

(19) A perusal of these provisions makes it clear that in a case identical with that of the petitioner, provisions for compensation has been expressly provided therefor. Another test which is crucial for the application of the "next below rule" is whether an officer, who is immediately next in the order of seniority, has been promoted to the higher paid post or not? In the case of the petitioner, this test is also amply satisfied. In this context, the observations in *The State of Mysore v. M. H. Bellary* (3), are instructive. Their Lordships of the Supreme Court were construing a similar provision in the Bombay Civil Service Rules, allied to the "next below rule"; therein the following observations appear:—

"So long, therefore, as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that that satisfactory service and the manner of its discharge in the post he actually fills should be deemed to be rendered in the parent department also so as to entitle him to promotions which are open on seniority-cum-merit basis."

(20) In view of the above, this petition must succeed and is allowed. A Writ of *mandamus* is directed to issue to Respondents Nos. 2 and 3 to pay the emoluments to the petitioner of the Superior Judicial Service (Selection Grade) from 11th of May, 1959 to 18th of October, 1960. In the circumstances of the case, however, there will be no order as to costs.

R. S. NARULA, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Jain, JJ.

DWARKA DASS,—*Petitioner*

versus

THE SUPERINTENDENT OF POLICE, LUDHIANA AND ANOTHER,—

Respondent

Civil Writ No. 800 of 1966

August 20, 1968.

Punjab Police Rules (1934)—Rules 12.2 and 12.22—Police constable having obtained certificate of appointment under rule 12.22—Whether can be dealt with

(3) A.I.R. 1965 S.C. 868.

Dwarka Dass *v.* The Superintendent of Police, Ludhiana, etc. (Mahajan, J.)

under Rule 12.21—Notice of discharge without following Procedure prescribed by chapter XVI—Such notice—Whether valid.

Held, that a constable who has obtained a certificate of appointment under rule 12.22 of the Police Rules, 1934 cannot be dealt with under rule 12.21. If he is to be removed from service, procedure prescribed in chapter XVI has to be followed. The order of termination of a constable under rule 12.21 after a lapse of three years is not justified by the Police Rules.

(Para 5)

Case referred by the Hon'ble Mr. Justice J. N. Kaushal on 9th November, 1966, to a larger Bench for decision of an important question of law involved in this case and it has been finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Prem Chand Jain on 20th August, 1968.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ order or direction be issued quashing the order Annexure 'A', dated 17th April, 1965 of Superintendent of Police Ludhiana and 'C' that of Deputy Inspector-General of Police of Jullundur Range.

KULDIP SINGH, ADVOCATE, for the Petitioner.

M. S. PUNNU, ADVOCATE, for the Respondents.

KULDIP SINGH, Advocate.

ABNASHA SINGH. Advocate, for Advocate-General.

ORDER OF SINGLE JUDGE

KAUSHAL, J.—Dwarka Dass petitioner was appointed a foot-constable in the Punjab Police on 30th November, 1961. In February, 1965, a notice was served on him in which it was stated that he would be discharged from service in a period of two months. On 17th April, 1965, petitioner's services were terminated by the Superintendent of Police, Ludhiana, with this order.

"The services of Constable Dwarka Dass, No. 466, being no longer required by the Police Department are hereby terminated with effect from 17th April, 1965 afternoon."

An appeal was filed against this order, which was dismissed by the Deputy Inspector-General, Jullundur Range, and it was observed therein,

“The impugned order does not put any stigma on the competency of the appellant and is not likely to affect his future career. The order of the Superintendent of Police, Ludhiana, does not amount to punishment and as such is not attracted by the provisions of Article 311 of the Constitution. The appeal is, therefore, rejected.”

(2) The petition has moved this Court by means of this writ petition under Articles 226 and 227 of the constitution of India.

(3) In the return filed by the Superintendent of Police, Ludhiana, it is stated that the petitioner was recruited as a temporary constable and he was not a permanent hand. It was further stated that the petitioner's services were terminated not because of any act of misconduct but because he was not found fit for the post of a constable. He being a temporary employee it was not necessary to hold any departmental enquiry against him. It was also stated that the services were terminated not because of any punishment but because the petitioner was no longer required in the police force. According to the return, the petitioner had no right to hold his post and the Superintendent of Police had authority to terminate his services after giving him two month's notice. The stand of the respondent is that every constable is recruited in the Police Department on temporary basis and there is no rule which entitles a constable for confirmation after the lapse of three years of service and Article 311 of the Constitution or rule 16.24 of the Punjab Police Rules, 1934, does not apply in the case of the petitioner.

