

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 2463 of 1994 (O&M)
Date of decision: 29.4.2011

State of Haryana and others

.....Appellants

Versus

Tara Chand @ Tara Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Manish Bansal, Addl.A.G.Haryana

Mr. Arvind Singh, Advocate
for respondent.

SABINA, J.

Plaintiff had filed a suit for declaration challenging order dated 17.8.1983, whereby the services of the plaintiff were dispensed with on the ground that he was unlikely to prove to be a good police officer under Rule 12.21 of the Punjab Police Rules, 1934 ('the Rules' for short). The plaintiff was recruited in the police department vide order dated 18.8.1980. The plea taken by the plaintiff was that the impugned order was illegal and unconstitutional as the same had been passed without assigning any reason or holding a departmental

enquiry.

Defendants, in their written statement, averred that the plaintiff had not completed his probation period and was discharged on 17.8.1983 as he was unlikely to prove to be an efficient police officer. The plaintiff was a habitual absentee. No reasons were required to be given at the time of passing of the impugned order under Rule 12.21 of the Rules.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether order dated 17.8.1983 terminating the services of the plaintiff is null, void, illegal unconstitutional, arbitrary and against the principles of natural justice as alleged? OPP.
2. Whether the suit is within limitation ? OPP
3. Whether the suit is bad for non-joinder of necessary parties? OPP
4. Whether the plaintiff has no cause of action to file the present suit ? OPP
5. Whether the plaint is not properly verified, if so, to what effect ? OPP
6. Relief.”

The Senior Sub Judge decreed the suit of the plaintiff vide judgment and decree dated 28.11.1992. Aggrieved by the said judgment and decree, defendants preferred an appeal and the same was dismissed vide judgment and decree dated 25.5.1994 passed by the Additional District Judge. Hence, the present appeal by the defendants.

The substantial question of law that arises in this appeal is as to whether the suit filed by the plaintiff was within the period of limitation.

Learned State counsel has submitted that the impugned order was passed on 17.8.1983, whereas, the suit had been filed by the plaintiff on 23.4.1988. As per Rule 12.21 of the Rules, no appeal was maintainable.

Learned counsel for the respondent, on the other hand, has submitted that the suit filed by the plaintiff was within limitation as the plaintiff had filed representations before the appropriate authority challenging the impugned order. The orders passed on the representation/ appeals filed by the plaintiff had never been conveyed to him.

Rule 12.21 of the Rules reads as under:-

“Discharge of inefficient: 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.”

Thus, as per the above provision if the competent authority finds that a constable is unlikely to prove an efficient police officer then the said officer may be discharged within three years of enrolment. No appeal is maintainable against an order passed under this Rule.

It has been held in, **State of Punjab Vs. Gurdev Singh Ashok Kumar** 1991(5) S.L.R. 1, as under:-

“ It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach

the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.”

The impugned order of discharge under Rule 12.21 of the Rules was passed on 17.8.1983. Thus, the plaintiff could have challenged the said order within three years. However, the plaintiff challenged the said order by filing the present suit in April 1988, thus, beyond the period of limitation. Since no statutory appeal was provided under the Rules to challenge the impugned order, the period of limitation could not be extended even if the plaintiff had moved representation/ appeals before the higher authorities. Thus, the trial Court erred in holding that the suit filed by the plaintiff was within the period of limitation while deciding issue No.2. The first Appellate Court has, however, not gone into the legal issue as to whether the suit filed by the plaintiff was within limitation or not. The Courts below have, thus, erred in decreeing the suit of the plaintiff as the same was barred by limitation. The substantial question of law stands answered accordingly.

Hence, the present appeal is allowed. The impugned judgment and decrees passed by the Courts below are set aside. Consequently, the suit of the plaintiff is dismissed.

**(SABINA)
JUDGE**

April 29, 2011
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