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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2000-1993 (O&M)
Date of decision: 04.12.2025

Charan Dass (deceased) through his LRs

...Appellant(s)

Versus

Punjab State and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Prateek Mahajan, Advocate and
Mr. Kunal Soni, Advocate for the appellant(s).

Mr. Sandeep Singh, AAG, Punjab, for respondent No.1.

Mr. Pranav Chamoli, Advocate for respondent No.2.

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VIKAS BAHL, J. (ORAL)

1. The present Regular Second Appeal has been filed by the plaintiff and is being pursued by his LRs.

2. Challenge in the present Regular Second Appeal is to the judgment dated 14.01.1992 vide which the suit filed by the plaintiff for declaration to the effect that order dated 20.04.1985 passed by the District and Sessions Judge, Amritsar whereby services of the plaintiff had been dispensed with was illegal and even order dated 12.08.1985 whereby appeal of the plaintiff had been dismissed was also illegal, had been dismissed. Challenge is also to the judgment dated 27.05.1993 passed by the First Appellate Court vide which the appeal filed by the plaintiff had also been

dismissed.

ARGUMENTS ON BEHALF OF THE APPELLANT(S):-

3. Learned counsel for the appellant(s) has challenged the judgments of the trial Court as well as of the First Appellate Court mainly on two counts. It is firstly submitted that the order dated 20.04.1985 vide which the services of the present appellant/plaintiff had been dispensed with is an order of dismissal in effect and the same has been passed as a matter of punishment and is stigmatic. It is further submitted that as has been stated in the plaint that prior to the passing of the order dated 20.04.1985, proceedings were initiated against the plaintiff-appellant and charge sheet was issued and thereafter, his services were terminated on 01.08.1984 by the then Senior Sub Judge, Amritsar and that the said order dated 01.08.1984 was challenged by the present appellant/plaintiff and the District and Sessions Judge, Amritsar vide order dated 21.11.1984 had set aside the said order dated 01.08.1984 and had reinstated the present appellant/plaintiff. It is submitted that the said proceedings were based on the basis of a complaint made by a Judicial Officer and after the order dated 01.08.1984 had been set aside, a subsequent order was passed by the District and Sessions Judge dated 20.04.1985 on account of the same alleged misconduct of the plaintiff, on which account the authorities had initially instituted the proceedings which had culminated into the passing of the order dated 21.11.1984. It is submitted that although, the impugned order dated 20.04.1985 when seen in isolation shows that it is an innocuous order but when seen in the light of the preceding facts, it is apparent that the impugned order passed is by way of punishment. It is submitted that the plaintiff/appellant although was a

temporary employee but he had been working since May, 1977 and thus, the order dated 20.04.1985 relieving the plaintiff without giving any detailed reason is against law. In support of his arguments, learned counsel for the appellant(s) has relied upon the judgment of the Hon'ble Supreme Court in the case of ***A.P. State Fed. Of Coop. Spinning Mills Ltd. Vs. P.V. Swaminathan*** reported as ***2001(10) SCC 83***.

4. Second argument raised on behalf of the appellant(s) for setting aside the impugned judgments and decrees is that the plaintiff/appellant had been working as an Orderly since May, 1977 and prior to the passing of the order dated 20.04.1985, he had worked for a period of more than seven years and thus, in effect, the plaintiff was a regular employee and his services could not have been dispensed with without giving due opportunity of hearing to the plaintiff-appellant and without even issuing any show cause notice to him. It is submitted that even a temporary employee has rights and once he has worked for a period of more than seven years, then, his services could not be terminated at the whims and fancies of the employer. In support of his argument, learned counsel for the appellant(s) has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Jaggo Vs. Union of India and others and other connected matters*** reported as ***2024 SCC Online SC 3826***. It is submitted that the trial Court as well as the First Appellate Court have not taken into consideration the law laid down by the Hon'ble Supreme Court in the abovesaid two judgments and thus, the judgments of the trial Court as well as the First Appellate Court deserve to be set aside and since the suit of the plaintiff-appellant is meritorious, the same should be decreed.

