
Article 335 of the Constitution of India lays down that the claim of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. (Article 335 of the Constitution of India thus enjoins upon the State to take into consideration the claims of the members of the Scheduled Castes and Scheduled Tribes in the matter of a appointment to public Service. Anganwari workers is not an appointment but is only an engagement on a fixed honorarium. Posts of Anganwari workers are not borne on any cadre.

(3) Nothing has been brought to our notice by the learned counsel for the petitioners in support of this averment in the writ petition that respondents 5 to 7 are not helpless women. People belonging to general category can also be poor while people belonging to Scheduled Castes and Scheduled Tribes can be well off.

(4) For the reasons given above, this writ petition fails and is dismissed.

J.S.T.

Before Amarjeet Chaudhary, ACJ & V.S. Aggarwal, J.

JOGINDER SINGH – *Petitioner*

versus

STATE OF PUNJAB AND OTHERS – *Respondents*

CWP No. 477 of 97

7th November, 1997

Punjab Police Rules, 1934 – RI.12.21 – Discharge of Police Constable – Competent authority reaching a conclusion that the Constable can never be proved an efficient police officer – Issuance of any show cause notice before discharge – Held, not required.

Held, that the contention of the petitioner that the impugned order of discharge is punitive and violative of principles of natural justice cannot be accepted for the simple reason that principle of natural justice is not an omnibus which can be boarded by everyone everywhere. Each case has to be decided on its own merit and on its facts and circumstances. The initial enrolment of the petitioner was based on the forged document which by implied admission of the petitioner, was to be so and he concealed the facts from the Punjab School Education Board, obtained duplicate Matriculation Certificate with modified date and also misled the higher authorities while filing appeal against the order of discharge by attaching the modified Matriculation certificate etc. Thus, there were repeated instances of concealment besides using of forged documents and these were the facts well within the knowledge of the petitioners and the sequence of events and consistent conduct of the petitioner leave no doubt that the competent authority rightly came to the conclusion that the petitioner can never be proved to be an efficient Police Officer and he was rightly discharged without

any show cause notice and opportunity of being heard under Rule 12.21 of the Punjab Police Rules.

(Paras 11 & 15)

H.S. Mattewal, Sr. Advocate with Sukhbir Singh,
Advocate; *for the petitioner*

Mr. Randhir Singh, D.A.G. Punjab; *for the respondent*

JUDGMENT

Amarjeet Chaudhary, ACJ,

(1) The petitioner was enlisted as Constable on 17th November, 1981 being found eligible for enrolment. The Matriculation Certificate produced by the petitioner at the time of enrolment was sent to the Secretary, Punjab School Education Board, Mohali for verification, — *vide* memo No. 4662/CRC dated 2nd May, 1983. The Secretary, Punjab School Education Board, Mohali intimated the Commandant, 36th BN PAP Bahadurgarh, Patiala, that the Matriculation Certificate of the petitioner was found tampered with regarding the date of birth and the same was not genuine. He further intimated that the date of birth of the petitioner has been changed from 6th March, 1954 to 6th March, 1955. On receipt of report by the Commandant, the petitioner was discharged from service under Rule 12.21 of the Punjab Police Rule (hereinafter to be referred to as the Rules), — *vide* office letter dated 6th May, 1983 and F.I.R. No. 381, dated 20th December, 1983 under Section 420/467 & 468/471, I.P.C. was got registered against the petitioner and five other Constables whose Matriculation Certificates were found to be defective and tampered with, in Police Station Sadar, Patiala. During the pendency of trial, the petitioner applied to the Secretary, Punjab School Education Board, Mohali for correction of date of birth on the basis of Panchayat record and managed to get a duplicate certificate. In the certificate, his date of birth was recorded as 22nd July, 1955 by concealing certain facts. The petitioner obtained duplicate certificate with new date of birth and preferred an appeal against the order of discharge from service to the Deputy Inspector General of Police, P.A.P. Jalandhar Cantt. and managed to get an order dated 4th September, 1985 for reinstatement. In the appeal filed by him, he concealed vital facts of criminal case pending against him and submitting of forged/fabricated certificate at the time of enlistment. When the said facts were brought to the notice of the Inspector General of Police, PAP Jalandhar, he reversed the order of Deputy Inspector General of Police and reinstated the petitioner, — *vide* order dated 4th September, 1985 and the period during which the petitioner remained out of service was treated as leave without pay. His Commandant refused to allow him to join duty as he was discharged from service as per directions of Inspector General of Police, P.A.P. Jalandhar Cantt. The petitioner faced trial in the court of Chief Judicial Magistrate, Patiala who acquitted him by giving him benefit of doubt. It is also relevant to mentioned here that the petitioner was also declared Proclaimed Offender, —

vide order dated 30th November, 1985 passed by the Chief Judicial Magistrate, Patiala. The petitioner filed Civil Writ Petition No. 6269 of 1990 which was withdrawn by him with liberty to file Revision Petition before the Inspector General of Police. The petitioner thereafter filed Revision petition which was dismissed by the Inspector General of Police, — *vide* order dated 16th August, 1994, copy annexure P-11 to the writ petition.

