

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.05.2017
PRONOUNCED ON : 19.06.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.13449 of 2017
and
W.M.P.No.14503 of 2017

V.Shanmugam

... Petitioner

Vs

The Senior Superintendent of Police (C&I)
Puducherry.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records relating to the proceedings of the respondent dated 06.04.2017 in No.OSD/DE-1/29-10/SSP(C&I)/2017 and quash the same.

For Petitioner : Mr.S.Haja Nazirudeen,
Senior Counsel
for Mr.A.B.Ashok

For Respondent : Mr.R.Syed Musthafa,
Additional Government Pleader(P)

सत्यमेव जयते
ORDER

The Writ Petition has been filed challenging the order dated 06.04.2017 passed by the respondent, dismissing the petitioner from service without issuing notice, charge memo and without enquiry. Such an order has been passed within 6 days from the date of registration of FIR in Crime No 32 of 2017 on the file of Mudaliarpur police station, Puducherry under sections 7 and 8 of the Puducherry Gaming Act and sections 420 r/w 34 IPC.

2. By consent, the main writ petition itself was taken up for hearing.

3. The brief facts of the case are as follows:

The petitioner was employed as Police Constable in Puducherry in 1998. Earlier, he was in the Puducherry home guards department. The petitioner has been part of the Special Task Force, Crime Team (South) and has solved many cases involving murder, theft, lottery case. The petitioner has received several accolades including Rajiv Gandhi Award on 16.08.2016. According to the petitioner, he had earned several enemies in the department as during the course of his investigation in many cases, it came to light that several police officers are involved in the crime. Whiles, when he was under medical leave from February 2017 onwards, news articles were published on 31.03.2017 alleging the involvement of the petitioner with an incident which resulted in registration of the FIR in Crime No.32/2017, on the file of Mudaliarpur Police Station, Puducherry. Thereafter, the impugned order came to be passed dismissing him from service on 06.04.2017 without any opportunity to him. Aggrieved, the petitioner is before this Court challenging the dismissal order contending inter alia that the impugned order has been passed in gross-violation of principles of natural justice; that he is not connected with the offences as alleged in the FIR, he has been falsely implicated at the instance of few police officers including the Sub Inspector - Ramesh, who was part of the raiding team and the FIR on the face of it, is unsustainable as against the petitioner; and that the procedures and protection under Puducherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 and Article 311(2) of the Constitution of India, have been violated.

Contentions of both the Counsels:

4. Mr.S.Haja Nazirudeen, learned Senior Counsel appearing for the petitioner contended that the impugned proceedings has been passed without any notice, without issuing any charge memo with imputations of charge and without any enquiry and hence, is in violation of the principles of natural justice. The learned Senior Counsel also contended that the procedure to be followed, while initiating the disciplinary proceedings against a police officer in the cadre of the petitioner, has been spelt out in the provisions of the Puducherry Police Subordinate Services (Discipline and Appeal) Rules, which were notified by the Lieutenant Governor of the Union Territory of Puducherry and the provisions make it mandatory to conduct the inquiry.

5. Further, the learned Senior Counsel relying upon Article 311(2) of the Constitution of India, contended that a person cannot be dismissed ordinarily without inquiry and without being afforded an opportunity. The proviso to Article 311(2) cannot be used arbitrarily and whimsically to avenge an employee, who has had an outstanding career. To invoke the proviso to Article 311 (2), there must be subjective satisfaction that enquiry cannot

be practically held, based on tangible materials to dispense with the enquiry and such reasons must be recorded, which is absent in the present case. The Learned Senior counsel also referring to the allegations averred in the affidavit and the statements of the accused in a theft case investigated by the petitioner, pointed out the involvement of police officers in various crimes including the Sub Inspector - P.Ramesh, who was also part of the present raiding team and it was strongly contended that the name of the petitioner has been included only with malafide intention to wreck vengeance and oust the petitioner from service.

6. The learned Senior Counsel also painstakingly referred to the FIR to contend that indisputably, the petitioner was not present at the time of the alleged raid. Further, it was pointed out that the FIR only specifies the name of the person present earlier as "Shanmugam of Kuruvinatham" and not as police constable Shanmugham. Therefore, as an afterthought, the petitioner has been implicated on vengeance. The learned senior counsel further pointed out the photographs of the alleged place, where the raid took place and contended that there is only one way to ingress and exit and that, it is not possible for anyone to escape after the police had entered into the premises, that too, when 13 police personnel were present. The learned Senior counsel also referring to Section 7 and 8 of the Puducherry Gaming Act, contended that both the sections prima facie cannot apply to the petitioner as he is neither the owner nor an employee and was not present at the time of the raid as per the FIR. It was also contended that Section 420 IPC could not be applied to a case registered under the Gaming Act, suo motu by the police.

7. The learned Senior Counsel for the petitioner also contended that in the Union Territory of Pondicherry, more than 100 cases have been registered against several police personnel for grave offences like murder, theft, lottery scam, but no action has been taken against them, whereas, by wrongly indicating the name of the petitioner found in a petty offence, the petitioner has been dismissed from service at the instance of the higher officers of the department. Therefore, such action of the respondent is not only arbitrary, but also discriminatory in nature. The learned Senior Counsel also relying upon the judgments, which are discussed below, sought reinstatement of the petitioner in service with backwages, as the dismissal is per se bad in law.

8. On the other hand, Mr.R.Syed Mustaffa, Additional Government Pleader (Puducherry) appearing for the respondent submitted that as per Rule 19 of the Central Civil Services (Classification Control and Appeal) Rules (hereinafter shortly referred to as 'CCS (CCA) Rules') and the second proviso to

Article 311(2) of the Constitution of India, the respondent is entitled to dispense with the enquiry. The other contention raised by the learned Additional Government Pleader (Puducherry) was that the writ petition was not maintainable in view of the availability of the appeal remedy before the Inspector General of Police and then to the Central Administrative Tribunal.

9. In reply, the learned senior counsel for the petitioner, relying upon Rule 3(1)(e) of the CCS(CCA) Rules submitted that once the State has notified its own rules, the Central Rules will cease to apply and in the instant case, as the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 was in force, invocation of the CCS (CCA) Rules is without authority. The above contention was not refuted by the learned Additional Government Pleader (Puducherry) appearing for the respondent.

