



RSA No.4599 of 2009 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4599 of 2009 (O&M)

STATE OF PUNJAB AND ORS. ...Appellants
Vs
GURJEET SINGH ...Respondent

1	The date when the judgment was reserved	08.07.2026
2	The date when the judgment is pronounced	14.09.2026
3	The date when the judgment is uploaded on the website	14.09.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Arun Jindal, Addl. A.G., Punjab
for the appellants.

Mr. Puneet Sharma, Advocate
for the respondent (through video-conferencing).

HARKESH MANUJA, J.

1. By way of present appeal, challenge has been laid to the judgment and decree dated 09.06.2009 passed by Addl. District Judge, Patiala (**hereinafter referred to as “First Appellate Court”**), wherein appeal filed on behalf of the plaintiff-respondent against the judgment and decree dated 01.03.2006 passed by the Court of Civil Judge (Jr. Division) (**hereinafter referred to as “trial Court”**), was allowed, thereby decreeing the suit of the plaintiff-respondent.
2. Briefly stated, the plaintiff’s case is that he was appointed as a Special Police Officer (SPO) on 30.08.1994 and was posted at GRP, Bathinda. On 13.07.1998, he was selected for appointment as a Constable in 5th Battalion, IRB, Amritsar, and was called for medical examination on 13.03.2000. He was involved

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in a criminal case on 13.01.1997 which was pending at the relevant time. However, the character verification report submitted by the CID did not disclose anything adverse against him. His service file, received from GRP, however, indicated the registration of the said criminal case. Consequently, the plaintiff was not permitted to join as a Constable and continued to discharge his duties as an SPO. Thereafter, vide order No. 32037-38/SPO Cell dated 06.10.2000, his services were ordered to be terminated and the said order was allegedly passed without affording him any opportunity of hearing or issuing any show-cause notice. It was further pleaded that his services could not have been terminated merely on the ground of registration of a criminal case and that, after completion of six months of satisfactory service, he became eligible and entitled to appointment as a Constable. After serving notice under Section 80 CPC, the plaintiff instituted the civil suit challenging the termination order and seeking the consequential reliefs.

3. Upon notice, the defendants appeared and filed their written statement. The suit was contested, *inter alia*, on the grounds of want of cause of action and improper valuation for the purposes of court fee. On merits, it was pleaded that the plaintiff was enlisted as an SPO under Section 17 of the Police Act, 1861, which empowered the police authorities to appoint residents of the neighbourhood in situations where a threat to the locality was apprehended and the regular police force was considered insufficient. According to the defendants, the plaintiff was engaged as a daily wager and, in terms of the conditions of his engagement, his services could be terminated at any time without prior notice. It was, therefore, contended that he had no right to hold the post. It was further denied that, character verification report contained nothing adverse against the plaintiff while specifically pleading that FIR No. 16 dated 13.01.1997 under Sections 307, 323, 324, 148 and 149 IPC was registered against him at Police



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Station Kotwali, Bathinda, and that the said fact was duly reported by the DSP/CID, Bathinda, vide letter dated 24.04.2000. It was accordingly maintained that the plaintiff was discharged from service vide order No. 32037-38/SPO Cell dated 06.10.2000 by the competent authority in accordance with the conditions governing his engagement. On these premises, dismissal of the suit was sought.

4. Replication to the written statement was filed by the plaintiff re-iterating the facts contained in the plaint while denying those contained in the written statement of the defendant.

5. From the pleadings of the parties, following issues were framed:-

“i) Whether the plaintiff is entitled to declaration Prayed for? OPP

ii) Whether the plaintiff has no cause of action to file the present suit? OPD

iii) Whether the suit has not been properly valued for the purpose of court fee, if so its effect? OPD

iv) Relief.”

6. On appraisal of evidence led by the parties, the learned trial Court, vide its judgment and decree dated 01.03.2006, dismissed the suit of the plaintiff.

