

RSA-2491 of 1994 (O&M)

2024:PHHC:078259



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

RSA-2491 of 1994 (O&M)
Reserved on: 16.05.2024
Pronounced on: 30.05.2024

The State of Punjab

.....Appellant

Versus

Constable Jaswinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Kanav Singla, AAG, Punjab.

Mr. J.P.S. Sidhu, Advocate,
for the respondent (through video conferencing).

NAMIT KUMAR, J.

1. This Regular Second Appeal, preferred by the State of Punjab, is directed against the judgment and decree dated 28.01.1991, passed by the Court of learned Sub Judge III Class, Bathinda, whereby suit for declaration filed by the respondent-plaintiff was decreed as well as against the judgment and decree dated 05.04.1994, passed by the Court of learned Additional District Judge, Bathinda, whereby appeal preferred by the appellant-defendant was dismissed.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Plaintiff filed a suit for declaration to the effect that he joined the police department as Constable on 15.06.1977. He continued serving the State of Punjab honestly, efficiently to the best of his ability and to the entire satisfaction as his superiors. In 1984 he was



suspended as a consequence of registration of FIR No.250 dated 21.07.1984 under the provisions of the Arms Act at Police Station Mansa and was transferred to Police Lines. Later on vide order dated 15.10.1984, he was dismissed from service without any enquiry invoking the provision of Article 311(2) of the Constitution of India. Plaintiff sought a relief of declaration that the said order was illegal, null and void.

3. Upon notice, defendant contested the suit and in the written statement took preliminary objections that the suit is barred by time and is premature. On merits, it was stated that a case under section 25 of The Arms Act, 1959 was registered against the plaintiff and the punishing authority while invoking the powers under Article 311(2) (b) of the Constitution and Rule 16.1 of the Punjab Police Rules, 1934 passed the impugned punishment order, which is legal and valid, was necessary to maintain public order and security of the State and the plaintiff had links with Sant Jarnail Singh Bhindranwala, but because of the non-recovery of the weapon, the case under The Arms Act, 1959 was sent as untraced.

4. On the basis of the pleadings, following issues were framed by the learned trial court:-

1. Whether the impugned order 15.10.84 passed by the SSP, Bathinda is illegal, and void? OPP
2. Whether valid notice under section 80 CPC was served on the defendants? OPP
3. Whether the suit is time barred? OPD
4. Whether the suit is premature? OPD



5. Relief.

5. The trial Court vide judgment and decree dated 28.01.1991 decreed the suit of the plaintiff. Aggrieved against the judgment and decree of the trial Court, defendant preferred an appeal, which was dismissed by the lower Appellate Court vide judgment and decree dated 05.04.1994. Hence, this Regular Second Appeal by the defendant.

6. Learned counsel for the appellant contended that judgments and decrees of the Courts below are based on conjectures and surmises. Learned counsel contended that the Courts below failed to appreciate that the respondent had links with terrorists. He further contended that holding of departmental inquiry against the respondent was not reasonably practicable, therefore, the punishing authority invoked the provisions of Article 311(2)(b) of the Constitution read with Rule 16.1 of the Punjab Police Rules, 1934. He contended that judgments and decrees of the Courts below being perverse are liable to be set aside. Learned counsel placed reliance upon a Division Bench Judgment of this Court in ***Yunish Masih v. State of Punjab and others, 2011(3) S.C.T. 81***. He also submitted that suit was time-barred as the impugned order was passed on 15.10.1984 and the suit was filed on 01.12.1987, whereas suit for declaration could be brought within a period of three years from the date of accrual of cause of action.

7. *Per contra*, learned counsel for the respondent contended that judgments and decrees of the Courts below are perfectly legal and valid. He contended that order dated 15.10.1984, dispensing with the



inquiry is wholly laconic and is not germane to the provisions of Article 311(2)(b) of the Constitution of India. He contended that order of dismissal was wholly arbitrary and was an attempt to deprive the respondent of his rights conferred by Article 311(2) to have a fair hearing in the matter of dismissal, which is an extreme act against an employee. He further contended that action of the authorities was in violation of provisions of Rule 16.38 of the Punjab Police Rules, 1934. He contended that judgments and decrees of the Courts below do not call for any interference by this Court and the appeal of the appellant is liable to be dismissed.

8. I have heard learned counsel for the parties and perused the record.

9. The present appeal stands admitted on 07.02.1995 and operation of the impugned judgments and decrees was stayed by this Court vide orders dated 13.12.1999.