10. Heard both the Counsels and perused all the records including the original file relating to the dismissal of the petitioner.

11. Initially, when the writ petition was taken up for consideration on 24.05.2017, the learned Additional Government Pleader (Puducherry), on instructions, fairly submitted that no notice was issued and no inquiry whatsoever was conducted before passing the impugned order and the impugned order was passed directly, as a FIR was registered against the petitioner and he was allegedly involved in the serious offence of playing cards for money by betting, which is an offence punishable under the provisions of Puducherry Gaming Act and for cheating. This Court adjourned the matter to 25.05.2017 directing the learned Additional Government Pleader for the respondent to get instructions. Since the file could not be produced on 25.05.2017, the matter was adjourned to 30.05.2017 enabling the counsel for the respondent to produce the file. On 30.05.2017, the original file was produced and then, both the counsels submitted their respective contentions as indicated above.

12. The contents of the impugned order reveal that the order of dismissal has been passed on the strength of the FIR in Crime No.32/2017, immediately within 6 days from the date of registration without any notice or reason as to why no opportunity is to be provided to the petitioner. Such a decision is claimed to be based on the enabling provisions in Rule 19 of CCS (CCA) Rules and second proviso to Article 311(2) of the Constitution of India.

13. On this point, the learned Senior counsel appearing for the petitioner has submitted that as per Rule 3(1)(e) of the CCS (CCA) Rules, once the State has notified the Rules to be followed for certain persons, the invocation of Rule 19 is

without authority. I find force in the contention so raised by the learned Senior Counsel appearing for the petitioner. In this context, it is relevant to quote the findings of the Division Bench of the Delhi High Court reported in 2008(101) DRJ 401 (DB) (Union of India and others v. Sub Inspector Sanjay Sharma):

"5.The said OA filed by the respondent is allowed on the ground that there was no review of the suspension within 90 days and, therefore, suspension order in the first form could not be sustained in law. The ground on which this petition is filed is that CCS(CCA) Rules have no application to the present case and, therefore, the case could not have been decided on the touchstone of Sub-rules (6) and (7) of Rule 10 of the said Rules. It is the case of the petitioners that the suspension of the employees of the Delhi Police is governed by its own rules, namely, the Delhi Police (Punishment and Appeal) Rules (hereinafter referred to as the 'DP(PA) Rules'). The question therefore, falls for determination is as to whether CCS(CCA) Rules are applicable or not and what is the effect of non-review of the suspension orders within 90 days under the DP(PA) Rules. Rule 3 of CCS(CCA) Rules, 1965 deals with application of these Rules. Clause (e) of Sub-rule (1) thereof stipulates that any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions, the said CCS(CCA) Rules would not apply. Therefore, what is to be seen is as to whether there is any special provisions made in DP(PA) Rules with respect to suspension.

6.Before advertng to that, we may note that vide Notification dated 17.12.1980, various rules are made applicable to the employees of Delhi Police who are governed by Delhi Police Act, 1978 and the list of 23 types of rules which are made applicable does not include CCS(CCA) Rules. It is also mentioned that in case there is any conflict between the provisions of rules framed under the Delhi Police Act and the Central Government rules adopted by the said notification, the provisions of the rules framed under the Delhi Police Act shall prevail.

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8.Since the respondent's service conditions

are governed by the DP(PA) Rules, Rule 10 of the CCS(CCA) Rules will have no application. Even apart from that, there is no provision akin to Sub-rule (6) or (7) of Rule 10 of the CCS(CCA) Rules."

14. Rule 3 (1) of CCS (CCA) of the Rules read as follows:

"3.Application

(1)These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to -

(a)any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,

(b)any member of the All India Services,

(c)any person in casual employment,

(d)any person subject to discharge from service on less than one month's notice,

(e)any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions."

15. In the present case, for regulating the procedures to be followed in matters relating to Discipline and Appeal proceedings regarding Police personnel in Puducherry, Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 was notified by the Lieutenant Governor of Pondicherry on 09th January 1968 . As per Rule 1(3), it applies to all the persons employed in Pondicherry Police Subordinate Services or the Pondicherry Armed Police Subordinate Services. For better appreciation, Rule 1(3) is reproduced hereunder:

"1(3). In these rules unless the context otherwise requires "Service" shall mean the Pondicherry Police Subordinate Service or the Pondicherry Armed Police Subordinate Service as classified below:

(i) (a). Inspectors of Police, Reserve Inspector of Police, Adjutant and M.D.L.Cs.

(b). Sub-Inspectors of Police, Reserve Sub-Inspectors of Police and M.D.L.s.

(c). Assistant Sub-Inspectors of Police and Brigadier Chief.

(d). Head constables of Police and Brigadiers.

(e). Constables of Police and AIGs.

(ii) (a). Subedars of PAP sergeant chief and segent

4th echelon.

(b). Jamedars of PAP and sergent 3rd echeon of cipahi company.

(c). Havildar Major of PAP and sergent 1st and 2nd echelon.

(d). Havildars of PAP caporals 4th echelon and caporal chef 1st and 2nd echelon.

(e). Naiks of PAP and caporals 1st, 2nd and 3rd echelon.

(f). L/Naiks of PAP and cipahis 1st and 2nd ehelon of Cipahi company.

(g). Constables and Buglers of PAP"

From the conjoint reading of Rule 3(1)(e) of the CCS (CCA) Rules and Rule 1(3) of the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968, it is clear that the post of Police constable would fall under the Subordinate service and only Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 is applicable to the petitioner. Upon perusal of the provisions of Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968, it is also clear that there is no incorporation or reference to make the provisions of the CCS (CCA) Rules applicable to the persons covered under the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968. Therefore, the invocation of Rule 19 of CCS(CCA) Rules by the respondent is without authority.

