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STATE OF PUNJAB AND ORS.

v.

RAJESH KUMAR

NOVEMBER 20, 2006

B

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Service Law:

C

Punjab Police Rules:

D

Rule 12.21—Police constable—Discharged from service within three years of enrolment—Held, a simple order of discharge having been passed within the period of probation as the employee was not found suitable for the post, no opportunity of hearing was necessary—Orders of High Court and all courts below holding the termination order as punitive in nature and based on misconduct, set aside—Administrative Law—Principles of natural justice—Opportunity of hearing.

E

The respondent, a constable of police, was discharged from service under Rule 12.21 of the Punjab Police Rules, within three years of enrolment. It was also the case of the Department that the respondent being an unauthorized absentee, the Superintendent of Police found him unlikely to prove an efficient police officer. However, the courts including the High Court held that the order of removal was based on misconduct and was punitive in nature and, therefore, opportunity of hearing was necessary. Aggrieved, the State Government filed the present appeal.

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Allowing the appeal, the Court

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HELD: 1.1. In the instant case, a simple order of discharge has been passed. It is not in dispute that the respondent was on probation. The period of probation gives any time an opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant. The Department officials found the respondent not suitable for the post and, therefore, they always reserve a right to dispense with his services in any manner during or at the end of the prescribed period which is called period of probation.

[210-D-E]

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State of Punjab v. Balbir Singh, (2004) 7 JT 383, relied on.

Sher Singh v. State of Haryana, [1994] 2 S.L.R. 100, approved.

1.2. All the lower courts including the High Court were clearly in error in holding that the order of termination of service is based on misconduct of the respondent and is punitive in nature. The High Court has failed to notice that departmental enquiry is not required before passing an order under Rule 12.21 of Punjab Police Rules to discharge a constable on ground of his unauthorised absence and being habitual absentee who is not suitable to become a police officer. Therefore, no opportunity of hearing is necessary as per law. The orders passed by all the courts below and also of the High Court are set aside. [211-E, D, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5090 of 2006.

From the Judgment and Order dated 24-1-2006 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 1655/2005(O & M).

H.S. Mujral and Sanjay Jain for the Appellants.

Suresh Kumari, N.K. Banke and A.P. Mohanty for the Respondent.

The Judgment of the court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

Heard learned counsel for the appellants and the respondent.

We have perused the orders passed by the courts below and the relevant rules.

The respondent was appointed on 02.12.1989 as a Constable. He was discharged from service on 18.10.1992 under Rule 12.21 of Punjab Police Rules. Rule 12.21 reads as under :-

“12.21. Discharge of inefficient:

A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent of police at any time within three years of enrolment. There shall be no appeal against an order of discharge under the rule”

A It is also the case of the Department that the respondent being an unauthorised absentee, the Superintendent of Police found him unlikely to prove an efficient police officer as per high standard of discipline as being expected from police personnel. The above submission of the learned counsel for the appellants is supported by a recent decision of this Court in *State of Punjab & Ors. v. Sukhwinder Singh*, [2005] 5 SCC 569, which is also a case of a police constable and the discharge of the said police officer before completion of probation period of three years. This Court held that a superior officer in order to satisfy himself whether the employee concerned should be continued in service or not may make an enquiry for this purpose. The superior officers of the Department have to take work from an employee and they are the best people to judge whether an employee should continue in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. A probationer is on test and a temporary employee has no right to the post.

D In the instant case, a simple order of discharge has been passed. It is not in dispute that the respondent was on probation having been appointed on 02.12.1989 and discharged on 18.10.1992. The period of probation gives any time an opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant. In the instant case, the Department officials found the respondent not suitable for the post and, therefore, they always reserve a right to dispense with his services in any manner during or at the end of the prescribed period which is called period of probation.

F In a similar case titled *State of Punjab v. Balbir Singh*, 2004 (7) JT 383 in which a constable was discharged from service under Rule 12.21 on the basis of specific charge of consumption of liquor in office and misbehaviour with a lady constable and this Court while affirming the order of discharge passed the following order :

G "Order of termination cannot be held to be punitive in nature. The misconduct on behalf of the respondent was not the inducing factor for the termination of the respondent. The preliminary enquiry was not done with the object of finding out misconduct on the part of the respondent it was done only with a view to determine the suitability of the respondent within the meaning of Punjab Police Rules 12.21. The termination was not founded on the misconduct but the misbehaviour with a lady constable and consumption of liquor in office were considered to determine the suitability of the respondent

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for the job, in the light of the standard of discipline expected from police personnel.” A

The Full Bench of the High Court of Punjab & Haryana has held in the case of *Sher Singh v. State of Haryana*, (1994) 2 S.L.R. Page 100 that a constable can be discharged from service under Rule 12.21 of Punjab Police Rules, 1934 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him. It was further held by the Full Bench that a Superintendent of Police can form his opinion on police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material. In view of the above decision, the constable can be discharged from service even if there is specific allegation which may amount to misconduct against him. B C

The High Court, in our opinion, has also failed to notice that departmental enquiry is not required before passing an order under Rule 12.21 of Punjab Police Rules to discharge a constable on ground of his unauthorised absence and being habitual absentee who is not suitable to become a police officer. D

All the Courts below are not right in observing that the order of discharge dated 18.10.1992 passed by the Senior superintendent of Police is based on misconduct of the respondent and, therefore, no opportunity of hearing is necessary as per law. E

In our opinion, all the lower courts including the High Court was clearly in error in holding that the order of termination of service is punitive in nature. We, therefore, allow the appeal filed by the appellants and set aside the orders passed by all the courts below and also of the High Court. F

No costs.

R.P.

Appeal allowed.