

SUPREME COURT OF INDIA

Major Singh

Vs.

State of Punjab

C.A. No. 2389 of 2000

(S. B. Majmudar and U. C. Banerjee JJ.)

04.04.2000

ORDER

1. Leave granted.

2. With consent of learned Counsel for the parties this appeal was taken up for final hearing forthwith.

3. A short question is involved in the present appeal by grant of special leave. The appellant is the original plaintiff. He was, at the relevant time, working as a Constable under Punjab Police Department. He came to be discharged from service by the impugned order dated 14th February 1992 which is Annexure P-2 in the paper book. According to the respondent-authorities the said order was an order of simplicitor discharge as per Rule 12.21 of the Punjab Police Rules, 1934. The appellant challenged the said order by filing a civil suit in the court of learned Sub-Judge, IInd Class, Jalandhar. The Trial Court, after recording evidence, came to the conclusion that the impugned order of discharge was not an order of simplicitor discharge, but was by way of penalty and amounted to dismissal of the appellant from service. Consequently, the Trial Court decreed the suit by order dated 07th March 1995 granting declaration and all consequential benefits to the appellant. This order of the Trial Court was carried in appeal by the respondent-authorities before the learned Additional District Judge. The learned Additional District Judge, Jalandhar by order

dated 01st April 1997 dismissed the appeal of the respondent-authorities and confirmed the judgment and decree of the Trial Court in favour of the appellant. That resulted into a second appeal by the respondents before the High Court. The learned Single Judge of the High Court by the impugned judgment allowed the Second Appeal and took the view that the impugned order of removal was of discharge simpliciter under Rule 12.21 of the Punjab Police Rules. Consequently, it was not necessary for the authorities to follow the gamut of departmental enquiry as enjoined by Rule 16.24 of the said Rules and that the order did not cast any stigma on the appellant and that as admittedly he had not completed three years' of police service Rule 12.21 could be invoked by the authorities.

4. Having heard learned Counsel for the parties, in our view, it is impossible on the facts of this case to sustain the impugned order of the High Court. The reason is obvious. A mere look at the termination order shows that aspersions regarding the conduct of the appellant have been cast in the order. Not only that but the order which consists of five pages read as a whole shows that the appellant is completely stigmatised. We may quote relevant extracts from the said impugned order of termination. In the first paragraph it is stated that having considered the conduct and the work of the appellant it is mentioned that his knowledge of law and police rule is much less. He remain loose and weak on his duty. He is in a habit to remain absent from his duty and in this connection his incharge has warned him for so many times. No special thing came to mind about his good character...He is of violative type and confronting, his companions. Then a list mentioning his earlier service record and punishments imposed on him is given. Three instances where censure punishment was imposed on him are mentioned. Thereafter, a detailed narration is made about his unsatisfactory work and then in the sixth paragraph, referring to the appellant's own stand before the authorities, it is mentioned that in the opinion of the authority passing the order the appellant could not control himself and had made hooliganism after consuming liquor in the barracks. In the penultimate paragraph it is mentioned that in the details given above, it is proved that he is not fit to become good police officer and he failed to submit sound ground in his defence by appearing before him in person thus keeping him for more time in the department is not in the interest of department as well as in Nation (Public) thus he dismissed constable Major Singh No, 80/173 under Rule 12.21 on 14.2.92 afternoon from Government service.

5. To say the least the order itself shows that the authority concerned was out to dismiss him from service because of his alleged misconduct as a police constable. It is difficult to appreciate how this order, the way it is couched and spread over five pages, could have been treated as an order discharging the appellant from service without casting any stigma as, with respect wrongly assumed by the learned Single Judge of the High Court. It is difficult to appreciate how Rule 12.21 on the facts of the present case could have been pressed in service for passing the impugned order. The said rule reads as under:

12.21. Discharge or Inefficients. - 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.

6. If any order under Rule 12.21 has to be passed which can stand scrutiny of Court and can be said to be legal, valid and falling within the four corners of the said rule without casting any aspersion or stigma on the person concerned, simplicitor mentioning that his work as constable is found not satisfactory, can suffice. But that, unfortunately, is not the language in which the impugned order was couched. It went beyond the four corners of Rule 12.21 and clearly stigmatised the appellant and tried to dismiss him from service for the alleged misconduct for which appropriate enquiry under Rule 16.24 against the appellant was required to be initiated. It is interesting to note that such an enquiry was initiated but was intercepted and was given a go-by for un-understandable reason. Consequently, even on merits the impugned order in Second Appeal cannot be sustained. Even apart from that, in Second Appeal in the light of concurrent findings of fact reached by the Trial Court and the First Appellate Court on the nature of the impugned order passed against the appellant, without framing any substantial question of law the learned Single Judge could not have exercised jurisdiction under Section 100 CPC.

7. It is now well settled by a catena of decisions of this Court that in order to be treated as an order of discharge simplicitor it on the face of it should not cast any aspersion or stigma on the person concerned and he must simply be told off the gates on the ground of unsatisfactory work. Rule 12.21 itself fell for consideration of this Court in the case of State of Haryana and Anr. v. Jagdish Chander (1996)IILLJ737SC . This Court clearly observed that the findings of habitual absence and indiscipline necessarily cast a stigma on the career of the delinquent and would be an impediment for any future employment elsewhere. Consequently, such an order could not be sustained under Rule 12.21 of Punjab Police Rules.

8. The aforesaid decision squarely applies to the facts of the present case. It is unfortunate that this decision, though rendered as early as in 1995, was not brought to the notice of the learned Single Judge who decided the Second Appeal in the present case in August 1998. We are sure that if the aforesaid judgment was brought to the notice of he learned Single Judge he would have come to the correct conclusion on the facts of the present case. For all these reasons, therefore, this appeal is allowed. The impugned order of the High Court in Second Appeal is set aside. The decree passed by the Trial Court and as confirmed by the first Appellate Court shall stand confirmed.

9. We make it clear that if the respondents feel that the appellant is required to be dealt with departmentally as per Rule 16.24 for the alleged misconduct in question, it will be open to the respondents to proceed against the appellant in accordance with law. The present judgment will not come in the way of their proceeding departmentally against the appellant, if so advised. We make no observations on the merits of such future proceedings, if any.

10 No costs.