

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

Date of decision: 08.03.2017

1. CWP No. 19132 of 2016 (O&M)

Gurinder Pal Singh Sidhu

...Petitioner

Versus

Punjabi University, Patiala and others

...Respondents

2. CWP No. 165 of 2017

Avtar Singh

...Petitioner

Versus

Punjabi University, Patiala and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Birender Singh Rana, Sr. Advocate, with
Mr. Rajinder Paul, Advocate,
for the petitioner in CWP No. 19132 of 2016.

Mr. D.S. Rawat, Advocate,
for the petitioner in CWP No. 165 of 2017.

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Parunjeet Singh, Advocate,
for respondent Nos. 1 & 2.

Mr. S.S. Gurna, Advocate,
for respondent No.3 in CWP No. 19132 of 2016.

JAISHREE THAKUR, J.

1. By way of this order I shall dispose of two writ petitions i.e.
CWP No. 19132 of 2016 and CWP No. 165 of 2017 since both writ
petitions arise out of similar facts and involve a common question of law.

For brevity facts are being extracted from CWP No. 19132 of 2016.

2. The petitioner herein has challenged the office order dated 01.09.2016 by which the services of the petitioner have been terminated without holding any departmental enquiry on the allegations of misconduct; with a further prayer that he be allowed to work on the post of Programmer in the University College of Engineering, Patiala University by reinstating him in service by all benefits.

3. In brief it is submitted, that the petitioner was appointed as Data Entry Operator in the pay scale of Rs. 5000-8000 on adhoc basis vide appointment letter dated 17.05.2004. Thereafter, he was appointed on the post of Programmer in the University College of Engineering on regular basis. The appointment of the petitioner was subject to probation of one year which could have been extended further by one year, which he completed. The petitioner was a President of the Non-Teaching Employees Association of Punjabi University, Patiala. One Sandeep Singh son of Gurdev Singh and Jatinder Singh @ Kala were employed as Safai Sewaks on contractual basis in the University, who were in the habit of instigating other Sweepers (Safai Sewaks) working under the contract system and in this regard various complaints were made by various co-employees and officers of the University. On 29.08.2016, the petitioner in his capacity of President of the Non-Teaching employees met with respondent No.1-Registrar where Sandeep Kumar and Jatinder Kala etc. were standing outside the office of the Registrar. These persons attacked the petitioner and his associates. To enquire into the incident, a Committee was constituted to look into the matter and Committee issued a notice dated 30.08.2016 to the

petitioner to be present in the Administrative office at 2.00 p.m. The mother of the petitioner requested for extension of time of the petitioner on the ground that he had not come to the house since 29.08.2016. The services of the petitioner were terminated on 01.09.2016 while further banning his entry in the University. Aggrieved against the termination order being passed without holding any departmental enquiry or giving any opportunity of hearing to the petitioner, the instant writ petition has been filed.

4. Mr. B.S.Rana, learned senior counsel assisted by Mr. Rajinder Paul, Advocate appearing on behalf of the petitioner contends that the services of a regular employee cannot be terminated without holding any departmental enquiry against him with respect to the charges alleged and *per se* the termination order is illegal. It is argued that the respondents have failed to appreciate the fact that the petitioner had come into the office of respondent No.1, the Registrar in connection with some demands being made to the President of the Non-Teaching employees of the association and he was attacked by Jatinder Singh @ Kala and Sandeep Singh etc.

5. Per contra, Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. Parunjeet Singh, Advocate, appearing on behalf of respondent Nos. 1 & 2 urges that the petitioner is of quarrelsome nature and is involved in several unbecoming /criminal activities. The petitioner was involved in FIR No. 97 dated 8.9.2016 under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in which his bail application was dismissed on 30.09.2016. He was arrested and remained behind bars till he was granted regular bail on 10.10.2016. It is further argued that FIR No. 94 dated 29.08.2016 was registered against him under

Sections 307, 323, 506, 148, 149 IPC on the statement of an employee of the University. The FIR would show that the petitioner gave grievous injuries with sharp edged weapons. The petitioner was granted bail on 20.09.2016. Because of his activities the respondent-University had filed a complaint for injunction against the petitioner and the alleged members of the Union of the petitioner has raised demonstration/ dharnas and slogans damaging the properties of the University. The trial Court had granted interim stay against the petitioner on 18.07.2016. Apart from the FIRs lodged against the petitioner, numerous complaints were also pending against him. It is argued that the respondent University constituted a high level committee pertaining to the incident of 29.08.2016 as the matter was extremely serious in nature. The Committee constituted included the Dean, Academic Affairs, Registrar, Dean Research, Director Planning, Dean Student Welfare, Professor Incharge, Legal Affairs etc. This Committee was constituted by the office of the Vice Chancellor on 30.08.2016, however, a letter was received from the mother of the petitioner, who sought some more time for the petitioner to appear before the Committee. Time was given to the petitioner and others to appear before the Committee on 01.09.2016 at 3:00 p.m. On which date, the Committee Members met but there was no appearance by the petitioner or anyone on his behalf. The Committee considered the matter to be placed before it and unanimously took the decision that the petitioner and others are guilty of the occurrence which took place on 29.08.2016 and also recommended for a strict punishment and termination of services and also that they should be banned from entering the University Campus. It is argued that as per the Punjabi University