10. The Division Bench in ***Yunish Masih's*** case (supra) while considering the similar issue has held as under: -

“18. It was on the basis of the aforesaid statement made during interrogation of Jaspal Singh alias Kulwant Singh in case FIR No. 159/92, dated 28.12.1992, that the competent authority, namely, Senior Superintendent of Police, Amritsar, has formed an opinion that holding of departmental inquiry against the petitioner appellant would not be reasonably practicable and has accordingly invoked the provision of Article 311(2)(b). The requirement of the aforesaid provision have been stated in paragraphs 130, 133 and 135 of the 5- Judge Constitution Bench judgment of Honble the Supreme Court rendered in



the case of Tulsiram Patel (supra). It has been held that the condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that it is not reasonably practicable to hold an inquiry contemplated by clause (2) of Article 311. The Constitution Bench further held that it was not possible to enumerate the cases in which it would not be reasonably practicable to hold an inquiry. The decision to conclude that it is not reasonably practicable to hold an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is available on the spot and knows what is happening. It is because the disciplinary authority is the best Judge of the situation which has resulted in insertion of clause (3) under Article 311 making the decision of the disciplinary authority on this question final. 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. The Constitution Bench also observed that it is not necessary first to constitute the inquiry and only after the witnesses are attacked or Enquiry Officer is subjected to violence that the Government should form an opinion that it was not reasonably practicable to hold an inquiry. In para 132, the following pertinent observation has been made:

"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 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)."

19. The second condition necessary for 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 as contemplated by Article 311(2). In the absence of recording of reason in writing, the order dispensing with the inquiry and the order of penalty would both be void and un-constitutional. However, it has been clarified in para 135 that such reasons are not required to be necessarily communicated and it would suffice if the same are recorded in the file.

20. When we apply the aforesaid principles to the facts of the present case, it becomes patent that the order dated 17.6.1993 (P-28) would satisfy both these requirements.



During the course of arguments we asked the learned Additional Advocate General as to how the statement made by Jaspal Singh alias Kulwant Singh would have any relevance to the investigation of case FIR No.159/92, dated 28.12.1992. A satisfactory answer has been given by Mr. Sehgal revealing that Jaspal Singh alias Kulwant Singh was absconding and was not available for interrogation in the aforesaid case registered against him. In order to satisfy the authorities about his absence, he had revealed the mysterious activities of the petitioner-appellant. A perusal of the Zimni No. 14, dated 13.6.1993, would make it patent that the appellant had close connection with various terrorist organizations as he used to pass on information to them with regard to movement of the police. The hard/nonhardcore terrorist like Jaspal Singh alias Kulwant Singh was the beneficiary and he also disclosed that there were other terrorist organisations who were beneficiary of the disclosure of information by the petitioner-appellant. It was, therefore, rightly concluded by the authorities that it was not reasonably practicable to hold an inquiry in accordance with Article 311(2) of the Constitution because of the links of the appellant-petitioner with the terrorist organisations.

21. It is also pertinent to notice that their Lordships of Hon'ble the Supreme Court in two judgments have noticed the situation which was obtaining in the State of Punjab during the period 1990-1991. In Mohinder Singhs case (supra) inquiry was dispensed with on the report submitted by the Superintendent of Police, Intelligence. In para 6 it has been held that there were sufficient grounds for dispensation of regular departmental inquiry and the terrorists were not likely to depose against the petitioner in that case particularly when the terrorism was at its peak in Punjab at that time i.e. 1991. It is further pertinent



to mention that the judgment rendered in Mohinder Singh's case (supra) would also apply to the facts of the case in hand. There the Senior Superintendent of Police, Chandigarh, had dispensed with holding of inquiry by invoking Article 311(2)(b) by citing the reason that the witness would not come forward to depose against that officer in a regular departmental inquiry. In that case the order dispensing with the inquiry was based on a report submitted by the Superintendent of Police revealing gross misuse of power and extortion of money by illegally detaining and torturing innocent persons by that delinquent officer. He was regarded as a terror in the area while discharging his duty as Sub-Inspector of Police. The view of Hon'ble the Supreme Court is discernible from para 6 of the judgment, which reads thus:

"6. Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the Court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the Court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit



Singh who appeared to be visibly terrified of this Sub-Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation - and keeping in view that all this was happening in the year 1991, in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent."

22. Therefore, the issue in the present case in a way is similar to the one which has been decided by Honble the Supreme Court in Mohinder Singhs case (supra). In the case in hand it was the Zimni recorded by SI Gurbachan Singh of Police Station B Division, Amritsar in case FIR No. 159/92, dated 28.12.1992, which has been made the basis for formation of an opinion as already observed in the preceding paras.

