



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9749 OF 2016

SPO/CONSTABLE IRB SATPAL SINGH

... APPELLANT

VERSUS

STATE OF PUNJAB & ORS.

... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** Reversal of an original decree in a first appeal resulting in dismissal of a suit for declaration and mandatory injunction, since affirmed by the High Court of Punjab and Haryana at Chandigarh in a second appeal, is under challenge.
- 2.** The present civil appeal by special leave, granted on 23rd September, 2016, is at the instance of the appellant who, as plaintiff, had successfully instituted a suit¹ in the trial court². He had prayed for declaration that the act of the defendant no.3³ in not allowing him to

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Reason:

¹ Civil Suit No. 189 of 2008

² Civil Judge (Junior Division), Gurdaspur

³ Commandant, First IRB, Patiala

join as Constable in Indian Reserve Battalion⁴ and the act of the defendant no.2⁵ in not allowing him to join as Special Police Officer in Batala district are illegal, invalid, unlawful, null and void and that he is entitled to join as a Constable or Special Police Officer, as the case may be, with consequential relief of mandatory injunction directing the defendants to allow him to join treating the intervening period from the date of termination of service till reinstatement as on duty with all service benefits. The trial court decreed the suit on 2nd December, 2011. Defendants 1⁶ and 2 were directed to reinstate the appellant with continuity of service and all other consequential benefits within three months; however, the appellant was held not entitled to wages from the date of his dismissal till reinstatement.

- 3.** Defendants in the suit carried the decree in appeal⁷ before the District Judge, Gurdaspur. They succeeded before the appellate court which, *vide* judgment and decree dated 21st May, 2014, set aside the decree under challenge and dismissed the suit of the appellant.
- 4.** Thoroughly dissatisfied, the appellant moved the High Court in an appeal⁸ under Section 100 of the Code of Civil Procedure, 1908⁹. The High Court dismissed the appeal by its judgment and decree dated 12th May, 2016, which is impugned in this appeal.

⁴ IRB

⁵ Senior Superintendent of Police, Batala

⁶ State of Punjab

⁷ C.A. No. 20 of 2012

⁸ R.S.A. No. 4771 of 2014 (O&M)

⁹ CPC

5. The short question arising for decision is whether reversal of the original decree resulting in denial of relief to the appellant, which was granted to him by the trial court, suffers from any error warranting interference.
6. For answering this question, we need to note the facts in brief which resulted in the appellant's service being terminated. The order of termination of service is not on record and whether the appellant was dismissed or removed is not too clear. However, the materials suggest that termination was brought about by discharge.
7. The pleaded case of the appellant was that he came to be appointed on 17th October, 1991 as Special Police Officer in Police District Batala. While performing official duty efficiently and without any blemish, he was selected for appointment as Constable in First IRB, Patiala *vide* a letter dated 27th August, 2002. Despite having reported on 30th August, 2002 in the office of the Commandant, IRB, Patiala, he was denied joining on the ground of pendency of a criminal case. Incidentally, at the relevant time, the appellant was an accused in FIR No. 159 dated 20th July, 2001 under Sections 324/326/34, Indian Penal Code, 1860¹⁰ registered at Police Station Sadar, Pathankot. He was tried by the magistrate¹¹. Trial culminated in the appellant's conviction under Section 324/326, IPC and sentence of rigorous imprisonment for 2 (two) and 3 (three) years', respectively *vide*

¹⁰ IPC

¹¹ Judicial Magistrate, First Class, Pathankot

judgment and order dated 21st April, 2006. In appeal, the appellate court¹² *vide* judgment dated 27th August, 2007 maintained the conviction under Section 324, IPC but set aside the conviction under Section 326, IPC. We consider it appropriate to reproduce below relevant portions from the order on sentence:

"... . The accused is a first offender and had not repeated any kind of delinquent act since 2001 which is circumstances to be taken into consideration to release the accused on probation. It is evident that the FIR dates back to the 24.08.2001 and more than six years had elapsed during which the accused Sat Pal had been suffering the agony of the trial. ... Hence, the accused is ordered to be released on probation of good conduct for the period of two years on furnishing probation bond of Rs.10,000/- and cost of litigation is assessed to be Rs.3,000/- and it is directed that the fine of Rs.500/- already paid will be adjusted in the costs and he will now pay the cost of Rs.2,500/-. ... The accused having been convicted had lost face in the society and the accused had been released on probation with the further direction that the conviction shall not affect his service career. The opinion of this court is fortified in the judgment of our Hon'ble High Court in the case **Jaswant Singh vs. The State of Punjab** 1989 (2) RCR 162. This direction will form part of the judgment and now file be consigned to the record-room."