Calendar those matters which are not covered under the Calendar, would be decided in accordance with the rules made by the Punjab Government for its officers and, therefore, as per rule 13.2 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 where the punishing authority is satisfied to record it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, inquiry can be dispensed with.

6. I have heard learned counsel for the parties and have gone through the record.

7. Admittedly, the petitioner herein is an employee of the University who has been named in two FIRs. FIR No. 97 dated 8.9.2016 has been lodged under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 wherein it has been alleged that on 01.06.2016 at the instance of the petitioner herein, his relative Gurmit Singh Meeta hurled unparliamentary words to the complainant which was an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He was granted bail in the aforesaid FIR on 10.10.2016. Second FIR No. 94 dated 29.08.2016 was lodged under Sections 307, 323, 506, 148, 149 IPC wherein it was stated that the petitioner Gurinder Pal Singh @ Bubby who is working as a Programmer in the department of Punjabi University, Patiala has been continuously beating and harassing the employees of the Scheduled caste community. On 28.09.2016, several persons went to meet the Registrar with regard to the demands of the employees when the petitioner armed with an iron rod along with his relative Gurmit Singh Meeta armed with iron rod, Avtar Singh Corporator armed with baseball, Mandeep Singh armed with baseball and

others came to the office of the Registrar and the petitioner gave a rod blow on Jatinder Singh Kala on his head, due to which Jatinder Singh Kala fell down. Injuries were also attributed to Gurmit Singh as well as Avtar Singh. The bail application in the aforesaid FIR was allowed by noting the fact that the alleged head injuries attributed to the petitioner had been declared to be simple in nature. The Committee constituted to look in the issue, apart from the incident that occurred on 29.08.2016, took into consideration the various complaints that have been received against the petitioner and unanimously came to the conclusion that strict action be taken against the petitioner and his colleagues. Before coming to this opinion, it was noted from the record that the University had taken disciplinary action against the petitioner and even stopped increments of the petitioner but despite warnings to improve their act and conduct they seem to be not improved. The Vice Chancellor being the appointing authority affirmed the order of termination so recommended.

8. The sole question that needs to be decided by this Court is whether the services of the petitioner who is an employee of the University could be terminated without chargesheeting him and holding disciplinary departmental enquiry.

9. Learned counsel for the petitioner relies upon the judgment rendered by this Court in ***Talwinder Singh vs. State of Punjab and others, 2016(2) SCT 551*** in support of his argument. The petitioner therein challenged the order dated 26.07.2011 whereby his services were terminated on account of lodging of an FIR No 37 dated 06.07.2011 under Sections 376, 506 IPC. The Director General School Education, Punjab, dismissed

the petitioner from service while he was still under probation on account of an offence of moral turpitude. Appeal was dismissed as well. Learned Single Judge held that being on probation the services could be terminated, but since the order of termination is stigmatic in nature the same could have not been done without holding a departmental enquiry. While relying upon several judgments, it was concluded that dismissal is only on the basis of an FIR being registered, the procedure of holding a departmental enquiry could not be dispensed with.

10. Reliance has also been placed on a judgment rendered by Hon'ble Supreme Court in ***Reena Rani Vs. State of Haryana & Ors., 2012 (10) SCC 215*** where the appellant Reena Rani came to be dismissed from service by the Superintendent of Police. While dismissing her, the Superintendent of Police did not disclose any reasons as to why it was not reasonably practicable to holding regular departmental enquiry. The High Court dismissed her writ petition which was affirmed by the Division Bench. The Apex Court reversed the decision holding that there was no reason given in the order of dismissal as to why it was not practicable to hold an enquiry.