(4) Mr. Kuldip Singh, who appear for the petitioner, has argued that the petitioner was governed by the Police Act and the Police Rules, and the departmental rules which apply to other services of the State of Punjab are not applicable in his case. According to the learned counsel, there is no provision in the Police Rules which empowers the Superintendent to terminate the services of a foot-constable after he had put in three years' service without following the procedure laid down in rule 16.24. Inasmuch as the services of the petitioner have been terminated in violation of the rules, it is contended, the petitioner is entitled to invoke the jurisdiction of this Court for the protection of his rights.

Rule 12.21 of the Punjab Police Rules reads like this—

“A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any

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time within three years of enrolment. There shall be no appeal against an order of discharge under this rule."

(5) Apart from this rule, no other rule has been brought to my notice which enables a Superintendent of Police to discharge a constable without assigning any reason. According to the contention of the learned counsel for the petitioner, after the expiry of three years of enrolment the power of discharge without assigning any reason no longer vests in the Superintendent of Police. Mr. Abnasha Singh, who appears for the Advocate-General, on the other hand, contents that in spite of rule 12.21 a constable who is temporary does not become permanent or quasi-permanent after the expiry of three years of his enrolment. The contention further proceeds that under the general law the services of a temporary constable can be terminated by giving him reasonable notice say of two months without assigning any reason inasmuch as he has no right to hold the post. Reliance was placed by the learned counsel on a copy of memorandum No. 6594-629/B, dated the 4th April, 1961, issued by the Inspector-General, of Police, Punjab, in which it was stated as follows—

"On re-examination of the entire matter, it has been found that temporary constables can be served with two months' notice of the termination of their service even when they have more than three years' service to their credit. However, it must be ensured that no reasons, whatsoever, are recorded in the notices of termination of services served on the constables."

A copy of this memorandum has been filed along with the return.

(6) The counsel for the petitioner has cited *Tek Chand v. The Union of India and others* (1), *Union of India through the Secretary, Ministry of Home Affairs, New Delhi and another v. Pritam Singh Sunder Singh* (2), and *Brij Lal Singh and another v. Superintendent of Police, Ghazipur and others* (3), in support of his submissions. On behalf of the respondent, reliance is placed on *Sukhbans Singh v. The State of Punjab* (4), *Shrinivas Ganesh v. Union of India* (5), and *Parshotam Lal Dhingra v. Union of India* (6).

- (1) 1964 P.L.R. 56.
- (2) A.I.R. 1956 Pb. 106.
- (3) (1961) 2 CrL. L.J. 327.
- (4) 1962 P.L.R. 1008.
- (5) A.I.R. 1956 Bom. 455.
- (6) A.I.R. 1958 S.C. 36.

(7) In my opinion, the point raised is of considerable importance and is likely to arise in a number of cases. It is desirable that the case be decided authoritatively by a larger Bench. The papers may, therefore, be placed before Hon'ble the Chief Justice for constituting a larger Bench.

JUDGMENT OF DIVISION BENCH

The Judgment of the Court was delivered by—

MAHAJAN, J.—The facts giving rise to this petition under Article 226 and 227 of the Constitution of India are elaborately stated in the referring order of Kaushal, J., That order should be read as part of the order. We have, therefore, not thought it fit to re-state the facts all over again.

(2) The sole contention of the petitioner is that his services could have been terminated within three years of his appointment as a constable or to be more precise as a recruit constable. After the period of three years his services could not be terminated under rule 12.21, when he had a certificate of appointment under rule 12.22 of the Punjab Police Rules, Rule 12.22 of the Police Rules is in these terms:—

“(1) Every enrolled police officers shall be given a certificate of appointment in the form prescribed by the Police Act (Form 12.22 (1) and shall sign a receipt therefor in his character roll. Such certificate shall be signed by the gazetted officer empowered to make the appointment.

(2) Such certificate shall be in abeyance during period of suspension and shall be surrendered on leaving the service.”

