

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

CWP No.2001 of 2022 (O&M)

Date of Decision:29.08.2022

Charanjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. A.P.S. Tung, DAG, Punjab.

JAISHREE THAKUR, J. (ORAL)

1. By way of instant writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks to quash order dated 13.05.2021 (Annexure P-5) passed by respondent No.5 whereby petitioner has been dismissed from service and order 01.11.2021 (Annexure P-6) passed by respondent No.3 vide which the appeal filed by the petitioner against the order dated 13.05.2021 stands dismissed

2. In brief, the facts of the case are that on 12.05.2021 after duty hours when the petitioner was busy in his daughter's birthday celebration, he received a Whatsapp message regarding some content against then SSP Moga from mobile No.8872943271, which he had forwarded on the Moga Police Whatsapp group from his mobile No.9780002129. Respondent No.5 i.e. the then SSP, Moga ordered DSP to pick up the petitioner from home on the very same day and on 13.05.2021 dismissed the petitioner from service by invoking Article 311 (2) (b) of the Constitution of India. The appeal preferred against the order dated 13.05.2021 also stood dismissed vide order

dated 01.11.2021 passed by respondent No.3. Hence, writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the impugned order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry. The respondents did not take into account more than 30 years service of the petitioner. Learned counsel relies upon judgments rendered in **Prem Saran Bansal Versus State of Punjab and others 2014 (4) SCT 481, Gurcharan Singh Versus State of Punjab 2017 (1) SCT 712, Sudesh Kumar Vs. State of Haryana and others Civil Appeal No.936 of 2002 decided on 19.04.2005, CWP No.14929 of 1989 titled as Swaran Singh and others Vs. State of Punjab and others decided on 03.01.1996, Ex-Constable Sangram Singh Vs. State of Punjab and others 1995 (4) SLR 536, Gurdev Kaur Vs. State of Punjab and others 1996(1) SCT 142 (P&H) (DB)** in support of his argument, that a regular departmental inquiry can be dispensed with only under exceptional circumstances. It is argued that no cogent reason has been given for dispensing with the inquiry proceedings. There has to be some material available to hold that it would not be practicable to hold a departmental inquiry.

4. Per contra, learned counsel appearing on behalf of the respondents—State would submit that the petitioner herein had made an objectionable post in the Whatsapp group on 12.05.2021 tarnishing the dignity of the post of Senior Superintendent of Police and on medical examination of the petitioner, he was found in drunken state. The petitioner has a bad service record and 20 years service of the petitioner had already been forfeited owing to his poor performance and bad service record and

therefore, the petitioner has been dismissed from service by invoking provisions of Article 311(2) (b) of the Constitution of India.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

6. The petitioner stands dismissed from service by taking into account the fact that he tarnished the image of the police department by posting a derogatory message against the then Senior Superintendent of Police, Moga in the official group. His dismissal is by invoking Article 311 (2) (b) of the Constitution of India thereby dispensing with the normal procedure of holding a departmental inquiry. Article 311 (2) (b) of the Constitution of India 1949 reads as:

“(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.

7. A bare reading of the Article itself would show that the authority who is empowered to dismiss or remove a person or to reduce his rank, has to record reasons in writing as to why it is not reasonably practical to hold such inquiry. There is no cogent reason mentioned in the impugned order as to why it is not reasonably practical to hold a departmental inquiry before imposing major penalty of dismissal of service upon the petitioner and, therefore, the same is liable to be set at naught.

8. In the case of **Union of India Vs. Tulsi Ram Patel, 1985 (Suppl) 2 SCR 131**, the Hon'ble Supreme Court observed that clause (b) of the second proviso to Article 311 of the Constitution 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. Relevant observations in this regard are as under: -

"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."

9. As noticed above, adequate reasons have to be given in the order of dismissal as to why it would not be reasonably practicable to hold a departmental inquiry. The impugned orders are bereft of any such reasons.

10. Consequently, the writ petition stands allowed and the impugned orders dismissing the petitioner from service vide order dated 13.05.2021 (P-5) and 01.11.2021 (P-6) rejecting his appeal are set aside.

The respondent-department will be at liberty to initiate departmental proceedings against the petitioner, if they so desire, which will be concluded within a period of three months thereafter.

August 29, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No