

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

CWP No.18790 of 2022

Date of decision : 18.1.2023

Bhupinder Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

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

PANKAJ JAIN, J.

Petitioner who was enrolled as a constable with the respondents is aggrieved of the order dated 5th of October, 2019 passed by respondent No.4 whereby services of the petitioner have been dismissed without holding inquiry invoking Article 311(2)(b) of the Constitution of India and the order dated 29th of October, 2020 passed by the Appellate Authority affirming the same.

2. As per the facts pleaded in the writ petition, the petitioner was member of police party deputed in the District Courts Complex, Ludhiana for producing the undertrials brought from Central Jail, Ludhiana and lodged in Bakshikhana of the District Court Complex Ludhiana. On 4th of October, 2019, the petitioner was entrusted to

produce undertrial Dharminster Pal @ Tinku in the court of Ld. Additional Sessions Judge. The petitioner is stated to have accompanied the undertrial to his house in private vehicle instead of taking him back to the lockup in the Court. From his house the undertrial Dharminster Pal @ Tinku fled away. On the basis of the aforesaid incident FIR No.358 dated 5th of October, 2019 got registered for offences punishable under Sections 223, 224 and 34 of the IPC against the petitioner Dharminster Pal @ Tinku and one Davinder Singh. Vide impugned order dated 5th of October, 2019 the authorities dispensed with the inquiry and recorded as under :-

“ORDER

Whereas, it has been brought to my notice that Constable Bhupinder Singh No. 3041/LDH, posted in Commissionerate, Ludhiana being the member of a disciplined force committed grave misconduct by assisting accused Dharminsterpal Singh @ Tinku in his escape from the police custody, SHO PS Division No.5, Ludhiana, has submitted a detailed report in this regard, which has been duly forwarded by Assistant Commissioner of Police, Civil Lines, Ludhiana that on 04-10-2019, this official took accused Dharminsterpal Singh @ Tinku s/o Dharmpal r/o village Barewal Awana, Ludhiana, from Bakshi Khana, Ludhiana for producing him before the Ld. Illaqa Magistrate, instead of depositing the accused back to Bakshi Khana, he took he to his residence at (accused person residence) village Barrewal Awana, Ferozepur Road, Ludhiana, in a private vehicle of the accused person from where, accused escaped from his custody. In this regard, a criminal case bearing FIR No.358 dated 05-10-2019 u/s 223-224-34 IPC, has already been registered against him, Dharimderpal Singh @ Tinku and other accused at PS

Division No.5, Ludhiana.

Whereas, after perusing the official record and after applying my unbiased independent mind, I being the competent authority, after examining and considering all the aspects, has made up my mind that it is not at all desirable to retain Constable Bhupinder Singh No. 3041/LDH, in service at the public expense. His retention and continuation in service may be detrimental to the interests of the state as well as the general public at large and to safeguard these interests with immediate effect, I consider that in view of the grave and misconduct committed by Constable Bhupinder Singh No. 3041/LDH, it is not reasonably practicable to hold any enquiry against him at this stage. I being the competent authority, is also well aware that the penalty of dismissal from service is very harsh and is oppressive for a public servant, but no sympathy can outweigh the consideration of the protection of the interests of the state as well as the regard for public good.

Therefore, I, Rakesh Agrawal, IPS Commissioner of Police, Ludhiana being the competent authority and having the powers to dismiss Constable Bhupinder Singh No. 3041/LDH, from service, while exercising those powers conferred under 311(2) (b) of the Constitution of India read with rule 16.2 (1) of PPR and under article hereby dismiss Constable Bhupinder Singh No. 3041/LDH, from service with immediate effect.

Commissioner of Police,
Ludhiana.”

3. The question that arises for the consideration of this Court is “*whether the reason recorded by the authority in dispensing with the inquiry invoking Article 311(2)(b) of the Constitution of India can be sustained or not?*”

4. Counsel for the petitioner has heavily relied upon judgment

passed in CWP No.16148 of 2021 titled as **Pargat Singh vs. State of Punjab and others**, dated 2nd of September, 2022 wherein this Court held as under :-

“9. Mere registration of an FIR would not be sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a departmental inquiry before dismissing a delinquent employee. In case of conviction, the situation is altogether different as has been specified in Article 311 (2) (a) of the Constitution of India. As noticed above, adequate reasons have to be given in the order of dismissal as to why it would not be reasonably practicable to hold a departmental inquiry. In **Constable Harinder Kumar's case (Supra)**, the delinquent was dismissed from service on registration of two FIRs, one under Section 401 IPC and the other under Section 25 Arms Act, 1959 without holding any departmental inquiry on the grounds that the activities of the delinquent were highly prejudicial and detrimental to police working as well as against public interest, therefore he was not fit to be retained in the police force. It was held that mere registration of FIR is not valid ground to dispense with holding a regular inquiry. A similar view has been taken in the cases of **Prem Saran Bansal and Gurcharan Singh's cases (Supra)**.

10. On perusal of impugned order of dismissal, it is apparent that no reasons whatsoever have been recorded to show as to why it is not possible to hold an inquiry. A mere observation that *“keeping in view their conduct they may threaten the witnesses and influence the regular departmental enquiry, it will not be reasonably practicable to hold an enquiry into the allegations against the accused LR/ASI Tilak Singh No.723/Amritsar and LR/ASI Pargat Singh No.1756/Amritsar..”*, would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.”

5. Per contra, State Counsel submits that keeping in view the

act and conduct of the petitioner, no fault can be found with the order passed by the respondent-Authorities dismissing the services of the petitioner. The petitioner being a member of Disciplined Force was assigned with the duty to apprehend the convicts. The petitioner on the contrary helped them in absconding and evading the process of law. He submits that continuation of the petitioner in the Police Force is detrimental to the interest of society at large and thus, the writ petition preferred by the petitioner deserves to be dismissed.

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

7. 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 subject to Article 311 too. 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.

8. In the present case, 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 intimidate 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 other 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.”

9. 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.
10. 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.”

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 falls short. The reason as recorded by the Authority does not show as to how the holding of inquiry can be said to be 'not reasonably practicable'. 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 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.

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

14. Resultantly, the present writ petition is allowed. Impugned order dated 5th of October, 2019 passed by respondent No.4 is hereby quashed with liberty to the respondents as stated herein above.

January 18, 2023
Dpr/Joyti

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No