

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

**CWP-14274-2015 (O&M)
Date of decision : 17.09.2018**

Kuldeep Singh and others

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. AK Walia, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN, J.

By way of filing the instant writ petition under Articles 226/227 of the Constitution of India, the petitioners seek issuance of a writ in the nature of Certiorari, for quashing impugned office order No.51 dated 03.06.2013 (Annexure P-1) issued by respondent No.3, thereby dismissing the petitioners from service; and order dated 07.04.2015 (Annexure P-12), whereby, the departmental appeals filed by the petitioners against impugned order (Annexure P-1) were also dismissed.

Facts leading to the filing of the instant petition are that on 17.05.2015, the petitioners, posted at Central Jail, Jalandhar at Kapurthala as Warders, were assigned the duty to take one undertrial Jagtar Singh to Civil Hospital, Kapurthala, on the advice of the Jail Doctor as the undertrial

had complained of chest pain. From Civil Hospital, Kapurthala, the undertrial was referred to Guru Nanak Dev Hospital, Amritsar, where he was admitted on the same day. The petitioners remained on Guard Duty till 23.05.2013, on which date, the undertrial managed to escape allegedly on account of negligence in duty of the petitioners. A preliminary inquiry dated 23.05.2013 (Annexure P-2) was conducted by the jail authorities and on the basis thereof, FIR No.150 dated 23.05.2013 under Sections 223 and 224 of the Indian Penal Code was registered at Police Station, Civil Lines, Amritsar against the petitioners for their negligence in the escape of the undertrial. Thereafter, vide impugned order Annexure P-1, the petitioners were dismissed from service by invoking the provisions of Article 311(2)(b) of the Constitution of India. The petitioners preferred departmental appeals against the order of dismissal, which too were rejected by respondent No.2 vide impugned order Annexure P-12. Hence the instant writ petition.

It is contended that Article 311(2)(b) of the Constitution of India has been wrongly invoked in the instant case as none of the three conditions stipulated therein, have been satisfied in this case. It is further submitted that the criminal case which was got registered against the petitioner culminated into acquittal of the petitioners vide judgment dated 14.09.2016 (Annexure P-13). No show-cause notice or regular departmental inquiry was conducted against the petitioners before passing the impugned order of dismissal.

On the other hand, learned State counsel has opposed the instant petition on the ground that it was incumbent upon the petitioners to

remain vigilant. It was on account of their negligence and connivance that the undertrial managed to escape. Keeping in view the seriousness and gravity of their incident, the petitioner were rightly dismissed from service.

Heard.

In the instant case, admittedly, no regular inquiry was conducted against the petitioners before the passing of impugned order of dismissal (Annexure P-1) by invoking the provisions of Article 311(2)(b) of the Constitution of India. A perusal of the impugned order (Annexure P-1) reveals that the competent authority did not consider it necessary to hold the inquiry on the ground that it was not reasonably practicable to do so. However, no objective facts which formed the basis of the satisfaction so recorded have come forth by the punishing authority. Article 311 of the Constitution of India reads as under:-

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

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

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

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the

evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply.....]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

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

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

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

Hon'ble Supreme Court in [Jaswant Singh v. State of Punjab](#), AIR 1991 SC 385, has discussed the scope of [Article 311\(2\)\(b\)](#) of the Constitution of India by holding thus:-

"The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authorities. 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 and caprice of the concerned Officer."

No material has been placed or disclosed either in the impugned order or before this Court on the basis of which an opinion was formed that it was not reasonably practicable to hold a departmental enquiry against the petitioner. The Punishing Authority has clearly proceeded in utter dis-regard of the mandate of Article 311(2)(b) of the Constitution of India.

Another aspect of the matter is that the petitioners were assigned the duty of taking the undertrial to the hospital despite the fact that they were Warders which is in utter disregard to the Punjab Jail Manual and instructions issued by the Government from time to time. Had the undertrial escaped from the custody of Police Guards, the matter would have been entirely different. At this stage, it is also considered necessary to refer to para 455 of the Punjab Jail Manual (Annexure P-3) dealing with transfer of prisoners to civil hospital in case of serious illness, relevant extract whereof reads thus:-

"The Superintendent of the jail concerned is responsible for making adequate arrangements for the guarding of such prisoners in a civil hospital. He should invariably request the Superintendent of Police concerned to provide sufficient police guard for guarding the prisoner sent to the hospital. He shall replace the warder guard by a police guard as soon as

possible in view of the danger of escape or rescue. In any case an officer of the prison shall remain Incharge of the prisoner in hospital to serve as a prison officer in control of the prisoner for the purpose of section 55 of the Prisons Act.”

Similarly, instructions dated 05.05.2000 (Annexure P-4) issued by the Department of Home Affairs and Justice (Jails Branch) regarding deputing of permanent staff by the Police Department for producing undertrial lodged in the jails in Punjab, stipulate thus:-

“(2) The District Police will deputy one Head Constable and six Constables for taking undertrials from the Central Jail for check up in the Civil Hospitals and further one Head Constable and four Constables will be deputed inside the Jails. The concerned staff will be changed every month so that no police official gets mixed up with the undertrials. The above decision may be strictly complied with and brought to the notice of all concerned.”

Instructions regarding provision of Guards for taking the undertrials for 'Peshis' etc. issued by the Additional Director General of Police, Crime, Punjab dated 07.07.2010 (Annexure P-5) are as follows:-

“....Further, on most of the occasions when undertrials are to be sent to Hospital on the advice of the Doctor, they have to be sent to the Hospital alongwith Jail Guards only. This practice is contrary to the rules and the jail officials/officers remain in the fear of departmental action for their alleged deficiency in the duty in the event of the undertrials escaping in such a situation, although it is not their duty.

Therefore, keeping in view the above problems, all Commissioners of Police/Senior Superintendents of Police in the Districts are directed to provide Guards according to the requisition and requirement of the Superintendent, Jails for taking the undertrials for attending peshis and in the Courts or for taking them to Hospital.”

Needless to mention, the respondents have also failed to prove any connivance of the petitioners with the undertrial in helping him escape from the custody. They also stand acquitted by the criminal Court in the FIR registered with regard to the incident in question.

For the reasons recorded above, the writ petition is allowed. The impugned order of dismissal dated 03.06.2013 (Annexure P-1) and impugned order dated 07.04.2015 (Annexure P-12) rejecting the appeals of the petitioners, are quashed. The petitioners are directed to be re- instated in service with all consequential benefits, within a period of three months from the date of receipt of certified copy of this judgment.

Allowed.

17.09.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No