A STATE OF PUNJAB AND ORS.

v.

SUKHWINDER SINGH

JULY 14, 2005

B [R.C. LAHOTI, CJ., G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

Service Law:

Punjab Police Rules: Rules 12.21 and 16.24 (ix).

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Probationer—Absence from duty—Discharge from service—Validity—Constable on probation discharged from service due to unauthorized absence from duty—High Court held that absence from duty was a misconduct and the discharge order amounted to punishment imposed on the said constable without holding a formal enquiry under R. 16.24 (ix) and, therefore, set aside the discharge order as being wholly illegal and contrary to law—Correctness of—Held: A probationer is on test and a temporary employee has no right to the post—The employer has a right to dispense with the services of an employee without anything more during or at the end of the probation period—In the present case, a simple order of discharge had been passed—The High Court erred in holding that the constable's absence from duty was the foundation of the order which necessitated an inquiry under R. 16.24 (ix)—High Court judgment set aside.

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The respondent was appointed as a police constable and he absented from duty without making any application for grant of leave or seeking permission for his absence. The respondent was, therefore, discharged from service under Rule 12.21 of the Punjab Police Rules as he was not likely to become an efficient police officer.

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The respondent filed a civil suit seeking a declaration that the discharge order was illegal and inoperative in law as it was passed by way of punishment, without holding any enquiry and without giving him any opportunity of hearing. The appellant contended that the respondent had put in less than three years of service and was a probationer on the date of passing of the discharge order and, therefore, he was rightly discharged under the Rules. The trial court decreed the suit which was affirmed by the First Appellate Court. In second

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appeal, the High Court held that absence from duty was a misconduct and the discharge order was a punishment which was imposed upon the respondent without holding a formal inquiry under Rule 16.24 (ix) of the Rules and set aside the discharge order as being wholly illegal and contrary to law. Hence the appeal.

Allowing the appeal, the Court

HELD: 1. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not, makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact-finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. 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 area 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. 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. [592-F-H; 593-A-C]

S.P. Vasudeva v. *State of Haryana,* AIR (1975) SC 2292, *Bishan Lal Gupta* v. *State of Haryana,* AIR (1978) SC 363, *Oil and Natural Gas Commission* v. *Dr. Md. S. Iskander Ali,* AIR (1980) SC 1242, *State of Maharashtra* v. *Veerappa R. Saboji,* AIR (1980) SC 42, *Governing Council*

A *of Kidwai Memorial Institute of Oncology* **v.** *Dr. Pandurang Godwalkar,* **AIR (1993) SC 392,** *Ravindra Kumar Misra* **v.** *U.P. State Handloom Corporation Ltd.,* **AIR (1987) SC 2408,** *Krishnadevaraya Education Trust* **v.** *L.A. Balakrishna,* **[2001] 9 SCC 319,** *Pavandendra Narayan Verma* **v.** *Sanjay Gandhi PGI of Medical Sciences,* **[2002] 1 SCC 520 and** *State of Punjab* **v.** *Balbir Singh,* **[2004] 11 SCC 743, relied on.**

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Hardeep Singh **v.** *State of Haryana,* **[1987] Supp. SCC 295 and** *State of U.P.* **v.** *Kaushal Kishore Shukla,* **[1991] 1 SCC 691, held inapplicable.**

Smt. Rajinder Kaur **v.** *State of Punjab,* **[1986] 4 SCC 141, overruled.**

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2. 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 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

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right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as the period of probation. The mere holding of preliminary inquiry where explanation is called for 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

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foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24 (ix) of the Punjab Police Rules. [593-D-H]

Superintendent of Police **v.** *Dwaraka Das,* **(1979) 1 SLR 299 and** *Ajit Singh* **v.** *State of Punjab,* **AIR (1983) SC 494, relied on.**

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Sher Singh **v.** *State of Haryana,* **(1994) 1 PLR 456 (P & H) (FB), approved.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4441 of 2001.

From the Judgment and Order dated 30.1.2001 of the Punjab and Haryana High Court in R.S.A. No. 199 of 1995.

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H.S. Munjral and Arun K. Sinha for the Appellant.

