

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.13626 of 2019(O&M)

Date of Decision.12.10.2022

Prabhjinder Singh

...Petitioner

Vs

State of Punjab and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashok Gupta, Advocate
for the petitioner.

Mr. Mohit Kapoor, Addl. A.G., Punjab.

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JAISHREE THAKUR J. (ORAL)

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the order dated 08.06.2017 (P-2) whereby the petitioner has been dismissed from service without any departmental proceedings and order dated 01.04.2019 (P-6) vide which the appeal filed by the petitioner to reinstate him in service has been dismissed, with the further prayer for issuance of a writ in the nature of mandamus, directing the respondents to reinstate him in service, with all consequential benefits.

2. In brief, the facts as stated in the writ petition are that the petitioner was serving the Punjab Police Department since 19.10.1987. The petitioner was implicated in FIR No.46 dated 01.06.2017 registered under Section 21 of the NDPS Act at Police Station Tarsika and he was arrested in the abovesaid case. The petitioner was dismissed from service without holding a departmental enquiry under Section 311 (2) (b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, 1934 and Section 7 of the Police Act, 1961 by order dated 08.06.2017. The petitioner stood trial in the

FIR case and was discharged of all allegations levelled against him by order dated 04.06.2018. On his discharge, the petitioner preferred an appeal before the Inspector General of Police against the order dated 08.06.2017 whereby his services were dismissed, however, the same was not considered. Thereafter, the petitioner preferred an appeal before the Director General of Police, Punjab to consider his case for reinstatement in service, which was dismissed vide order dated 01.04.2009 and the order of dismissal was upheld. Aggrieved against the said orders, the instant writ petition has been filed.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner was falsely implicated in the FIR No.46 dated 01.06.2017 and on mere registration of the FIR, the petitioner was dismissed from service. The fact that the petitioner was falsely implicated in the aforesaid FIR is borne out from the fact that the petitioner was discharged by the Judge, Special Court, Amritsar vide order dated 04.06.2018, which has attained finality as the same has not been challenged. It is also argued that the order of dismissal without holding any departmental enquiry by invoking Article 311 (2) (b) of the Constitution of India is wholly unsustainable as there is no ground mentioned in the said order as to why departmental inquiry could not have been initiated. In support of his arguments, counsel for the petitioner would rely upon the judgments in **Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398; 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, Smt. Surinder Kaur wd/o Sh. Labh Singh Vs. State of Punjab through DGP, Chandigarh 2008 (1) SCT 396, Ex. Constable Balwinder Singh Vs. State of Punjab and others 2003 (2) SCT 137, Joginder Singh Vs. Union Territory of Chandigarh and others 2015 (1) SCT 87, Union Territory, Chandigarh and others Vs. Pardeep Kumar and other passed in CWP No.3532 of 2013 on 24.02.2016 to contend that provisions of Article 311(2) (b) of the Constitution of India have to be invoked under very stringent circumstances and the order must contain reasons as to why it is not possible to hold a departmental inquiry.

4. Learned counsel appearing on behalf of the respondent-State would submit that the petitioner herein had been nominated as an accused in FIR No.46 dated 01.06.2017 and therefore, the order of dismissal was rightly passed under Article 311 (2) (b) of the Constitution of India. It is also submitted that the petitioner herein is a habitual offender and the service record of the petitioner would reflect that he faced 19 departmental enquiries on several occasions.

5. I have heard learned counsel for the parties and have gone through the pleadings of the case. The facts are not in dispute to the extent that the petitioner was appointed as a Constable in the year 1987. He was nominated as an accused along with Balwinder Singh @ Babba under FIR No.46 dated 01.06.2017 registered at Police Station Tariska, Amritsar Rural with the allegation of being found in possession of 5 grams of heroin. Based upon registration of the FIR, the petitioner was dismissed from service by invoking Article 311 (2) (b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules while holding that it would not be appropriate to

conduct departmental proceedings against him. The reasons given in the order dated 08.06.2017 dismissing the service of the petitioner are that: (i) none of the official witnesses would depose against the petitioner because he has connections with dangerous and anti-social elements; (ii) life of the enquiry officer would be endangered and (iii) it would take a long time to conduct the departmental enquiry. The reasoning as given for dispensing with service of the petitioner by invoking Article 311(2) (b) of the Constitution of India is wholly unjustified, keeping in view the fact that Article 311 (2) (b) of the Constitution of India 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. 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.

6. A bare reading of the Article itself would show that the authority which 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. 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 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."

7. 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 inquiry 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 inquiry. 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 inquiry 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 **Prem Saran Bansal and Gurcharan Singh's cases (Supra)**.

8. 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 *“none of the official witnesses will be ready to depose against him; life of enquiry officer can be endangered owing to connection of the delinquent official with anti-social elements and it will take a long time to conduct the departmental inquiry,* would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee, especially in view the fact that the petitioner has been discharged vide order dated 04.06.2018 passed by the Judge, Special Court, Amritsar, which factum has not been taken into consideration by the appellate authority while dismissing the appeal of the petitioner.

9. The reason given in the written statement that the petitioner is a habitual offender cannot be taken into consideration at the moment, because these departmental proceedings were not mentioned or part of the order of dismissal. If a show cause notice had been issued to him, the petitioner would have been in a position to take up his defence. It is also pertinent to note that the petitioner stood discharged by the trial court in the FIR under Section 21(b) of the NDPS Act by the Judge, Special Court, Amritsar. It is not a case where there was a judgment of on account of witnesses turning hostile but

taking into account that there was no recovery effected from him and there was nothing on record to show that he had any relationship with the main accused namely Balwinder Singh @ Babba. The appeal filed by the petitioner against the order of dismissal after he stood discharged ought to have been taken into account by the authorities concerned. Rule 16.3 of the Punjab Police Rules indicates that when a police officer, who has been tried and acquitted by a criminal court, shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, subject to the exceptions as carved out. In the instant case, the petitioner was dismissed from service by invoking Article 311 (2) (b) of the Constitution of India only on the ground that he had been nominated as an accused under the said FIR. On discharge, the authorities concerned have failed to take into account that the petitioner stood discharged and once the order of discharge is not challenged by the State itself, his discharge ought to have been taken into account.

10. Consequently, orders dated 08.06.2017 and 01.04.2019 are set aside and the competent authority is directed to re-consider the case of the petitioner by taking into consideration the judgment passed by the Judge, Special Court, Amritsar and proceed with the departmental enquiry, if so required and conclude the same, within a period of three months from the date the enquiry is initiated.

11. The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

October 12, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No