ARGUMENTS ON BEHALF OF RESPONDENT NO.2:-

5. Learned counsel for respondent No.2, on the other hand, has submitted that the judgments of the trial Court as well as the First Appellate Court are in accordance with law and deserve to be upheld and the suit filed by the plaintiff is meritless and deserves to be dismissed. It is argued that admittedly, the plaintiff was a temporary employee and as per the terms of his appointment, his services could be terminated or dispensed with without assigning any cause at any time. It is submitted that the order dated 20.04.1985 is in accordance with the terms and conditions of the appointment letter and in the said order, it had been mentioned that the services of the plaintiff-appellant were no longer required. It is submitted that a perusal of order dated 20.04.1985 would show that it was not even remotely stigmatic nor it was passed by way of punishment, rather it had been passed in accordance with the terms and conditions of the appointment letter of the plaintiff-appellant. It is argued that it is a matter of settled law that a temporary employee has no right to hold post and his services are liable to be terminated in accordance with the terms of his contract. Reliance in the said regard has been placed upon the judgment of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and another Vs. Kaushal Kishore Shukla,*** reported as ***1991(1) SCC 691***. It is further submitted that in the present case, there is no mala fide alleged against any person nor any such person has been made a party by name and since the plaintiff-appellant had no right, thus, relieving of the plaintiff-appellant in accordance with the terms and conditions of his appointment cannot be even remotely stated to be by way of punishment.

6. It is further submitted that the present suit deserves to be dismissed solely on the ground of non-joinder of necessary parties and also on account of non-production of the order dated 12.08.1985 by virtue of which the appeal filed by the plaintiff-appellant against the order dated 20.04.1985 was dismissed by the High Court. It is submitted that although the order dated 12.08.1985 has been challenged but the said order has not been placed on record nor it has been shown that the said order is not in accordance with law. Further since the said order had been passed by the Administrative Judge while deciding a Service Appeal filed by the plaintiff-appellant, it was incumbent upon the plaintiff-appellant to have made the High Court a party, which has not been done. It is argued that the reliance placed by the appellant-plaintiff upon the case of ***Jaggo*** (Supra) is completely misconceived as the said case of ***Jaggo*** (Supra) was a case wherein the appellants therein had initially filed for regularisation of their services and it was after the dismissal of their case for regularisation that their services were terminated and thus, both the claims for regularisation and illegal termination were pursued by the said employees. It is submitted that a perusal of the plaint in the present case nowhere shows that any prayer or relief for regularisation had been made by the plaintiff-appellant nor it had been remotely stated by the plaintiff-appellant that the work and responsibilities and working hours etc. discharged by him were of the same nature as that of the regular employees, so as to claim parity with the regular employees. It is further submitted that the judgment in the case of ***Jaggo*** (Supra) was given in the background that the appellants therein had set up a case for regularisation and had even made a prayer for regularisation and the

Hon'ble Supreme Court, after considering the facts and circumstances including the fact that the appellants therein had worked for more than 10 years, had opined that they were entitled to regularisation and the termination of their services immediately after their initial case for regularisation was dismissed, was considered to be an arbitrary and illegal act and it was in the said background that the said judgment had been given. It is prayed that the present appeal being meritless, deserves to be dismissed.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1:-

7. Learned counsel for respondent No.1-State has also opposed the present appeal and has adopted the arguments raised on behalf of respondent No.2.

ANALYSIS AND FINDINGS:-

8. This Court has heard learned counsel for the parties and has perused the paper book as well as the record of the trial Court and is of the opinion that the present appeal is meritless and deserves to be dismissed and judgments of the trial Court as well as the First Appellate Court deserve to be upheld, for the reasons which have been detailed hereinafter.