8. On 14th January, 2003, the appellant was discharged from service with reference to pending criminal proceedings against him. This is an admitted fact¹³.
9. Mr. Gupta, learned counsel appearing for the appellant contended that the respondent acted illegally in discharging him from service at a point of time when the criminal case was pending. No conviction having been recorded against the appellant, mere pendency of a

¹² Additional Sessions Judge, Gurdaspur

¹³ paragraph 4 of the counter affidavit of the respondents filed in this proceeding

criminal case did not authorize the defendants to terminate his service.

- 10.** Next, Mr. Gupta contended that the Additional Sessions Judge had made it clear, while releasing the appellant on probation, that his conviction under Section 324, IPC would not affect his service career. Respondents did not challenge the order of the Additional Sessions Judge and, therefore, the same attained finality. In such view of the matter and particularly having regard to Section 12 of the Probation of Offenders Act, 1958¹⁴, it was legitimately expected that the respondents would reinstate the appellant in service; not having done so, the respondents must be held to have acted in an arbitrary manner.
- 11.** Mr. Gupta then contended that the respondents had acted in clear breach of the principles of natural justice. Appellant was neither put to notice nor heard before the order of discharge was made; and this constitutes a valid ground based on which intervention by this Court is warranted in favour of the appellant to set things right.
- 12.** While conceding that the order dated 14th January, 2003 discharging the appellant from service was not under challenge and also that reinstatement at this distance of time may not be appropriate, Mr. Gupta implored the Court to award damages to the appellant for the wrongful termination of service brought about by the respondents.

¹⁴ 1958 Act

13. *Per contra*, Mr. Karan Sharma, learned counsel appearing for the respondents contended that the appeal is absolutely without any merit. Referring to the decisions of this Court, which were placed for consideration before the High Court, he urged that the appeal merits outright dismissal.
14. We have heard learned counsel for the parties and perused the materials on record together with the decisions cited at the bar.
15. The main thrust of Mr. Gupta's submission rests on the observation of the Additional Sessions Judge, Gurdaspur¹⁵ that the conviction under Section 324, IPC shall not affect the service career of the appellant. According to him, the decision having attained finality, nothing including the conviction prevented the respondents from reinstating the appellant in service.
16. The Sessions Judge seems to have drawn inspiration from the decision of a Single Judge of the High Court in ***Jaswant Singh v. The State of Punjab***¹⁶. Though not challenged by the respondents, we have no hesitation to record that such an observation is in the teeth of a catena of decisions of this Court which perhaps were not cited before the Sessions Judge.
17. ***Southern Railway v. T.R. Chellapan***¹⁷, ***Trikha Ram v. V.K. Seth***¹⁸, ***Union of India v. Bakshi Ram***¹⁹, ***Karam Singh v. State***

¹⁵ Sessions Judge

¹⁶ (1989) 2 RCR (Cri) 162 = 1989 SCC OnLine P&H 290

¹⁷ (1976) 3 SCC 190

¹⁸ 1987 Supl. SCC 39

¹⁹ (1990) 2 SCC 426

of Punjab²⁰ and **DIG of Police v. P.R.K. Mohan**²¹ are authorities, predating the decision of the Additional Sessions Judge, which consistently laid down the proposition of law that mere release of a convict on probation under the 1958 Act does not wash away the conviction and even though benefit is given under the 1958 Act, the convicted person can be removed from service solely based on his conviction. All these decisions together with the decisions in **Shankar Dass v. Union of India**²², **State of Uttar Pradesh v. Ranjit Singh**²³ and **Punjab Water Supply Sewerage Board v. Ram Sajivan**²⁴ were noticed in a subsequent decision in **Sushil Kumar Singhal v. Punjab National Bank**²⁵ where this Court speaking through Hon'ble B.S. Chauhan, J. held as follows:

18. In view of the above, the law on the issue can be summarised to the effect that the conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against the employee or to take appropriate steps for his dismissal/removal only on the basis of his conviction. The word "disqualification" contained in Section 12 of the 1958 Act refers to a disqualification provided in other statutes, as explained by this Court in the abovereferred cases, and the employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the 1958 Act.

(emphasis ours)

- 18.** We defer to the above referred precedents. The decision in **Jaswant Singh** (supra) did not notice the decision in **T.R. Chellapan** (supra) and **Trikha Ram** (supra), which were rendered at a prior point of

²⁰ (1996) 7 SCC 748

²¹ (1997) 11 SCC 571

²² (1985) 2 SCC 358

²³ (1999) 2 SCC 617

²⁴ (2007) 9 SCC 86

²⁵ (2010) 8 SCC 573

time and, hence, it has to be held that **Jaswant Singh** (supra) does not lay down correct law. We wish to clarify that though **Union of India v. Tulsiram Patel**²⁶ partly overruled **T.R. Chellapan** (supra), the observations relevant for a decision in this appeal were not disturbed.

19. Be that as it may, we wish to provide an additional line of reasoning in support of our conclusion that Section 12 of the 1958 Act cannot come to the rescue of a convict-employee released on probation insofar as affectation of his service career is concerned.