Neeraj Kr.Jain, Bharat Singh, Aditya Kr. Choudhary, Sanjay Singh and Ugra Shankar Prasad for the Respondent.

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The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. This appeal, by special leave, has been preferred by the State of Punjab and others challenging the judgment and decree dated 30.1.2001 of the High Court of Punjab and Haryana by which the Second Appeal preferred by the appellants was dismissed and the decree passed by the courts below decreeing the respondent's suit was affirmed.

2. The respondent Sukhwinder Singh joined on 4.8.1989 as a police constable and was allotted number 644 in District Amritsar in the State of Punjab. He was sent for training at Police Recruit Training College Jahan Khelan. He absented from duty w.e.f. 22.2.1990 without making any application for grant of leave or seeking permission for his absence. The Senior Superintendent of Police, Amritsar, passed the following order on 16.3.1990:-

> "Constable Sukhwinder Singh No. 644/ASR of this District is discharged from service w.e.f. 16.3.1990 under Punjab Police Rules 12.21 as he is not likely to become an efficient police officer."

The respondent Sukhwinder Singh filed a civil suit in the Court of Sub-Judge, Amritsar, seeking a declaration that the order dated 16.3.1990, passed by the Senior Superintendent of Police, Amritsar, discharging him from service, was illegal and inoperative in law as it was passed by way of punishment, without holding any enquiry and without giving him any opportunity of hearing. The appellants herein contested the suit on various grounds and the main plea taken therein was that the respondent had to put in less than three years of service and was a probationer on the date of passing of the order dated 16.3.1990 and, therefore, he was rightly discharged under Rule 12.21 of the Punjab Police Rules (hereinafter referred to as the 'Rules') by the Senior Superintendent of Police. The Senior Superintendent of Police was of the opinion that the respondent was not likely to become an efficient police officer and, therefore, he exercised his powers under Rule 12.21. It was further pleaded that the respondent being a probationer had no right to the post. The order of discharge did not cast any stigma and did not affect him with any evil consequences.

3. The learned sub-Judge, Amritsar, after appreciating the evidence on record, held that the order dated 16.3.1990 passed by the Senior Superintendent of Police, Amritsar, was illegal, null and void and accordingly passed a decree in favour of the respondent that he would continue in service and was entitled to his pay, powers, privileges and other service benefits of the post of a constable. The appeal preferred by the appellants was dismissed by the Additional District Judge on 28.5.1994 and the decree of the trial court was

affirmed. The appellants then preferred a Second Appeal in the High Court, which was also dismissed on the finding that the respondent was thrown out of job on the ground of absence from duty. Absence from duty is a misconduct and it was a punishment which was imposed upon him without holding a formal inquiry as envisaged under Rule 16.24 (ix) of the Rules. Consequently the order of discharge dated 16.3.1990 was wholly illegal and contrary to law.

4. Learned counsel for the appellants has submitted that the respondent had been appointed on 4.8.1989 and he had not completed three years of service and, therefore, he was only a probationer in terms of the Rules. The impugned order is neither stigmatic nor it affects him with any evil consequences, as it only uses the expression that the respondent is not likely to become an efficient police officer. The Rules confer power upon the appointing authority to discharge a probationer without holding any inquiry if he forms an opinion that the constable is not likely to become an efficient police officer. The learned counsel further submitted that no disciplinary action had been taken against the respondent and as such there was no necessity of holding any formal inquiry wherein the delinquent employee is afforded an opportunity to defend himself.

5. The learned counsel for the respondent has, on the other hand, submitted that the impugned order of discharge dated 16.3.1990 though apparently looks to be innocuous but had in fact been passed on the ground of misconduct, viz., the absence from duty w.e.f. 22.2.1990 and, therefore, it is founded upon an act of misconduct. He has further submitted that the aforesaid misconduct being the foundation of the order, it was obligatory upon the appointing authority to have held a formal departmental inquiry wherein the respondent would have got an opportunity to defend himself

