2023INSC798

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11871 OF 2014

THE STATE OF PUNJAB AND OTHERS ...APPELLANTS

Versus

JASWANT SINGH ...RESPONDENT

WITH

CIVIL APPEAL NO. 11634 OF 2014

J U D G M E N T

J. K. MAHESHWARI, J.

1. In the present appeals, respondent Jaswant Singh was recruited as a constable with Punjab Police. During probation, he was discharged from the services by Senior Superintendent of Police, Amritsar (hereinafter referred to as **"S.S.P."**) in exercise of power under Rule 12.21 of Punjab Police Rules, 1934 (hereinafter referred to as **"PPR"**). Challenging the same, the respondent-plaintiff filed a suit, which was partly decreed by the Trial Court

and the discharge order was held to be illegal on the ground that it was passed in violation of the principles of natural justice.

2. Assailing the same, the appellants/State preferred first appeal before Additional District Judge, Amritsar. Simultaneously, the respondent-plaintiff also filed a first appeal and sought relief of mandatory injunction on the ground that since the order discharging him from services was not found legally sustainable, therefore, he should be allowed to join duty and should be granted all the consequential benefits. The first appellate Court by common judgment dismissed the appeal filed by State and allowed the appeal of the respondent-plaintiff holding him entitled to receive all service benefits as accrued.

3. Challenging the common judgment passed by the first appellate Court, two regular second appeals were filed before the High Court by the State Government. The first one was against the judgment in their appeal passed by the first appellate Court and the second was against the grant of mandatory injunction granting all service benefits to the respondent-plaintiff. Both the appeals were dismissed by the impugned judgment, against which the present appeals have been filed.

4. Brief facts of the case are that, the respondent-plaintiff was

appointed as constable in Punjab Police on probation, who joined on 12.11.1989 and was allotted number 1669. He was sent for training to 'Police Recruits Training Centre, Jahan Khelan, District Hoshiarpur' (hereinafter referred to as **"Training Centre"**). Meanwhile, he along with other recruit constables were sent to Amritsar on 24.11.1990 for special duty as security guards. After the completion of the said assignment, all the constables deputed on duty were relieved and they reported back to the Training Centre, except respondent-plaintiff who remained absent without any intimation. The Superintendent of Police of the Training Centre (hereinafter referred to as **"S.P."**), came to know about such conduct and reported to S.S.P. Amritsar vide memorandum dated 21.02.1991. It was stated therein that owing to prolonged absence from duty without intimation, respondent-plaintiff had no interest in training, and he lacked a sense of responsibility. Therefore, it was recommended that he cannot prove himself to be a good, efficient police officer and he is setting a bad precedent for other trainees. The S.P. further recommended for his discharge from service under Rule 12.21 of PPR with a request to strike-off his name from the rolls of the Training Centre with immediate effect treating the absence period as on leave without pay. In furtherance

to the said recommendation, the S.S.P. passed the order dated 28.03.1991, discharging the respondent-plaintiff. The said order is relevant and for ready reference is being reproduced as under:

> ***"****ORDER*
>
> *Constable Jaswant Singh No. 1669/ASR S/o Shri Hazara Singh, caste Jat, R/o Village Thoba, PS Ramdass, Police District Majitha is hereby discharged from service under P.P.R. 12.21 as he is not likely to become an efficient Police Officer. His absent period from 24.11.1990 to date is treated as non-duty non pay.*
>
> *Issue orders in OB.*
>
> *Sd/-xxxxxxxxxxx*
> *Sr. Superintendent of Police,*
> *Amritsar*
>
> *No. 11369 – 76/B Dated 28.03.1991****"***

5. The respondent-plaintiff being aggrieved by the order of discharge, filed 'Civil Suit No. 306 of 1994' seeking declaration that the said order is illegal, unconstitutional, null and void. He also prayed for a relief of mandatory injunction against appellants-defendants to take him back in service and grant arrears of salary and other benefits accrued to him for the said period. It was stated by him that he had worked with utmost diligence and efficiency. When he was sent as security guard to Amritsar on special duty, he fell sick and had to take medical treatment due to which he could not join the duty on time. After recovery, when he made an attempt to re-join his duty along with medical and fitness certificates, he was not allowed to join the duty and was discharged

from service without any show-cause notice and affording an opportunity of hearing. The said action was challenged by him alleging gross violation of the principles of natural justice.

