

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

**CWP No.6832 of 2022
Date of decision : 23.01.2023**

Harpal Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sameer Sachdeva, Advocate
for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari seeking quashing of order dated 12th of April, 2021 dismissing the petitioner from services by resorting to Article 311(2)(b) of the Constitution of India by dispensing with the inquiry and the order dated 15th of September, 2020 passed by respondent No.4 whereby departmental appeal preferred by the petitioner stands rejected affirming the order of dismissal.

2. Short question involved in the present writ petition is : *as to whether Anneuxre P-1 i.e. the order of dismissal passed against the petitioner dated 15th of September, 2022 can be sustained in law or not?*

3. Ld. Counsel for the petitioner submits that a bare perusal thereof would reveal that no reason has been recorded for dispensing with the inquiry before awarding extreme punishment of dismissal to the petitioner apart from the fact that there is a video which was made viral on the social media wherein two of the employees could be seen preparing for taking drugs. Counsel for the petitioner further claims parity submitting that the other employee namely PHC Surjeet Singh No.7169 who also finds mention in the impugned order already stands reinstated and relies upon law laid down in **Chattar Singh vs. Haryana Vidyut Prasaran Nigam Limited and others 2002(1) RSJ 97** to submit that where two employees are chargesheeted under the same chargesheet and are facing identical charges, the employer cannot award punishment of dismissal to one and allow the other to go scot-free.

4. I have heard counsel for the parties and have gone through the records of the case.

5. Facts are not much in dispute. Once one of such employees has been reinstated in the service the other will also have the right to be.

6. The pleasure doctrine of the English Common Law stands engrafted in Article 310 of our Constitution. However, the same is clarified by, “except as expressly provided by this Constitution”. Thus,

the same is also subject to Article 311. Article 311 mandates that a person who is member of Civil Service cannot be dismissed or removed by an Authority subordinate to the Appointing Authority of that person. Article 311(2) further provides that such person shall not be dismissed or removed or reduced in rank except after holding an inquiry wherein he is not only informed of charges against him but is also given an opportunity of being heard in respect of those charges. However, Article 311(2) has exceptions carved out in the Second Proviso appended thereto.

7. While dealing with the similar order in **CWP No.2852 of 2011** titled as **Malkiat Singh vs. State of Punjab and others**, wherein inquiry was dispensed with by invoking Article 311(2)(b) of the Constitution of India, this Court has followed the ratio of law laid down in **Union of India vs. Tulsi Ram Patel, (1985) 3 SCC 398**, and held as under :

“Thus, the broader principles that emerge are :-

- (i) The authority can dispense with the inquiry by recording reasons in writing to the effect that holding of such inquiry is not reasonably practicable;
- (ii) 'Not reasonably practicable' does not mean impossible. It rather connotes that the holding of inquiry is not practicable in the opinion of a reasonable man taking reasonable view of the prevailing situation;
- (iii) Reasonable practicability of holding an inquiry is a matter of assessment to be made by disciplinary authority who is the best judge thereof;

- (iv) A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motive (s) 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;
- (v) The finality given to the decision of the disciplinary authority by Article 311(3) is not beyond judicial review;
- (vi) The reason for dispensing with the inquiry must be recorded in writing not necessarily in the order but at least on the record ; and
- (vii) There must be some material on record to justify such reason to dispense with the inquiry.”

8. The aforesaid principles were further considered by Apex Court in the case of **Jaswant Singh vs. State of Punjab and others, (1991) 1 SCC 362** wherein the Apex Court while reiterating the law laid down in **Tulsi Ram Patel's case** (supra) held that :-

“.....It was incumbent on the respondents to disclose to the court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. 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.

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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.”

9. Applying the aforesaid principal on the present case, this Court finds that the impugned order cannot be sustained.

10. The punishing authority while dispensing with the inquiry invoking provisions of Article 311(2)(b) of the Constitution of India observed as under :-

“I being satisfied with the aforementioned report of the Deputy Superintendent of Police Fazilka, it would be appropriate to dismiss the aforementioned employees from service. I am fully aware that to dismiss the service of aforementioned employees is a major punishment. Therefore, before awarding severe punishment of dismissal from service Superintendent of Police (SD). It has recommended to dismiss the to these employees it would be appropriate to afford an opportunity of hearing to these employees. But by doing so, the aforementioned employees can influence the complainant party, which can create hurdle in initiating appropriate proceedings against him. But by the act of the aforementioned employees ASI (Local) Harpal Singh No. 404/Fazilka and PHC Surjit Singh No. 7169 by consuming the drugs and their videos made viral in the social medial has tarnished the image of the police department. It would not be in the interest of public as well as police department to retain this employee in the service of police department and that would not be in accordance with rules. I have gone through the report of Deputy Superintendent of Police, Fazilka and have come to the conclusion that to continue ASI (Local) Harpal Singh No. 404/Fazilka and PHC Surjit Singh No. 7169 in service is not in public interest.

In view of the above, I Harjit Singh IPS, Senior Superintendent of Police, Fazilka in exercise of powers under Article 311 (2)(b) of the Constitution of India am hereby dismiss the service of ASI (Local) Harpal Singh No. 404/Fazilka and PHC Surjit Singh No. 7169 w.e.f. 15.9.2020 (After noon) from the police department.”

11. There is no material on record to show the basis of the apprehension raised by the authority w.r.t. there being a possibility of employee influencing the complainant party. The reasoning adopted by the Punishing Authority is in teeth of the bare provision of law. Trite it is that mere reproduction of statutory expression cannot be a substitute to the reasoned satisfaction of the authority. There is an obligation casted upon the authority to record cogent reasons for dispensing with the inquiry and such reason must be backed by the material. There is no material referred to in the order or placed on record to justify dispensing with the inquiry of the petitioner.

12. It is made clear that the Court while entertaining the present writ petition has not dealt with the merits of the allegations levelled against the petitioner. The order of dismissal has been tested merely on the touchstone of Article 311(2) of the Constitution of India.

13. As a sequel of the discussion held hereinabove, the present writ petition is allowed. Impugned order dated 12th of April, 2021 is hereby quashed. However, liberty is granted to the respondents to proceed against the petitioner in accordance with law.

January 23, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No