6. Rule 12.21 of the 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 an order of discharge under this rule."

7. A Full Bench of Punjab and Haryana High Court in *Sher Singh* v. *State of Haryana and Ors.*, (1994) 1 PLR 456, has examined the content and scope of Rules 12.21, 19.3 and 19.5 of the Rules in considerable detail. It has been held in that case that the effect of the Rules is that for a period of three years a constable is under surveillance. He is being watched and is kept in

close supervision. He has no right to the post and his services are terminable at any time during this period of three years. He can secure his position in the service only if he convinces the Superintendent of Police that he is likely to prove an efficient police officer. The Full Bench has further held that the Rules contained the necessary guidelines for the Superintendent of Police, on the basis of which, he has to form an opinion regarding a constable. If on a consideration of the relevant material, the Superintendent of Police finds that a particular constable is not active, disciplined, self-reliant, punctual, sober, courteous or straight-forward or that he does not possess the knowledge or the technical details of the work required of him, he can reasonably form an opinion that he is not likely to prove an efficient police officer. In such a situation the Superintendent of Police can invoke his power under Rule 12.21 and can discharge the constable from the force. We are in agreement with the view taken by the Full Bench of the High Court. In fact, this view is in consonance with the decision of this Court rendered in *The Superintendent of Police, Ludhiana and Anr.* v. *Dwarka Das,* [1979] (1) SLR 299, where it was observed that if Rules 12.21(3) and 12.21 are read together, it will appear that the maximum period of probation in the case of a police officer of the rank of constable is three years, for the Superintendent of Police concerned has the power to discharge him within that period. It was also held that the power of discharge cannot be exercised under Rule 12.21 after the expiry of the period of three years and consequentially if it is proposed to deal with an inefficient police officer after the expiry of that period, it is necessary to do so in accordance with Chapter XVI of the Rules, which makes provisions for the imposition of various punishments including dismissal from the police force. No simple order of discharge under Rule 12.21 can be passed after the expiry of the period of three years for that will attract Article 311 of the Constitution.

8. Termination of service of a probationer during or at the end of period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to. The period of probation, therefore, furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master and it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power

A to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer. (See *Ajit Singh and others etc.* v. *State of Punjab and Anr.*, AIR (1983) SC 494.

9. The learned counsel for the respondent has submitted that the court B should unveil the cloak and go behind the order dated 16.3.1990, which had in fact been passed on the ground of continued absence from duty of the respondent w.e.f. 22.2.1990 and as the said order was founded upon an act of misconduct, the order of discharge was in fact an order of dismissal by way of punishment and since no formal inquiry had been held and the respondent C had not been given an opportunity of defending himself, the impugned order is wholly illegal and is liable to be struck down. In support of his submission learned counsel has placed reliance on *Hardeep Singh* v. *State of Haryana and Ors.*, [1987] Supp) SCC 295. In this case the appellant Hardeep Singh had joined the police service in Haryana in 1979 and became a member of an unregistered Haryana Police Association, which had been canvassing for D improvement in the service conditions of the police personnel serving with the Haryana Police and on several occasions made representations for improvement of service conditions. As part of its campaign the Association gave a call in the month of July to all its members to participate in "a non-taking of food campaign", which took place on 15.8.1982. On that day the E appellant and 16,000 other Constables and Head Constables attended to their duties but they did not take their food in the mess. The State Government issued order of dismissal/removal against 425 policemen under Rule 12.21 of the Rules without serving any charge-sheet. The writ petition filed by 154 such policemen was allowed by this Court. The appellant filed a writ petition in the High Court which was dismissed. On thorough examination of the F written statement filed by the State of Haryana and the facts of the case this Court came to a finding that the order of discharge was passed by way of punishment on account of his union activities, specially those participating in the call for expressing the protest of the Association for improvement in service conditions by abstaining from taking meals in the mess on 15.8.2002, G and that it was not a simple order of discharge. The Court specifically held that on the facts and circumstances of the case it could not be said that the order of discharge was an order simpliciter of removal from service of a probationer in accordance with the terms and conditions of the service, as it tantamount to dismissal from service by reason of misconduct. In our opinion, this authority can be of no assistance to the respondent in view of the H conclusion drawn by this Court that the order had been passed on account

of the union activities of the employee and his participation in the call for expressing the protest. A