9. The plaintiff-appellant had filed a suit with the following prayers:-

> *"9. Under the circumstances it is prayed that a declratory decree to the effect that the impugned order dated* ***20.4.1985*** *passed by the Distt. & Session Judge whereby the Services of the plaintiff were terminated which order in fact is order of dismisal or removal from services and* ***further the order dated 12.8.1985 whereby the appeal preferred against the afore referred order was declined by the Appellet authority are***

wrong, illegal, arbitrary & capricious. *That the cause of the suit be granted in favour of the plaintiff against the defendants and the plaintiff should also be granted any other relief to which the plaintiff is entitled under law and Justice."*

10. It was the case of the plaintiff that he was a temporary employee and was appointed vide appointment order dated 12.05.1977 by the then District and Sessions Judge, Amritsar and that initially, his services were terminated on 01.08.1984 by the then Senior Sub Judge, Amritsar after holding an inquiry and the said order was challenged by the plaintiff by filing an appeal before the District and Sessions Judge, Amritsar, who vide order dated 21.11.1984 set aside the order passed by the Senior Sub Judge dated 01.08.1984 and reinstated the plaintiff-appellant as Orderly. It was further the case of the plaintiff-appellant that thereafter, vide order dated 20.04.1985, services of the plaintiff-appellant were terminated without holding any inquiry and the termination amounted to dismissal and was a stigma on the plaintiff. In the plaint, no prayer for regularisation was made nor any plea was taken that the work discharged as well as the responsibilities of the plaintiff-appellant and that the working hours etc. of the plaintiff-appellant were similar to that of the regular employees. No basis was laid down for claiming parity with the regular employees. Although, the order dated 12.08.1985, which was the order passed in Service Appeal by the Administrative Judge of this Court, had been challenged but it is not disputed before this Court that the said order has not been placed on record. The High Court has also not been made a party to the suit.

11. In the written statement filed by defendant No.2-District and

Sessions Judge, Amritsar, it was specifically stated that the plaintiff-appellant was appointed on a purely temporary basis and even the service record of the plaintiff was not good and there were several red entries in the service record of the plaintiff-appellant. It was further specifically averred that the services of the plaintiff-appellant were dispensed with/terminated as he was no longer required and the same was in accordance with the terms and conditions of the appointment order of the plaintiff in which it was specifically mentioned that the services of the plaintiff could be terminated without assigning any cause at any time. It was further the case of defendant No.2 that the order of dismissal did not cast any aspersion, much less, stigma on the plaintiff and the relieving order was simplicitor in nature.

12. The trial Court vide judgment dated 14.01.1992 dismissed the said suit. A perusal of the said judgment would show that it was specifically recorded that the plaintiff was appointed on purely temporary basis vide order dated 12.05.1977 (Ex.P5) and it was specifically stated in the said appointment order that services of the plaintiff could be terminated without assigning any reasons at any time and that the plaintiff continued to work as a temporary employee. It was further observed that the order dated 20.04.1985 (Ex.P6) vide which services of the plaintiff were terminated was on the ground that his services were no longer required and the same was in accordance with the terms and conditions of his appointment order and that the said order was an innocuous order and could not be stated to have been passed as a matter of punishment.

13. The argument raised on behalf of the plaintiff to the effect that the same was stigmatic and was passed as a matter of punishment in view of

the earlier order passed dated 01.08.1984, was rejected after taking into consideration the law laid down by the Hon'ble Supreme Court in ***Kaushal Kishore Shukla's*** case (Supra), and after observing that a perusal of the order dated 20.04.1985 did not even remotely show that it was stigmatic. It was observed that in the earlier proceedings charge sheet had been issued to the plaintiff and his services were terminated vide order dated 01.08.1984 but the same was set aside by the District and Sessions Judge vide order dated 21.11.1984 and the plaintiff was reinstated and it was after several months that the subsequent order dated 20.04.1985 was passed. It was observed that in case the intention of the Punishing Authority was to victimize the plaintiff for the mis-conduct as stated in the charge-sheet in the earlier proceedings, then, the competent authority could have very well after setting aside the order dated 01.08.1984, remanded the case to the Inquiry Officer to hold a de novo inquiry and could have also ordered fresh inquiry on the basis of the same allegations and after completion of the same, services of the plaintiff could very well have been terminated. It was stated that there was no bias in the mind of the Punishing Authority and the same is apparent from the fact that on the earlier occasion, once the authority had found that order of dismissal dated 01.08.1984 was not passed by the competent authority, the said order was set aside and the plaintiff was reinstated.

