



209(2)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-620-1999 (O&M)
Date of Decision:21.11.2024

MANN SINGH

.....Petitioner

Versus

STATE OF PUNJAB & ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. B.S. Sidhu, Advocate
for the petitioner.

Mr. G.S. Bhullar, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 09.10.1995 (Annexure P-1) whereby he was dismissed from service; order dated 24.12.1997 (Annexure P-3) whereby his appeal was dismissed; and order dated 27.11.1998 (Annexure P-6) whereby his revision was dismissed.

2. The petitioner joined Punjab Police as Constable on 04.03.1987 on compassionate ground. He came to be dismissed vide order dated 09.10.1995 passed by Senior Superintendent of Police, Amritsar. He unsuccessfully preferred appeal before Appellate Authority followed by revision before Revisionary Authority. He was dismissed from service without complying with mandate of Rule 16.24 of Punjab



Police Rules, 1934 as well as Article 311 (2) of the Constitution of India. The Disciplinary Authority dispensed with inquiry and dismissed him from service on the ground that he has relations with *Babbar Khalsa*, an extremist group.

3. Mr. B.S. Sidhu, Advocate for the petitioner submits that respondent did not comply with mandate of Article 311(2) of the Constitution of India without any rhyme or reason. There was no ground to dispense with inquiry. He was dismissed mechanically and it caused irreparable loss to him. The Appellate Authorities have also acted mechanically and there is no application of mind. The impugned orders deserve to be set aside and petitioner needs to be reinstated with back wages.

4. Mr. G.S. Bhullar, AAG, Punjab submits that during 1985 to 1995, the State of Punjab was facing acute problem of terrorism. There was specific intelligence against the petitioner that he is in direct connection with extremists. On the basis of secret reports received from State of West Bengal as well as Government of India, the petitioner was dismissed from service. The inquiry was dispensed with under compelling circumstances. There was no possibility of any witness to come forward and make a statement against the petitioner on account of fear and coercion.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. Different Benches of Supreme Court including a Constitution Bench in *Syed Yakoob Vs K.S. Radhakrishnan, AIR 1964 SC 477* and a two judge bench recently in *Central Council for Research*



in Ayurvedic Sciences and another Vs Bikartan Das and others 2023

SCC Online SC 996 have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected



by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.

7. In the impugned order, the respondent has not disclosed

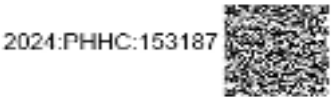


intelligence input which gave impetus to dispense with inquiry and dismissed the petitioner from service, however, on the asking of Court, learned State Counsel produced report received from State of West Bengal which is further based upon communication received from Government of India.

8. From the perusal of reports received from State of West Bengal, it is apparent that petitioner was misusing his official position. He was detained by Kolkata Police and at that point of time, he was carrying official gun. He had gone there without informing his seniors as well as without getting prior approval. He was posing himself as Gunman of purported President of District Congress Dal, Amritsar.

9. A Coordinate Bench of this Court in ***RSA No.385 of 1993*** titled as '***State of Punjab and others Vs. Dalbir Singh through his LRs***', relying upon judgment of Supreme Court in '***Union Territory, Chandigarh and others Vs. Mohinder Singh***', (1997) 3 SCC 68 has upheld dispensation of inquiry under Article 311(2) of the Constitution of India, in view of peculiar situation prevailing in the State of Punjab during the period in question. The case of petitioner is squarely covered by judgment of this Court in ***Dalbir Singh (supra)*** as well as Supreme Court in ***Mohinder Singh (Supra)***.

10. There is another facet of the matter which needs to be noticed. The petitioner was dismissed from service in 1995 and a period almost three decades has passed away. At this belated stage, especially when conduct of petitioner was not above the board, there seems no reason to interfere with concurrent findings recorded by different authorities under Punjab Police Act, 1861 read with Punjab Police Rules,



1934.

11. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

12. Pending misc. application (s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

21.11.2024
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No