7. Aggrieved against the judgment and decree dated 01.03.2006 passed by the learned trial Court, the plaintiff preferred an appeal, which was allowed vide judgment and decree dated 09.06.2009 by the learned First Appellate Court, thereby decreeing the suit of the plaintiff. Hence, the present Regular Second Appeal was filed by the appellant-defendant-State.

CONTENTIONS

ON BEHALF OF THE APPELLANT-STATE

8. Impugning the judgment and decree dated 09.06.2009 passed by the learned First Appellate Court, learned counsel for the appellant-State submitted



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that the respondent was appointed as an SPO on daily-wage basis, subject to the condition that his services could be terminated without issuance of a show-cause notice. During his engagement, FIR No.16 dated 13.01.1997 under Sections 307, 323, 324, 148 and 149 IPC was registered against him. Consequently, pursuant to the directions of the Director General of Police, Punjab dated 21.09.2000, the competent authority discharged him vide order dated 06.10.2000 in terms of the conditions of his engagement. It was contended that, the discharge being simpliciter and without any stigma, no show-cause notice or opportunity of hearing was required. In support, reliance was placed upon the judgment of the Division Bench of this Court in ***Parveen Kumar v. State of Punjab, 2001(3) RSJ 206***, wherein, it was held as under:

“In view of the complaints received by respondent No. 3 against the petitioners the former did not consider their work and conduct satisfactory. It was, thus, open to him to discharge them from service without affording an opportunity of hearing to them. The petitioners were temporary employees working on daily wages. When the competent authority received complaints against them, it had two options before it - it could discharge the petitioners in terms of the Standing Orders under which they were appointed or take disciplinary/punitive action against them for the alleged misconduct. In the present case, the competent authority chose the first option and discharged the petitioners from service. The question of affording any opportunity of hearing to them did not, therefore, arise and the competent authority was rather lenient towards them as it was not taking any punitive or disciplinary action against them though it was open to it to do so. If the competent authority had chosen the second option then in that event an opportunity of hearing would have been afforded to the petitioners and even a regular inquiry would have been held. In our opinion, no fault can be found with the action of the competent authority in choosing the first option.”

9. Learned counsel further relied upon the judgment of this Court in ***Sher Singh v. State of Haryana, 1994(2) SLR 100***, to contend that a constable could be discharged under Rule 12.21 of the Punjab Police Rules within three



years of his enrolment, even where the circumstances involved allegations of misconduct.

10. Learned counsel also contended that the respondent's antecedents were relevant for determining his suitability for appointment as a Constable in the police force. In support, reliance was placed upon the judgment of the Hon'ble Supreme Court in **Delhi Administration v. Sushil Kumar, 1996(11) SCC 605**, wherein it was held:

“The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 Indian Penal Code, under Section 324 read with Section 34 Indian Penal Code and under Section 324 Indian Penal Code, he cannot be denied the right of appointment to the post under the State. The question is: whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focused this aspect and found him not desirable to appoint him to the service.”

10.1. No other argument was raised on behalf of the appellants.

**ON BEHALF OF RESPONDENTS**

11. On the other hand, learned counsel appearing on behalf of respondent-plaintiff submitted that the judgment and decree passed by the First Appellate Court been based on proper appreciation of material facts and the relevant rules, called for no interference and as such, present appeal was liable to be dismissed.

DISCUSSION AND REASONING

12. I have heard learned counsels for the parties and perused the paper-book. I am unable to find substance in the contentions raised on behalf of the appellant/defendant-State.

13. The question which arises for consideration is whether the order dated 06.10.2000 was a simpliciter discharge of the plaintiff in terms of the conditions of his engagement as an SPO or whether the said power was exercised on the basis of the allegations levelled against him.

14. There is no dispute that the plaintiff was engaged as an SPO and that the conditions of his engagement permitted his discharge without issuance of a show-cause notice. However, the said condition cannot be considered in isolation. The nature of the order has to be examined from the material which led to its passing. In the present case, the order of discharge dated 06.10.2000 (Ex.P-30) was issued pursuant to the communication of the DGP, Punjab dated 21.09.2000 (Ex.P-29). The said communication specifically refers to the criminal case against the plaintiff, his custody from 14.02.1997 to 28.02.1997 and the allegation regarding production of a false medical certificate. The said communication directed that the



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plaintiff be discharged in view of the above facts. Thus, the order of discharge cannot be viewed independently of the material which formed its basis.

