

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

CWP No.3285 of 2021 (O&M)

Date of Decision: 27.7.2022

Jugraj Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil K. Nehra, Advocate,
for the petitioner.

Ms. Akshita Chauhan, AAG, 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 19.06.2019 (Annexure P-3) passed by respondent No.4 by which the petitioner has been dismissed from service and orders dated 26.08.2019 and 25.02.2020 (Annexures P-5 and P-7 respectively), vide which the appeals filed by the petitioner against the order dated 19.06.2019 stood dismissed.

2. In brief, the facts of the case are that an FIR No.36 dated 28.05.2019 under Sections 307, 392, 34 IPC and Sections 24, 54, 59 of the Arms Act (offence enhanced Section 473, 482 IPC) was registered at Police Station Fatehgarh Churian, District Batala against Shubham Singh and Manpreet Singh. During interrogation, accused Shubham Singh made a disclosure statement that the petitioner herein had alliance with gangster Harwinder Singh alias Manu and he himself met petitioner on 2-3 occasions along with Harwinder Singh @ Manu. Thereafter, respondent No.4 i.e.

Senior Superintendent of Police, Batala without conducting any enquiry or issuing any show cause notice dismissed the petitioner from service on 19.06.2019, by invoking Article 311 (2) (b) of the Constitution of India holding that the alliance of the petitioner with gangster is evident and it is highly unlikely that said gangsters will depose against the petitioner in an enquiry/departmental proceedings. Under these circumstances, it will not be reasonably practicable to hold an enquiry into the allegations against the petitioner. It was further held that further continuation of the petitioner in service will not be in the public interest and will be detrimental to the interest of the organization.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner has clean service record and he never involved in any illegal activities during his service career. Petitioner was never nominated in the said FIR and merely on the basis of allegation levelled by one of the accused in the FIR that petitioner has alliance with some gangster, petitioner has been dismissed from service without holding any departmental enquiry. It is submitted that the impugned order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry. 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, CWP No. 14712 of 2017 titled Rakesh Kumar Versus State of Punjab and others decided on 25.4.2022, CWP No. 21419 of 2020 titled Bikramjit and another Versus State of Punjab and others decided on 23.2.2022, CWP 13847 of 1995 titled Constable Harinder Kumar Versus State of Punjab and**

another decided on 24.10.2013, CWP No. 890 of 2011 titled Pammi Ram Versus state of Punjab and others decided on 4.2.2013, CWP No. 10423 of 2020 titled Sarabjit Singh Versus state of Punjab and another decided on 1.9.2020 and Baljit Singh Versus Senior Superintendent of Police, Amritsar 2008 (1) S.C.T. 686, 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 alliance with the gangsters, who are involved in various cases registered against them. Even accused Shubham Singh, who disclosed during interrogation that petitioner has alliance with gangster Harwinder Singh @ Mannu, is involved in 24 criminal cases, registered against him in various districts. Since it was not practicable to hold enquiry against the petitioner as it was highly unlikely that said gangster would depose against the petitioner, he was rightly dismissed from service by invoking Section 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 in disclosure statement made by one Shubham in FIR No.36 dated 28.05.2019, it was alleged that petitioner herein has alliance

with one gangster namely Harwinder Singh @ Manu and said Shubham also met petitioner along with Harwinder Singh @ Manu on 2-3 occasions. Petitioner's 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 without holding a departmental inquiry, has to record reasons in writing as to why it is not reasonably practical to hold such inquiry. This

reasoning is missing in the impugned order, wherein the only consideration is that *“their retention and continuation in service may be detrimental to the interest of the state as well as the general public...”*

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 provision to Article 311 of the Constitution can be invoked only when the authority is satisfied from the material placed before it 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. Mere disclosure statement made by an accused in an FIR registered against him, alleging therein that the petitioner herein has alliance with one gangster namely Harwinder Singh @ Manu, would not be a sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a departmental inquiry before dismissing a delinquent employee. 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.

10. On perusal of impugned order of dismissal, it is apparent that no reasons whatsoever have been recorded to show as to why it is not possible to hold an inquiry. A mere observation that *“it is highly unlikely that that the above named gangsters will depose against him in an*

enquiry/departmental proceedings since all the above named gangsters and constable Jugraj Singh No.2187/BTL were hand in glove with each other”, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

11. Consequently, the writ petition stands allowed and the impugned order dismissing the petitioners from service vide order dated 19.06.2019 (Annexure P/3) and orders dated 26.08.2019 (P-5) & 25.02.2020 (P-7) are set aside, leaving it open to the respondent-Department to take departmental action in accordance with law.

July 27, 2022
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No