

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

263

CWP No. 11350 of 2021 (O&M)
Date of decision: 08.02.2023

Ex. P/Head Constable Anup Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Raj Kumar Arya, Advocate for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present petition has filed under Article 226/227 of the Constitution of India for issuance of the writ, order or direction especially in the nature of Certiorari for quashing the impugned order dated 17.06.2015 passed by SSP Tarn Taran (Annexure P-1) whereby the services of the petitioner have been ordered to be dismissed by resorting to Article 311(2) (b) of the Constitution of India dispensing with the inquiry.

Petitioner was serving as Head Constable. One under trial namely Gurdhain Singh son of Baldev Singh resident of Village Pahuwind, PS Bhikhwind, District Tarn Taran who as an accused in case FIR No. 155 of 2010 under Sections 399/402/279/411 IPC and 25/54/59 of Arms Act at Police Station Sadar, Tarn Taran escaped from custody. FIR No. 182 dated 12.06.2015 came into being qua the said incident for offences punishable under Section 223/224 IPC registered at Police Station City Tarn Taran.

On the basis of said FIR, the impugned order has been passed. It is not disputed that subsequent passing of this order, the petitioner has been declared innocent in the said FIR.

The question that arises for the consideration of this Court is whether the reason recorded for invoking Article 311(2)(b) of the Constitution of India can be said to be the one to constitute 'Not reasonably practicable'. 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.”

Trite it is that where law vests public authority with discretionary power, the said power must not be used arbitrarily. Power vested under Article 311(2)(b) is not unfettered but is qualified by a responsibility casted upon the authority to not only to formulate reasoned opinion to the effect that holding of inquiry is 'not reasonably practicable' but also mandates it to record such reasons in writing.

The impugned order when tested on the touchstone of the aforesaid principles, this Court finds that the reasons recorded by the Authority in dispensing with the inquiry fall short. In fact there is no reason recorded by the Authority to justify dispensing with the inquiry. Thus, the impugned order cannot be sustained. The Authority cannot dispense with the inquiry arbitrarily. Mere reproduction of the statutory expression cannot have an effect of dispensing with the Constitutional obligation casted upon the authority to give cogent reason for dispensing with the inquiry. The Competent Authority was not expected to dispense with the inquiry lightly as has been done in the present case. It was required to take into consideration the facts and circumstances of the case and apply its mind which is found to be missing in the impugned order. No material has been placed on record

to justify the casual approach or to back the satisfaction of the authority to dispense with the inquiry.

Needless to say, this Court while entertaining the present writ petition has deliberately not ventured into the merits and facts of the case. The impugned order has been tested merely on the touchstone of Article 311(2) of the Constitution of India.

Liberty is granted to the respondents to proceed against the petitioner in accordance with law.

Resultantly, the present writ petition is allowed. Impugned order dated 17.06.2015 is hereby quashed with liberty to the respondents as stated herein above.

08.02.2023

Rajeev (rvs)

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No