

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 1941 of 2010
With
Writ Petition No. 2010 of 2010

Writ Petition No. 1941 of 2010

Vijay s/o. Uttam Hirey,
Age : 51 years,
Occupation : Nil,
R/o. Khedgaon (Khurd),
Taluka : Bhadgaon,
District : Jalgaon.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai - 400 032.

2. Director General of Police,
Maharashtra State,
Police Headquarters,
Near Gateway of India,
Mumbai - 400 032.

3. Superintendent of Police,
Jalgaon, District : Jalgaon.

4. Sub-Divisional Police Officer,
Amalner Sub-Division, Amalner,
District : Jalgaon.

.. Respondents.

5. Maharashtra Administrative Tribunal,
Mumbai Bench at Aurangabad,
Old High Court Building,
Aurangabad, District : Aurangabad.

.. Respondent no.5 deleted.

Writ Petition No. 2010 of 2010

Balu s/o. Rambhau Shrikhande,
Age : 47 years,
Occupation : Nil,
R/o. At Post Marwad,
Taluka : Amalner,
District : Jalgaon.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai - 400 032.

2. Director General of Police,
Maharashtra State,
Police Headquarters,
Near Gateway of India,
Mumbai - 400 032.

3. Superintendent of Police,
Jalgaon, District : Jalgaon.

4. Sub-Divisional Police Officer,
Amalner Sub-Division, Amalner,
District : Jalgaon.

.. Respondents.

5. Maharashtra Administrative Tribunal,
Mumbai Bench at Aurangabad,
Old High Court Building,
Aurangabad, District : Aurangabad.

.. Respondent no.5 deleted.

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Mr. Pradip R. Patil, Advocate, for the petitioners.

*Mr. S.S. Tope, Assistant Government Pleader, for
respondent nos.1 to 4.*

*Respondent no.5 deleted in both petitions vide
order dated 10-4-2012 and 7-4-2010, respectively.*

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**CORAM : A.V. NIRGUDE &
A.M. BADAR, JJ.**

DATE : 26TH JUNE 2015

ORAL JUDGMENT (Per A.V. Nirgude, J.) :

1. Both these petitions are taken up for final hearing and are being disposed of by this common judgment as the facts are interconnected.

2. The petitioners are Police personnel. The petitioner in W.P. No. 1941 of 2010 is a Police Constable, while the petitioner in W.P. No. 2010 of 2010 is a Police Head Constable. It is admitted fact, that both these Policemen left the Police Station at 6.00 p.m. on 14th January 2008, for performing duty of patrolling. On the next day i.e. 15th January 2008, at about 7.50 a.m., both reported to the Police Station, that the weapon 303 Rifle was lost and was snatched by a suspect. In the enquiry, it was revealed that instead of attending the duty of patrolling, these Policemen went to a village where they consumed liquor. The Head Constable

became indisposed because of over consumption and went to sleep. The other Constable consumed liquor with a villager and then tried to go to a place with the villager where he thought that business of illicit liquor was going on. The villager refused to go with him and there ensued between the village and the Constable. The villager could snatch away the rifle from the hands of Constable. Both these Constables then practically did nothing save and except, they tried to search and find the villager who had taken away the weapon. Obviously, during night time, such search was in a vain. During the entire night, both these Constables waited in the village and only in the morning, at about 7.50 a.m., they reported the incident.

3. The Superintendent of Police directed enquiry through his colleague Sub-Divisional Police Officer, who recorded statements of all the concerned witnesses, including the petitioners, and submitted his report within three days. On 17th January 2008, the Superintendent of Police took recourse to Article 311(2) of the Constitution of India, holding that it was not reasonably practical to hold departmental enquiry in the cases of petitioners and passed order of their dismissal from service.

4. The orders of dismissal of the petitioners, from service, were challenged before the Maharashtra Administrative Tribunal. The Bench of the Tribunal heard the cases in detail, perused record and recorded finding that the discretion, not to hold departmental enquiry was used properly and dismissed the Original Applications filed by the petitioners. This judgment is challenged in these Writ Petitions.

5. We went through the judgment as well as the order of

dismissal passed by the Superintendent of Police, Jalgaon.

6. The learned Counsel for the petitioners submitted that both, the order of Administrative Tribunal, as well as the order passed by the Superintendent of Police, were incorrect. According to him, this was not a case where departmental enquiry could have been dispensed with.