6. The appellants-defendants contested the suit raising preliminary objection regarding its maintainability and being barred by time. Due to not joining S.P., Training Centre as defendant, the objection regarding non-joinder of necessary party was also taken. On merits, it was pleaded that the order of discharge has rightly been passed by the competent authority in exercise of power under Rule 12.21 of PPR, and therefore, the suit be dismissed.

7. The Civil Judge (Jr. Division), Amritsar, vide judgment dated 12.01.2000, partly decreed the suit recording a finding that order of discharge was passed without affording an opportunity of hearing to the respondent-plaintiff. It was held that, the order of discharge passed by the appellants-defendants is in violation of the principles of natural justice. The Trial Court further directed the appellants-defendants to remove the said procedural irregularity within two months and decide the case of respondent-plaintiff after affording due opportunity of hearing.

8. The said judgment was challenged by the appellants on the

ground that the respondent-plaintiff was a probationer constable and hence, the power under Rule 12.21 of PPR has rightly been exercised to discharge him from duty. The Trial Court has not duly considered the said provisions in the right perspective. Simultaneously, due to non-grant of mandatory injunction, the respondent-plaintiff also preferred appeal contending that since the order of discharge was not found legally sustainable, therefore, he should be allowed to join the duties granting all consequential benefits. Both the appeals were decided by a common judgment dated 14.02.2002. The first appellate Court dismissed the appeal filed by the appellants/State, whereas the appeal filed by respondent-plaintiff was allowed and he was held entitled to all the service benefits as accrued. However, the Court granted liberty to the appellants to proceed against respondent-plaintiff under Rule 16.24 of PPR. The said judgment and decree was confirmed by High Court vide common impugned judgment. Being aggrieved by the same, these appeals have been preferred by State.

9. Learned counsel for the appellants contends that the respondent was appointed on probation and during training, he was sent for special duty along with other trainee/recruited constables. After the completion of the deputation, while the other

trainee constables reported back to the Training Centre and joined, the respondent-plaintiff neither reported back nor gave any intimation for his non-reporting. Therefore, the S.P., Training Centre, made a recommendation to S.S.P., Amritsar to exercise power under Rule 12.21 of PPR to discharge the probationary constable. In the said recommendation, it was indicated that the act of non-reporting at the Training Centre without any intimation reflects absolute lack of interest in training and sense of responsibility. In the said view, S.P. further reported that respondent-plaintiff cannot prove himself to be a good and efficient police officer. Hence, on the said recommendation, the order of discharge has rightly been passed under Rule 12.21 PPR by the S.S.P. within the period of three years from date of enrolment as the probationer constable was found unlikely to prove an efficient police officer. It is further urged that the order of termination is simpliciter and not punitive or stigmatic in nature and the High Court while affirming the judgment and decree of the Courts below committed grave error in law. In support of the said contentions, reliance has been placed on 3-Judge Bench judgment of this Court in the case of ***"State of Punjab and Others Vs. Sukhwinder Singh, (2005) 5 SCC 569"*** and also on the judgment in the case

of ***"State of Punjab and others Vs. Constable Avtar Singh, (2008) 7 SCC 405"***.

10. Per contra, learned counsel for the respondent contends that the impugned order of discharge is not simpliciter, but it is punitive. It is urged that, recommendation made by S.P., Training Centre, indicates that the foundation of such recommendation is based on an allegation of misconduct. Therefore, it was mandatory to conduct an inquiry following the procedure contemplated under Rule 16.24 of PPR and for the said reason, the Courts below have rightly set-aside the order of discharge. It is further urged that the concurrent finding as recorded does not warrant any interference in these appeals. In support of the said contention, counsel for the respondent has placed reliance on the judgment of this Court in the case of ***"Amar Kumar Vs. State of Bihar and Others, (2013) 4 PLJR 269"*** and ***"Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others, (2015) 15 SCC 151"***.

