Superintendent of Police, Ludhiana and Another

Vs

Dwarka Das

Superintendent of Police, Ludhiana and Another

Vs

Jasmer Singh

And State of Punjab and Others

Vs

Bhian Singh, Respondent

Civil Appeal Nos. 1286, 1287 and 2511 of 1969

(D. A. Desai, P. N. Shinghal JJ)

28.11.1978

JUDGMENT

SHINGHAL, J. -

1.These three appeals by certificates granted by the High Court of Punjab and Haryana are directed against two judgments of that Court dated August 20, 1966 and another judgment of that Court dated November 22, 1968. The High Court first decided the writ petition of constable Dwarka Das, which is the subject-matter of Appeal No. 1286 of 1969, and disposed of the other two writ petitions, which are the subject-matter of Appeals Nos. 1287 and 2511 of 1969, on the basis of that judgment. These three appeals therefore raise common questions of law and have been heard together at the request of learned Counsel for the parties and will be disposed of by a common judgment.

2. The writ petitioners in all the three cases were recruited as constables in the police force of the Punjab State. It is not in dispute before us that (i) they were police officers of the State, (ii) they were enrolled as police officers, (iii) they had put in more than three years' service after their recruitment and enrolment as police officers, and (iv) they were discharged under the provisions of Rule 12.21 of the Punjab Police Rules, 1934, (hereinafter referred to as the Rules) and not by way of punishment under the provisions of Chapter XVI of the Rules. No attempt has been made to distinguish one case from the other, on facts. On the other hand, learned Counsel for the parties are in agreement that the facts of the three cases are quite similar and they raise the common question of law whether the orders of discharge were valid. The respondents challenged the validity of those orders by writ petitions which were allowed by the impugned judgments of the High Court and the three appeals are before us for that reason.

3. It has been argued by Mr. Harbans Singh, on behalf of the appellant State, that even though the

respondents had put in more than three years' service as police officers of the State Government, their appointments were temporary and could be terminated for that reason even if the termination could not strictly be said to fall within the purview of Rule 12.21 of the Rules. That in fact is the only question for consideration in these appeals and can easily be answered with reference to the provisions of the Police Act, 1861, hereinafter referred to as the Act, and the Rules.

4. Section 1 of the Act defines "police" to include all persons who shall be enrolled under it. Section 2 provides that the entire police establishment under the State Government shall be deemed to be one police force, and shall be formally enrolled. It further provides that the conditions of service of the members of the subordinate ranks of the police force shall be such as may be determined by the State Government. Section 8 is also relevant, for it expressly provides that every police officer appointed to the police force of the State (other than an officer mentioned in Section 4), shall receive on his appointment a certificate in the form annexed to the Act, by virtue of which he shall be vested with the powers, functions and privileges of a police officer. The certificate states that the police officer concerned has been appointed a member of the police force under the Act, and vested with the powers, functions and privileges of a police officer. The certificate is not therefore the order of appointment or enrolment, but is subsequent to the appointment and the enrolment, even though it is a part of the process of appointment and enrolment, inasmuch as it certifies that the police officer has been vested with the necessary powers, functions and privileges of a police officer. The certificate does not however have any bearing on the question whether its holder is a permanent or a temporary police officer, for that is a matter which has to be governed by the other condition of his service. It is not in dispute before us that such certificates were issued to all the three respondents and that they functioned as police officers for more than three years.

5. Chapter XII of the Rules deals with the appointment and enrolment of police officers. Clause (3) of Rule 12.2 provides, inter alia, as follows :

> (3) All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

It is therefore obvious that as the respondents were enrolled police officers, they were on probation. The period of probation has not been specified in the Rules, but Rule 12.21 provides for the discharge of an inefficient police officer as follows :

> 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.

So if Rules 12.2(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, for the Superintendent of Police concerned has the power to discharge him within that period. It follows that the power of discharge cannot be exercised under Rule 12.21 after the expiry of the period of three years. If therefore 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 the rules of Chapter XVI of the Rules which makes provision for the imposition of various punishments including dismissal from the police force. It is not permissible to ignore those rules and make a simple order of discharge under Rule 12.21 after the expiry of the period of three years for that will attract Article 311 of the Constitution. The Superintendent of Police concerned could not have ignored that requirement of the law and terminated the services of the three respondents after the expiry of the period of three years from their enrolment in the police

force of the State.

6. The High Court therefore rightly set aside the orders of termination of the services of the three respondents and to that extent the impugned judgments are correct. But we are constrained to say that it was not justified in holding that "a constable who has obtained a certificate under Rule 12.22 cannot be dealt with under Rule 12.21", and that "if he is to be removed from service, procedure prescribed in Chapter XVI has to be followed". The reason is that, as has been shown, the certificate prescribed under Rule 12.22 is meant to serve the purpose of Section 8 of the Act by vesting police officer with the powers, functions and privileges of a police officer, and has to be issued on his appointment as such. The certificate is thus a letter of authority, and enables the police officer concerned to enter upon his duties as a police officer. It has to be granted almost from the inception, when a person is appointed and enrolled as police officer, and it is not correct to say that the mere issue of the certificate puts its holder beyond the reach of Rule 12.21 even if it is found that he is unlikely to prove an efficient police officer and has not completed the period of three years after his enrolment. Except for this slight clarification, we find no merit in these appeals and they are dismissed with costs.

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