

231.

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

CWP-24118-2021

Date of Decision: 02.09.2022

SURINDER PAL SINGH

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Sehajbir Singh Aulakh, AAG, Punjab.

JAISHREE THAKUR.J

By way of instant writ petition under Article 226 of the Constitution of India, the petitioner seeks to quash the order dated 09.11.2021, Annexure P-6, whereby he has been ordered to be terminated from service by invoking Article 311(2)(b) of the Constitution of India. He has also prayed for reinstatement in service with all consequential benefits or to grant him pension by considering his service of 32 years.

The brief facts, as pleaded, are that the petitioner was appointed as a Constable in Punjab Police on 07.02.1989 and was promoted as Head Constable on 04.11.2011. An FIR No.5 dated 04.02.2020, under Section 7 of Prevention of Corruption Act, Police Station Vigilance Bureau, Patiala, was registered against him with the allegation that he, being an Investigating Officer, demanded certain amount from the accused persons in a criminal

case under investigation with him, on account of helping them in getting anticipatory bail. Departmental proceedings were initiated against him. Pursuant to the enquiry report and the reply filed by the petitioner to the show cause notice, respondent No.3-Senior Superintendent of Police, Barnala, vide order dated 22.06.2021, punished him with stoppage of two increments permanently. Respondent No.3 sought status from Deputy Superintendent of Police of the employees of the district who are involved in criminal cases pertaining to corruption. The DSP sent the report on 09.11.2021 and on the same day, respondent No.3 passed the order dismissing the petitioner from service by invoking Article 311(2)(b) of the Constitution of India, which order is under challenge before this Court by way of instant writ petition.

Learned counsel appearing on behalf of the petitioner would argue that before passing the impugned order, no reasons were assigned for invoking Article 311(2)(b) of the Constitution of India. He was neither given any show cause notice nor an opportunity of hearing. He has relied 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 as ***Rakesh Kumar Versus State of Punjab and others, decided on 25.04.2022; CWP No.21419 of 2020*** titled as ***Bikramjit and another Versus State of Punjab and others, decided on 23.02.2022; CWP 13847 of 1995*** titled as ***Constable Harinder Kumar Versus State of Punjab and another, decided on 24.10.2013; CWP No. 890 of 2011*** titled as ***Pammi Ram Versus State of Punjab and others, decided on 04.02.2013; CWP No.10423 of 2020*** titled as ***Sarabjit Singh Versus***

State of Punjab and another, decided on 01.09.2020 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. There has to be some material available to hold that it would not be practicable to hold a departmental inquiry.

On the other hand, learned State would argue that it is on the basis of service record of the petitioner wherein he has been issued 40 censure, 9 warnings and absence from duty on number of times, that the order of dismissal of the petitioner by invoking Article 311(2)(b) of the Constitution of India has been passed by respondent No.3 on 09.11.2021.

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

The plea of the petitioner is that without giving him any opportunity of hearing, the impugned order was passed on 09.11.2021, the date on which status report was filed. His 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.”

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 order, wherein the only consideration is that “*the conduct of the ASI (Local Rank) Surinder Pal Singh No.905/Barnala is not good for credibility of the police department. This official does not deserve to be a good public servant in future. I am also satisfied that there is no need to issue show cause notice or initiate department enquiry furthermore against the ASI (Local Rank) Surinder Pal Singh No.905/Barnala.*”

In the case of ***Union of India Versus Tulsi Ram Patel, 1985 (2) SLR 576***, the Hon'ble Supreme Court observed that clause (b) of the second provision to Article 311 of the Constitution of India 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."

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 of IPC and the other under Section 25 of 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)***.

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 the conduct of the petitioner is not good for credibility of the police department and he does not deserve to be a good public servant in future, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

Consequently, the writ petition is allowed and the impugned order dismissing the petitioner from service vide order dated 09.11.2021, Annexure P-6, is set aside, leaving it open to the department to initiate departmental action against the petitioner in accordance with law, if so desired.

(JAISHREE THAKUR)
JUDGE

02.09.2022

sanjeev

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