

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

CWP-10423-2020 (O&M)
Date of decision : 01.09.2020

Sarabjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Abhimanyu Tiwari, Advocate for the petitioner.

Ms. Anu Chatrath Addl. A.G. Punjab.

ANIL KSHETARPAL, J.

This writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 04.03.2020 passed by respondent No.2 i.e. 4th Commando Battalion, Phase-II, SAS Nagar, Mohali, dismissing the petitioner from service under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India. In the considered view of this Court, following question of law arise for determination:-

“Whether in absence of sufficient reasons recorded in writing dispensing with the requirement of holding inquiry in the alleged misconduct of employee by the authority, order of dismissal/removal from service of employee, passed in exercise of the powers under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India is

sustainable?”

Some facts are required to be noticed. The petitioner was appointed as a Constable in the Punjab Police on 24.03.2011. Two FIRs have been registered against the petitioner. First is FIR No.14 dated 29.02.2020 under Sections 376, 417, 506 of the Indian Penal Code. In a nutshell, the allegations are that in the year 2010 i.e. before the petitioner joined service, he had an affair with the first informant (alleged victim). They also made physical relations. It is alleged that after getting job, the petitioner stopped talking to the first informant and when she pressurized, he threatened her that she will be killed or kidnapped or harmed by throwing acid. The petitioner also threatened that he also has their photographs which would be uploaded on Facebook and Whatsapp. Therefore, the first informant kept mum over period of 9 years.

Second is FIR No.15 dated 01.03.2020 under Sections 379B, 353, 186, 224, 225, 427, 148, 149 of the Indian Penal Code. This FIR has been registered by a Police Official with the allegation that when the police party went to arrest the petitioner, he after having been apprehended; ran away and various villagers named in the FIR scuffled with the members of the police party and snatched Rs.2200/- and Identity Card from the Wallet of the first informant. Another accused also gave a blow to a police official with some sharp edged weapon which hit on his little finger. The villagers also broke the wind screen of the Government Vehicle.

In the present case, on the basis of these allegations, respondent No.2 has chosen to invoke Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India to remove/dismiss the petitioner from the service

while dispensing with the requirement of holding departmental enquiry.

Pursuant to the notice in the writ petition, a reply has been filed defending the order of dismissal. This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the petitioner has submitted that respondent No.2 did not record reasons for dispensing with the requirement of holding inquiry and, therefore, the order is not sustainable. He relied upon judgments passed by the Five Judge Bench in **Union of India and others Vs. Tulsi Ram Patel and others, (1985) 3 SCC 398** subsequently followed in **Reena Rani Vs. State of Haryana and another, (2012) 10 SCC 215** in support of his submission.

On the other hand, learned Additional Advocate General Punjab, has drawn attention of the Court to the judgment passed in **Kuldip Singh Vs. State of Punjab and others, (1996) 10 SCC 659** and **Chandigarh Administration, U.T. Chandigarh Vs. Ajay Manchanda etc. (1996) 3 SCC 753**.

Let us first examine the order (Annexure P-3) which is the subject matter of challenge. From careful reading of translation of the impugned order, it is apparent that no reason whatsoever has been recorded as to why holding of the inquiry is not reasonably practicable. What has been recorded is "it does not seem justified to conduct departmental inquiry at this stage". In the considered view of this Court, this is not sufficient compliance of the mandate of Article 311 of the Constitution of India which is extracted 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.”*

On careful reading of Clause (b) of 2nd Proviso, it is apparent that the authority empowered to dismiss or remove a person or to reduce

him in rank, has to record reasons in writing as to why it is not reasonably practicable to hold such inquiry. Such satisfaction has to be subjective satisfaction of the authority so empowered. In the present case, careful reading of the impugned order shows that there is total absence of reasons in this regard. Mere observation that the departmental enquiry at this stage does not appear to be justified is not sufficient to invoke powers under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India. Still further, in the present case, there are two FIRs against the petitioner. In first one, the first informant/alleged victim has lodged the FIR after a period of 10 years. It is not recorded that she feels terrorized or is refusing to appear in the departmental inquiry. Second FIR is by a police official. In such circumstances, the allegations made in FIR No.15 are required to be proved by the members of the police party alongwith the independent witness, if any. Hence, learned Additional Advocate General Punjab has also failed to draw attention of the Court to reasons making it reasonably impracticable to hold such inquiry.

The reliance placed by the learned Additional Advocate General, Punjab, on the judgments in Kuldeep Singh's (Supra) and Chandigarh Administration's (Supra) is misplaced. In Kuldeep Singh's case (Supra), the petitioner was working as a Head Constable in Punjab Police. It was during the time, when situation of law and order in the State was worst. The Head Constable had confessed links with the terrorists. In those circumstances, the Supreme Court held that dispensing with the departmental enquiry was appropriate. In the case of Chandigarh Administration's (Supra), again the employee was at the relevant time

working as a Sub Inspector in Chandigarh. The authority entitled to remove had come to a conclusion that the complainant and the witnesses have been terrorized by the respondent and on that account, they were not prepared to proceed with the complaint or the case further. In those facts, the Court upheld invocation of Clause (b) of 2nd Proviso to Article 311(2) of the Constitution of India. As noted above, in the present case, neither the reasons in writing have been recorded by the authority nor they are born from the record.

Keeping in view the aforesaid facts, the order dated 04.03.2020 is set aside. Hence, the petitioner shall be entitled to reinstated in service with consequential benefits. However, it shall be open to the respondent to initiate departmental inquiry in the alleged misconduct, if any, of the petitioner.

Accordingly, the present writ petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.09.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No