11. Having heard learned counsel for the parties and looking to the nature of the order passed against the respondent as quoted above, it is apparent that the respondent was discharged from service under Rule 12.21 of PPR as the appellants were of the

opinion that the probationer constable was not likely to become an efficient police officer. In the said context, to appreciate the issue in detail, reference to Rule 12.21 of PPR is relevant and the same is reproduced hereinbelow:

> ***"12.21 –*** *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.****"***

12. The Full Bench of the Punjab & Haryana High Court in the case of ***"Sher Singh, Ex-Constable Vs. State of Haryana & Ors., 1994 SCC OnLine P&H 166"*** has examined the content and scope of Rules 12.21, 19.3 and 19.5 of PPR in detail. In the said case, the High Court held that during the period of probation the constable remains under surveillance and is kept in close supervision. The probationer has no right to the post and the services are terminable at any time during the said period. The probationer can secure his position in service only if he convinces the Superintendent of Police that he is likely to prove as an efficient police officer. It was further stated that, 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, straightforward or that he does not

possess the knowledge of the technical details of the work required to be performed by him, he can reasonably form an opinion that he is not likely to prove an efficient police officer. The Full Bench further held that in such a situation, the Superintendent of Police can invoke his power under Rule 12.21 of PPR and can discharge the constable from the force. The observations as made by Full Bench of the High Court have been approved by this Court in the case of ***Sukhwinder Singh (supra)*** wherein it was observed that this Court is in agreement with the view taken by the Full Bench of the High Court. In the said case, this Court relied upon the judgment of ***"Superintendent of Police Vs. Dwarka Das, (1979) 3 SCC 789"***, in which also Rule 12.21 and Rule 12.21(3) of PPR were dealt with, and it was held that the Superintendent of Police has the power to discharge the probationer within the period of probation.

13. In the case of ***"State of Punjab and Others Vs. Balbir Singh, (2004) 11 SCC 743"***, this Court had an occasion to consider Rule 12.21 of PPR and in paragraphs 5, 7 and 11, this Court observed as thus –

> ***"5.*** *Thus, the order of discharge simpliciter, prima facie, is not punitive, it being in terms of Punjab Police Rule 12.21, but the question still is whether the incident which led to the passing of that order was motive or inducing factor or was*

the foundation of order of discharge.

7. *Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of State of Orissa v. Ram Narayan Das, (1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 LLJ 552. It was held that one should look into "object or purpose of the enquiry" and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. On the facts of that case, the termination of a probationer was upheld inasmuch as the purpose of the enquiry was held to be to find out if the employee could be confirmed. The purpose of the enquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.*

11. *In the light of the above legal position, we will now determine whether, in substance, the order of discharge in the present case is punitive in nature. For this purpose it would be necessary to ascertain, firstly, the "nature of enquiry" i.e. whether the termination is preceded by a full-scale formal enquiry into allegations involving misconduct on the part of the respondent, which culminated in the finding of guilt, and, secondly, the "purpose of the enquiry" i.e. whether the purpose of the enquiry is to find out any misconduct on the part of the employee or it is aimed at finding out as to the respondent being unlikely to prove as an efficient police officer."*

14. Similarly, this Court in the case of ***"Ravindra Kumar Misra***

Vs. U.P. State Handloom Corporation Ltd. and Another, 1987 (Supp) SCC 739", while dealing the case of termination of a temporary employee, made a distinction between simpliciter termination and punitive termination applying the test of motive and foundation. This Court clarified the said distinction and observed as under –

> ***"6.*** *As we have already observed, though the provisions of Article 311(2) of the Constitution do not apply, the Service Rules which are almost at par make the decisions of this Court relevant in disposing of the present appeal. In several authoritative pronouncements of this Court, the concept of "motive" and "foundation" has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilized to make the order of termination following such assessment punitive in character. In a large democracy as ours, administration is bound to be impersonal and in regard to public officers whether in government or public corporations, assessments have got to be in writing for purposes of record. We do not think there is any justification in the contention of the appellant that once such an assessment is recorded, the order of termination made soon thereafter must take the punitive character.***"