16. Regarding the imposition of punishment and procedures to be followed in the disciplinary proceedings, Rule 3 of the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968, is applicable. Rule 2 deals with minor and major punishments. Insofar as the present case is concerned, dismissal by way of major punishment is contemplated in Rule 2(j). It is now necessary to consider Rule 3, which reads as follows:

"3(a). In every case where it is proposed to impose on a member of the service, any of the penalties mentioned in clauses (a), (b), (c), (d) and (f) of rules 2, he shall be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(b)(i). In every case where it is proposed to impose on a member of the service, any of the penalties mentioned in clauses (a), (g), (i) and (j) of rule 2, the grounds on which it is proposed to be taken on facts which have led to his conviction in a criminal court, be reduced to the form of a definite charges which shall be communicated to a person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take

into consideration in passing orders on the case. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held if such an enquiry is desired by the person charged or is directed by the authority concerned. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no oral enquiry is held and if he had desired to be heard in person, he shall be so heard. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

(ii). After the enquiry referred to in clause (i) has been completed and after the authority competent to impose the penalty mentioned in that clause has arrived at provisional conclusion in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf submitted by the person charged shall be duly taken into consideration before final orders are passed.

(c). The requirements of sub-rules (a) and (b) shall not apply where the officer concerned has absconded or where it is for other reasons not possible to communicate with him.

(d). All or any of the provisions of sub-rules (a) and (b) may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is a difficulty in observing exactly the requirements of the sub-rules and those requirements can be waived without injustice to the person charged."

A perusal of the above rule 3(b) makes it categorical that only in cases where there is conviction by a criminal court, a penalty in clauses (a), (g), (i) and (j) of rule 2 can be imposed. It is clear that the punishments can be imposed only after issuing a charge memo with statement of allegations and

other documents to the person charged and give an opportunity to submit his objections in writing. Thereafter, if the person wants an oral enquiry and personal hearing, the same must be provided. The provision also paves way for cross-examination and further opportunity after the enquiry. Thereafter, the competent authority has to forward the copy of the report and grant further opportunity intimating the penalty proposed and seek for objections. The language used in Rule 3(b) makes it mandatory to follow the procedure in all cases. The procedures contemplated under the Rules have not been followed. In fact, the respondent has not even referred to the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968.

17. Next coming to Article 311 of the Constitution of India, which reads as under:

"311. 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 a 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."

It is settled law that Article 311(2) is an exception to the rule of doctrine of pleasure. It restricts or limits the use of power in a capricious or whimsical way. It mandates opportunity in the form of inquiry and hearing to the delinquent employee, before his services are terminated. The power to dispense with enquiry is provided in Second Proviso. Three circumstances are enumerated in the proviso, namely (a) upon conviction on a criminal charge; (b) upon satisfaction that it is not practicable to hold an enquiry; and (c) in the interest of the state that it is not expedient to hold the enquiry. Clause (b) has been invoked in the present case.

18. It has been contended by the learned Senior Counsel for the petitioner that the satisfaction must be "subjective satisfaction" and authority so invoking the proviso, must record the reasons based on some concrete materials. Though, the CCS (CCA) Rules are not applicable to the case on hand, Rule 19 (2) was referred by the respondent in the impugned proceedings. At this juncture, it is useful to refer to Rule 19, which reads thus:

"19.Special procedure in certain cases:

Notwithstanding anything contained in rule 14 to rule 18-

(i)where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii)where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii)where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, (and the Government servant has been given an

opportunity of representing against the advice of the commission, before any orders are made in any case under this rule.)”

Rule 19 (2) has been worded similarly to clause (b) of Second Proviso to Article 311(2). Rules 3(c) and 3(d) of the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 make way for waiving the procedure to be followed as prescribed in Rule 3 (b). Again such waiver can be only when the delinquent officer is absconding or incommunicable and in exceptional circumstances for some special and sufficient reasons recorded in writing as to why such procedure cannot be followed. However, even such a waiver must not cause injustice to the party. All imply that there must be satisfaction recorded in writing. But such satisfaction must be based on materials. The materials must enable a reasonable man of reasonable mind to arrive at such a decision to deprive a person of the protection guaranteed under Article 311(2). There must be application of mind to the materials on record before such a decision is taken.

19. It is now relevant to refer to the reasons recorded and the materials found in the original File No.OSD/DE-1/29-10/SSP (C&I)/2017. The file consists of four documents namely (i) report prepared by the Inspector of Police, Mudaliarpur Police Station dated 30.03.2017, on which several endorsements are made including a seal wherein FR No.918 dated 01.04.2017 is inscribed; (ii) a note dated 06.04.2017, wherein, it has been advised to seek the opinion of the Law Department as direct dismissal would lead to legal embargo and violation of Rules and procedures with an endorsement by the respondent; (iii) Copy of FIR and particulars of the accused; and (iv) Several copies of the order impugned. The particulars of the accused annexed contain nothing but the names and addresses of the accused given in the complaint. Apart from the above documents, there are no materials to show that a preliminary enquiry was conducted and there are no materials to support the allegations made against the petitioner. The file does not contain the statements of any independent witnesses. It also does not name the persons, who were examined in connection therewith.

20. The FIR was launched based on the complaint by one Rajan, Sub-Inspector of Police and the same was registered by the very same officer in the capacity of the Station House Officer on 30.03.2017. The FIR also reveals that he is the investigating officer; 13 of the accused were arrested on the same day; the 14th accused is described as Shanmugham of Kuruvinnatham and the 15th person is Stalin, the owner of the premises. The FIR was registered for the offences punishable under Sections 7 and 8 of the Pondicherry Gaming Act and Sections 34 and 420 IPC. The report of the Inspector of Police is dated 30.03.2017, i.e on the same day. The language of the

report proceeds as if the Inspector had conducted the investigation in the case, whereas, the FIR reveals the Sub-Inspector to be the Investigating officer. The name of the petitioner is for the first time included in the subject of the report and again, in the body, as if the examination of the witnesses revealed that Shanmugham named in the FIR is the police constable i.e., the petitioner herein. In the statement annexed with the FIR along with the report, it is mentioned only as "Shanmugam of Kuruvinatham" and not as "PC 2167 V.Shanmugham". The statement of the witnesses was not enclosed along with the report implying that the respondent and other officers had no material other than the FIR to consider. No such statement is also found in the file. The report has been forwarded by the Inspector through the Superintendent of Police (South) for necessary disciplinary action to the Inspector General of Police (Appellate Authority), Senior Superintendent of Police(L & O), Superintendent of Police(HQ) and Senior Superintendent of Police(C&I), i.e., the respondent.

