

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

R.S..A. No. 1583 of 1994 (O&M)

Date of decision : 29.04.2015

State of Punjab and another **...Appellants**

versus

Harbhajan Singh Ex Constable **..Respondent**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab

Mr. K.S. Sidhu, Advocate &
Mr. Satbir Gill, Advocate
for the respondent

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

State has come up in Regular Second Appeal against the concurrent finding recorded by both the Courts below whereby the suit of the plaintiff-respondent (for short 'the respondent') was decreed.

The respondent joined as a Constable at Amritsar on 10.04.1981 and was allotted constabulary No. 2979. He was involved in a case under Section 18 of the N.D.P.S Act, registered at Police Station, Ajnala and due to this reason, S.S.P Amritsar dismissed the respondent from service, vide order dated 27/28.06.1987. In the order, it was stated that the respondent was in league with terrorists and extremist and that he was working with them and helping them in the collection

of money. The respondent was governed by the Punjab Police Rules and could not be dismissed from service, without any enquiry, as contemplated in the Punjab Police Rules. Another case u/s 3/4 of T.A.D.A Act and the Official Secrets Act, was registered against the respondent and the matter was not referred to the District Magistrate to seek his permission to hold an enquiry under Rule 16.38 of the Punjab Police Rules. The respondent was not served with any show cause notice. Thereafter, the respondent was acquitted by Addl. Sessions Judge, Amritsar vide judgment dated 07.02.1988 and the State did not file any appeal against the judgment of acquittal and hence the judgment attained finality. Further the order of dismissal was not communicated to the respondent and was passed in his absence without giving him any opportunity of any kind.

Upon notice, the appellants filed their joint written statement and on merits admitted that the respondent joined the department on 10.04.1982 as Constable and F.I.R No. 202 dated 08.06.1987 under Section 18 and 61 of NDPS Act was registered against him. According to the appellants, the respondent was in league with terrorists and extremist and that he was working with them and helping them in the collection of money. Order passed by S.S.P was legal and valid. The provisions of Rule 16.38 of the Punjab Police Rules were not applicable to the facts of the present case and

approval of District Magistrate was not required.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the order dated 28/6/87 is illegal and void? OPP*
- 2. Whether the plaintiff served a valid notice u/s 80 C .P.C? OPD*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the suit of the plaintiff is premature, if so, its effect? OPD*
- 5. Relief.”*

The trial Court examined the file (Ex D1) i.e police file of F.I.R No. 202 dated 8.6.1987 registered against the respondent under Section 18/61/85 of NPDS Act, which shows that SHO Police Station Ajnala in his zimini order dated 24.6.1987 held that there is no evidence against the plaintiff in order to put him on trial for the offence under Section 3/4 of Terrorists Disruptive Activities (P) Ordinance, 1987 and this zimini of SHO Police Station Ajnala was verified by DSP Major Singh, Ajnala who also arrived at the same conclusion that there is no evidence against the plaintiff in order to put him on trial for the offence under Section 3/4 of Terrorists Disruptive Activities (P) Ordinance, 1987.

Thereafter, he was of the opinion that there was no material before

the Punishing Authority to substantiate the allegations against the plaintiff as reported in the order that “Whereas Constable Harbhajan Singh No. 2979 of Amritsar District has been reported to be in league with terrorists and extremists of Amritsar District.

In the contradictory of this noting, the SSP, Amritsar dismissed the respondent from service without holding any departmental enquiry, as envisaged by Punjab Police Rule 16.24 under Article 311 (2) of the Constitution of India.

The trial Court decreed the suit of the respondent and dismissed the order dated 27/28.06.1987 and the respondent was ordered to be deemed in service since 27/28.06.1987 from the date of impugned order and entitled to all the benefits.

On appeal, the Lower Appellate Court affirmed the findings of the trial Court. Reference was made to the judgment of Hon'ble the Supreme Court in a case of ***Union of India v. Tulsiram Patel 1986 (3) SCC 398.***

This judgment of Hon'ble the Supreme Court has been followed by this Court in ***State of Punjab and another vs. Ajit Singh, passed in R.S.A No. 2082 of 1992, decided on 03.08.2010*** wherein Ajit Singh was appointed as Constable in the Punjab Police on 19.05.1979. However, he was dismissed from service on 03.03.1988 on the ground of dereliction of duties in the aid of extremists without