(2) The impugned order has been challenged primarily on the ground that the order of discharge of petitioner is punitive in nature. The counsel argues that the petitioner was discharged on the ground that he had tampered with the Matriculation Certificate by changing date of birth. The petitioner was sent up for trial and has been acquitted. The counsel argues that the trial Court has held that the State has miserably failed to prove that the Matriculation Certificate of the petitioner was forged and as such the impugned order is liable to be quashed. The counsel further argues that under Rule 12.21 of the Punjab Police Rules, a Constable can be discharged from service if he is found unlikely to prove an efficient police officer. The counsel contends that there was no material on the record that the petitioner was not an efficient police officer and as such the impugned order deserves to be quashed.

(3) On notice of motion having been issued, the respondents appeared and filed written statement controverting the pleas raised by the petitioner.

(4) The learned Deputy Advocate General, Punjab, has argued that the petitioner has tampered with the Matriculation Certificate on the basis of which he was discharged. He was declared Proclaimed offender. The State counsel contends that the conduct of the petitioner is such that had he been retained in service he would not have been proved to be an efficient police officer. He further argues that the petitioner was only given benefit of doubt and it cannot be termed as honourable acquittal and as such the writ petition may be dismissed.

(5) We have heard counsel for the parties and perused the paper book.

(6) The sole question for consideration in the present case is whether the petitioner was rightly discharged from service under Rule 12.21 of the Punjab Police Rules without any inquiry and without affording him any opportunity of being heard.

(7) Before dealing with the aforementioned issues, we would like to notice that though the petitioner has impugned the order of his discharge from service dated 29th July, 1983 but neither of the parties has placed the same on record for our perusal. However, after considering the matter in its entirety on the touchstone of the settled law *vis-a-vis* conduct of the petitioner, we are left with no alternative except to reach the conclusion that the petitioner was rightly discharged from service under Rule 12.21 of the Punjab Police Rules without any inquiry and without any show cause for which we are detailing the reasons in the succeeding paras.

(8) Rule 12.21 of the Punjab Police Rules 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 the order of discharge under this rule."

(9) A plain reading of this rule shows that the competent authority is vested with the power to discharge a Constable from service, if it forms an opinion that he is not likely to prove an efficient Police Officer. This power can be exercised within three years of enrolment.

(10) Undisputedly the petitioner, who was enrolled as a Constable on 17th November, 1981, was discharged on 19th July, 1983 within a period of three years on the ground that he had produced a forged Matriculation Certificate to the extent that date of birth of the petitioner had been changed from 6th March, 1954 to 6th March, 1955 and this forgery was established from the report of the Punjab School Education Board where the Matriculation Certificates are sent by the department for verification of genuineness thereof. This forgery was established from the conduct of petitioner himself when he procured duplicate Matriculation Certificate with modified date of birth subsequently.

(11) The argument of the learned counsel or the petitioner that the impugned order of discharge is punitive and violative of principles of natural justice cannot be accepted for the simple reason that principle of natural justice is not an omnibus which can be boarded by everyone everywhere. Each case has to be decided on its own merit and on its facts and circumstances. Law on principles of natural justice is no longer *res integra* and some of the situations can be summed up as under:—

- (a) Where the appointment is obtained by an individual by producing a forged certificate or the appointment is in violation of the Recruitment Rules i.e. void *abonti* there is no need to follow the principles of natural justice and the services of the individual can be dispensed with without issuing any show cause notice or affording an opportunity of being heard.
- (b) Even if the impugned order of termination/discharge from the services of an employee cast a stigma, if no prejudice is caused to him and the position would have remained the same even after issuance of show cause notice, even then the order of discharge or termination without meeting the principles of natural justice would not be vitiated.
- (c) If the Service Rules provide for discharge/termination of the services of an employee in terms of his appointment or in terms of Recruitment Rules and there is not provision of show cause notice or compliance of natural justice and the power exercised by the authorities under such a Service rule cannot be said to be violative of principles of natural justice, if the services are dispensed with by simple order without attaching any stigma without any notice.

