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W.P.(MD)NO.13058 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13058 of 2023

and

W.M.P(MD)No.11052 of 2023

M.Vasanthi

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Madurai Range,
Madurai.

2. The Superintendent of Police,
Madurai District,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records realting to orders passed by the first respondent in C.No.A2/1343398/332/2021, R.O.No.147/2023 dated 11.04.2023 and quash the same and consequently direct the respondents to reinstate the petitioner.

For Petitioner : Mr.M.Subash Babu,
Senior counsel,
for M/s.Subash Law Office.



For Respondents : Mr.Veera Kathiravan,
Additional Advocate General,
assisted by,
Mr.N.Ramesh Arumugam,
Government Advocate.

ORDER

The writ petitioner, who was holding the post of Inspector of Police, was dismissed from service on 11.04.2023 by the disciplinary authority without holding an enquiry. The question that arises for consideration is whether the invocation of the second proviso to Clause (2) of Article 311 of the Constitution of India r/w. Rule 3 of Tamil Nadu Police Subordinate Service (D&A) Rules 1955 was justified in the facts and circumstances of the case.

2. The writ petitioner was recruited as Sub-Inspector of Police in the year 2004. She was promoted as Inspector of Police on 18.04.2018. According to the petitioner, on 05.07.2021, while on duty at Nagamalai Pudukkottai police station, she received information about exchange of fake currency; acting on that basis, she intercepted the car bearing registration No.TN-59-BE-8953 near Shanthi Lodge and seized two bags from the persons involved; on search one bag was found to contain papers and documents while the other bag contained only dresses; since



there was no incriminating material, the persons concerned who were brought to station were let off after interrogation.

3. On 06.07.2021, one K.Arshath lodged a written complaint before the Superintendent of Police, Madurai (Rural), that he was waiting near Shanthi Lodge, Nagamalai Pudukkottai carrying cash of Rs. 10 Lakhs; even as he was having transactions with one Karthick and others, a police vehicle came to the spot; Inspector of Police Vasanthi got down and the said Karthick grabbed the cash bag and gave it to her; the said Arshath was also taken in the police vehicle and dropped at some distance; when the petitioner insisted for return of his money, he was asked to come the day to the police station on 06.07.2021 when the petitioner contacted Nagamalai Pudukkottai police station, he was asked to come to Thallakulam police station; Arshath met the petitioner outside Thallakulam police station in her jeep; the petitioner told Arshath that there was no cash in the bag and threatened him that if he repeated his demand for return of cash, he will be booked in a narcotics case and arrested.

4. Since serious allegations have been made against the police officer, the Superintendent of Police, Madurai(Rural) ordered preliminary enquiry. According to the report submitted on 13.07.2021,



the complainant K.Arshath was without work on account of pandemic condition; he wanted to earn money somehow; he approached one Baskaran; the said Baskaran had told Arshath that one Pandi who is known to him is having Indian currency printed in Pakistan and that he would give currency twice or thrice in value in exchange; after further negotiations, it was agreed that in exchange of Rs.10 Lakhs, Arshath would be paid Rs.30 Lakhs by Pandi, Ukirapandi (Chettiar), Karthick and Kundupandi; On 03.07.2021, the exchange could not fructify because Arshath insisted on counting the sum of Rs.30 Lakhs physically; since the group supplying the fake currency notes realized that Arshath will not accept the exchanged notes without verification, they hatched a conspiracy; the petitioner Ms.Vasanthi is said to be a relative of Kundupandi; with her involvement, it was decided to grab Rs.10 Lakhs from Arshath; accordingly, after confirming that Arshath had come with Rs.10 Lakhs, the interception was organized; Arshath and others were bundled into the police vehicle; Arshath was soon dropped and sent away after being threatened; the petitioner thereafter went in her police vehicle towards Thirumangalam and stopped near Srinivasa Colony; there Chettiar and Kundupandi came in a Scorpio vehicle; Vasanthi handed over both the bags to Chettiar; Chettiar gave Rs.2 Lakhs to Vasanthi and



left; the remaining amount was shared among Kundupandi, Chettiar and Karthick.