21. On the rear side of the report, the Senior Superintendent of Police(L&O), who is neither the investigating officer nor the appropriate authority, has noted that the investigation has revealed that the petitioner is one of the organisers of the gameship rocket and associated with antisocial elements indulging in prostitution and lottery trade and put up the same for necessary departmental action. The file does not contain any document which authorises the Senior Superintendent of Police(L&O) to make such note. Also, the file does not contain any document based upon which, such an endorsement was made by the Senior Superintendent of Police(L&O). The report of the Inspector also does not contain any such allegations. However, the file travelled to next stage after the approval and recommendation by the Inspector General of Police, the appellate authority and finally, the respondent, who is the disciplinary authority quoting Article 311 of the Constitution of India, straight away endorsed that the petitioner shall be dismissed with immediate effect on 06/04/2017. No reasons have been recorded by him. He has not recorded any satisfaction. He has also not referred to the allegations in the endorsement of the Senior Superintendent of Police(L&O) to come to such conclusion. The report along with the endorsements were forwarded to the Superintendent of Police(HQ), who prepared a note for obtaining opinion from the law department, however, the same was rejected by the respondent observing that as a police officer, the petitioner has broken the law and involved in serious offence and therefore, as a disciplinary authority, he has decided not to conduct any inquiry against him and is constrained to impose the major penalty of "Dismissal from Service" with immediate effect under Rule 19(2) of CCS (CCA) Rules and proviso to Article 311(2) of the Constitution of India. Accordingly, the impugned order dated 06.04.2017 was passed and served on the

petitioner, casting a stigma on his character.

22. From the file, it is clear that though the respondent is the disciplinary authority, various officers have made endorsements without any material, apart from the FIR in Crime No 32/2017. The FIR also does not specifically implicate the petitioner. It is crystal clear that independent preliminary inquiry has not been conducted. Therefore, in the absence of any material, the decision of the respondent to invoke the proviso to Article 311(2) of the Constitution of India and Rule 19(2) of CCS (CCA) Rules to dispense with the inquiry is nothing but an arbitrary exercise of power. In fact, the respondent has not even stated as to why it is not practicable to hold the enquiry. It appears from the language used in the note that he has decided not to hold the enquiry rather than subjectively satisfying himself with valid reasons based on materials, to dispense with the inquiry, which he is legally required to.

23. It is needless to say that in the absence of materials, one cannot apply his mind and satisfy himself, but can only decide arbitrarily, which has transpired in the present case. Nevertheless, such materials have to be placed before him before the decision is taken. Subsequent production of materials would not validate the order. It would only imply that the records have been created subsequently to justify the order already passed. Subjective satisfaction would mean the consideration of the allegations and the materials in support of the same by application of mind and recording justifiable reasons to arrive at such conclusion. It is also pertinent to mention here that there is a difference between "not reasonably practical to hold an inquiry" and "not necessary to hold the inquiry". It could be said that it may not be reasonably practical to hold an inquiry if the officer is absconding or if there is a threat to witnesses or if the officer is likely to intimidate the disciplinary authority or in cases of insubordination. But, in the present case, no such reasons are existing and recorded. Further, it has also not been recorded that it is an exceptional case and no special or sufficient reasons have been recorded. Obviously, a dismissal without opportunity would severely prejudice the interest of the affected party. Therefore, the respondent has clearly violated the procedure as contemplated under the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968, as well.

24. It is also necessary to bring on record that anyone can make allegations, but the same must be substantiated with materials and established in Court of law. This Court is in full consonance with the submission of the learned senior counsel for the petitioner that just because a FIR has been registered, the petitioner should not have been dismissed in a slip shot manner. It is relevant to point out that the petitioner has had an

exemplary career for 19 years in police department, which is not disputed. He is one of the latest recipients of Rajiv Gandhi Award in 2016. He has also made specific allegations of malafides and attempts to avenge him by implicating him in false case because he had during the course of his investigation, brought to light about the involvement of many police officers in many cases involving serious moral turpitude, including lottery case, theft case, etc. In support of his contention, he has produced the statement of two accused, who were arrested by him in a theft case and specific allegations are made by him against the Sub Inspector - Ramesh, a member of Special Task Force, who accompanied the raiding team. Such allegations raised by the petitioner, therefore cannot be ignored, more so after perusal of the file, in which, baseless allegations without any materials, have been made by many officers, with an intent to get him dismissed from service for the reasons better known to themselves.

25. At this juncture, it is relevant to refer to the judgments cited by the learned senior counsel appearing for the petitioner:

(i) In the Judgment reported in 2013 CJ (SC) 1208 (Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and others), the Hon'ble Supreme Court has held as under:

"22. In Indian Railway Construction Co. Ltd. v. Ajay Kumar (2003) 4 SCC 579, this Court was called upon to consider whether the services of the respondent could be terminated by dispensing with the requirement of inquiry enshrined in Indian Railway Construction Co. Ltd. (Conduct, Discipline and Appeal) Rules, 1981 read with Article 311(2) of the Constitution. The learned Single Judge of the Delhi High Court held that there was no legal justification to dispense with the inquiry and ordered reinstatement of the workman with back wages. The Division Bench upheld the order of the learned Single Judge. The two Judge Bench of this Court referred to the judgments in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited ((1979) 2 SCC 80) and P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar ((2001) 2 SCC 54) and held that payment of Rs.15 lakhs in full and final settlement of all claims of the employee will serve the ends of justice."

(ii) The Apex Court in the judgement reported in 2013 (16) SCC 59 (Registrar General, High Court of Gujarat and another v. Jayshree Chamanlal Buddhbhatti) held as follows:

"20. The question, therefore, comes for consideration, as stated earlier, as to whether this is a case of termination simpliciter of the

services of a probationer on account of her unsuitability for the post that she was holding, or whether it is a termination of her services after holding an inquiry behind her back, and without giving her an opportunity to defend.