23. However, the facts of Kuldip Singh's case (supra) are akin to the facts of the present case. Kuldip Singh was a Head Constable of Police and he was dismissed from service like the petitioner-appellant without holding an inquiry because the Senior Superintendent of Police has invoked second proviso (b) appended to clause (2) of Article 311 for dispensing with the inquiry opining that it was not reasonably practicable to hold such an inquiry in his case. After exhausting departmental remedy he lost before this Court. The Appellate Authority had found in Kuldip Singh's case (supra) that he was mixed up with the terrorists and he was supplying secret information of the police department to them, which created hindrance in its smooth functioning. He was interrogated in a case (FIR No. 219/1990) where he admitted to have links with the



terrorists like Major Singh Shahid and Sital Singh Jakhar. Despite the fact that he was acquitted in case FIR No.219/1990, the use of the aforesaid interrogation and his admission was not considered irrelevant for the purposes of concluding that inquiry was not reasonably practicable to be held. Their Lordships of Hon'ble the Supreme Court have gone to the extent that even if the confession has been made to the police or while in custody of the police, it would not be of much consequence as long as it is germane to the requirement of Article 311(2)(b) and inspires confidence. The view of Hon'ble the Supreme Court is evident from the perusal of para 11, which reads thus:

"11. In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact,



however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (b) is held to have been validly invoked, the Government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the facts said to have been found against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some others caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of mala fides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also



satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority."

24. In view of the aforesaid, we find that in the present case the condition that there are sufficient reasons, which are germane to the provisions of Article 311(2)(b), stands satisfied. Once it has been found, while investigating case FIR No. 159/92, dated 28.12.1992, that Jaspal Singh alias Kulwant Singh had revealed that the petitioner-appellant was mixed up with the terrorists and was passing on secret information to them then no fault can be found with the order dated 17.6.1993 (P-28). The report of the Senior Superintendent of Police, Amritsar, dated 15.6.1993, based on the interrogation has also been placed on record along with the affidavit dated 8.2.2011, which reads as under:

" ASI Yunis Masih No. 2077/ASR has been found to be mixed up with terrorists. It is not practicable to hold regular departmental enquiry against him in public interest and as such it is dispensed with by virtue of power conferred upon me by Article 311(2)(b) of Constitution of India read with PPR 16(1). ASI Yunis Masih No. 2077/ASR is hereby dismissed from service w.e.f. 15.06.1993 F.N."

x x x x

26. It is, thus, evident that even second condition that the reason in writing should be cited in the order, stands satisfied. On further examination of the original record the



aforesaid fact is fully substantiated. Therefore, the view taken by the learned Single Judge deserves to be approved, which has upheld the order dated 17.6.1993 (P-28) and the subsequent appellate order (P-29).”

11. In the present case, FIR under Section 25 of The Arms Act, 1959 was registered against the respondent-plaintiff on the information that he had contacts with the terrorists. During his interrogation, respondent-plaintiff made a confession that he had contacts with Teja Singh and Nachhatter Singh of his village who had contacts with Sant Jarnail Singh Bhindranwala and through them, respondent had met Sant Jarnail Singh Bhindranwala two three times and two pistols were given to him by Sant Bhindranwala, out of which one pistol was given by the respondent to Teja Singh and other was thrown in the canal. His dismissal was based upon having his contacts with terrorists. This Court is of the opinion that at the relevant time, terrorism was at its peak in the State of Punjab, therefore, there were sufficient grounds for dispensation of regular departmental inquiry against the respondent as no witness would have come forward to depose against the respondent-plaintiff. The departmental inquiry would have taken a long time and keeping him in service till its completion, during those days could have been harmful/risky and not in public interest. Hence, it was not reasonably practicable to hold such an inquiry in this case.

12. It is true that for holding a departmental inquiry, the provisions of Rule 16.38 of the Punjab Police Rules, 1934 might be mandatorily adhered to. However, same is not applicable to the cases



where no departmental inquiry is to be held. In the present case, departmental inquiry was dispensed with as the same was not practicable, therefore, Rule 16.38 would not be applicable to the facts of the present case.

13. This Court finds that judgments and decrees of the learned Courts below are perverse and contrary to law as the Courts below have failed to appreciate that respondent-plaintiff had links with the terrorists, it was not reasonably practicable to hold departmental inquiry and the order of dismissal of the respondent was rightly passed by dispensing with the departmental inquiry.

14. In view of the above, appeal is allowed. Judgments and decrees of the Courts below are set aside. Decree-sheet be prepared accordingly.

15. Pending application(s), if any, stand disposed of accordingly.

30.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No