5. The preliminary report based its findings on the statement of K.Palpandi @ Thirumangalam Pandi made during enquiry. The Sanjay Gandhi (HC 2252) who was the driver who drove the vehicle also broadly corroborated the sequence of events except receipt of Rs.2 Lakhs from Chettiar. CDR details also confirmed that the petitioner was in contact with Palpandi, Chettiar and Kundupandi. According to the preliminary enquiry, the petitioner was emboldened to commit the crime because she felt confident that Arshath would not dare to lodge complaint because of the inherently illegal nature of the transaction.

6. Thereafter Crime No.18 of 2021 was registered on the file of the Inspector of Police, DCB, Madurai on 27.07.2021. The petitioner figured as the fifth accused. She was also suspended from service on the same day by the Deputy Inspector General of Police, Madurai Range. On 06.09.2021, charge memo was issued. Arshath was shown as the first witness while Baskaran as the second witness. Sanjay Gandhi, the police driver was shown as the seventh witness. The petitioner filed W.P. (MD)No.21790 of 2021 for keeping the disciplinary proceedings in abeyance till disposal of the criminal case registered in Crime No.18 of



2021 on the file of DCB, Madurai. The writ petition was dismissed on

04.07.2022.

7. In the meanwhile, the petitioner filed CrI.O.P.(MD)No.14120 of 2022 before this Court for quashing the criminal proceedings. Crime No.18 of 2021 had been investigated and charge sheeted and taken cognizance in C.C.No.87 of 2022 on the file of the Judicial Magistrate No.I, Madurai. Quashing was sought on the ground that the matter had been compromised. In the compromise memo, all the five accused namely, Palpandi, Kundupandi, Ukkira Pandi, Karthick and the petitioner herein had signed. The defacto complainant Arshath had also filed a supporting affidavit. However, the quash petition was dismissed as withdrawn on 04.08.2022.

8. The petitioner was arrested on 26.08.2021. She was granted bail in CrI.O.P.(MD)No.14255 of 2021 on 08.10.2021. Since the prosecution took the view that the defacto complainant had been influenced, CrI.MP(MD).No.10321 of 2022 was filed for cancelling the bail. The petition was disposed of in the following terms:-

“ i.The Inspector General of Police



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(South Zone) shall to constitute a special team headed by an Additional Superintendent of Police or a Deputy Superintendent of Police to ascertain whether the accused in CC.No.87 of 2022 on the file of the learned Judicial Magistrate No.I, Madurai in any manner have attempted to influence the defacto complainant or any other witnesses in Crime No.18 of 2021 by verifying, their call details and by conducting proper investigation.

ii.If any attempt has been made by any of the accused, to tamper the witnesses in CC.No. 87 of 2022, the petitioner / investigation officer shall register a separate case for the offence made thereon as against the accused concerned.

iii.The Inspector General of Police (South Zone) shall also take necessary steps as required under the witness protection scheme to all the witnesses in CC No.87 of 2022 and shall ensure a fair trial in this case.



iv.The trial Court shall conduct a fair

trial in CC.No.87 of 2022 and dispose it as expeditiously as possible.”

9. Pursuant to the direction given by this Court, the Inspector General of Police(South Zone), Madurai constituted a special team headed by an IPS officer. The statement of K.Arshath was recorded under Section 164 of Cr.P.C. before Judicial Magistrate No.I, Madurai. The special team after enquiry, confirmed that there was witness tampering. Thereupon, Crime No.8 of 2023 was registered on the file of DCB, Madurai against the petitioners and others for the offences under Section 195A, 214 and 120B IPC.

10. In the disciplinary action initiated against the petitioner, an enquiry officer was appointed. But without proceeding with the enquiry, the impugned order came to be passed. Assailing the same, the present writ petition has been filed.

11. The learned Senior counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He contended that the petitioner is under suspension and therefore, the disciplinary authority could not have arrived at the conclusion that it was not practicable to hold the enquiry. Such



satisfaction is perverse. After appointing enquiry officer, the matter should have been allowed to proceed to its logical conclusion and not short-circuited. He relied on the decisions reported in **(1985) 3 SCC 398 (Union of India V. Tulsiram Patel)**, **(2012) 10 SCC 215 (Reena Rani V. State of Haryana) and Risal Singh V. State of Haryana (2014) 13 SCC 244** and an unreported decision in **CWP No.21363 of 2020 (O&M) (Ramesh Kumar V. State of Haryana) dated 16.05.2023** decided by the *Punjab-Haryana High Court*. He called upon this Court to set aside the impugned order and grant relief as prayed for.