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29. The propositions in this behalf, as to what constitutes a motive, and what constitutes a foundation for the action were once again crystallized in the judgment of this Court in Chandra Prakash Shahi v.State of U.P. reported in (2000) 5 SCC 152, wherein paras 28 and 29 of the judgment of this Court laid down the relevant propositions which are as follows:

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the

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(iii) The Division Bench of the Himachal Pradesh High Court in the judgment reported in 2015 CJ (HP) 1295 (Shimla Bench) (Hon'ble High Court of H.P. and another v. Roshan Lal) following the above referred Apex Court judgment, has held as follows:

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considered view that the order of termination has been passed by the employer, in the instant case, on the charges of misconduct, is punitive in nature. The inquiry was to be conducted and the writ respondent was to be given the opportunity of hearing, which has not been done in the present case. Thus, as per the mandate of the Apex Court, the termination order, on the fact of it, is not sustainable in the eyes of law. The learned Single Judge has rightly made the discussion in the impugned judgment and has rightly quashed the termination order."

In the present case, the impugned order imposes a stigma on the petitioner. There are allegations impinging the character of the petitioner, who has put in nearly 19 years of unblemished service in the department. The action is definitely punitive in nature. Therefore, the respondent must have given an opportunity to the petitioner.

(iv) The Apex Court in the judgment reported in 2006 (13) SC 314 (Prithipal Singh v. State of Punjab), has held as under:

7. "This Court in Union of India & Anr. vs. Tulsiram Patel [AIR 1985 SC 1416], held that

"132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second

proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

8. The said dicta was affirmed by a Three Judge Bench of this Court Chief Security Officer & Ors. vs. Singasan Rabi Das [(1991) 1 SCC 729], stating :

"It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witness of the security/other railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for

dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry."

[See also Tarsem Singh vs. State of Punjab & Ors. (2006) 13 SCC 581]].

9. Holding of a departmental proceeding is the rule. The 2nd Proviso appended to Article 311(2) of the Constitution of India provides for an exception. It is a trite law that existence of such an exceptional situation must be shown to exist on the basis of relevant materials. In this case, even such a question did not arise as a departmental proceeding had been held and the appellant was not found guilty therein. Once he was exonerated of the charges, the question of issuing an order of dismissal against him and that too, upon dispensation of a formal inquiry, did not arise. The judgment of the High Court as also of the 1st Appellate Court are set aside and that of the trial court is restored. In the peculiar facts and circumstances of case Appellant shall be entitled to the costs, which is quantified at Rs.10,000."

(v) Similarly, the Apex Court in the judgment reported in 2006 (13) SC 581 (Tarsem Singh v. State of Punjab and others) has observed as follows:

"9. It is not disputed before us that in awarding the punishment of dismissal from service upon the appellant no formal enquiry was held purportedly on the ground that the same enquiry could be dispensed with, under proviso (b) appended to Clause (2) of Art. 311 of the Constitution of India, which reads as under:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) * * *

(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 further that this clause shall not apply-

(a) * * *

(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;"

10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under section 377 of the Indian Penal Code. However, it may not be necessary for us to go into the said question.

11. We have noticed hereinbefore that the formal enquiry was dispensed with only on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, inter alia, on the ground that there was no need for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24.06.1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also misdirected himself in passing the said order insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.

12. Even the Inspector General of Police in

passing his order dated 26.11.1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate authority, also proceeded on the basis that the appellant was guilty of commission of offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry. This aspect of the matter has been considered by this Court in *Jaswant Singh v. State of Punjab*, (1991 1 SCC 362) wherein relying upon the judgment of the Constitution Bench of this Court, inter alia, in *Union of India v. Tulsiram Patel*, (1985 3 SCC 398), it was held: (*Jaswant Singh case*, SCC p. 368, para 4)

"Although Clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry."

13. In that case also like the present one, the attention of the Court was not drawn to any material existing on the date of passing of the impugned order in support of the allegations contained in the order dispensing with the departmental enquiry.

14. In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of Art. 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order."

(vi) In the judgment reported in 2014 (13) SCC 244 (Risal Singh v. State of Haryana and others), the Apex Court under similar circumstances, where a writ petition directly filed under Article 226 of the Constitution before the High Court was dismissed, while allowing the appeal of Assistant Sub-Inspector, has held, after discussing various judgments as under:

"2. The broad essential facts which need to be adumbrated for the decision of the present appeal are that the appellant, an Assistant Sub-Inspector (Ad hoc Sub-Inspector) serving in the Department of Police in the State of Haryana, as alleged, was involved in a corruption sting operation in a television channel. Because of the said alleged sting operation, the Superintendent of Police, Mewat at Nuh, vide order dated 19.06.2008, after referring to the news item in the television channel, proceeded to pass the following order:

".....

2. The above said act on the part of above official shows his criminal activities. He being a member of a disciplined force is responsible for protecting the life and property of the citizen of this country, but instead of discharging his duty honestly and sincerely he himself has indulged in criminal activities. As such he has not only tarnished the image of the Haryana Police but also has rudely shaken faith of the citizens of Haryana in the entire Police force, who is supposed to be their protectors. He has acted in a most reprehensible manner. Which is unexpected from a member of disciplined force and undoubtedly extremely prejudicial to the person safety and security of citizen.

3. The involvement of said police official in such a shameful criminal activity has eroded the faith of common people and his continuance in the force is likely to cause further irreparable loss to the functioning and credibility of Haryana Police. The defaulter has acted in a manner highly unbecoming of police official. After such act of serious misconduct. If he is allowed to continue in the Police force, it would be detrimental to public interest.

4. Keeping in view the overall circumstances of above operation, I K.K. Rao, IPS, Superintendent of Police, Mewat at Nuh, in exercise of the powers conferred under Article 311(2)(b) of Constitution of India I hereby order the dismissal of SI Rishal Singh

No. 133/GGN with immediate effect. A copy of this order be delivered to him free of cost."

....

6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in Union of India and Anr. v. Tulsiram Patel (1985) 3 SCC 398) is apposite. In the said case the Constitution Bench, while dealing with the exercise of power under Article 311(2) (b), has ruled thus:

"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

7. In Jaswant Sing v. State of Punjab and Others ((1991) 1 SCC 362), the Court, while dealing with the exercise of power as conferred by way of exception under Article 311(2) (b) of the Constitution, opined as follows:

"5.....Clause (b) of the second proviso

to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case: (SCC p.504, para 130)

'130.....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 decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the officer concerned."

