

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

Date of decision : 16.01.2023

CWP-2852-2011 (O&M)

Malkiat Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CWP-4403-2011 (O&M)

Gurdev Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Anju Arora, Advocate,
Mr. Jashan Preet, Advocate and
Ms. Manpreet Kaur, Advocate
for the petitioner(s).

Mr. Charanpreet Singh, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This order shall disposed off the above captioned two writ petitions filed by the petitioners invoking writ jurisdiction of this Court under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari seeking quashing of the order dated 23rd of October, 2008 passed by respondent No.5 dismissing the petitioners from services by resorting to Article 311(2)(b) of the Constitution of India by

dispensing with the inquiry and the order dated 30th of March, 2010 passed by respondent No.4 whereby departmental appeal preferred by the petitioners stands rejected affirming the order of dismissal and that order dated 1st of September, 2010 (passed in CWP-2852-2011)/4th of September, 2010 (passed in CWP-4403-2011) whereby the statutory revision(s) preferred by the petitioners stands rejected.

2. Counsel for the petitioner(s) refers to the impugned order of dismissal dated 23rd of October, 2008 to contend that the reasoning recorded by the punishing authority to dispense with the inquiry cannot be sustained. In support of her arguments, counsel for the petitioners relies upon the law laid down by the Constitutional Bench of Supreme Court in **Union of India Vs. Tulsiram Patel (1985) 3 SCC 398**.

3. Ld. Counsel for the respondent-State on the other hand has referred to para No.3 of the preliminary submissions made in the written statement which reads as under :-

“The order dated 1.09.2010 Annexure P-17, order dated 24.5.2010 Annexure P-14, Order dated 30.3.2010 annexure P-12 and order dated 23.10.2008 Annexure P-7 are absolutely legal and according to law and procedure. So the petition be kindly dismissed on this ground along.”

However, he is not in position to show any material as to support the reasoning recorded in the impugned order.

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

records of the case.

5. Facts are not much in dispute. The short question that would arise in the present writ petition is as to whether the impugned order dated 28th of October, 2008 passed by the punishing authority can be sustained in view of bare provisions as contained in Article 311(2)(b) of the Constitution of India and as interpreted by the Apex Court in **Tulsiram Patel's case (supra)** *vis-a-vis* reasoning recorded in the Annexure P-7 (in CWP No.2852 of 2011) which reads as under :-

“DSP City Tarn Taran, in his report has recommended for dismissal of both these above personnel from service of police department. After perusing the whole case I have come to this conclusion that there is no hope of getting any justifiable conclusion by conducting departmental enquiry because in this case the above police personnel and accused, who have escaped from the police custody, had connived with each other. Therefore, keeping in view the above circumstances continuation of ASI Malkiat Singh No. 2856/ Ludhiana and Head Constable Gurdev Singh No.1612/ Tarn Taran in police department is in gross violation of discipline and irresponsibility towards duty and connivance with the undertrial accused. Therefore, I, being competent authority, dismiss ASI Malkiat Singh No. 2856/ Ludhiana, Head Constable Gurdev Singh No. 1612/ Tarn Taran, from 15.10.2008, from police services under Article 311 (a) (2) of the Constitution of India.”

6. The pleasure doctrine of the English Common Law stands engrafted in Article 310 of our Constitution. However, the same is qualified 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. In the present cases, we are concerned with Clause b of the Second Proviso which empowers the Authority to dispense with the inquiry as contemplated under Article 311(2) on being satisfied for the reason to be recorded in writing that holding of such inquiry is 'not reasonably practicable'. The expression 'not reasonably practicable' as contained in Article 311 has been interpreted by Constitutional Bench in **Union of India vs. Tulsi Ram Patel, (1985) 3 SCC 398**, and the same continues to be the guiding light. It has been held :

“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. 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 intimidates witnesses who are going to give 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 others threatens, 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. 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 and others, [1984] 3 S.C.R. 302, 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 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.

8. 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.

9. 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.

xxxxx

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.”

10. The State Counsel does not dispute that Rule 16.2(5) of the Punjab Police Rules elaborately provides for procedure in the departmental inquiries and under the said Rule, there is no provision whereby the inquiry can be dispensed with. Trite it is that where law *viz* 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 conclude that holding of inquiry is 'not reasonably practicable' but also mandates it to record such reasons in writing.

11. 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.

12. I may hastenly add here that this Court while entertaining the instant writ petitions 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.

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

14. Resultantly, the present writ petitions are allowed. Impugned order dated 23rd of October, 2008 and all consequential orders thereto are

hereby quashed with liberty to the respondents as stated herein above.

15. A copy of this order be kept on the file of other connected case.

January 16, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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