12. The respondents have filed a detailed counter-affidavit and the learned Additional Advocate General took me through its contents. He pointed out that the conduct of the petitioner had led to the passing of the impugned order. He also relied on **Tulsiram Patel** to sustain the impugned order. He pressed for dismissal of the writ petition.

13. I carefully considered the rival contentions and went through the materials on record. Before testing the impugned order, let me cite the relevant provisions. Article 311 of the Constitution of India is as follows:-

**“ 311. Dismissal, removal or reduction in
rank of persons employed in civil capacities under**



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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 an 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.”

Rule 3 of Tamil Nadu Police Subordinate Service (D&A) Rules 1955 is on similar lines. Rule 3 deals with the procedure where it is proposed to be imposed what is known as major penalty on a member of



the police subordinate service. Rule 3(d) is as follows:-

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“ (i) All or any of the provisions of sub rules (a) and (b) may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is a difficulty in observing exactly the requirements of the sub rules and those requirements can be waived without injustice to the person charged.

(ii) If any question arises whether it is reasonably practicable to follow the procedure prescribed in sub rule (b) the decision thereon of the authority empowered to dismiss or remove such person or reduce him in rank, as the case may be shall be final.”

14. The petitioner is a member of the police subordinate service. She was holding the rank of Inspector. A comparison of the second proviso to Article 311(2) of the Constitution of India and Rule 3(d) of Tamil Nadu Police Subordinate Service (D&A) Rules 1955 leads me to the conclusion that a higher threshold and bench mark has been laid down in Rule 3(d). There cannot be any dispute that a member of the police subordinate service is entitled to the higher protection conferred



under the rules over and above what is set out in Article 311 of the Constitution of India. Under the second proviso to Article 311(2), it is enough if the empowered authority comes to the conclusion that it is not reasonably practicable to hold the enquiry. Under Rule 3(d), the empowered authority must record special and sufficient reasons that there is difficulty in exactly observing the procedural requirements set out in the sub-rules. It must also be shown that the requirements have been waived without injustice to the person charged. In other words, there are twin requirements to be fulfilled.

15. The question that arises for consideration is whether both these requirements have been met in this case. The leading case on the subject is ***Union of India V. Tulsiram Patel (1985) 3 SCC 398***. The discussion pertaining to the second proviso is reproduced below verbatim:

“ 128. The main thrust of the arguments as regards Clause (b) of the second proviso to Article 311(2) was that whatever the situation may be minimal inquiry or at least an opportunity to show cause against the proposed penalty is always feasible and is required by law. The arguments with respect to a minimal inquiry were founded on the basis of the applicability of Article 14 and the principles of natural justice and the arguments with



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respect to an opportunity to show cause against the proposed penalty were in addition founded upon the decision in Challappan's case. These contentions have already been dealt with and negatived by us and we have further held that Challappan's case in so far as it held that a government servant should be heard before imposing a penalty upon him was wrongly decided.

129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious



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situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under Clause (b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers and agitators as sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, Clause (b) is not meant to be applied in ordinary, normal situations but in such situations where is not



reasonably practicable to hold an inquiry.

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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



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the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other thretens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a



matter of assessment to be made by the disciplinary authority.

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Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that Clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. 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 finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief



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Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

131. It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to



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hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply Clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or



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further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. therefore, even where a part of an inquiry has been held and the rest is dispensed with under Clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133. The second condition necessary for the valid application of Clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the



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reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of Clause (b) of the second proviso. For instance, it would be no compliance with the requirement of Clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.



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135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of that reasons in a departmental appeal or before a court of law and the failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in Clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As Clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in Clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under Clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate



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the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons.