After so stating, the two-Judge Bench quashed the order of dismissal and directed the appellant to be reinstated in service forthwith with the monetary benefits. Be it noted, it was also observed therein that it would be open to the employer, if so advised, notwithstanding the lapse of time, to proceed with the disciplinary proceedings.

9. Recently, in *Reena Rani v. State of Haryana* ((2012) 10 SCC 215), after referring to the various authorities in the field, the Court ruled that when reasons are not ascribed, the order is vitiated and accordingly set aside the order of dismissal which had been concurred with by the Single Judge and directed for reinstatement in service with all consequential benefits. It has also been observed therein that the order passed by this Court would not preclude the competent authority from taking action against the Appellant in accordance with law.

10. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court

giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.

11. Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority....."

(vii) In the judgment reported in 2014 CJ (SC) 1062 (Raghubir Singh v. General Manager, Haryana Roadways, Hissar), the Apex Court has held as under:

"26. In addition to the above findings and reasons, the case of Calcutta Dock Labour Board and Ors. v. Jaffar Imam and Ors, 1966 AIR(SC) 282, is aptly applicable to the fact situation of the case on hand. In the aforesaid case, the respondents had been detained under the Preventive Detention Act, 1950. Thereafter, they were terminated by the appellants without being given a reasonable opportunity to show cause as to why they shouldn't be terminated. It was held by this Court as follows:-

"13. Even in regard to its employees who may have been detained under the Act, if after their release the appellant wanted to take disciplinary action against them on the ground that they were guilty of misconduct, it was absolutely essential that the appellant should have held a proper enquiry. At this enquiry, reasonable opportunity should have been given to the respondents to show cause and before reaching its conclusion, the appellant was bound to lead evidence against the respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation to hold such an enquiry is also imposed on the appellant by clause 36(3) of the Scheme of 1951 and cl. 45(6) of the Scheme of 1956. It appears that in the present enquiry, the respondents were not given notice of any specific allegations made against them, and the record clearly shows that no evidence was led in the enquiry at all. It is only the detention orders that were apparently

produced and it is on the detention orders alone that the whole proceedings rest and the impugned orders are founded. That being so, we feel no hesitation in holding that the Court of Appeal was perfectly right in setting aside the respective orders passed by the two learned single Judges when they dismissed the three writ petitions filed, by the respondents.

14. The circumstance that the respondents happened to be detained can afford no justification for not complying with the relevant statutory provision and not following the principles of natural justice. Any attempt to short-circuit the procedure based on considerations of natural justice must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever "

27. In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the respondent should have issued a show cause notice to the appellant, calling upon him to show cause as to why the order of dismissal should not be passed against him. The appellant being an employee of the respondent was dismissed without conducting an enquiry against him and not ensuring compliance with the principles of natural justice. The second show cause notice giving an opportunity to show cause to the proposed punishment before passing the order of termination was also not given to the appellant-workman by the respondent which is mandatory in law as per the decisions of this Court in the case of Union of India and others v. Mohd. Ramzan Khan, 1991 1 SCC 588 and Managing Director, ECIL, Hyderabad, v. Karunakar, 1993 4 SCC 727."

26. The ratio laid down in the decisions referred to above, in my considered view, are squarely applicable to the facts of the case. The ratio clearly spells out that departmental proceedings must be held in all cases. The exception can be invoked only in exceptional circumstances based on valid materials. After perusal of the file, apart from the FIR, there is no material in the file and the respondent, apart from recording that the petitioner as a police officer has tarnished the image and failed to protect the law, has not recorded any reasons, but has only expressed his opinion. Reasons must be

ascribed as to why inquiry cannot be held. The manner in which the file has travelled from one office to another with remarks without any materials and the finding of the respondent disproportionate to the materials in the file only shocks the conscience of this Court. He has proceeded as if it is his absolute discretion and pleasure, which is unbecoming and untenable as any such decision would be amenable to judicial review under Article 226 of the Constitution of India.

27. At this stage, it is noteworthy to refer to the observation of the Constitutional Bench of the Apex Court in the judgment reported in 2010 (6) SCC 331 (B.P.Singhal v. Union of India and another), while considering the scope of judicial review and the doctrine of pleasure, which is extracted hereunder:

"24.It is of some relevance to note that the 'Doctrine of Pleasure' in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. The Canadian Supreme Court in Wells v. Newfoundland [1999 (177) DL (4th) 73(SCC)] has concluded that "at pleasure" doctrine is no longer justifiable in the context of modern employment relationship.

33.The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set-up, when an office is held during the pleasure of any authority, and if no limitations or restrictions

are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons.

52. Clause (1) of Article 310 provides that a person serving the Union Government holds office during the pleasure of the President and a person serving a State Government holds office during the pleasure of the Governor. The "doctrine of pleasure" is subjected to a restriction in Article 310(2) and the restrictions in Articles 311(1) and (2). The most significant restriction is contained in clause (2) of Article 311 which provides that no such employee shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges levelled against him and given a reasonable opportunity of being heard in respect of those charges.

53. Clause (1) of Article 310 begins with the words "Except as expressly provided by the Constitution". Therefore, Article 310 itself makes it clear that though a person serves the Union or a State during the pleasure of the President/Governor, the power of removal at pleasure is subject to the other express provisions of the Constitution; and Article 311 contains such express provision which places limitations upon the power of removal at pleasure....

72. The traditional English view was that prerogative powers of the Crown conferred unfettered discretion which could not be questioned

in courts. Lord Ruskil attempted to enumerate such prerogative powers in Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] : (AC p. 418)

"... Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject-matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another."

However, the contemporary English view is that in principle even such "political questions" and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety. [See decision of House of Lords in: R.(Bancoult) v. Secy. of State for Foreign & Commonwealth Affairs (No.2) [(2009) 1 AC 453 (HL)]. In fact, De Smith's Judicial Review (6th Edn. 2007, p. 15) states:

"Judicial review has developed to the point where it is possible to say that no power—whether statutory or under the prerogative—is any longer inherently unreviewable. Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power, its scope and its substance. As we shall see, even when discretionary powers are engaged, they are not immune from judicial review."