14.1 The position becomes clearer from the findings recorded by both the learned Courts below, wherein it has been noticed that DW-2 admitted that no show-cause notice was issued to the plaintiff and that his service record was satisfactory. If the plaintiff was otherwise performing his duties satisfactorily, the reference to the aforesaid allegations in the communication preceding the discharge order cannot be treated as an irrelevant circumstance. The record shows that the allegations against the plaintiff were acted upon while passing the order of discharge.

15. Further, the distinction between a termination simpliciter and a termination founded on misconduct has been explained by the Hon'ble Supreme Court in ***Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd. and Ors., (2003) 3 SCC 263***. It was held that where the order is simpliciter in form, the Court can examine the background and attending circumstances to ascertain whether the termination was in fact founded on misconduct. The relevant observations are as under:

“From long line of decisions it appears to us whether an order of termination is simplicitor or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. May a time the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or on motive on the ground of unsuitability to continue in service. If the form and language of the so called order of termination simplicitor of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the



order of termination is simplicitor or punitive. In cases where the services of a probationer are terminated by an order of termination simplicitor and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simplicitor but the real face behind it is to get rid of services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simplicitor to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct”

16. Further, this Court in ***Surinder Pal Kaur v. State of Punjab and others***, reported as **2005 (1) SCT 106**, considered the scope of the Standing Order permitting discharge of an SPO without notice. It was held that such power could be exercised in case of unsatisfactory work and conduct, but where the discharge was founded upon a specific allegation of misconduct, an inquiry and opportunity of hearing were necessary. The relevant observations are reproduced hereunder:

“18. The contention of counsel for the respondents that the petitioner's services, being governed by the standing order, which permits the discharge from service at any time, whatsoever for unsatisfactory work and conduct, would have been accepted, had the impugned order confined itself to the work and conduct of the petitioner. As the impugned order concludes that the petitioner misconduct herself/misbehaved with another Officer, the punishing authority was required to hold an inquiry and on the basis of evidence, led for and against the allegations and, thereafter arrive at an independent conclusion. In the absence of any such procedure having been adopted, and in view of the settled law, as referred to in the preceding paragraphs, I have no hesitation in holding that the impugned order being founded on an alleged misconduct is not only punitive but also stigmatic. As no show-cause notice was ever issued, nor any explanation sought or any inquiry conducted, the impugned order, being violative of the principles of natural justice, has to be set aside.



Merely because the petitioner was an S.P.O., appointed on daily wages, would be no reason to dispense her services on allegations of misconduct, without issuance of a show-cause notice or holding of an inquiry.”

17. Likewise, in ***State of Punjab and others v. Dharam Pal***, reported as **2015 (3) SCT 633**, this Court, reiterated that the power to discharge an SPO without notice is available in a case of discharge simpliciter, but cannot be invoked where the order is stigmatic and founded upon misconduct. The relevant observations are as under:

*“10. Reference can be made to a judgment of this Court in the case of **Tarsem Lal v. State of Punjab and another** (RSA No. 3997 of 2001) decided on 17.12.2003 whereby the appeal filed by the plaintiff-appellant was allowed by observing that Clause (9) of the Standing Order gives power to the respondents to discharge the Special Police Officers, whose work and conduct has been found to be not satisfactory without issuing any notice to him. However, a perusal of the order dispensing with the services of the appellant shows that it is stigmatic in nature. It is not an order of removal simpliciter. The removal of the services of the appellant is on account of his having been found absent from duty. An order passed with a stigma attached thereto could be passed only after affording an opportunity of hearing to the official under Article 311 of the Constitution of India. The opportunity of hearing was denied to the appellant in that case. The order of removal from service was held not sustainable in law.*

11. In view of all that has been discussed above, no question of law arises for consideration in this regular second appeal. Hence the same is dismissed.”