136. It was next submitted that though Clause (b) of the second proviso excludes an inquiry into the charges made against H government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him



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to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

137. A government servant who has been dismissed, removed or reduced in rank, by applying to his case Clause (b) or an analogous provisions of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if



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dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

138. Where a government servant is dismissed, removed or reduced in rank by applying Clause (b) or an analogous provision of the service rules and the approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether Clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by Clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the



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disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by Clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to Clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

16. In *Jaswant Singh V. State of Punjab* (1991) 1 SCC 362, it was



held as follows:-

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“ The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority 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 concerned officer.”

17. A recent decision of the Division Bench of Hon'ble Calcutta High Court is equally relevant. In *Kunjumole V. The Union of India* (WP.CT/1/2022 dated 26.08.2022) it was held as follows:-

“ 9. The above clause makes it clear that it is incumbent on the authority to record its satisfaction in writing of the reason as to why it would not reasonably be practicable to hold such inquiry where the authority is empowered to dismiss a person. The word “... reasonably practicable to hold ...” means that it is not practicable to hold the inquiry based on certain factual circumstances which are inalienable to the case before the Disciplinary Authority. The word “reasonably” further indicates that it is not a case of total impracticability but that holding of an



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inquiry is not practicable taking a reasonable view of the relevant factual situation. What however is non-negotiable is that the Disciplinary Authority must state its reason in writing for dispensing with a disciplinary inquiry which would have an indelible impact on the person who is removed, dismissed from service or reduced in rank without an inquiry. The reason recorded must reflect the attending circumstances which would make it reasonably impracticable for the authority to hold the inquiry before imposing the penalty.

10. Article 311(2) makes it clear that the rule is inquiry hearing before dismissal. The exception slips in where it is impracticable to hold the inquiry and the onus is on the authority to record its satisfaction in writing as to the reason for the impracticability. The underlying presumption in Article 311 is that dismissal, removal or reduction in rank of a person employed in a civil capacity under the Union or State is not to be taken lightly or done without following due process. The threshold to prove dispensation of due process and compliance with the principles of natural justice is high in all matters but particularly heightened in Article 311(2)(b) of the Constitution



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of India. In essence, the constitutional obligation of recording reasons for departing from the norm must strictly be conformed with. Invocation of the power without bowing down to the constitutional mandate would render the order of penalty void (Union of India vs. Tulsiram Patel, (1985) 3 SCC 398). ”

18. The Hon'ble Apex Court in Jaswant Singh had held that the competent authority is obliged to record reasons when passing an order under Clause (b) to the second proviso to Article 311(2). This obligation is mandatory. Failure to do so will vitiate the order itself. The impugned order passes muster on this score. It is on this ground Reena Rani and Risal singh relied on by the learned Senior counsel for the petitioner are distinguishable.

19. The disciplinary authority has passed a speaking order. The very first paragraph contains the reason. After pointing out that the petitioner has been charged in a grave criminal case, the disciplinary authority notes that the delinquent had influenced the complainant. It is true that the decision to dispense with the departmental enquiry cannot rest solely on the ipse dixit of the concerned authority. It is the duty of the authority to disclose to the Court the material in existence at the date of the passing of the order in support of the subject to satisfaction



recorded in the order. **((Hari Niwas Gupta V. State of Bihar (2020) 3**

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SCC 153 quoting Jaswant Singh). The original note file recording the satisfaction of the disciplinary authority was produced before me. I went through it in full. The note runs to 12 paragraphs. It is handwritten. The empowered authority has referred to the antecedent facts. Thereafter the authority came to the conclusion that the departmental proceedings would be made into a farce and not in public interest. In that view of the matter, Article 311(2)(b) was invoked and the punishment of dismissal was handed out to the petitioner.

20. The petitioner figured as A5 in Crime No.18 of 2021 on the file of DCB, Madurai, for the offences under Sections 120B, 384, 389, 409, 420 and 506(i) IPC. The case was registered not at the drop of the hat. The occurrence had taken place on 05.07.2021. Complaint was given on 06.07.2021. The case was registered only on 27.07.2021. Preliminary enquiry was conducted by an Additional Superintendent of Police and report was submitted on 13.07.2021. The Superintendent of Police after due vetting gave direction for registering FIR only on 27.07.2021. Thereafter, investigation was taken up and final report was filed on 14.12.2021. It was taken cognizance in C.C.No.87 of 2022 on the file of Judicial Magistrate No.I, Madurai. Such a case could not have been