28. Therefore, under the circumstances, the powers of this court under Article 226 of the Constitution of India are not fettered in service matters when the action of the authority is arbitrary, capricious or whimsical. In the present case, in addition to the existence of all the elements, there also appears to be malice, particularly considering the documents filed by the petitioner, the allegations regarding Sub-Inspector P.Ramesh, attempts to implicate the petitioner in false cases in the affidavit and also considering that the FIR was registered on 30.03.2017, the report of the inspector was prepared on 30.03.2014 itself framing the petitioner as the

Shanmugam who is mentioned in the FIR and a file was opened on 01.04.2017(Saturday), then the file travelled to various offices from 03.04.2017 on which remarks were made without any materials and then reached the office of the respondent, the disciplinary authority on 05.04.2017, who straight away took a decision without recording any reasons to dispense with the enquiry on 05.04.2017 and reiterated the same on 06.04.2017, based on which the impugned proceedings came to be drawn and issued.

29. It was contented by the learned senior counsel for the petitioner that more than 100 police officers in various ranks in the Union Territory of Puducherry have been implicated in grave offences including murder, but no action whatsoever has been initiated against them. However, though the petitioner is not connected with the alleged offence, the petitioner has been dismissed from service in an arbitrary manner, which amounts to discrimination. The learned senior counsel also submitted that there is a conspiracy to include the name of the petitioner in other cases. As the contention has not been disputed by the learned Additional Government Pleader (Puducherry) for the respondent, this Court has not called for the particulars. The allegations put against the Government is startling.

30. Article 16 of the Constitution of India safeguards the citizens of this Country against discrimination more particularly in the matters of employment. Every discriminative action has arbitrariness within it. Therefore, such actions would not only be hit by Article 16, but also by Article 14. The State cannot discriminate between citizens, who are placed equally. The fundamental right against discrimination is available not only in the matters of employment, but is also available in matters relating to termination. It is now relevant to refer to the judgment of the Gujarat High Court reported in 2016 CJ (GUJ) 1981 (Dhramaben K. Desai v. State of Gujarat and others), after considering various judgments of the Apex Court has held as follows:

"10. In the case of E.P. Royappa Vs. State of Tamil Nadi and Anr. 1974(1) S.L.R. 497, a Constitution Bench of the Supreme Court considered the scope of Articles 14 and 16 and laid down the following principles:

"Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in Public employment which is so vital to the building up of the new classless egalitarian society envisaged in

the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other " words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, there informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J. "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16. Article 14 and 16 strikes at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and out side the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vider; in

fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant effected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is, therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Article 311 but not Articles 14 and 16."

...

15. The Supreme Court in *General Manager, Southern Railway Vs. Rangachari*, A.I.R. 1962 SC 36, rejected the narrow construction of the expression "matters relating to employment" used in Article 16(1) of the Constitution observing as under:" If the narrow construction of the expression "matters relating to employment" is accepted, it would make the fundamental right guaranteed by Article 16(1) illusory. In that case it would be open to the State to comply with the formal requirements of Article 16(1) by affording equality of opportunity to all citizens in the matter of initial employment and then to defeat its very aim and object by introducing discriminatory provisions in respect of employees soon after their employment. Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation for the same or similar posts? On the narrow construction of Act. 16(1), even if such a discriminatory course is adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Article 16(1). Such a result could not obviously have been intended by the Constitution. In this connection it may be relevant to remember that Article 16(1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters

relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment," The above observations of Rangachari's case (supra) have been relied upon by the three Judges Bench in Belliappa's, case (AIR 1979 SC 429) to hold that the expression "matters relating to employment" includes termination of employment as would appear from the following observations made in paras 18 and 19 of the decision, which are extracted below:" Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute denial of equal protection and offend the equality clause in Articles 14 and 15(1). Article 16(1) guarantees "equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". Moreover, according to the principle underlying S. 16 of the General Clauses Act, the expression 'appointment' used in Article 16(1) will include termination of or removal from service, also. It is now well settled that the that the expression "matters relating to employment" used in Article 16(1) is not confined to initial matters prior to the act of employment, but comprehends all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment, such as, provisions as to salary, increments, leave, gratuity, pension, age of superannuation, promotion and even termination of employment. It is further well established that Articles 14, 15(1) and 16(1) form part of the same constitutional code of guarantees and supplement each other. If any authority is needed for the above enunciation, reference may be made to the observations made by Gajendragadkar, J., as he then was, in General Manager, Southern Railway v. Rangachari, (A.I.R. 1962 S.C. 36) (supra)." It is interesting to note that O. Chinnappa, J., as he then was, who authored the judgment of the Full Bench in Y.K. Bhatta's case (supra) was also a member of the two Judges Bench of the Supreme Court in Sengara Singh and Ors. v. The State of Punjab and Ors., A.I.R. 1984 S.C. 1499, in which the dismissal of police personnel was set aside on the ground of violation of Article 14 of the Constitution. The relevant portion of the Judgment

in Sengara Singh's case (supra) reads as under :"
Now if the in discipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and, therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action." In The Managing Director, U.P. Warehousing Corporation and Ors. v. Vijay Narayan Vajpayee, A.I.R. 1980 S.C. 840, which was a case of dismissal from service, O. Chinnappa Reddy, J., in his concurring opinion expressed the view that the rights available to civil servants under Articles 14 and 16 should be extended to the employees of public sector corporation and governmental agencies and observed:" There is no good reason why, if Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the Corporation set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, which the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the Rule which denies him access to a Court to enforce a contract of employment and denies him the protection of Articles 14 and 16 of the Constitution. " The wide reach of Articles 14 and 16 has been invoked to invalidate the termination of the service of the employees in a

large number of cases including the often quoted decisions of Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, A.I.R. 1975 S.C. 1331 (Constitution Bench); Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr., A.I.R. 1986 S.C. 1571; Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors., A.I.R. 1991 S.C. 101 (Constitution Bench). In Jarnail Singh and Ors. v. State of Punjab and Ors., 1986(2) S.L.R. 278, a two Judges Bench of the Supreme Court relied on various precedents including the judgment in D.B. Belliappa's case (supra) and held that the termination of the services of a senior person while retaining the junior amounted to violation of Articles 14 and 16 of the Constitution. No doubt, some of the decisions referred to above relate to permanent employees but the ratio of the law laid down in all these decisions is that if the action of a public employer to terminate the services is found to be arbitrary then it is liable to be invalidated on the ground of violation of Articles 14 and 16 of the Constitution. Thus, it must be treated as a settled proposition of law that Articles 14 and 16 can be invoked by an employee to challenge the termination of his services and the judgment of the Full Bench will have to be read subject to the law laid down by the Apex Court. (c) That apart, in Y.K. Bhatia's case (supra), the Full Bench has itself held that it will be open to person affected in the individual cases to establish discriminatory treatment which cannot be explained except on the basis of malice in law or malice in fact."

