

**CWP-28382-2018 (O&M)
and other connected cases**

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

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**CWP-28382-2018 (O&M) and
other connected cases
Date of Order: 14.02.2022**

LAKHWINDER SINGH

..Petitioner

Versus

STATE OF PUNJAB & ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anupam Bhardwaj, Advocate
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

This order shall dispose of CWP-28382-2018, CWP-19929-2019, CWP-4578-2021 and CWP-2213-2022. The Disciplinary Authority (Senior Superintendent of Police, Amritsar Rural, Amritsar) has dispensed with the service of the four petitioners who have filed separate writ petitions by common order. In substance, the allegations are that FIR No.58, dated 17.09.2017, has been registered on the statement of Gagandeep Singh son of Balwinder Singh against the petitioners under Section 389, 342, 506, 34 IPC and 7 of P.C. Act, 1988. It is alleged that the petitioners entered his shop while claiming that they have come from Narcotic Cell, Border Range, Amritsar Rural and demanded a sum of Rs.1,00,000/- failing which he will be involved in a false case under the NDPS Act. Sh. Gagandeep Singh is

alleged to have paid a sum of Rs.40,000/- immediately and, thereafter, paid a sum of Rs.16,000/-, Rs.15,000/- and Rs.4,600/-. The operative part of the order passed by the Senior Superintendent of Police, Amritsar, is extracted as under:-

“On the basis of cases registered against the above employees and their service record was perused. ASI[CR] Lakhwinder Singh No.805/ASR-R, PHG Hardip Singh 284/ASR-R, ASI[R] Harjit Singh 1336/ASR-R, are not fit to be retained in the service of police department. I am also satisfied with the fact that it will not be desirable to retain them in police department in view of the provisions of Article 311[2][b] of the Constitution of India along with Punjab Police Rules 16.1”

A detailed written statement has been filed by the State of Punjab. On 11.02.2022, after hearing arguments of the learned counsel representing the petitioners, the following order was passed:-

“The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

Heard learned counsel representing the parties at some length. The attention of the learned counsel representing the State of Punjab has been drawn to the fact that the appointing authority has not recorded his satisfaction to the effect that it is not reasonably practicable to hold regular inquiry into the charges against the petitioner in the impugned order.

Let the original file in which the order in question was passed be produced in the Court for perusal on the next date of hearing.

List on 14.02.2022.

A photocopy of this order be placed on the files of the other connected cases.”

The original record has been produced. The learned counsel representing the State of Punjab admits that there is no additional reason recorded on the file.

Article 311 of the Constitution of India is extracted as under:-

“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 a 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: 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

(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 of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

On reading of the order, it is evident that the power under Article 311(2)(b) of the Constitution of India along with Punjab Police Rules 16.1 has been invoked only on forming an opinion that the various petitioners are not fit to be retained in the service of the police department.

On careful reading of Clause (b) of Sub-Article 2 of Article 311, it is evident

that the authority empowered to dismiss or remove a person or reduce such employee in rank is required to record in writing that it is not reasonably practicable to hold such inquiry. In the present case, the aforesaid reasons have not at all been recorded. This matter is no longer *res integra*. Failure to record reasons for dispensing with the requirements of holding inquiry is sufficient to set aside the order. Reference in this regard can be made to Five Judge Bench judgment in **Union of India and another Vs. Tulsiram Patel, (1985)3 SCC 398**, which was subsequently followed in **Reena Rani Vs. State of Haryana and others (2012)10 SCC 215**.

The learned counsel representing the petitioners further relies upon judgment in **Risal Vs. State of Haryana and others, Civil Appeal No.2839 of 2011, decided on 13.05.2014**.

Rule 16.1 provides that no police officer shall be departmentally punished otherwise than as provided in these Rules. Sub-Rule 2 of Rule 16.2 enlist the officers who are entitled to pass orders of dismissal, reduction, stoppage of increment or forfeiture of service. Rule 16.1 does not enable the Disciplinary Authority to pass orders without holding a regular inquiry.

The learned counsel representing the petitioner has also informed the Bench that the petitioners have been acquitted in a criminal case registered against them.

The learned State counsel has failed to put forward any convincing argument. He submits that the petitioners have not been honourably acquitted. Be that as it may.

The requirement of Article 311(2)(b) has not been fulfilled by the competent authority, consequently the order is not sustainable.

Keeping in view the aforesaid facts, this Bench is left with no choice but to allow the writ petitions while quashing the order dated 05.12.2017. However, it shall be open to the respondents to initiate departmental inquiry in the alleged misconduct, if any, of the respective petitioners. Till the regular inquiry is held, the petitioners shall not be paid consequential benefits as the order in question has been set aside only on technical ground.

All the pending miscellaneous applications, if any, are also disposed of.

February 14th, 2022
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No