportunity to defend him. Aggrieved against the said order, the present appeal has been filed by the State Of Punjab.

(8) The following substantial questions of law were framed for consideration:-

1. Whether the impugned order and judgment is contrary to the decision of the Full Bench rendered in *Sher Singh versus State of Haryana*,<sup>1</sup>?

---

<sup>1</sup> 1994 (2) RSJ 412

2. Whether the impugned order discharging the plaintiff/respondent is contrary to law?

(9) Counsel appearing for the appellant has contended that the respondent joined as a Constable in PAP in November 1990 and he was discharged from service under Rule 12.21 of the Punjab Police Rules 1934 vide order dated 02.11.1992 i. e before the period of probation of three years was completed. It was argued that as per the well settled principle of law, it was not necessary to hold any enquiry before the discharge of a constable who was under probation under rule 12.21 of the Punjab Police Rules 1934. Learned counsel for the appellants relied upon a Full Bench judgment of our Hon'ble High Court in *Sher Singh versus State of Haryana*,<sup>2</sup> to contend that the Commandant can discharge a Constable from service at any time within three years from his entry in service. Even a single act of indiscipline can lead the competent authority to conclude that the constable is unlikely to prove an efficient police Officer. It is further contended that when an employee has no right to a post being on probation and if the competent authority forms an opinion that his continuation in service is not in public interest on account of his inefficiency, it can either terminate his service in accordance with the terms of his appointment.

(10) On the other hand, counsel for the respondent has relied upon judgment *State of Punjab versus Sukhwinder Singh*,<sup>3</sup> and *Prithipal Singh versus State of Punjab and Ors.*,<sup>4</sup> to contend that holding of an inquiry is a must before an order of discharge can be passed.

(11) After hearing the learned counsel for the parties and going through the case file, I am of the considered opinion that the State appeal deserves to be allowed.

(12) A perusal of Fauji Missal and Character Roll of the respondent shows that he absented himself from 14.08.1992 to 15.08.1992. He again was absent from duty for 10 days from 03.12.1990 to 13.12.1990. For this absence, he was awarded punishment of censure. The respondent again himself absented from duty from 12.07.1992 to 05.08.1992 i.e for a period of 24 days and he was again censured. Despite the second censure, respondent remained absent from duty from 09.08.1992 to 02.11.1992. No reply was filed to

---

<sup>2</sup> 1994(3) SCT 1

<sup>3</sup> 2001(2) RSJ 32

<sup>4</sup> (2002) 10 SCC 133

the show cause notice dated 10.10.1991. Faced with these circumstances, the order of discharge was passed on 02.11.1992.

(13) The respondent was appointed as a Constable on 15.11.1990. Before completion of the three year period of probation he was discharged from service as the authorities did not find

him suitable to be retained in service. The record plainly reveals that the Constable remained absent from duty and it was on this count, he was served with punishment of censure twice. Despite the censure he again remained absent from duty. As has been held in *Sher Singh's case (supra)* a departmental inquiry is not required before passing an order under Rule 12.21 of the Punjab Police Rules 1934 to discharge a Constable on the ground of his unauthorized absence and being a habitual absentee. The same view has been reiterated in later judgments of the Hon'ble Supreme Court reported as *State of Punjab and others versus Rajesh Kumar*,<sup>5</sup> and *State of Punjab and others versus Sukhwinder Singh*<sup>6</sup>.

(14) In the instant case, a simple order of discharge has been passed. It is not in dispute that the respondent was on probation and remained absent from duty on several occasions. The period of probation gives time and opportunity to the employer to watch the work and efficiency of the employee. In the instant case, it was found that the respondent was not suitable for the post and, therefore, order dated 02.11.1992 was issued dispensing with his services is just and proper. It is also not in dispute that the respondent is out of service and was never reinstated after he was discharged.

(15) The authority cited by learned counsel for the plaintiff/respondent in *State of Punjab versus Sukhwinder Singh*,<sup>7</sup> has been over ruled by holding:

“A Full Bench of Punjab and Haryana High Court in *Sher Singh versus State of Haryana and Ors.* [1991] 1 SCR 1, has examined the content and scope of Rules 12. 21, 19.3 and 19.5 of the Rules in considerable detail. It has been held in that case that the effect of the Rules is that for a period of three years a constable is under surveillance. He is being watched and is kept in close supervision. He has no right to the post and his services are terminable at any

---

<sup>5</sup> 2006(12) SCC 418

<sup>6</sup> 2005(5) Supreme 68

<sup>7</sup> 2001(2) RSJ 32

time during this period of three years. He can secure his position in the service only if he convinces the Superintendent of Police that he is likely to prove an efficient police officer. The Full Bench has further held that the Rules contained the necessary guidelines for the Superintendent of Police, on the basis of which, he has to form an opinion regarding a constable. If on a consideration of the relevant material, the Superintendent of Police finds that a particular constable is not active, disciplined, self-reliant, punctual, sober, courteous or straight-forward or that he does not possess the knowledge or the technical details of the work required of him, he can reasonably form an opinion that he is not likely to prove an efficient police officer. In such a situation the Superintendent of Police can invoke his power under Rule 12.21 and can discharge the constable from the force. We are in agreement with the view taken by the Full Bench of the High Court. In fact, this view is in consonance with the decision of this Court rendered in *The Superintendent of Police, Ludhiana and Anr. v. Dwarka Das* [1979] 2 SCR 405, where it was observed that if Rules 12.21(3) and 12.21 are read together, it will appear that the maximum period of probation in the case of a police officer of the rank of constable is three years, and for the Superintendent of Police concerned has the power to discharge him within that period. It was also held that the power of discharge cannot be exercised under Rule 12.21 after the expiry of the period of three years and consequentially if it is proposed to deal with an inefficient police officer after the expiry of that period, it is necessary to do so in accordance with Chapter XVI of the Rules, which makes provisions for the imposition of various punishments including dismissal from the police force. No simple order of discharge under Rule 12.21 can be passed after the expiry of the period of three years for that will attract Article 311 of the Constitution.”

(16) In view of the above the appeal filed by the appellants is allowed and the judgment and decree passed by the Additional District Judge, Jalandhar is set aside.

---

*J.S. Mehndiratta*