20. It would be profitable to note what Section 12 of the 1958 Act postulates. It reads:

12. Removal of disqualification attaching to conviction.— Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence.

21. The precedents referred to in **Sushil Kumar Singhal** (supra) examined Section 12 of the 1958 Act, a non-obstante clause, in some detail. Our understanding of Section 12 is this. A plain reading thereof makes the position clear that it has two components, the second explaining the first: (i) a convict released on probation under Section 3 or 4 shall not suffer any disqualification even though a law may provide for his disqualification; but (ii) the disqualification has to be

²⁶ (1985) 3 SCC 398

one attaching to such conviction for the offence concerned under that law. The words "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law" are important. The same cannot be stretched to mean that release on probation would operate as a bar to terminate the service of a convict if he is in public employment and to whom the provisions of Article 311 of the Constitution apply. Release on probation does not obliterate the conviction. Primary object of releasing a convict on probation is his reformation and rehabilitation as a useful and self-reliant member of society without subjecting him to the deleterious effects of prison life. However, on the ground of conduct which has led to his conviction on a criminal charge notwithstanding release on probation, the holder of a civil post under the State can be proceeded against in view of the second proviso to clause (2) of Article 311 and be dismissed or removed from service or reduced in rank without any enquiry. If dismissed or removed, such termination of service because of a conviction could be seen as one attaching to a conviction in view of the second proviso referred to above. However, the word "law" used in Section 12 refers to a general or special law that the Constitution empowers the Parliament/Legislatures to enact and it (Section 12) cannot and does not take within its sweep the Constitution itself to which it owes its origin. Though the words "any disqualification" by themselves could perhaps be seen as wide enough to cover a case even of termination of service, nonetheless, the scope of these words

requires interpretation in the context of the non-obstante clause which does not exclude operation of a constitutional provision.

22. Since, however, we are not too certain of the appellant's nature of appointment, we refrain from rejecting the argument of Mr. Gupta on this ground but for all the precedents noted above, we hold that Section 12 of the 1958 Act is incapable of the construction sought to be put upon it by Mr. Gupta to persuade us hold in the appellant's favour.

23. Having so held, we proceed to deal with the other points raised by Mr. Gupta.

24. This appeal has originated from a suit and not a writ petition. Powers of the civil court are not as wide as the powers of a writ court; hence, the appellant must be held to be bound by the rules of procedure meaning thereby the CPC. This appeal being a continuation of the *lis* has to be decided based on the pleadings, the evidence led and the relief claimed. The plaint and the written statement as well as the evidence are not on record. Our narration of facts is sourced from the judgments of the courts below. There is no reference to the order of appointment of the appellant anywhere in any of the three judgments. This has disabled us to ascertain the precise nature of his appointment. It is further significant to note that the order of discharge was never challenged by the appellant while *inter alia* claiming reinstatement in service. Without any prayer for amendment of the plaint under Order VI Rule 17, CPC and or an application for

producing additional evidence under Order XLI Rule 27 thereof, we have no other option but to limit our scrutiny to the materials on record. Despite all these shortcomings, we can hold without any doubt that the appellant was extended a raw deal by reason of he being discharged from service merely on the ground of pendency of a criminal case. The fact of discharge on the stated ground is admitted by the respondents. That the appellant at a later stage stood convicted under Section 324, IPC cannot cure the illegality vitiating the order of discharge when it was made. It is possible, because of ill-advice, the frame of the suit was not proper. Appellant did not challenge the order of discharge dated 14th January, 2003. Even the prayers were defective. Relief of reinstatement in service could not have been granted by the civil court in view of Section 14 of the Specific Relief Act, 1963. It is only damages that the appellant could have claimed and been awarded. Mr. Gupta did not dispute such position.

- 25.** But, can or should the resultant deficiencies noticed above completely absolve the respondents of consequences arising from such an illegal and arbitrary act? The answer has to be in the negative.
- 26.** Appellant was discharged from service not because of his conviction on a criminal charge but merely on the ground of pendency of the criminal case. He was not given an opportunity of raising his defence. We have not been shown any law which authorises a public employer to either dismiss or remove an employee serving the police for more

than a decade solely on the ground of pendency of a criminal case. The act of termination of service, in the circumstances, cannot be justified.

- 27.** To do complete justice between the parties, we invoke our power under Article 142 of the Constitution and direct the respondents to pay compensation of Rs.5,00,000/- (Rupees five lakh) only to the appellant within 3 (three) months from date. A higher amount could have been awarded but for lack of information on vital aspects, noticed above, for which the appellant too cannot escape blame.
- 28.** The civil appeal is, accordingly, disposed of in the above terms.
- 29.** Connected applications, if any, shall stand disposed of.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

**NEW DELHI;
August 04, 2026.**