14. The First Appellate Court dismissed the appeal filed by the present appellant(s) and reiterated the fact that the termination order was in consonance with the terms of the appointment order of the plaintiff-appellant who was appointed on a temporary basis and could not be stated to be penal

in nature. The judgments of the trial Court as well as the First Appellate Court are well reasoned and deserve to be upheld.

15. Relevant portion of the appointment order which has been produced as Ex.P5 by the plaintiff is reproduced hereinbelow:-

> *"ORDER*
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> *Shri Charan Dass son of Shri Pritam Dass who was recommended by the Employment Exchange, Amritsar is appointed as Orderly in the Court of Shri B.S.Teji, Additional District and Sessions Judge, Amritsar,* ***purely on temporary basis in the grade of Rs.70-2-80/3-95 plus usual allowances admissible to Punjab Government employees with effect from 12th May, 1977. His services are liable to termination without any cause at any time****.*
>
> *12.5.1977.* *Sd/- S.S.Sodhi,*
> *District & Sessions Judge,*
> *Amritsar."*

A perusal of the same would show that it had specifically been stated that the appellant-plaintiff was being appointed purely on temporary basis and his services were liable to be terminated without any cause at any time. It is not in dispute that the said terms of the appointment order have never been challenged by the plaintiff nor have even been challenged in the present suit and the plaintiff continued to work as a temporary employee on the abovesaid terms and conditions. No claim for regularisation was ever filed by the plaintiff nor any such prayer was made even in the present suit. On 20.04.1985, services of the plaintiff were terminated/relieved on the ground that his services were no longer required. Order dated 20.04.1985 which has been duly exhibited as Ex.P6 is reproduced hereinbelow:-

"ORDER

The services of Sh. Charan Dass, Orderly to the court of Sh.J.S. Khushdil, Judicial Magistrate Ist Class and Sub Judge II Class, ***Amritsar, being purely temporary are hereby terminated with effect from today forenoon, being no longer required.***

20.4.1985. *Sd/-*

District & Sessions Judge,

Amritsar."

A perusal of the said order would show that same cannot even remotely be stated to be stigmatic or having been passed by way of punishment. In fact, the said order has been passed in accordance with the terms and conditions of the appointment order. No mala fide has been alleged by the plaintiff-appellant in the suit, nor any person has been made a party by name.

16. The Hon'ble Supreme Court in ***Kaushal Kishore Shukla's*** case (Supra), which was a judgment passed by a Bench of three Hon'ble Judges, had observed that under service jurisprudence, a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of the contract of service and in case the competent authority is satisfied that the employee is not suitable for the service whereupon the service of the temporary employee is terminated, no exception can be taken to such an order of termination. It was further observed that since the said temporary employee has no right to hold post, thus, termination of such Government servant, more so, in pursuance of the terms and conditions of his appointment letter, does not visit him with any evil consequences.

17. In the said case, the question which arose for consideration before the Hon'ble Supreme Court was to the effect that as to whether the order terminating the servicess of the respondent therein, who was admittedly an ad hoc and temporary employee, was vitiated in law. In the said case, it was observed that the High Court had held that since persons junior to the respondent therein were retained in the service whereas service of the respondent therein was terminated, the order of termination was discriminatory in nature and was founded on an adverse entry awarded to the respondent therein in his character roll, without giving him any opportunity and thus, the said order could not be said to have been passed in good faith. The Hon'ble Supreme Court, while setting aside the judgment of the High Court and allowing the appeal filed by the State, had observed that it was erroneous to hold that where a preliminary inquiry against a temporary Government servant was held or was initiated but was thereafter abandoned, before the issue of order of termination, such order is necessarily punitive in nature. It was further observed that with respect to temporary employee, appropriate authority has the power to terminate his services by discharging him under the terms of the contract/relevant Rules.