15. In the same context, this Court in the case of ***"Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and Another, (2002) 1 SCC 520"*** has reiterated the same principle in the matter of termination of a probationer. It has been observed as thus:

> ***"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."*

16. After considering the various pronouncements on the similar issue, this Court in the case of ***Sukhwinder Singh (supra)*** in paragraph 20 observed as thus:

> ***"20.*** *In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of the Senior Superintendent of Police as absence from duty is a misconduct. The High Court has*

*further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh v. State of Punjab [(1983) 2 SCC 217 : 1983 SCC (L&S) 303 : AIR 1983 SC 494] the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules.***"***

17. The said judgment has been followed by this Court in the case of ***Avtar Singh (supra)*** and in paragraph 11 of the said judgment observed as thus:

"11. *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 v. State of Punjab [(2002) 10 SCC 133 : 2003 SCC (L&S) 103] . 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 [(2005) 5 SCC 569 : 2005 SCC (L&S) 705] 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. In view of the principles as reiterated in various judgments by this Court, if we examine the facts of the case in hand leading to the order of discharge, then it is crystal clear that respondent-plaintiff was appointed as a constable and joined the duties on 12.11.1989 on probation. During probation, while he was on training, he along with other trainee constables was deputed for law and order duty in Amritsar District on 24.11.1990. Respondent-plaintiff and other recruits were relieved from the said duty and reported back at the Training Centre, except respondent-plaintiff, who remained on prolonged absence without any intimation to the Training Centre. The S.P., Training Centre, vide memorandum dated 21.02.1991, made a recommendation to S.S.P. that the respondent-plaintiff had not shown any interest in the training and lacks sense of responsibility, further recommending that he is unlikely to prove himself as a good and

efficient police officer, hence, he may be discharged under Rule 12.21 of PPR. From perusal of the said Rule, it is apparent that in case a probationary constable is found unlikely to prove an efficient police officer, he may be discharged by the Senior Superintendent of Police at any time within three years from the date of enrolment. The S.S.P. relying upon the recommendation of the supervising officer (S.P., Training Centre) formed an opinion that the probationary constable is found unlikely to prove an efficient police officer owing to his demeanour as reported and discussed herein above.

19. In our considered view, all the three Courts misconstrued Rule 12.21 of PPR and decreed the suit filed by the respondent-plaintiff. Looking to the contents of the order of discharge, in the considered opinion of this Court, there is no foundation of misconduct alleged in the order and it is an order of simpliciter discharge of a probationer constable. The judgment in the case of ***Ratnesh Kumar Choudhary (supra)*** relied upon by the respondent is of no help for the simple reason that in that case, the initial appointment was alleged to be illegal based on a vigilance report which was on record. Thereafter, notice was issued on the anvil of the said vigilance report which contained serious

allegations and in the said peculiar situation, the Court found that the termination was not simpliciter, but it was punitive

20. Similarly, in the case of ***Amar Kumar (supra)***, wherein the Court found that the appellant therein had instigated to do commotion/agitation/protest and also raised slogans by spreading false rumours in connection with the death of one of the trainees, which was the foundation to pass the order for termination. Thus, in the said case, the Court was of the opinion that the order of termination cannot be simpliciter. In both the cases as referred above, the allegation of serious misconduct is common, unlike in the instant case, wherein, the foundation of discharge is not on any serious allegation or act of misconduct. The discharge order was passed on the recommendation of the concerned supervisory authority of the Training Centre due to prolonged absence from training without any intimation. The authority found that the probationer constable has no interest in training, and no sense of responsibility, hence, he cannot prove himself a good, efficient police officer. In view of above discussion, both the referred cases are distinguishable on facts.

21. For the reasons discussed above, we are of the considered opinion that the view taken by the High Court and also by the two

courts below is completely erroneous in law and must be set-aside. The appeals are accordingly allowed. The judgments and decree passed by the High Court and also by the first appellate Court and Civil Judge (Jr. Division) are set-aside, and the suit filed by the respondent-plaintiff shall stand dismissed. No order as to costs.

.....J.
(J.K. MAHESHWARI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
SEPTEMBER 5, 2023.