(3) When the services were terminated by the order Annexure 'A', he surrendered the certificate as required by rule 12.22 (2) and this fact is averred in paragraph 2 of the petition and is admitted in the return. When this case was posted before us at the last hearing, we adjourned it for the production of this certificate and in spite of that adjournment, the certificate has not been produced. Instead an order of appointment has been produced wherein it is stated that the petitioner was appointed as a temporary constable.

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(4) The Police Rules disclose that the constables are appointed under rule 12.12. They are recruited and then their names are entered in the register of recruits. Thereafter, their physical fitness is ascertained under rule 12.15. Then they are subjected to medical examination under rule 12.15 and after they have been declared medically fit, they are enrolled in the order book in Form 12.13. Thereafter the recruit is sent to the Lines Officer who personally place him in the charge of the Chief Drill Instructor and thereafter his training starts. Rule 12.18 prescribes for the verification of the character of the recruit. Rule 12.20 deals with the dates of enrolment. Then follows rule 12.21 which confers powers on the Superintendent of Police to discharge a constable. In the context of the Police Rules; it appears that this Rule is meant to finally screen suitable persons who should be appointed to the police force. It is after a period of three years screening that a recruit is entitled to be enrolled as a police constable and then a certificate of appointment is issued to him in the Form 12.22(1) unless of course within the period of three years; he is discharged from service. There is no rule in the Police Rules providing for confirmation of temporary police constables. It is evident from the scheme of the Police Rules that the power to discharge a recruit, and here I must emphasise that all recruits are temporary hands; is with the Superintendent of Police and has to be exercised by him within a period of three years from the date the constable is brought on the register of enrolled recruits. As a matter of fact; under rule 12.18, a recruit can be provisionally enrolled pending the result of reference as to his character. Therefore, if the intention was that a person should still remain a temporary hand after a certificate to him had been issued under rule 12.22, the framers would have made a similar provision as has been made in rule 12.20 namely that he will still be a provisional hand in the police force.

(5) After reading the rules in Chapter XII in their proper context, the result is that a constable who has obtained a certificate under rule 12.22 cannot be dealt with under rule 12.21. If he is to be removed from service, procedure prescribed in Chapter XVI has to be followed. It is, therefore, obvious that the order of termination of the petitioner under rule 12.21 is not justified by the Police Rules and, therefore must be quashed.

(6) We may make it clear that we are not pronouncing upon the fitness of the petitioner to be retained in the police force. That is a

matter which the Superintendent of Police or any competent authority in this behalf is entitled to determine. It will be open to them after following the procedure prescribed in Chapter XVI to dispense with the services of the petitioner if they are of the opinion that he is not a suitable person to be retained in the police force. We are only striking down the order because the order could not be passed under rule 12.21.

(7) For the reasons recorded above, we allow this petition and quash the impugned order, but in the circumstances of the case we will make no order as to costs.

R.N.M.

REVISIONAL CRIMINAL

Before A. D. Koshal, J.

PRITAM SINGH,—*Petitioner*

versus

SHMT. SOWARNI,—*Respondent*

Criminal Revision No. 893 of 1967

August 30, 1968.

Hindu Marriage Act (XXV of 1955)—Ss. 4 and 29(2)—Dissolution of a Hindu Marriage on the ground allowed by custom—Whether permitted—such dissolution—Whether must be obtained through Court—Custom (Punjab)—Marriage—Dissolution of—Sainis of Gurdaspur Tehsil—Repudiation of wife by husband—Whether dissolves marriage.

Held, that section 29(2) of Hindu Marriage Act does not envisage dissolution only by a court according to the provisions of the Act. The word "obtain" is no doubt there but then the forum from or the procedure by which the dissolution of a Hindu marriage is to be obtained, is not indicated in the clause. The section lays down that no provision of the Act shall affect any right recognised by custom, etc., to obtain the dissolution of a Hindu marriage. This clearly means that the manner in which the dissolution of marriage is to come about remains the same as was recognised by the custom in question. No distinction is made between the right itself and the manner in which it is to be exercised. A custom which recognises the dissolution of a Hindu marriage has been left untouched by the Act in all its aspects. The provisions of section 4 of the Act, therefore, do not present any hurdle in the way of the dissolution of a Hindu marriage if it is obtained in the manner recognised by custom and not through Court.

(Para 14)