10. The other case relied upon by the learned counsel for the respondent is *State of Uttar Pradesh and Anr* v. *Kaushal Kishore Shukla,* [1991] 1 SCC 691. In this case the employee Kaushal Kishore Shukla was appointed on ad hoc basis for fixed period on 18.2.1977 as Assistant Auditor, which was B extended on several occasions and the last extension was granted on 21.1.1980 which was to expire on 28.2.1981. His services were terminated on 23.9.1980. The termination order was challenged on the ground that certain allegations of misconduct had been made against him regarding which an ex parte inquiry was held wherein he was not given any opportunity of hearing. These C allegations were also referred to in the counter affidavit, which was filed on behalf of the State before the High Court. It was submitted that the order of termination of service was founded on the allegations of misconduct and the ex parte inquiry report. The High Court accepted the plea of the employee and quashed the termination order. The appeal filed by the State was allowed by this Court and the order of the High Court was set aside with the following D observations : -

> "The respondent being a temporary government 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 E 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 F 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 unauthorized audit of Boys Fund was held, does not change the nature of the order of termination into that G 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. The allegations made against the respondent contained in the counter-affidavit by way of defence filed on behalf H

A of the appellants also do not change the nature and character of the order of termination."

11. In *S.P. Vasudeva* v. *State of Haryana and Ors.*, AIR (1975) SC 2292, it was held that where an order of reversion of a person who had no right to the post, does not show ex facie that he was being reverted as a measure B of punishment or does not cast any stigma on him, the courts will not normally go behind that order to see if there were any motivating factors behind that order. In *Bishan Lal Gupta* v. *State of Haryana and Ors.*, AIR 1978 SC 363, it was held where the intention behind an inquiry against a probationer was not to hold a full departmental trial to punish but a summary C inquiry to determine only suitability to continue in service of the probationer and the probationer was given ample opportunity to answer in writing whatever was alleged against him in show cause notices, the innocuous order of termination following such summary inquiry could not be said to be an order of punishment which entitled him to a full-fledged inquiry contemplated by Article 311 of the Constitution. In *Oil and Natural Gas Commission* v. *Dr. Md.* D *S. Iskander Ali,* AIR (1980) SC 1242, it was held as under: -

> "Where the short history of the service of the probationer appointed in a temporary post clearly showed that his work had never been satisfactory and he was not found suitable for being retained in service and that was why even though some sort of an enquiry was E started, it was not proceeded with and no punishment was inflicted on him and in these circumstances, if the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when the appointing authority had the right to terminate F the service without assigning any reasons."

These are all decisions by Benches of three learned Judges.

12. The same question was considered in considerable detail in *State of Maharashtra* v. *Veerappa R. Saboji* AIR (1980) SC 42, and it was observed G as under:

> "Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or *mala fide* H unless a very strong case is made out and proved by the Government

servant who challenges such an order." A

In *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore* v. *Dr. Pandurang Godwalkar and Anr.*, AIR (1993) SC 392, the same principle was reiterated and it was held that where the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some B preliminary enquiry it cannot be held that as some enquiry had been made against him before issuance of order of termination it really amounted to his removal from service on a charge, as such penal in nature.

13. In *Ravindra Kumar Misra* v. *U.P. State Handloom Corporation Ltd and Anr.*, AIR (1987) SC 2408, the appellant had been appointed on 30.10.1976 C and had got two promotions while still working in temporary status and by 1982 he had been working as Deputy Production Manager. On 22.11.1982 he was placed under suspension and the suspension order recited that as a result of preliminary inquiries made by the Central Manager it had come to notice that the appellant was responsible for misconduct, dereliction of duty, D mismanagement and showing fictitious production of terrycot cloth. The suspension order was revoked on 1.2.1983 and thereafter on 10.2.1983 a simple order terminating his services was passed reciting that his services were no more required and his service would be deemed to be terminated from the date of receipt of the notice. It was further mentioned therein that he would be entitled to receive one month's salary in lieu of notice period. The termination E order was challenged by the appellant on the ground that the same was punitive in nature, which was also demonstrated from the fact that shortly before the order of termination a suspension order had been passed wherein a specific charge of misconduct against him was mentioned. After referring to several earlier decisions this Court repelled the challenge made by the F employee by observing as under in paragraph 6 of the Report: -

> ".....In several authoritative pronouncements of this Court, the concept of 'motive' and 'foundation' has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in G terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It H

may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary, merely because the appropriate authority proceeds to make an assessment and leaves a record of its views, the same would not be available to be utilized to make the order of termination following such assessment, punitive in character."