11. In the instant case, the Committee constituted came to the conclusion that the petitioner herein along with Gurrmit Singh and Avtar Singh are involved in violent incidents in the University and due to this reason there is always atmosphere of uneasiness, fear, panic and anxiety in the University Campus. A jam was created on 30.08.2016 at National Highway - 64 wherein members of the Scheduled Caste category demanded that the services of the petitioner and his associates who were involved in

the incident of 29.08.2016 be terminated. The Committee came to the conclusion that on account of vitiated atmosphere which was created by the associations belonging to the Scheduled Caste and the non-teaching employees of the University by holding dharnas and stopping of all working of the University it would not be possible to conduct regular enquiry. Director, Scheduled Caste Commission for Scheduled Caste, State Office had also sent a letter dated 26.08.2016 to the University stating that Jatinder Singh Matu and Jatinder Kala who had suffered injuries, had written a letter dated 16.8.2016 to the Commission that they are apprehending danger from Gurinder Pal Singh, Programmer and Gurmit Singh. It was also noted that the University had given chance to the petitioner and his associates to put their appearance before the Committee but no one came forward. It was on deliberation of all these factors that it was unanimously decided to dispense with the regular departmental enquiry.

12. In *Union of India vs. Tulsiram Patel (1985) 3 SCC 398*, it has clearly been held that the reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority. Such authorities generally on the spot know what is happening and such authorities are not expected to dispense with a disciplinary enquiry lightly or arbitrarily or with ulterior motive. But it has also been noted in the said judgment that it would not be reasonably practicable to hold an enquiry where the Government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him and also it would not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general discipline

and insubordination prevails. Relevant paragraphs of ***Union of India vs Tulsi Ram*** case (supra) reads as under :-

“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. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given

evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the government servant concerned is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of [Article 311](#) makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by [Article 311\(3\)](#) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of [Arjun Chaubey v. Union of India and others](#), [1984] 3 S.C.R. 302, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior

Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

131. *It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.*

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\(2\)](#)."*

13. In the case in hand, the petitioner Gurinder Pal Singh has already been named in the FIR filed under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and came to be arrested therein. There is already direct enmity between the petitioner herein and the members of the Safai Sewak Association. The enmity boiled over to an

altercation which took place between the petitioner and members of the Association wherein an FIR was lodged. Bail was granted to the petitioner while noting that he had inflicted a blow upon the head of one Jatinder Singh Kala a member of the Scheduled Caste Association. The argument raised that the petitioner was granted bail by the trial court holding that injuries are simple in nature is an argument that is noted only to be rejected. In a university, which is the temple of learning, violence has no place and that too instigation at the behest of a staff member. Atmosphere in the University already stands vitiated which led to a protest being held outside the Administrative Block as well as jamming of roads. This protest was held on account of the fact that a member of the Scheduled Caste Association had suffered injuries. Therefore, by placing reliance upon the judgment in ***Union of India v. Tulsiram Patel*** (supra) it can safely be concluded that because of the head along conflict that had taken place between the petitioner and members of the Association and the animosity generated it would not be “reasonably practicable” to hold an enquiry.

14. Strength can also be drawn from judgment rendered by the Hon’ble Supreme Court in ***Ved Mitter Gill Vs. Union Territory Administration, Chandigarh and others, AIR 2015 SC 1796***. The Hon’ble Supreme Court also dealt with a situation where the appellant therein had been dismissed from service without holding an inquiry as envisaged under Article 311 of the Constitution of India while taking note of various judgments referred by the Supreme Court particularly, in ***Union of India vs. Tulsiram Patel*** (supra) wherein it was held that it would not have been practicable to hold an enquiry against the appellant Ved Mitter Gill as he

being a senior employee of Model Jail, Burail, Chandigarh, his junior jail officers, who alone would have been witnesses in such departmental proceedings, were not likely to come forward to depose against him, for fear or earning his wrath in future. In the instant case, the witnesses would most likely to be intimidated by the petitioner who is already facing proceedings under FIR No. 97 dated 8.9.2016 under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

15. The judgment as relied upon by learned senior counsel for the petitioner in ***Reena Rani vs. State of Haryana and others*** (supra) and ***Talwinder Singh vs. State of Punjab and others*** (supra) are distinguishable as the facts therein are not applicable to the case in hand, therefore, the same can not be relied upon.

16. As far as Avtar Singh, petitioner in CWP No. 165 of 2017, is concerned, he was initially appointed on 'contract' and his services were later converted into a 'work charge' employee. Learned counsel for the petitioner-Avtar Singh too has raised an argument that the order of dismissal is stigmatic and without affording any opportunity of hearing. Reliance too has been placed on the judgments referred to above to buttress the argument that any order of dismissal without holding an enquiry and issuance of a chargesheet is not sustainable. The argument as raised is wholly without merit on account of the fact that the petitioner herein too has been associated and is named in the FIR. Specific allegations have been raised against him that he too attacked with a baseball bat. Even though no injuries are attributed to him but the conduct of the petitioner is such that it would not warrant any interference by this Court.

17. Resultantly, in view of the discussion above, there being no infirmity in the termination orders passed which have been after due deliberation as to why it is not practicable to hold an inquiry, the writ petitions are dismissed and all applications disposed of accordingly.

08.03.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.