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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 25.04.2022

1. CWP-14712-2017
RAKESH KUMAR

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

2. CWP-14722-2017
GURWINDER SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

3. CWP-14724-2017
NAVDEEP SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D. S. Patwalia, Senior Advocate with
Mr. A. S. Chadha, Advocate and
Mr. Kannan Malik, Advocate
for the petitioner(s).

Ms. Ambika Bedi, AAG, Punjab.

JAISHREE THAKUR, J. (Oral)

1. By this common order, this Court proposes to dispose of the above noted three writ petitions.
2. The instant petitions are filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction including the writ in the nature of certiorari for quashing the order dated 25.07.2014 (Annexure P-3), whereby the petitioners were dismissed from service by invoking Article 311 (2)(b) of the Constitution of India and the order passed on the statutory appeal dated 02.03.2016 (Annexure P-6), passed by respondent No.4 and order dated 16.04.2016 (Annexure P-8) passed by respondent No.3 in revision, upholding the order of dismissal (Annexure P-3).
3. Learned Senior counsel for the petitioners herein would contend that the petitioners herein, who were working as Constables in the State of Punjab were nominated in an FIR No.74 dated 25.07.2014, under Section 384 of the IPC and Section 7 and 8 of the Prevention of Corruption Act, 1988. An allegation had been made, that the petitioners in connivance with each other and one Harjap Singh had extorted Rs. 70,000/- from Rupinder Singh and split it amongst themselves. On the registration of the said FIR, the order of dismissal came to be passed by the Senior Superintendent of Police, Jalandhar (Rural), dismissing the petitioners and said Harjap Singh from Government service with effect from 25.07.2014 a.n. under Article 311 (2)(b) of the Constitution of India. It is contended that the petitioners herein who had been nominated under the said FIR, were

acquitted by the Judge, Special Court, Jalandhar on 16.04.2015, after considering the evidence led. The Court acquitted the petitioners of all charges against them on the ground that the prosecution had not been able to bring home the guilt of the accused. The order of acquittal was not taken into due consideration by the Appellate Authority nor by the Revisional Authority. It is further submitted that the order of dismissal by invoking Article 311 (2)(b) of the Constitution of India would not be sustainable in view of the settled law that the said powers can be exercised only in extraordinary circumstances and that while dispensing with an inquiry, the competent authority is to record reasons as to why an inquiry cannot be held. In this regard, learned Senior counsel for the petitioners herein would rely upon the judgments in **Sudesh Kumar versus State of Haryana, 2005 (11) SCC 525**, **Reena Rani versus State of Haryana and Others-CA No.2761 of 2012 arising out of SLP(C) 7701 of 2011**, decision of a Coordinate Bench of this Court in **CWP No.13847 of 1995 Harinder Kumar versus State of Punjab and Another** as well as **CWP No.15903 of 2014 Dinesh Singh versus State of Punjab and Others** besides the Division Bench decision of Delhi High Court in **Commissioner of Police and Others versus Ashwani Kumar and Others, WP(C) No.4078 of 2017** and **CM application No.17906 of 2017**.

4. Learned Senior counsel further argued that there were four Constables who had been nominated as an accused in the said FIR and all were dismissed by invoking Article 311 (2)(b) of the Constitution of India but one of them namely Harjap Singh, who had filed CWP No.14710 of 2017, has now been reinstated in service by an order dated 30.05.2019 by

conceding that this was not the case for invoking the said Article. Learned Senior counsel for the petitioners herein would claim parity with said Harjap Singh.

5. Learned State counsel would submit that the matter ought to be sent back to the Additional Chief Secretary, Government of Punjab, Department of Home Affairs and Justice, who has passed the order in the case of Constable Harjap Singh on 30.05.2019, during pendency of his CWP No.14710 of 2017.

6. I have heard learned counsel for the parties and have gone through the case laws as cited.

7. Article 311 of the Constitution of India is reproduced for ready reference:

"311. Dismissal removal or reduction in rank of persons employed in civil capacities under the Union or a State:-

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(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.:

(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.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

8. The petitioners were appointed as Constables with the Punjab Police and were dismissed from service by invoking Article 311(2) (b) of the Constitution of India as FIR No.74 dated 25.07.2014, under Section 384 of the IPC and Section 7 and 8 of the Prevention of Corruption Act, 1988 came to be registered against them. The date of dismissal is the same date as the date of registration of the FIR. While dismissing a government servant under Article 311 (2) (b), the appropriate disciplinary authority has to record reasons in writing that it does not consider it reasonably practicable to give to the person an opportunity of showing cause. The satisfaction under this clause has to be of the disciplinary authority that has the power to dismiss, remove or reduce the Government servant in rank. As a check against an

arbitrary use of this exception, it has been provided that the reasons for which the competent authority decides to do away with the prescribed procedure must be recorded in writing setting out why it would not be practicable.

9. On perusal of impugned order of termination, it is apparent that no reasons whatsoever have been recorded to show as to how the provisions of Article 311 (2) (b) have been attracted. A reading of the impugned order would show that the reason for dispensing of holding a regular enquiry is that a finding is given that no witness is likely to come forth to depose and that the petitioner has a criminal mentality, but there is no material available to support this ground.

10. In **Jaswant Singh v. State of Punjab, 1991 AIR (SC) 385** it has been held:

"It was incumbent on the respondents to disclose to the Court the material in existence at the date-of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. 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 enquiry. This is clear from the following observation at p. 270 of Tulsi Ram's case :

"A disciplinary authority is not expected to dispense with a disciplinary authority 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."

11. The law in this regard is no longer *res intergrata*, as can be noticed from the judgements as cited above. Therefore the impugned orders would not be sustainable.

12. Another reason for setting aside the impugned orders is that a co-accused in the FIR, who was also dismissed by the authorities while dispensing with regular enquiry, had filed an appeal before the Additional Chief Secretary Government of Punjab, Department of Home Affairs and Justice and the said appeal was allowed holding that it was not fair to dismiss the appellant with hearing and that departmental proceedings were liable to be initiated. The appellant Harjap Singh stood reinstated and the period from date of dismissal till reinstatement was to be treated as Non Duty Period. The petitioners who are similarly situated as said Harjap Singh, too should be given an opportunity of hearing.

13. Consequently the writ petitions are allowed and the impugned order dismissing the petitioners from service vide order 25.07.2014 (Annexure P-3) and the orders passed on the statutory appeal dated 02.03.2016 (Annexure P-6), by respondent No.4 and order dated 16.04.2016 (Annexure P-8) passed by respondent No.3 in revision, are set aside leaving it open to the department to take departmental action against the petitioners in accordance with law, if needed.

(JAISHREE THAKUR)
JUDGE

25.04.2022
Chetan Thakur

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No