7. On perusal of the impugned order dated 17th January 2008, passed by the Superintendent of Police, we find that the Superintendent used discretion given to him, under Article 311(2) of the Constitution, mainly because he found that the incident in question indicated that the petitioners are rowdy and vindictive in nature. No one would come forward to give deposition against them. In view of this, he came to the conclusion that the departmental enquiry is not practicable. The learned Counsel for the petitioners took us through various judgments of the Supreme Court as well as Division Bench of this Court.

8. It is well settled law, that Article 311, which lays down doctrine of pleasure, is not an unjust provision or a relic of British Empire. The Supreme Court, in the case of ***Union of India & another Vs. Tulsiram Patel***, reported in ***AIR 1985 SC 1416(1)***, considered the scope of the proviso to Article 311(2). In order to appreciate the observations of the Supreme Court, one must first read Article 311 of the Constitution. It reads as under :-

" Dismissal, removal or reduction in rank of
persons employed in civil capacities under the

Union or a State. – (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply –

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which

has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final. "

The relevant portion for our discussion is, '***it is not reasonably practicable to hold such inquiry***'. The Supreme Court, in the above mentioned judgment, discussed the meaning of '***reasonably practicable***' and held that it is not possible to enumerate cases in which it would be reasonably practicable to hold the enquiry, but some instances by way of illustration may be given.

Following portion of the judgment is quite instructive :-

“ It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together, with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear or reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary

authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. "

9. If we apply these principles to the facts of this case, we can easily come to the conclusion that the discretion used by the Superintendent was not indiscreet. The incident, in question, took place during the night between 14th January 2008 and 15th January 2008. It occurred in a village where number of villagers witnessed various parts of the incidents. The witnesses, thus, were vulnerable to pressure that would be exerted by not only petitioners but number of their colleagues. In our view, there are two circumstances which are not tenable; first, the petitioners abandoned their duty of patrolling and went to the village. Secondly, one of the petitioners, who was carrying a weapon, lost it. Admittedly, it was a case of robbery

and yet the same was not reported immediately to Police Station. This aspect of the case would clearly point out that the misconduct is untenable. In this way also, we may come to the conclusion, that the departmental enquiry was reasonably impracticable.

10. The learned Counsel for the petitioners has placed reliance also on Section 26 of the Maharashtra Police Act, and argued that even if recourse to Article 311(2) of the Constitution of India is taken by the Superintendent of Police, who was a disciplinary authority for the petitioners, he ought to have given hearing to the petitioners before imposing penalty of dismissal. Section 26 of the said Act reads as under :-

" Procedure to be observed in awarding punishment – Except in cases referred to in the second proviso to clause (2) of Article 311 of the Constitution of India, no order of punishment under Sub-section (1) of Section 25 shall be passed unless the prescribed procedure is followed."

The reliance on this provision is obviously misplaced. This provision is applicable only when cases are not considered under Article 311(2) of the Constitution of India.

11. The other judgments placed before us, on behalf of the petitioners, are as under :-

Sr. No.	Judgment delivered by the Court :	Names of parties	Citation
1.	Supreme Court	<i>Tarsem Singh Vs. State of Punjab & others.</i>	(2006) 13 Supreme Court Cases 581
2.	Supreme Court	<i>Sudesh Kumar Vs. State of Haryana & others.</i>	(2005) 11 Supreme Court Cases 525
3.	Supreme Court	<i>Chief Security Officer & others Vs. Singasan Rabi Das</i>	(1991) 1 Supreme Court Cases 729
4.	Supreme Court	<i>Jaswant Singh Vs. State of Punjab & others</i>	(1991) 1 Supreme Court Cases 362
5.	High Court of Bombay	<i>Shantilal Dnyanu Jadhav Vs. Commissioner of Police</i>	(2010) 3 Mah.L.J. 362
6.	High Court of Bombay	<i>Nitin Janardhan Raut Vs. State of Maharashtra & another</i>	2002(6) Bom.C.R. 43

We are not inclined to discuss the above citations in view of the discussion recorded above.

12. In the result, the petitions fail and the same are dismissed. Rule is discharged with no order as to costs.

(A.M. BADAR)
JUDGE

(A.V. NIRGUDE)
JUDGE

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