

SUPREME COURT OF INDIA

State of Punjab

Vs.

Constable Avtar Singh (dead) thr.Lrs.

(Tarun Chatterjee and Dalveer Bhandari JJ.)

12.05.2008

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal arises from the judgment dated September 16, 2002 delivered by the High Court of Punjab and Haryana at Chandigarh in RSA No.556/2001.

3. Brief facts which are necessary to dispose of this appeal are recapitulated as under:-

4. The respondent was appointed on probation for a period of three years in the Punjab Police in 1989. In July, 1992, he was sent to Barnala, Punjab to attend a departmental enquiry. The Deputy Superintendent of Police, Barnala relieved the respondent on 1.8.1992 with the direction to report at his place of posting, but the respondent did not report at his place of posting, therefore, he was marked absent from 1.8.1992 to 19.9.1992. The respondent joined the duty on 20.9.1992 after one month and two days and again remained absent from 7.10.1992. The respondent remained absent for a long period without any permission from the senior officers which is a serious act of misconduct according to the police discipline rules. In these circumstances, the respondent was dismissed from service w.e.f. 1.11.1992 under rule 12.21 of the *Punjab Police Rules, 1934*.

5. Rule 12.21 reads as under:

"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. The said order of dismissal was challenged by the respondent by filing a civil suit for declaration that the order of dismissal is illegal, ultra vires, unconstitutional, null and void and against the principle of natural justice. The suit of the plaintiff /respondent was decreed.

7. The State of Punjab aggrieved by the said judgment and decree preferred an appeal. The said appeal was also dismissed. According to the appellants, the appeal was dismissed without considering the Punjab Police Rule 12.21. Under the said rule, an employee of disciplined forces can be removed from services any time within three years of the enrolment. The Appellate Court held that an opportunity has to be afforded to the delinquent official because the dismissal from the service carries a serious stigma.

8. The State of Punjab preferred a regular second appeal contending that the question of absence from duty without prior permission of the Senior Officer is an act of grave misconduct. The Punjab Police Rules, 1934 permit that an inefficient constable may be discharged by the Superintendent of Police at any time within three years of the enrolment. The High Court of Punjab and Haryana dismissed the regular second appeal on the ground that the impugned order of discharge was stigmatic and respondent was not given a fair opportunity and secondly absence from duty could not be viewed as culpable as in the same order the Senior Superintendent of Police, (for short 'SSP'), Barnala has condoned respondent's absence from the duty. The State of Punjab aggrieved by the judgment of the High Court has preferred the present appeal by special leave under Article 136 of the Constitution.

9. The learned counsel appearing for the State of Punjab submitted that the controversy involved in this case is no longer res integra. He placed reliance on a three-Judge bench decision of this court in *State of Punjab & Others v. Sukhwinder Singh*¹. The facts of this case are almost similar to the facts of the case in hand. In the said case, the respondent was appointed as a police constable. Before completion of the probation period of three years, he absented from duty without seeking permission for 22 days. The SSP discharged him from service with immediate effect by invoking rule 12.21 of the Punjab Police Rules, 1934. The respondent challenged the order of discharge before the civil court. The civil court held that order is null and void and the appellate court also upheld that decision. The High Court dismissed the second appeal and held that absence from duty was a misconduct and imposition of the punishment of discharge on the respondent without holding a formal inquiry as envisaged under Rule 16.24 (ix) of the Rules vitiated the order of discharge. The State of Punjab aggrieved by the order of the High Court filed an appeal by special leave before this court.

10. The State of Punjab contended before this court that the respondent was only a probationer in terms of the Rules. That the impugned order of discharge was neither stigmatic nor did it affect him with any evil consequences. The impugned order was passed in exercise of the power conferred by the Rules. That since no disciplinary action had been taken against the respondent there was no necessity of holding any formal enquiry.

11. On the other hand, the respondent submitted that the impugned order of discharge, although apparently innocuous, had in fact been passed on the ground of misconduct viz. the continued absence from duty and therefore amounted to an order of dismissal. That, therefore, it was obligatory upon the appointing authority to have held a formal departmental enquiry. This court held as under:

"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 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 about eight months back. As observed in *Ajit Singh v. State of Punjab*² 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 aster 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."

This court set aside the impugned judgment of the High Court. The ratio of this case is fully applicable to the facts of the case in hand. In the aforesaid case, the court dealt with the case of police constable who was dismissed from the service without holding the enquiry and by invoking Rule 12.21 of the Punjab Police Rules, 1934 and the charge was absence of 22 days from the duty.

12. In this case, the respondent was also a probationer police constable. He was also discharged from the service because he remained absent from 1.8.1992 to 19.9.1992. He joined duty on 20.9.1992 after total absence of a period of one month and two days and again he remained absence since 7.10.1992.

13. 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 & Others*³. 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 (supra) 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.

14. Consequently, the appeal filed by the State of Punjab is allowed, but in the facts and circumstances of this case, we direct the parties to bear their own costs.

¹(2005) 5 SCC 569

²(1983) 2 SCC 217

³(2002) 10 SCC 133