18. It would be relevant to note that in the abovesaid case, the respondent therein was an Assistant Auditor and was appointed on 18.02.1977 and his term was extended and he continued to work till 23.09.1980 and had thus, worked for a period of more than three years and even, the appointment letter of the said respondent contained similar terms as that in the case of the present appellant, as it was stated in the appointment letter of the said respondent that his services could be

terminated at any time without assigning any reason or compensation. Relevant portion of the abovesaid judgment which fully supports the case of the present respondents is reproduced hereinbelow:-

> *"3.* ***The sole question which falls for consideration in this appeal is whether the order dated 23.9.1980 terminating the respondent's services, who was admittedly an ad hoc and temporary employee is vitiated in law. The High Court has held that since juniors to the respondent were retained in service while the respondent's services were terminated, the order of termination was discriminatory in nature. It further held that since the order of termination was founded on an adverse entry awarded to the respondent in his character roll without giving him any opportunity on the ground that he was not suitable, the order "cannot be said to be a decision given in good faith."*** *The High Court further observed, "Even if any punishment was to be awarded, it should have been proportionate to the alleged offence, if any." On these findings the High Court held that the order of termination suffered from apparent error of law, it accordingly allowed the respondent's writ petition and quashed the order of termination.*
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> *4. xxx xxx*
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> *5. ……* ***The contract of service as contained in the appointment letter also stipulated the terms and conditions of the respondent's employment that his services were liable to be terminated at any time without assigning any reason or compensation. In the counter affidavit filed before the High Court the order of termination was defended on the ground that the respondent's work and conduct were not satisfactory and he was unsuitable for the service therefore his services were terminated. To support that contention the appellant placed reliance on the adverse entry awarded to the respondent in the year 1977-78 and also on the allegations***

made against him with regard to the audit of the Boys Fund of Raja Raghubar Dayal Inter College. The High Court held that since junior persons to the respondent in service were retained, the order of termination was rendered illegal*. In our opinion, the principle of 'last come first go' is applicable to a case where on account of reduction of work or shrinkage of cadre retrenchment takes place and the services of employees are terminated on account of retrenchment. In the event of retrenchment the principle of 'last come first go' is applicable under which senior in service is retained while the junior's services are terminated.* ***But this principle is not applicable to a case where the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with terms and conditions of his service if out of several temporary employees working in a department a senior is found unsuitable on account of his work and conduct, it is open to the competent authority to terminate his services and retain the services of juniors who may be found suitable for the service.***

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6. ***The High Court held that the termination of respondent's services on the basis of adverse entry in the character roll was not in good faith and the punishment imposed on him was disproportionate. It is unfortunate that the High Court has not recorded any reasons for this conclusion. The respondent had earned an adverse entry and complaints were made against him with regard to the unauthorised audit of the Boys Fund in an educational institution, in respect of which a preliminary inquiry was held and thereupon, the competent authority was satisfied that the respondent was not suitable for the service. The adverse entry as well as the preliminary inquiry report with regard to the complaint of unauthorised audit constituted adequate***

material to enable the competent authority to form the requisite opinion regarding the respondents suitability for service. Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

7. ***A temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants.*** *A temporary Government servant can, however, be dismissed from service by way of punishment.* ***Whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant……..***

It must be borne in mind that a temporary Government servant has no right to hold the post and termination of such a Government servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case (supra) do not include the termination of services of a temporary Government servant in accordance

with the terms and conditions of service. *The view taken by the Constitution Bench in Dhingra's case has been reiterated and affirmed by the Constitution Bench decisions of this Court in The State of Orissa and anr. v. Ram Narayan Das, 1961 (1) SCR 606, R.C. Lacy v. The State of Bihar and anr., C.A. No. 590/62 decided on 23.10.1963, Champaklal Chimanlal Shah v. The Union of India, 1964(5) SCR 190, Jagdish Mitter v. The Union of India, 1964 AIR SC 449, A.G. Benjamin v. Union of India, C.A. No. 1341/66 decided on 13.12.1966, Shamsher Singh and anr. v. State of Punjab, 1975(1) SCR 814. These decisions have been discussed and followed by a three Judge Bench in State of Punjab and anr. v. Shri Sukh Raj Bahadur, 1968(3) SCR 234.*

*8. …….****As already observed, the respondent being a temporary Govt. Servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination, without casting any stigma on him. The termination order does not indict the respondent for any misconduct****. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry* ***the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorised audit of Boys Fund, was held does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent instead it exercised its power to***

terminate the respondent's services in accordance with the contract of service and the Rules.

