

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

211

CWP-35700-2019

CM-6613-CWP-2021

Date of decision: 06.01.2022

VINAY GUPTA

...Petitioner

V/S

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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Present: Mr. Jagdish Manchanda, Advocate,
for the petitioner.

Mr. Alok Kumar Jain, Senior Panel Counsel,
for the respondent-UOI.

Mr. Saurabh Mohunta, DAG, Haryana.
(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

Petition herein is for issuance of a writ in the nature of certiorari seeking to quash order dated 30.03.2019 (Annexure P-9) impugned herein vide which services of the petitioner have been terminated.

2. Learned counsel for the petitioner submits that respondents have terminated the services of the petitioner without giving any opportunity of hearing and/or without proving any allegations against the petitioner. He submits that *qua* same allegations, respondents themselves got an FIR registered against some unknown persons. However, after that they themselves decided regarding the guilt of the petitioner and did not even wait for the outcome of investigation and criminal proceedings arising therefrom. Therefore, the impugned termination order dated 30.03.2019 and advertisement issued vide office letter dated 28.06.2019 (Annexure P-10) *qua* the post of Monitoring and Evaluation officer are illegal.

3. Learned counsel relies on the judgment rendered by this Court contained at Annexure P-13 reported as **2014 (4) SCT 481** titled **Prem Saran Bansal versus State of Punjab and others**, wherein following Supreme Court cited therein, speaking for this Court, my learned brother Mahesh Grover, J. (as he then was) held as under:-

“3. This Court would however, not comment upon the allegation in the F.I.R., but would examine the issue as to whether the services of an employee could be terminated merely on the registration of an F.I.R. and by dispensing with the niceties of holding departmental proceedings.

*4. The Hon'ble Supreme Court in **Union of India and another v. Tulsi Ram Patel A.I.R. 1985 S.C. 1416** as also several other judgments which have been delivered approving the view expressed in **Union of India and another v. Tulsi Ram Patel** (supra), has held that the services of an employee cannot be terminated unless there are sufficient reasons given for dispensing with the enquiry. Even after conviction, such reasons would have to be recorded so as to withstand judicial scrutiny. Time and again, it has been observed that it is the conduct which leads to conviction that could form the basis of dismissal or termination of the services of an employee. Here there is only registration of an F.I.R. and thus when mere conviction cannot form the basis of dismissal then how can the respondents justify dismissal simply on registration of F.I.R.*

*5. The Hon'ble Supreme Court in **Risal Singh v. State of Haryana 2014(3) S.C.T. 8** observed as follows :-*

*“6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in **Union of India and anr. v. Tulsiram Patel (1985) 3 SCC 398** is apposite. In the said case the Constitution Bench, while dealing with the exercise of power under Article 311(2)(b), has ruled thus :*

“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “capable of being put into practice, carried out in action, effected, accomplished, or done ; feasible”. Webster's Third New International Dictionary defines the word “practicable” inter alia as meaning “possible to practice or perform : capable of being put into practice, done or accomplished : feasible”. Further, the words used are not “not practicable” but “not reasonably practicable”. Webster's Third New International Dictionary defines the word

“reasonably” as “in a reasonable manner “ to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.”

6. *The impugned order suffers from a grave fallacy and is contrary to the settled law of the land.*

7. *Finding the impugned order to be erroneous when it offers no reasons to dispense with the enquiry the impugned order would clearly be unsustainable in the eyes of law and is therefore, quashed. It may be noticed that this Court had granted an opportunity to the respondents to seek instructions as the order was palpably wrong. But instead of taking any remedial steps, the respondents have persisted with the order and have rather said that the Court may pass an order.”*

4. I have heard rival contentions of learned counsels.

5. Concededly, from the record appended with the return filed to the petition, it is borne out that neither any show-cause-notice was issued to the petitioner nor any departmental inquiry was conducted before passing the impugned order dated 30.03.2019 (Annexure P-9) vide which services of the petitioner have been terminated summarily.

6. Reliance has been placed by learned counsel for respondents to contend that as per enquiry report dated 30.03.2019 (Annexure R-1), there was sufficient application of mind, inasmuch as such, vide a letter is from a panel of 5 officers i.e. Deputy Civil Surgeon (National Health Mission), Nodal Officer (Mental Health), Nodal Officer (Malaria), another Nodal Officer (stream not mentioned) and District Programme Manager addressed to Civil Surgeon, Kaithal it is in turn stated that a letter has been received from the Investigating Officer-cum-SHO, Police Station City Kaithal that FIR bearing No.117 dated 16.03.2019 under Section 67 of the IT Act and Section 420 IPC has been registered against the petitioner. After finding significant evidence against the petitioner, the aforesaid panel was of the

view and accordingly recommended that contract of the petitioner be terminated without granting any further extension. Based thereof, the impugned termination order was passed.

7. On perusal of record, it is thus sufficiently clear that aforesaid letter (Annexure R/1) cannot be termed either as an inquiry report or be construed as a substitution of the contemplated service safeguards provided to an employee. Neither show-cause-notice was issued nor any departmental inquiry was conducted wherein petitioner was involved to defend himself. Merely on the basis of self-serving one sided *ex parte* opinion formed by the panel, that too without conducting the proper proceedings, the impugned order has been passed.

8. This Court is of the view that the employer is fully entitled to dispense with the services of a delinquent employee provided proper procedure is followed. If the same is not done, it is a fraught with misuse of power by the authorities that may be.

9. Illustratively, assuming an employee is just going on the road driving his personal vehicle and meets with an accident, it could give rise to registration of an FIR. However, without there being any finding of his guilt or conviction against him, merely on the ground of suspicion of his involvement in a criminal negligence causing accident, he cannot be terminated from service. Similar is the situation herein, termination order seems to have been passed merely on the basis of suspicion as the trial is still at an initial stage, neither charge-sheet has been filed nor criminal trial has commenced.

10. In the premise, impugned order does not stand judicial scrutiny and the same is, accordingly, set aside with consequences to follow.

11. It is made clear that quashing of the impugned termination order shall not preclude the respondents to proceed in accordance with law, and pass fresh orders thereafter.

12. Disposed of accordingly.

(ARUN MONGA)
JUDGE

January 06, 2022
vandana

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