

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

**CWP No. 7241 of 2022 (O&M)
Date of Decision: 16.12.2022**

Renu Bala and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. R.K. Grewal, Advocate
for the petitioners.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR, J.

1. By way of instant writ petition, the petitioners seeking issuance of a writ in the nature of Certiorari for quashing orders, both dated 01.11.2019 (Annexures P/2 and P/3) passed by respondent No.4, whereby the petitioners stand dismissed from service; and orders dated 27.5.2020, 09.04.2021 and 12.4.2021 (Annexures P/4 to P/7 respectively), vide which the appeals and the revisions filed by the petitioners stand rejected.

2. In brief, the facts are that initially petitioner No. 1 joined the services as Special Police Officer (SPO) on 14.9.1991 in the Department of Punjab Police and as Constable on 3.10.1989. Thereafter, she was promoted as Assistant Sub-Inspector (Local Rank). Similarly, petitioner No.2 joined as Constable on 3.10.1989 and thereafter he was promoted as Assistant Sub-Inspector (Local Rank). It is claimed that the petitioners had unblemished service record and there had been no complaint whatsoever

against them. However, on 29.10.2019, FIR No. 204 came to be registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, against petitioner No.1, on the statement of ASI Sukhraj Singh, for keeping 50 grams of heroin. It is submitted that name of petitioner No.2 did not find mention in the FIR, however, he was implicated on the alleged disclosure statement made by petitioner No.1. After registration of the aforesaid FIR, the petitioners were dismissed from service without holding any inquiry, vide orders both dated 1.11.2019 (P-2 and P-3). After the orders of dismissal, the petitioners filed their respective appeals at the first instance before the Inspector General of Patiala, Patiala Range, Patiala—respondent No. 3 and thereafter before the Director General of Police—respondent No.2, which were dismissed vide orders dated 27.5.2020, 9.4.2021 and 12.4.2021 (P-4 to P-7), giving rise to the instant writ petition.

3. Learned counsel appearing on behalf of the petitioners would contend that the petitioners had been falsely implicated in the aforesaid FIR, on the basis of which they have been dismissed from service. It is submitted that conscious possession of the contraband of petitioner No.1 was planted by the complainant—ASI Sukhraj Singh due to previous enmity and professional rivalries between the petitioners and the said complainant. In fact, it is a sheer misuse of the process of law. Petitioner No.2 was in no way involved in the FIR, but he has been nominated only on the alleged disclosure statement of petitioner No.1, which is not admissible in evidence as the same is hit by the mandate of law as provided under Sections 24 and 25 of the Evidence Act. It is further submitted that the petitioners have been

dismissed from service without issuance of any show cause notice or giving any opportunity of being heard, which is against the principles of natural justice. Learned counsel relies upon judgments rendered in **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 and CWP No. 10423 of 2020 titled Sarabjit Singh Versus state of Punjab and another decided on 1.9.2020**, in support of her 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 evidence available to hold that it would not be practical to hold a departmental inquiry, which is apparently missing in this case.

4. Per contra, learned counsel appearing on behalf of the State would submit that petitioner No.1 herein was found in possession of 50 grams of heroin and since both the petitioners were involved in the offence, therefore, an FIR was lodged for the offence committed by them. They committed a grave misconduct and their misdeeds have defamed the police department in the eyes of the general public. It is submitted that the matter was considered by the Senior Superintendent of Police, Patiala, who dismissed the petitioners from service under Article 311 (2) (b) of the Constitution of India, dispensing with the regular departmental inquiry. It is

submitted that the petitioners, who were members of the disciplined force and were supposed to protect the law, were themselves involved in the heinous offence of illegal trafficking of drugs, which is against the society.

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

6. The petitioners stand dismissed from service by taking into account the FIR that has been filed against them. Their dismissal is by invoking Article 311 (2) (b) of the Constitution of India thereby dispensing with the normal procedure of holding a departmental enquiry under Rule 16.24 of the Punjab Police Rules 1934. 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. This reasoning is missing in the impugned orders, wherein the only consideration is that the petitioners herein are involved in the FIR under the NDPS Act as petitioner No. 1 was found in conscious possession of 50 grams of heroin and petitioner No. 2 was nominated on the basis of alleged disclosure statement of petitioner No.1.

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 him that it is not reasonably practicable to hold a departmental enquiry. 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 registration of an FIR would not be sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a departmental enquiry before dismissing a delinquent employee. In case of conviction, the situation is altogether different as has been specified in Article 311 (2) (a) of the Constitution of India. 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 enquiry. In **Constable Harinder Kumar's case (Supra)**, the delinquent was dismissed from service on registration of two FIRs, one under Section 401 IPC and the other under Section 25 Arms Act, 1959 without holding any departmental enquiry on the grounds that the activities of the delinquent were highly prejudicial and detrimental to police working as well as against public interest, therefore he was not fit to be retained in the police force. It was held that mere registration of FIR is not valid ground to dispense with holding a regular inquiry. A similar view has been taken in the cases of **Pammi Ram** and **Sarabjit Singh (Supra)**.

10. The Senior Superintendent of Police, Patiala, while dismissing petitioner No.1 has observed as under:-

“That I have come to the conclusion after thoroughly examining the facts of the above-mentioned case that the above-mentioned police official has committed the heinous offence against the country and the society. The above mentioned act is very shameful being a member of Disciplinary Force for the image of the department of Police and it is very serious matter. Therefore, departmental proceeding is not required to dismiss, ASI Renu Bala No. 3050/PTL and the reason for the same have been incorporated by the Superintendent of Police (Investigation), Patiala. Therefore, it is appropriate to initiate the proceedings against the above-mentioned police officials under Article 311 (2) (b) of Indian Constitution...”

Similar observations have been made while passing impugned order in respect of petitioner No.2. From the perusal of impugned orders of

dismissal, it is apparent that no cogent reason whatsoever has been recorded to show as to why it is not possible to hold an inquiry. A mere observation, as referred to above, 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 is allowed and the impugned orders dismissing the petitioners from service vide order dated 1.11.2019 (Annexures P/2 and P/3) and the orders dated 27.5.2020, 9.4.2021 and 12.4.2021 (Annexure P/4 to P/7) passed in appeals are set aside, leaving it open to the department to take departmental action in accordance with law.

16.12.2022

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No