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We have referred to the above decisions in detail to dispel any doubt about the correct position of law. It is erroneous to hold that where a preliminary enquiry into allegations against a temporary Government servant is held ***or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature.***

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13. In the instant case the respondent was a temporary Government servant and there was adverse report regarding his work which was reflected in the adverse remarks made for the year 1977-78. The competent authority held a preliminary inquiry in the allegations of improper conduct in carrying out unauthorised audit of Boys Fund of an educational institution, on result of the preliminary enquiry no charges were framed against the respondent, no officer was appointed for holding the departmental inquiry instead the competent authority chose to terminate the respondent's services in exercise of its powers under the terms of contract as well as under the relevant rules applicable to a temporary Government servant. It never intended to dismiss the respondent from service. Holding of preliminary inquiry does not affect the nature of the termination order. ***The allegations made against the respondent contained in the counter-affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of order of termination. The High Court failed to consider the question in proper perspective and it interfered with the order of termination in a casual manner.****"*

19. The case of the present appellant-plaintiff is on a lesser footing

than the case of the employee in the abovesaid case before the Hon'ble Supreme Court, inasmuch as, in the case before the Hon'ble Spreme Court, it was also the case of the respondent therein that persons junior to the respondent therein had been retained in service and that the order of termination had been passed on the basis of adverse entries in the service record of the respondent therein for the year 1977-78 and also on the basis of the allegations made against him with regard to the audit of the Boys Fund of Raja Raghubar Dayal Inter College.

20. In the case of ***Nepal Singh vs. State of U.P. and others*** reported as ***1980(3) SCC 288,*** whereby a temporary employee against whom disciplinary proceedings had been initiated, which were quashed by the authorities vide order dated 12.03.1970 but subsequently his services were terminated on 27.04.1970 on the ground that he was no more required, the Hon'ble Supreme Court had observed that it was settled law that the order terminating the services of a temporary Government servant which is ex-facie innocuous, in that it does not cast any stigma on the government servant or visits him with penal consequences, must be regarded as effecting a termination simplicitor. It was further observed that the circumstance that disciplinary proceedings had been instituted against the temporary employee would not lead to any inference that the impugned order had been passed by way of punishment.

21. In the abovesaid case also, the disciplinary proceedings were initiated against the temporary employee and immediately after the same were quashed, within a period of less than two months, the order of termination of the services of temporary employee was passed in similar

terms as has been the order passed in the present case and in the said background also, the Hon'ble Supreme Court had upheld the order of relieving/termination and found the same neither to be stigmatic nor to be passed by way of punishment. The law laid down in the abovesaid judgment fully applies in the facts and circumstances of the present case.

22. The abovesaid judgments and facts of the said cases answer the first ground of challenge laid by the learned counsel for the appellant(s). The fact that earlier disciplinary proceedings had been initiated against the appellant-plaintiff culminating into the order of termination dated 01.08.1984 which was subsequently set aside on 21.11.1984 on the ground that the termination order was not passed by the competent authority and vide which the present appellant was reinstated, would not lead to an inference that the subsequent order dated 20.04.1985 was passed by way of punishment. Additionally it would be relevant to mention that in the present case, no malafide has been alleged against anybody nor any person has been made a party by name. The order dated 20.04.1985 has been passed after a period of more than four months from the date of order dated 21.11.1984 setting aside the order dated 01.08.1994. Moreover, as has been rightly observed by the trial Court that in case any punitive action was to be taken against the appellant-plaintiff, then, it was very much open to the competent authority at the time of passing the order dated 21.11.1984 to remand the case to the inquiry officer for de novo proceedings, as the sole ground for setting aside the order dated 01.08.1984 was lack of jurisdiction of the authority who had passed the said order, or to pass an order initiating a fresh enquiry on the basis of the same allegations and after completion of the

same, the services of the plaintiff could have been dismissed.

