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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10565 of 2020
Date of decision: 07.12.2020

Paramjit Singh

..... Petitioner

V/s.

State of Punjab and others

..... Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Pankaj Kundra, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Sanjay Kumar, J. (Oral)

The petitioner, an Assistant Sub-Inspector of Police, was dismissed from service, *vide* order dated 08.05.2020 passed by the Senior Superintendent of Police, Kapurthala. Hence, this writ petition.

It is not in dispute that the Senior Superintendent of Police, Kapurthala, took recourse to Article 311 (2) (b) of the Constitution and dismissed the petitioner without holding any inquiry against him.

Mr. Pankaj Kundra, learned counsel for the petitioner, would attack the dismissal order on a simple but compelling ground. He would point out that no valid grounds were put forth therein as to why holding an inquiry was not practicable. Learned counsel would therefore contend that the dismissal order is unsustainable in law.

Mr. Navdeep Chhabra, learned Deputy Advocate General, Punjab, would assert that the dismissal order is appealable under the relevant rules and argue that the writ petition is not maintainable owing to the availability of an efficacious alternative remedy. He would submit that, given the gross violation of discipline by the petitioner as a member of a uniformed service, he could not be allowed to continue in the Police Department. He would justify the action of the Senior Superintendent of Police, Kapurthala, in dispensing with an inquiry in such circumstances, as it was not in public interest to retain the petitioner in police service.

Perusal of the impugned dismissal order reflects that the Senior Superintendent of Police, Kapurthala, referred to the incidents that formed the basis of FIR No. 49 dated 08.05.2020 registered on the file of Police Station Subhanpur, District Kapurthala, under Sections 302, 307 and 34 IPC read with Sections 25 and 27 of the Arms Act, 1959. He then summed up that it was proved from the facts that had come to light that the petitioner, being a responsible police official, had grossly violated police discipline by firing bullets from his licensed revolver upon Arvinderjit Singh, the deceased, and that the petitioner had broken the law despite being a police officer. Noting that the petitioner had spoiled the image of the Police Department, he recorded that it was not apt to keep such an official in the Police Department in view of public interest and as it would have a bad effect on other officials. He then stated as follows:-

'It is not apt to undertake departmental inquiry against this official as per Rule No.16.24 of Punjab Police Rules, 1934. Therefore, due to his

aforesaid offence/allegation, keeping in view Section 311 (2) (B) of the Indian Constitution, I do not feel it apt to get conducted departmental inquiry against him. It is completely not in public interest to keep him on job in Police Department for more time'.

In consequence, the Senior Superintendent of Police, Kapurthala, straightaway dismissed the petitioner from service.

Article 311 of the Constitution deals with dismissal/removal or reduction in rank of persons employed in civil capacities under the Union or a State. Article 311 (2) provides that no such person 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 reasonable opportunity of being heard in respect of those charges. However, the *proviso* thereunder states that Article 311 (2) shall not apply in certain situation. The situation contemplated by Clause (b) of the *proviso* is one 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.

The scope of this Constitutional provision was considered by the Supreme Court recently in '***Hari Niwas Gupta V/s. State of Bihar and another***' [(2020) 3 SCC 153]. Therein, it was observed that the obligation under Article 311 (2) (b) is mandatory and to invoke the power thereunder to dispense with a departmental inquiry, the authority must record a finding that such an inquiry cannot be conducted and record specific reasons for the same. Reference was made to ***Jaswant Singh V/s. State of Punjab*** [(1991) 1 SCC 362], wherein the Supreme Court had held that 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 inquiry.

Earlier, in ***Union of India V/s. Tulsi Ram Patel [(1985) 3 SCC 398]***, the Supreme Court had observed that 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 earlier judgments of this Court in ***Warder Ram Singh V/s. State of Punjab and others [2017 (1) SCT 364]***, ***Gurcharan Singh V/s. State of Punjab and others [2017 (1) SCT 712]*** and ***Major Singh V/s. State of Punjab and other [2017(4) SCT 32]*** echoed this very legal position.

In the light of these precedential edicts, it is manifest that the impugned dismissal order falls woefully short of the required standard. It was not in compliance with the mandate of the *proviso* for the Senior Superintendent of Police, Kapurthala, to baldly state that 'it is not apt to undertake departmental inquiry' with nothing further to support his view that holding an inquiry would not be reasonably practicable. Merely because the petitioner was a member of the police service, it did not mean that his superior could brand him guilty on the strength of a FIR registered against him and thereby hold him unfit for continuing in service. No reason whatsoever was offered by the Senior Superintendent of Police as to why it was not practicable to hold an inquiry against the petitioner. The impugned dismissal order is therefore unsustainable in law.

Further, as the authorities themselves took recourse to a Constitutional provision but the aforestated analysis put its beyond the pale of doubt that there was clear abuse of the power conferred by the said provision, availability of an appellate remedy is not a ground to bar the petitioner from invoking the writ jurisdiction of this Court.

The writ petition is therefore held to be maintainable.

To sum up, this Court finds that the dismissal of the petitioner from service without an inquiry cannot be justified and the same cannot be brought under Article 311 (2) (b) of the Constitution.

The dismissal order is accordingly set aside. This order shall however not preclude the authorities from taking recourse to regular disciplinary action against the petitioner in accordance with due procedure.

The writ petition is allowed to the extent indicated above.

No order as to costs.

07.12.2020

'rakesh'

whether speaking/reasoned

whether reportable

(SANJAY KUMAR)
JUDGE

: *Yes/no*

: *Yes/no*