18. Applying the aforesaid legal principles to the facts of the present case, the condition of engagement permitting discharge without issuance of show-cause notice would undoubtedly apply where the discharge is simpliciter. However, where the discharge is founded upon allegations of misconduct, the position would be different. In the present case, the communication dated 21.09.2000(Ex.P-29)



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specifically refers to the criminal case registered against the plaintiff, his custody from 14.02.1997 to 28.02.1997 and the allegation regarding production of a false medical certificate, and thereafter directs his discharge under the conditions of his engagement. The order dated 06.10.2000 was passed pursuant to the said communication. Further, as noticed by the learned Courts below, DW-2 admitted that the work and conduct of the plaintiff were satisfactory. Thus, the allegations referred to in Ex.P-29 were not merely incidental circumstances, but constituted the basis for passing the order of discharge. Once the discharge was founded upon allegations of misconduct, the same could not have been effected by merely invoking the condition permitting discharge without notice. The allegations were required to be established in accordance with law and the plaintiff was required to be served with a show-cause notice and afforded an opportunity of hearing. The mere form of the order as one of discharge simpliciter would not change its true nature. In the absence of such opportunity and proof of the allegations, the order dated 06.10.2000 cannot be sustained. The First Appellate Court, therefore, rightly held the same to be punitive in nature.

19. The reliance placed by learned State counsel upon ***Parveen Kumar's case (supra)***, does not alter the position. The said decision recognises the power of the competent authority to discharge a temporary/daily-wage employee where the authority merely exercises the power available under the applicable conditions of engagement instead of initiating disciplinary proceedings. That principle would undoubtedly apply where the order is genuinely one of discharge simpliciter. It cannot, however, be invoked where the alleged misconduct is not merely a circumstance influencing the employer's discretion but constitutes the very basis of



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the decision to terminate. The present case, on the evidence noticed above, falls in the latter category.

20. Furthermore, the reliance upon *Sher Singh's case (supra)* is equally misplaced. In this case, the Hon'ble Bench was concerned with the scope of Rule 12.21 of the Punjab Police Rules in relation to the discharge of a constable during the prescribed period of enrolment, on an assessment of whether he was likely to prove an efficient police officer. However, the plaintiff herein was appointed as an SPO and, despite having been selected for appointment as a Constable, was never permitted to join that post. His discharge was from his existing engagement as an SPO, thus the said case does not advance the case of the appellant.

21. The contention raised on behalf of the appellants that the antecedents of the plaintiff were relevant for determining his suitability for appointment as a Constable, relying upon *Sushil Kumar's case (supra)* also does not find merit. Though in the present case also, the plaintiff was ultimately acquitted in the criminal proceedings vide order dated 05.01.2001(Ex. P-31), however, no evidence whatsoever has been brought on record to show any adverse material regarding the antecedents of the plaintiff. Even the character verification report (Ex. D-2) does not record any adverse antecedent except the registration of the aforesaid criminal case. Further, the order of discharge was passed pursuant to the communication referring to the registration of the criminal case against the plaintiff. Nevertheless, the fact remains that once the discharge was founded upon allegations of misconduct, the same could not have been effected without issuing a show-cause notice and affording an opportunity of hearing to the plaintiff.

22. In view of the foregoing discussion, this Court is of the humble opinion, that the learned First Appellate Court after considering the communication



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dated 21.09.2000, the discharge order dated 06.10.2000 and the statement of DW-2, rightly recorded that the discharge was punitive in nature and the same could not have been effected without issuing show cause notice and affording opportunity of hearing. Thus, finding no illegality or perversity in the decision rendered by the First Appellate Court, the judgment and decree dated 09.06.2009 is upheld and the present appeal is hereby dismissed.

23. Pending misc. application(s), if any, also stands disposed of.

September 14, 2026

Atik

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

(HARKESH MANUJA)
JUDGE