23. It would also be relevant to mention that in the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Sukhwinder Singh*** reported as ***(2005)5 SCC 569***, it was reiterated that the temporary employee had no right to the post and mere holding of a preliminary enquiry would not make an order of discharge/termination which was otherwise innocuous to be punitive in nature. The relevant portion of the said judgment is reproduced hereinbelow:-

> *".....**The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people**. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. **As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong.***
>
> *20. In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a*

simple order of discharge had been passed. ***The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry.*** *There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh v. State of Punjab the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and* ***if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules****.*

21. For the reasons discussed above, we are of the opinion that

the view taken by the High Court and also by the lower courts is wholly erroneous in law and must be set aside. ***The appeal is accordingly allowed and the judgment and decree passed by the High Court and also by the learned Sub-Judge and learned Additional District Judge are set aside. The suit filed by the plaintiff-respondent is dismissed."***

24. The judgment in the case of ***Sukhwinder Singh (supra)*** has further been referred to in the latest judgment of the Hon'ble Supreme Court titled as "***State of Punjab and others vs. Jaswant Singh***" reported as ***(2023) 9 Supreme Court Cases 150***. In the said case, although in the order of discharge it had been specifically observed that the employee was absent from 24.11.1990 to date yet it was observed that there was no foundation of mis-conduct alleged in the order and it was an order of simplicitor discharge. The order of discharge in the said case, which was reproduced in paragraph 5 of the said judgment, as well as the relevant portion of the abovesaid judgment are reproduced hereinbelow:-

"5. In furtherance to the said recommendation, the SSP passed the order dated 28.03.1991, discharging the respondent-plaintiff. The said order is relevant and for ready reference is being reproduced as under:

"ORDER

Constable Jaswant Singh No. 1669/ASR s/o Shri Hazara Singh, caste Jat, R/o Village Thoba, PS Ramdass, Police District Majitha is hereby discharged from service under PPR 12.21 as he is not likely to become an efficient police officer. ***His absent period from 24.11.1990 to date is treated as non-duty non pay.***

Issue orders in OB.

Sd/-

Sr. Superintendent of Police,
Amritsar

No. 11369 – 76/B Dated 28.3.1991"

xxx xxx xxx

22. In our considered view, all the three courts misconstrued Rule 12.21 of PPR and decreed the suit filed by the respondent- plaintiff. ***Looking to the contents of the order of discharge, in the considered opinion of this Court, there is no foundation of misconduct alleged in the order and it is an order of simpliciter discharge*** *of a probationer constable. The judgment in Ratnesh Kumar Choudhary relied upon by the respondent is of no help for the simple reason that in that case, the initial appointment was alleged to be illegal based on a vigilance report which was on record. Thereafter, notice was issued on the anvil of the said vigilance report which contained serious allegations and in the said peculiar situation, the Court found that the termination was not simpliciter, but it was punitive.*

25. The judgment of the Hon'ble Supreme Court in the case of ***P.V. Swaminathan*** (supra) which has been sought to be relied upon by the learned counsel for the appellant is based on completely different facts. In the said case, the employee who was the respondent therein was appointed as a General Manager for a period of three years w.e.f. 06.08.1991 and his services were terminated on 10.06.1993 i.e., prior to the lapsing of the said three years. In the said case, the letter from the Commissioner for Handlooms and Director of Handlooms and Textiles dated 19.05.1993, which was issued immediately prior to the order of termination, was held to be the foundation for terminating the services and thus, the Hon'ble

Supreme Court in the facts and circumstances of the said case had held that the order of termination was based on mis-conduct. Even in the said judgment, the Hon'ble Supreme Court had observed that the legal position is fairly settled that an order of termination of a temporary employee or probationer or even a tenure employee, simplicitor without casting any stigma may not be interfered with by the Court. However, in the peculiar facts and circumstances of the said case where the termination was prior to the expiry of the term of contract and was based upon the letter dated 19.05.1993 and other aspects, the termination order which was set aside by the High Court, was upheld, although no relief of reinstatement was granted. In the present case, it is not the case of the plaintiff that his services have been terminated or he has been relieved prior to the last date of his contract, rather his relieving/termination is in consonance with the terms and conditions of his contract. Thus, the said judgment would not further the case of the appellant-plaintiff.