compromised. Yet an arrangement of compromise was entered into with the complainant. The petitioner had signed along with four other accused. Since the High Court refused to quash the proceedings, Crl.O.P. (MD)No.14120 of 2022 came to be withdrawn. It became obvious that the petitioner had succeeded in reaching out to the star witness namely, Arshath. Following the direction given by the High Court in Crl.M.P. (MD)No.10321 of 2022, enquiry came to be conducted into the conduct of the petitioner and that led to registration of Crime No.8 of 2023 on the file of DCB, Madurai under Sections 195(A), 214 and 120B IPC. The second case was registered against the petitioner based on the report of the special team that was constituted by the South Zone IG pursuant to the direction of this Court. The statement of Arshath was recorded under Section 164 of Cr.P.C. On 20.03.2023 before Judicial Magistrate No.I, Madurai. Arshath had narrated in detail as to how he was made to come to the negotiating table. He had also stated that he was paid Rs.5 Lakhs and that the remaining Rs.5 Lakhs would be paid after the case was closed. This testimony of the complainant before the Judicial Magistrate is fatal to the petitioner. It shows the extent to which the petitioner will go to wriggle out of the consequences emanating from her conduct.

21. Public servants are in the civil department of the state as well



as in the police / paramilitary / military. The yardstick applicable to a clerk in the Revenue Department will not be the same as the one applied to a member of the uniformed force. The rank occupied by the delinquent will also determine the applicable standard. These are matters of nuance. That is why Clause (3) of Article 311 attaches finality to the decision of the empowered authority. Of course this is subject to judicial review. The parameters of review will vary from case to case. The petitioner was holding the rank of Inspector of Police. Such a person can definitely wield influence and possess the capacity to influence the witnesses. The petitioner was holding officer rank in an uniformed service. The materials on record indicate that she had grabbed Ten Lakhs of Rupees from Arshath and later shared the proceeds of crime. After the case was chargesheeted, she succeeded in coercing Arshath to compromise. This is a matter of record. A quash petition on the strength of compromise memo was filed before the High Court. The departmental enquiry against the petitioner rested entirely on the testimony to be given by Arshath. The very same Arshath in his affidavit filed in CrI.O.P.(MD)No.14120 of 2022 had gone to the extent of stating that a private money transaction was exaggerated and improved by giving a criminal colour and that the dispute could have been settled in the civil Court and that he did not



want to proceed further since he had compromised the entire issue with the accused and that he has no objection to quash the proceedings against them. The very same Arshath subsequently gave statement under Section 164 of Cr.P.C. that he was pressurised into compromising the issue. The role of the petitioner is too apparent and that led to registration of second FIR against her. In these circumstances, the competent authority rightly came to the conclusion that it was not reasonably practicable to conduct the enquiry against the petitioner. As held by the Calcutta High Court, the question to ask is not whether it is practicable to hold the enquiry but whether it is reasonably practicable. If the witness turns hostile for whatever reason, then the enquiry turns out to be false. I hold that the satisfaction of the empowered authority is well founded.

22. Then comes the question of justice. Justice is not to be viewed from a relative perspective. It is an absolute stand point. In a case of this nature, it is all about fairness. The point is whether the empowered authority acted capriciously or out of malice. If the authority had applied her mind with reference to the materials on record and came to a considered conclusion, then it means that there is no injustice. A losing litigant will always cry that injustice had been done to her. After a careful



scrutiny of the entire material on record, I am more than satisfied that by waiving the procedural safeguards, no injustice had been done to the petitioner. The order impugned in the writ petition is sustained. The writ petition is dismissed. I however clarify that this order will not have any bearing on the criminal prosecution pending against the petitioner. The criminal case will be decided entirely on the strength of evidence adduced before the concerned trial Courts. No costs. Consequently, connected MP. is closed.

30.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
PMU

To

1. The Deputy Inspector General of Police,
Madurai Range,
Madurai.
2. The Superintendent of Police,
Madurai District,
Madurai.



WEB COPY



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W.P.(MD)NO.13058 OF 2023

G.R.SWAMINATHAN, J.

PMU

W.P(MD)No.13058 of 2023

30.06.2023