- (d) That if the authorities come to the conclusion and record of finding that the Government employee is guilty of a grave misconduct and misconduct is foundation not a motive for order of discharge which is mentioned in the order, then principles of natural justice has to be complied with as the order becomes stigmatic, however, exceptions are at (a) and (b) above.

(12) In the present case, the petitioner has not only produced a Matriculation Certificate at the time of his enrolment containing forged date of birth but also concealed material information from the Punjab School Education Board while applying for duplicate Matriculation Certificate with modified date of birth without mentioning the case pending against him and his conduct having already been examined by the authorities and he procured duplicate Matriculation Certificate with new date of birth being 22nd July, 1955. This very fact proves that the Matriculation Certificate produced by the petitioner at the time of his enrolment was bogus one qua the date of birth and in view of this implied admission of the petitioner, he was not required to be issued any show cause notice. The facts are patent on the record nor he could give any defence with regard to original Matriculation Certificate and the duplicate one which is the own doing of the petitioner and in such a situation, on opportunity of being heard was required and it is established that he submitted a forged certificate at the time of his enrolment. Even the subsequent conduct of the petitioner is condemnable inasmuch as he preferred an appeal against the order of discharge after procuring a duplicate Matriculation Certificate with modified date of birth without even disclosing the pendency of criminal case against him and procured an order of reinstatement from the higher authority and it was only thereafter when the Commandant brought the facts to the notice of the higher authorities that order of his reinstatement was reversed and consequently his revision petition filed before the Inspector General of Police was also rejected.

(13) We are conscious of the judicial pronouncements on the issue including Full bench Judgement of this court on rendered area in *Sher Singh v. State of Haryana and Others* (1) and a judgment of the Hon'ble Apex Court rendered in the *State of Haryana v. Jagdish Chander* (2) reported as but neither of these two judgments is applicable to the present case.

(14) In *Sher Singh's* case (*supra*), it has been held by the Full Bench that a Constable can be discharged from service under Rule 12.21 at any time within three years of employment/enrolment inspite of the fact that there is a specific allegations which may even amount to misconduct against him and neither Article 311 of the Constitution of India nor Punjab Police Rules i.e. Rule 16.24 is attracted which can be attracted only if the punishing authority decides to punish a Constable. Similarly it was held that Superintendent of Police can form an opinion whether the Constable will be

(1) 1994(2) RSJ 412
(2) JT 1995(2) SC 108

good Officer or not and such opinion need not be based on periodic report but can be formed on the basis of any other relevant material.

(15) The Hon'ble Apex Court in Jagdish Chander's case (*supra*) has held that where the Superintendent of Police records a finding which would be stigma on the career of the discharged officer, opportunity has to be given before recording adverse finding. In the said case, the order was not the order of discharge simpliciter and in the absence of the opportunity, it was held that order of discharge was vitiated by manifest error of law and directions were issued that an enquiry be held and opportunity be given to the Police Officer to defend himself. In the said case, in the order of discharge, the express words indicating discharge from service on the ground of habitual absenteeism, negligence towards duty and indiscipline were included and the Hon'ble Apex Court has held that such a finding case stigma on the career of the appellant and would be an impediment for future employment elsewhere could not have been passed by the Superintendent of Police and the Apex Court in that case held that granting of opportunity and show cause notice is mandatory, whereas in the present case, facts are entirely different as initial enrolment was based on the forged document which by implied admission of the petitioner, was to be so and he concealed the facts from the Punjab School Education Board, obtained duplicate Matriculation Certificate with modified date and also misled the higher authorities while filing appeal against the order of discharge by attaching the modified Matriculation Certificate etc. etc. Thus there were repeated instances of concealment besides using of the forged documents and these were the facts well within the knowledge of the petitioner and the sequence of events and consistent conduct of the petitioner leave no doubt that the competent authority rightly came to the conclusion that the petitioner can never be proved to be an efficient Police Officer and he was rightly discharged and without any show cause notice and opportunity of being heard under Rule 12.21 of the Punjab Police Rules.

(16) Consequently, we find no merit in the writ petition and the same is accordingly dismissed. The petitioner is burdened with Rs. 5,000 as costs to be paid by him to the Free Legal Aid Society, Punjab and Haryana High Court, Chandigarh. This cost we are imposing so as to discourage such type of conduct of a person, who used the forged document. misled the authorities and the Education Board with a view to procuring employment at the cost of anyone else who was deserving and could have been considered at the relevant time, so as to caution others to be careful in such like matters.

S.C.K.