31. In the present case, in view of the undisputed fact that the petitioner has been terminated without any opportunity, even though a cloud is created upon his character by implicating him in an offence under Puducherry Gaming Act read with the provisions of the Indian Penal Code, creating a stigma in a career spanning over 19 years and the inaction of the State against similarly accused officers, reflects nothing but capricious, discriminative and monarchical exercise of power by officers in higher rank, if permitted to continue would make a mockery of the fundamental rights guaranteed by the constitution. It is the duty of the State and its machineries to provide for such an administration that catapults the governance in the right direction by upholding the fundamental and constitutional rights guaranteed in the constitution. It is relevant to refer to a couple of couplets from the monumental Thirukkural, which addresses every problem in the contemporary society.

Couplet No 541

ஓர்ந்துகண் ணோடா திறைபுரிந் தியார்மாட்டும்
தேர்ந்துசெய் வஃதே முறை.

Orndhukan Notaadhu Iraipurindhu Yaarmaattum
Therndhusey Vaqdhe Murai

Explanation:

It implies that the person in power has to examine into the crimes which may be committed, analyse carefully and act without partiality and show no favour to any one and inflict such punishments as may be wisely resolved.

Couplet 547

இறைகாக்கும் வையகம் எல்லாம் அவனை
முறைகாக்கும் முட்டாச் செயின்.

Iraikaakkum Vaiyakam Ellaam Avanai
Muraikaakkum Muttaach Cheyin.

Explanation:

It implies though the king defends the whole world; but it is the manner of administration of justice, which is to be administered without defect, defends the king.

32. The learned senior counsel has assailed the FIR, contending that the premises has only one point to ingress and exit and therefore, if the petitioner had been there, he could not have escaped. The learned senior counsel also relied upon the photographs to further contend that it is not humanly possible to jump from the second floor and the fact that the specification in the FIR that "all 13 accused were arrested" would imply that only 13 were present and to falsely implicate the petitioner, it has been added as if another person was present and he escaped. It was also contended that the complainant is the Sub-Inspector, who himself has registered the FIR and is the Investigating officer, which is perse illegal and reflects the malafides. Also in a case, where the primary allegation is that certain people allegedly joined together to poker, a game of play cards for money, the offence of Section 420 of Indian Penal Code is not attracted, more so when there is no inducement and failure to honour the promise, that too in a complaint lodged by police officer. The offence under IPC has been included only to make the offence non-bailable. Considering the above aspects and taking note of the fact that the name of the 14th accused was mentioned only as "Shanmugam of Kuruvinatham" and not as Police constable Shanmugam, this Court finds considerable force in the contentions of the learned

senior counsel for the petitioner. However, this Court is not venturing further into the sustainability of the FIR as this is not the appropriate forum and it is for the petitioner to work out his remedies as per law.

33. Insofar as the plea of alternative remedy is concerned, it is well settled that the invocation of the powers under Article 226 of the Constitution of India is a discretionary relief and refusal is only a self-imposed restriction. The Court is to be cautious and the exercise of discretion depends upon the facts of each case. This Court after perusing the records, has found that no materials are available and no reasons have been recorded for dispensing with the enquiry. Further, this Court has already found that the impugned order has been passed in violation of principles of natural justice as not even a notice was issued inviting objections, in an arbitrary, whimsical and discriminatory manner with malafides and against the protection guaranteed under Article 311(2) of the constitution, violating the procedures stated in the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 and without satisfying the requirements under the proviso to Article 311(2) of the Constitution of India. Under such circumstances, this Court has already relying upon the various judgments of the Apex Court, held that judicial review is available to the court, when the act complained of is found to be arbitrary, discriminatory and capricious. If such orders are permitted to continue, it will lead to anarchical situation where the service of any government servant would be terminated on mere allegations, without any opportunity and enquiry at the discretion of the officers. That apart, the order has also the stamp of approval of the Inspector General of Police, who is the appellate authority as contemplated under the provisions of the Pondicherry Police Subordinate Services (Discipline and Appeal) Rules, 1968. Therefore, relegating the petitioner to avail the alternative remedy, would serve no purpose. Hence, this Court holds that in the above facts and circumstances, the writ petition is maintainable and the petitioner is entitled to succeed.

34. Regarding back wages, this Court has already found that the impugned order is unsustainable for the reasons stated above. The learned senior counsel for the petitioner while admitting that though it has not been pleaded, pointed out to various paragraphs in the decisions referred above and contended that once the order is found to be illegal, the petitioner is entitled to back wages. However, considering the fact that the petitioner was on medical leave at the time of the incident and it is not clear as to when he would have joined duty and whether he was on loss of pay or not, this Court is not inclined to grant the back wages.

35. In the result, the writ petition is allowed and the impugned order of dismissal dated 06.04.2017 passed by the respondent is set aside. The respondent is directed to reinstate the petitioner in service forthwith. However, liberty is granted to the respondent to initiate appropriate proceedings against the petitioner if he is so advised, by granting him due opportunity, by following the procedures and taking into account the observations made above. Consequently, W.M.P.No 14503/2017 is closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rk

To

The Senior Superintendent of Police (C&I)
Puducherry.

+1cc to Mr.A.B.Ashok, Advocate, S.R.No.42928

+1cc to the Government Pleader, S.R.No.43688

W.P.No.13449 of 2017

LRS (CO)
CA(05/07/2017)

सत्यमेव जयते

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