14. In *Krishnadevaraya Education Trust and Anr* v. *L.A. Balakrishna,* [2001] 9 SCC 319, it was held that a probationer is on test and if his services are found not be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services. The mere fact that in response to the challenge the employer states that the services were not satisfactory, would not *ipso facto* mean that the services of the probationer were terminated by way of punishment.

15. *Pavanendra Narayan Verma* v. *Sanjay Gandhi PGI of Medical Sciences and Anr.,* [2002] 1 SCC 520, is a recent decision of this Court where, after referring to large number of earlier decisions, the law on the point has been very clearly elucidated in the following manner :-

"One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing the termination has been upheld.

.....

Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

16. *State of Punjab and Ors* v. *Balbir Singh,* [2004] 11 SCC 743, is a direct case on Rule 12.21 of the Rules. Here also after considering large number of earlier decisions the Court laid down the following principle: -

> "The order of discharge simpliciter, *prima facie*, is not punitive, it being in terms of Punjab Police Rule 12.21 but the question still is whether the incident which led to the passing of that order was motive or inducing factor or was the foundation of order of discharge.
>
> In order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. The other test to determine whether, in substance, the order of discharge is punitive in nature is to ascertain the "nature of enquiry" i.e. whether the termination is preceded by a full-scale formal enquiry into allegations involving misconduct on the part of the respondent, which culminated in the finding of guilt, and the "purpose of the enquiry" i.e. whether the purpose of the enquiry is to find out any misconduct on the part of the employee or it is aimed at finding out as to the respondent being unlikely to prove as an efficient police officer."

17. The learned counsel for the respondent has also placed reliance on *Smt. Rajinder Kaur* v. *State of Punjab and Anr.,* [1986] 4 SCC 141, which is a decision by a Bench of two learned Judges. In this case the appellant was appointed as a lady constable on 7.5.1979 and after completion of training she was posted in the police lines in March, 1980. The Superintendent of Police, Hoshiarpur, discharged the appellant by order dated 9.9.1980 under Rule 12.21 of the Rules. The order of discharge read as under: -

> "Lady Constable Rajinder Kaur No. 732 is unlikely to prove an efficient police officer. She is, therefore, hereby discharged from the Police Force under Punjab Police Rules 12.21 with effect from today (September 9, 1980).
>
> Issue order in O.R. and all concerned to notice and necessary

A action."

The main contention on behalf of the appellant was that an inquiry was made by the Deputy Superintendent of Police as to the character of the appellant into the allegation that she stayed at Mahalpur for one or two nights with one constable Jaswant Singh and evidence was recorded therein without B giving the appellant any opportunity of hearing or to cross-examine the witnesses and the impugned order was made after completion of the investigation on the ground of her misconduct which cast a *stigma* on her service career. This contention was accepted and on the finding that though the order of discharge stated to be made in accordance with the provisions C of Rule 12.21 of the Rules, it was really made on the basis of the misconduct as found on inquiry into the allegation behind her back and further that though the order was couched in innocuous terms, the order was merely camouflage for an order of dismissal from service on the ground of misconduct, the impugned order of discharge was set aside. With respects we are unable to agree with the view taken in this case. As discussed earlier the consistent D view of this Court is that even if some kind of preliminary inquiry or fact finding inquiry is held in which the employee is not afforded an opportunity of hearing, the order of discharge of a probationer cannot be treated as an order of punishment as the appointing authority has to necessarily ascertain all the relevant facts before taking a decision whether the probationer should E be retained in service or not. The decision in *Smt. Rajinder Kaur* v. *State of Punjab,* is hereby over-ruled.

18. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the F employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive G in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. 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 H 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.

19. 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 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 the 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 and Ors. etc.* v. *State of Punjab and Anr.*, (supra) 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.

A 20. 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.

B 21. No costs.

V.S.S. Appeal allowed.