26. The suit of the plaintiff is also required to be dismissed on the ground of non-joinder of necessary party and for having not produced the order dated 12.08.1985. It would be relevant to note that it is the case of the plaintiff that the Service Appeal filed by the plaintiff was dismissed by the Administrative Judge of this Court. A perusal of the letter dated 27.08.1985 (Ex.P16) which has been produced by the plaintiff would clearly show that the Service Appeal was dismissed on 12.08.1985. The said order has admittedly not been produced on record. Moreover, the High Court has not been made a party although the High Court had every right to defend the case once the Service Appeal had been dismissed by the Administrative

Judge of the High Court. The said aspect is only an additional aspect in addition to the other reasons which have been detailed hereinabove for dismissal of the present appeal.

27. The second argument raised on behalf of the learned counsel for the appellant for decreeing the suit of the plaintiff and for setting aside the judgment is also misconceived. For the second argument, sole reliance has been placed on behalf of the appellant(s) upon the judgment of the Hon'ble Supreme Court in the case of ***Jaggo*** (supra). The said case is based on completely different facts. In the case of ***Jaggo*** (supra), the appellants therein had sought regularization of their services by filing an original application before the Tribunal and they had made specific pleadings to the effect that their role and responsibility as well as their work was similar to that of the regular employee and they were performing core functions integral to CWC's operations and had worked for a period ranging from more than 10 years to two decades and met the parameters laid down in the judgment of the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka vs. Uma Devi*** reported as (***2006) 4 SCC 1*** and thus, denial of regularisation to them was against law. It was also the specific case of the appellants therein that they were not backdoor entrants and were equivalent to regular employees and that there was nothing adverse against them but persons with fewer year of services had been regularised and not the appellants therein. The Hon'ble Supreme Court after observing that the appellants therein had long and interrupted service for a period extending well beyond 10 years held that their services could not be dispensed with in an illegal manner. It was also found that large number of persons with lesser

tenure were regularized by the respondent therein and details of the same were given in the said judgment and thus, it was observed that the action of the respondent therein was violative of the principle of equality enshrined under Articles 14 and 16 of the Constitution of India.

28. In the present case, as has been detailed hereinabove, neither any prayer for regularisation has been made nor any case has been set up in the plaint to show that the plaintiff had been doing same work and was having same responsibilities and working hours etc. as that of regular employees. There is nothing to show that any person junior to the plaintiff, had been made to continue. Importantly, even the period of service of the plaintiff even as per his best case would not exceed 10 years and thus, he does not fall within the parameters of law laid down by the Hon'ble Suprme Court in the case of ***Uma Devi*** (Supra). Moreover, it cannot be said that the services of the present plaintiff-appellant was unblemished, inasmuch as, a perusal of his service book would show that apart from other aspects, the present plaintiff-appellant was censured vide order dated 21.01.1983. Although, in the case of ***Jaggo*** (Supra), subsequent termination of services was also challenged but the said termination was prima facie mala fide, inasmuch as, within 10 days of the dismissal of the original application filed by the appellants therein for regularisation of their services, their services were terminated in spite of the fact that they had more than 10 years of service and there was nothing adverse against them. Thus, the said judgment would not further the case of the plaintiff-appellant. Moreover, the argument now sought to be raised before this Court was neither pleaded in the plaint nor was argued before the trial Court or before the First Appellate Court.

There is no foundational basis to raise the said argument before this Court.

29. Additionally it would be relevant to mention that the plaintiff-appellant was relieved from services on 20.04.1985. The suit filed by the plaintiff was dismissed and appeal therefrom was also dismissed. The present Regular Second Appeal was filed in the year 1993 and there is no interim order in favour of the appellant. The appellant is also stated to have died. Judgments of the trial Court as well as First Appellate Court are in accordance with law and deserve to be upheld.

30. Keeping in view the abovesaid facts and circumstances, the judgments of the trial Court as well as the First Appellate Court are upheld and the present appeal being meritless is dismissed.

31. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

04.12.2025 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**