

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11474 OF 2023

1. The State of Maharashtra
Through the P.O.MAT
Aurangabad Bench
2. The Commissioner of Police,
Aurangabad City, Mill Corner,
Dr. Babasaheb Ambedkar Road,
Aurangabad
...Petitioners
(Ori. Respondents in OA)

Versus

Amit Shivanand Swami,
Age:28 years, Occu: Nil
R/o. C/o. Shri Ulhas Kalgutkar,
Colony no.9, Laxmi Narayan Nagar,
Alandi Road, Near Saibaba Mandir,
Pune-411 032
...Respondent
(Original applicants in OA)

...
Mr. P. S. Patil, Addl.G.P. for the Petitioners
...

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
& ARUN R. PEDNEKER, J.**

DATE : 14th SEPTEMBER, 2023.

P.C. :

1. Heard Mr. P. S. Patil, learned Additional
Government Pleader for the petitioners.

2. By the present petition the petitioners are

challenging the judgment and order dated 30.09.2022, passed by the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad, in O.A. No.1185 of 2019, whereby the tribunal has set aside the order dated 20.01.2018, passed by petitioner no.2 herein, in exercise of powers under Article 311(2)(b) of the Constitution of India, dismissing the respondent employee.

3. The brief facts leading to the filing of the writ petition are summarized as under:

A. The respondent entered into police service on 10.06.2016 as a Police Constable. On completion of training he was deployed as body guard / gunman for the Hon'ble Judge of the High Court.

B. While performing the duty as aforesaid, on 06.01.2018, the respondent met with an accident and suffered multiple injuries. It was revealed that at that time the respondent was in police uniform and had consumed alcohol. At the time of the accident the service revolver which was in possession of the respondent with

10 live cartridges was lost.

C. On 09.01.2018, the respondent was placed under suspension in contemplation of departmental enquiry. However, on 20.01.2018, petitioner no.2, by invoking the provisions of Article 311(2)(b) of the Constitution of India dismissed the respondent from the police service.

D. While invoking the provision of Article 311(2)(b) of the Constitution of India the authority reached to the subjective satisfaction that the disciplinary enquiry is not possible for the reason that the constable after being intoxicated carried the service revolver with live cartridges along with his friends in the public place. Thereafter, the respondent - constable recorded selfies with his friends with the service revolver. He also handed over the service revolver in the hands of his friends and, thus, without any responsibility he lost the service revolver along with live cartridges. The respondent was found irresponsible in maintaining the custody of the

service revolver and the service revolver having gone possibly into the hands of any anti social elements, there is a possibility of serious security and crime issues. When the enquiry was conducted into the accident it was noticed that the witnesses were not willing to openly make statement against the respondent and looking at the gravity of the matter it was inferred by the concerned disciplinary authority that it is reasonably not possible to hold an enquiry against the respondent and, as such, dismissed the respondent from service by invoking Article 311(2)(b) of the Constitution of India.

4. The reasons stated in the order for exercise of the powers under Article 311(2)(b) of the Constitution of India are extracted below:

" आणि ज्याअर्थी या घटनेच्या अनुषंगाने निष्पन्न झालेल्या बाबी यावरून तुम्ही पोशि/३२१७ अमित शिवानंद स्वामी तुमचे ताब्यातील सर्व्हिस पिस्टल व राउंड सांभाळण्यात गंभीर कसूर करून असमर्थ ठरलेले असून सादर पिस्टल व १० राउंड देशविघातक शक्ती, गुन्हेगार व्यक्तीचे हाती पडून भविष्यात देशविरोधी कृत्य तसेच शरीराविरुद्ध व मालमत्तेविरुद्ध सारखे गंभीर स्वरूपाचे गुन्हे घडून येण्याची शक्यता आहे. सदर गंभीर स्वरूपाची कसुरी हि देश विघातक कार्याशी, गुन्हेगारी टोळीशी संबंधित असण्यास वाव मिळत आहे. तसेच या घटनेशी संबंधित साक्षीदार यांनी सखोल विभागीय चौकशीच्या अनुषंगाने उघडपणे जबाब देण्यास दर्शविलेली असमर्थता या बाबी विचारात घेता कसूरदार पोलीस कर्मचारी यांचे गंभीर स्वरूपाचे गुन्हेगारी व नैतिक अधःपतनाच्या वर्तनातील प्रचलित नियमाप्रमाणे विभागीय चौकशी करणे

वाजवीपणे व्यवहार्य (Reasonably practicable) होणार नाही. याबाबत माझी सक्षम अधिकारी म्हणून खात्री झाली आहे.

त्याअर्थी, मी, यशस्वी यादव, पोलीस आयुक्त, औरंगाबाद शहर सक्षम अधिकारी म्हणून भारतीय राज्य घटनेच्या कलम ३११ (२) (बी) या तरतुदीचा वापर करून पोलीस मुख्यालय औरंगाबाद शहर येथे नेमणुकीस असलेले कसूरदार निलंबित पोशि/३२१७ अमित शिवानंद स्वामी यांना शासकीय सेवेतून बडतर्फ करीत आहे. हि बडतर्फी सदरचे आदेश निर्गमित झाले तारखेपासून अमलात येईल."

5. Invocation of Article 311(2)(b) of the Constitution of India is a very serious matter and dismissal of the employee by dispensing with the departmental enquiry, the authority concerned has to reach at a subjective satisfaction that it is not reasonably practicable to hold such an enquiry. The satisfaction has to be based on certain objective facts.

6. The Hon'ble Supreme Court in the case of **Risal Singh Vs. State of Haryana and others, (2014) 13 SCC 244**, while considering exercise of power under Article 311(2)(b) of the Constitution of India has observed as under:

"6. ...In this context, reference to the authority in *Union of India v. Tulsiram Patel* is apposite. In the said case the Constitution Bench, while dealing with the exercise of power under Article 311(2)(b), has ruled thus: (SCC p. 503, para 130)

"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."

7. *In Jaswant Singh v. State of Punjab the Court, while dealing with the exercise of power as conferred by way of exception under Article 311(2)(b) of the Constitution, opined as follows: (SCC p. 369, para 5)*

"5. ...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 SCR p. 270 of Tulsiram case: (SCC p.504, para 130)

'130. ... 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.'

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the officer concerned."

7. Thus, applying the aforesaid law to the facts of the present case, in the instant case, the authority has not given any reasons as to how it is not possible or reasonably practicable to hold a departmental enquiry. The prior irresponsible conduct of the constable cannot be a ground for dispensing with disciplinary enquiry. A vague statement that the witnesses were not openly willing to depose against the constable is also not good enough unless it is shown that there is a atmosphere of terror or that such witnesses cannot depose in view of fear of the respondent constable. The exercise of the power under Article 311(2)(b) of the Constitution of India is conferred by way of an exception to the general rule of holding disciplinary enquiry. The facts

before us does not in any way show that it is not possible to hold an inquiry against the delinquent employee.

8. In view of the same, we find no reason to interfere with the order passed by the learned tribunal and sustain the order passed by the learned tribunal to the extent of the present respondent. We, further extend the time granted by the tribunal by two (02) months from today to initiate the departmental enquiry against the respondent, if they so desire and in the event the proceedings are initiated against the respondent, the petitioners are directed to complete it within six (06) months from the commencement, as directed by the tribunal. The tribunal's order in all other respect is maintained qua the present respondent.

9. The writ petition is disposed of with above direction.

(ARUN R. PEDNEKER, J.)

(CHIEF JUSTICE)