holding any inquiry. This Court has held in ***Baljit Singh, Ex Constable s/o Khaqzan Singh v. Senior Superintendent of Police, Amritsar 2008 (2) RSJ 293*** that where some material was available before the competent authority in the form of preliminary inquiry, information etc, it would be the basis of forming an opinion that it was reasonable practical to hold regular inquiry but where no such material was available, the exercise held under Article 311 (2)(b) of the Constitution of India was held to be arbitrary. Reference was made to ***Darshan Jit Singh Dhindsa vs. The State of Punjab and others 1993(2) page 650***, whereby the Division Bench of this Court In that case the services of the official was dispensed with on the allegation that he has linked with extremists. There was nothing on the record from which one can come to the conclusion that holding of an inquiry is or was not practical. The charge of petitioner having linked with extremists were vague. In the service record, there was commendation certificate for the courageous acts performed by the petitioner in curbing the terrorists activities. It was held that mere reproduction of the words of the statute are not sufficient to justify the finding of fact with respect to the satisfaction of the authority concerned under Article 311(2)(b) of the Constitution of India. Further, in a case of ***Ashok Kumar vs. State of Punjab and others 1990 (2) RSJ 209***, it was held that it was obligatory on Superintendent of Police to report the matter to

District Magistrate to decide whether any departmental inquiry or criminal proceedings should be held in case of allegations against the police official that he was mixing with the bad characters and smugglers. Provisions of Rule 16.38 of the Act, was not followed, no inquiry was held and it was held that order clearly outside the scope of Article 311(2)(b) of the Constitution of India. Similar view was taken by this Court in authority ***Sub Inspector Mohinder Singh Cheema vs. State of Punjab and others 1990 (2) RSJ 714*** . In authority **Jaswant Singh vs. State of Punjab and others 1991(1) SCC page 125**,

Hon'ble Apex Court has held that reasoning given for dispensing with the inquiry be substantiated

Thus, by relying upon various judgment passed by this Court as well as Hon'ble the Supreme Court , this Court dismissed the appeal filed by the State against Ajit Singh. Against this judgment, State of Punjab file SLP, which was dismissed by Hon'ble the Supreme Court, vide SLP Civil No 17368/12, decided on 25.10.2013.

Reference at this stage can be made to a judgment of this Court in a case of ***Ex Constable Baljinder Singh v. State of Punjab and others, 2012 (4) S.C.T 103*** wherein petitioner was working as Constable and was arrested under Section 212/216 IPC and section 3/4 of TADA Act. His services were dismissed by SSP after dispensing with the enquiry. No opportunity of hearing was given to him. This Court

while relying upon Tulsi Ram's case (supra) set aside the termination order and directed the department to reinstate the petitioner in service. In para 15, it has been held as under:-

15. In the instant case, at the cost of repetition, it may be mentioned that the criminal case, in which the petitioner was arrested, he was acquitted and the respondent State has not produced any judgment of reversal. The State has also submitted that an enquiry was held against the petitioner. Be that it may, no record of enquiry has been produced by the State. In any case, if some enquiry could be held against the petitioner, then there was no difficulty for the State to hold a regular enquiry against the petitioner before terminating his services. It is settled proposition of law that the departmental authority at his own whim or caprice could not dispense with the enquiry for some ulterior motive or to over-come the political or other pressure at the relevant time. Holding departmental proceedings for any kind of dereliction of duty is a enumerated under proviso to Article 311(2) (b) of the Constitution of India and also in the punishment and appeal rules governing the employment and there must be valid reasons to dispense

with the enquiry based upon material. In the instant case, no material has been placed before this Court to substantiate the opinion of the Senior Superintendent of Police in dispensing with the said procedure. Such opinion must be based upon objective criterion and identifiable material and not merely on the presumptions and assumptions of the authorities. Thus, the stigmatic order passed against the petitioner without holding a departmental enquiry and also without recording any valid reasons for dispensing with such enquiry, cannot stand the scrutiny of the settled law of the land.”

In the present case, the respondent was dismissed from service as F.I.R under the NDPS Act was pending against him. However, a perusal of file of above mentioned F.I.R (Ex D1) shows that SHO Police Station Ajnala in his zimini order dated 24.6.1987 held that there is no evidence against the plaintiff in order to put him on trial for the offence under Section 3/4 of Terrorists Disruptive Activities (P) Ordinance, 1987 and this zimini of SHO Police Station Ajnala was verified by DSP Major Singh, Ajnala who also arrived at the same conclusion that there is no evidence against the plaintiff in order to put him on trial for the offence under Section 3/4 of Terrorists Disruptive Activities (P) Ordinance, 1987.

Hence, in the absence of any evidence against the respondent, the termination order passed by SSP without holding regular inquiry cannot be sustained, in view of **Tulsi Ram's case (supra)** which has consistently been followed by this Court.

In view of the above, the judgments passed by both the Courts below do not require any interference by this Court. No substantial question of law arises for consideration.

The regular second appeal is dismissed.

(RITU BAHRI)
JUDGE

29.04.2015

G Arora