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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30690-2019

Date of decision: 05.12.2022

NARWINDER SINGH SIDHU

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JAISHREE THAKUR, J.

1. By way of instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks to quash order dated 09.08.2019 (Annexure P-3) by which the petitioner stands dismissed from service by respondent No.3, by invoking the provisions of Article 311 (2) (b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, 1934 and Section 7 of the Punjab Police Act, 1861.

2. In brief, the facts of the case are that the petitioner was appointed as Constable on 25.09.2012 at Jalandhar (Rural) and was transferred to Amritsar (City) and later on to Amritsar (Rural). In an FIR No.0036 dated 28.05.2019, under Sections 307, 392, 473, 482, 34 of the IPC and Section 25 of the Arms Act,

registered at Police Station Fatehgarh Churian, accused Shubham Singh and Manpreet Singh were arrested on 28.05.2019 and huge quantity of arms and ammunition was recovered from them. There are 24 FIRs registered against them, in which 5 cases are under Section 302 of the IPC. They were produced in Court on 29.05.2019 and the Court sent them in police custody for a period of seven days. During investigation, accused Shubham Singh disclosed that when they stayed in the house of Nikku at village Khehra, then the petitioner herein along with two other hardcore criminals came in his i-20 car. They took tea together and the petitioner showed accused Shubham Singh his poster and advised him to change his hair style in order to avoid his arrest. Thereafter, the accused persons left from there but the petitioner stayed back at village Khehra in the house of aforesaid Nikku. During further investigation, connection of the petitioner with aforesaid accused persons was found to be correct. On the basis of report from the Senior Superintendent of Police, Batala, departmental inquiry was ordered against the petitioner by suspending him vide order dated 21.10.2019 (Annexure P-1) passed by the Senior Superintendent of Police, Amritsar (Rural) and Inquiry Officer was appointed. Based on the very same report, Superintendent of Police, Investigation, Amritsar (Rural) recommended immediate dismissal of the petitioner from service as he was considered a threat to the security of the State being close to the hardcore criminals. Thereafter, the petitioner was dismissed from service vide order dated 09.08.2019 (Annexure P-3) by respondent No.3 by invoking the provisions of Article 311 (2) (b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, 1934 and Section 7 of the Punjab Police Act, 1861, holding that no witness would come forward to depose against the petitioner as he has close connections with hardcore criminals and that there

could be danger to the life of the Inquiry Officer, in case departmental inquiry is initiated because the petitioner has connections with hardcore criminals, who with a view to achieve their anti-social and illegal motive, can harm the life of any officer and also that the departmental inquiry might take long time and retention of the petitioner till then in the department would not be free from danger nor feasible in public interest.

3. Learned counsel appearing on behalf of the petitioner would contend that no FIR was registered against the petitioner herein and still he has been punished without being heard and considering his side of defence. He would submit that the impugned order does not contain any cogent reasons for dispensing with the departmental inquiry. He would argue that aforesaid accused, who were nominated as an accused in FIR No.0036, with whom there is allegation against the petitioner of having close connection, have been acquitted on 11.05.2022 by the Additional Sessions Judge, Gurdaspur. He relies 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. It is argued that there has to be some material available to hold that it would not be practical to hold a departmental inquiry.

4. Per contra, learned counsel appearing on behalf of the respondents-State would submit that the petitioner herein has been indulging in activities which are unbecoming of a Government servant. She would further submit that as the petitioner had close connection with hardcore criminals, no witness from public or from police was likely to come forward to depose against him for fear of their life and property and, therefore, the departmental inquiry was dispensed with. She would argue that the petitioner has not even filed any appeal against the impugned order of his dismissal before the higher authorities nor has he served any legal notice to the respondents before filing the instant writ petition and in view of the same, the instant writ petition deserves to be dismissed.

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

6. The petitioner stands dismissed from service by taking into account the fact that he had close connection with the accused persons, who were hardcore criminals and against whom FIR No.0036 was registered and petitioner had helped them, which would hamper the security of the State. 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 under Rule 16.24 of the Punjab Police Rules 1934. Article 311 (2) (b) of the Constitution of India 1949 reads as under:-

“(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 without holding a departmental inquiry, 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 no witness would come forward to depose against the petitioner as he has connections with hardcore criminals and there could be danger to the life of the Inquiry Officer, in case departmental inquiry is initiated because the petitioner has connections with hardcore criminals, who with a view to achieve their anti-social and illegal motive, can harm the life of any officer and also that the departmental inquiry might take long time and retention of the petitioner till then in the department would not be free from danger nor feasible in public interest”*.

8. In the case of **Union of India versus 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 it 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."

9. Mere allegation against the petitioner herein that he had close connection with the aforesaid accused persons and had helped them, who are hardcore criminals, 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 him from service. 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 the IPC and the other under Section 25 of the 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)**.

10. 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 no witness would come forward to depose against the petitioner as he has connections with hardcore criminals and there could be danger to the life of the Inquiry Officer, in case departmental inquiry is initiated because the petitioner has connections with hardcore criminals, who with a view to achieve their anti-social and illegal motive, can harm the life of any officer and also that the departmental inquiry might take long time and retention of the petitioner till then in the department would not be free from danger nor feasible in public interest”*, 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 instant writ petition stands allowed and impugned order dismissing the petitioner from service vide order dated 09.08.2019 (Annexure P-3) is set aside, leaving it open to the Department to take departmental action in accordance with law.

05.12.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No