



CWP-18044-2016

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

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CWP-18044-2016

Date of Decision: 29.05.2024

Narinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Shubhkarman Singh Sandhu, Advocate
for Ms. Molly A. Lakhanpal, Advocate for the petitioner
Mr. Sehajbir Singh Aulakh, Assistant Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of:

- i. order dated 05.07.2013 (Annexure P-1) whereby he was dismissed from service;
- ii. order dated 20.12.2013 (Annexure P-2) vide which his appeal was dismissed; and
- iii. order dated 18.07.2014 (Annexure P-4) vide which revision filed by him was rejected.

2. On 09.10.2023, this Court passed the following order:



“In the instant case a perusal of impugned order dated 5.7.2013 (Annexure P-1) passed by Senior Superintendent of Police, Fatehgarh Sahib i.e. order of termination of the petitioner shows that the authorities concerned have terminated services of the petitioner without holding any inquiry. The relevant extract from the impugned order reads as under:

“..... In this matter regarding not conducting Departmental Inquiry in compliance of Section 311(2) of provisions (b) of Indian Constitution the detailed reason have been written separately.....”

The petitioner has also made specific averments regarding Article 311 of Constitution of India.

The State filed its reply by way of affidavit of Shri Gurdev Singh, PPS, DSP, Fatehgarh Sahib, District Fatehgarh Sahib, dated 13.12.2016, wherein he has deposed in Para No.16 as under:

“16. That in reply to contents of Para No.16 of the petition, it is submitted the contents are totally false. Provisions of Article 311(2)(b) has been rightly invokes and reasons have been mentioned therein by specifically passing order by the competent authority as well as by the appellate authority and by the review authority. The petitioner has been dismissed only after having been minutely gone through the entire service record as well as the allegations so stated in the complaint found to be correct as investigated by SP Hqr. and also by applying provisions of PPR rules and provisions of law.”

Although the impugned order as well as the aforesaid reply categorically state that a specific order had been passed for invoking provisions of Article 311(2)(b) of Constitution of India but no such order indicating any reason for dispensing with the departmental inquiry is forthcoming although two



separate replies have been filed by the State i.e. one in the shape of affidavit of Shri Gurdev Singh, PPS, DSP, Fatehgarh Sahib, District Fatehgarh Sahib, dated 13.12.2016 and another in the shape of additional affidavit of Shri Raminder Singh, PPS, Superintendent of Police (Headquarters), Fatehgarh Sahib, dated 22.9.2023.

The State to file a categoric and specific reply in this regard and to apprise this Court as to whether any separate order with regard to dispensing the inquiry with the aid of Article 311(2)(b) of Constitution of India was passed or not. In case, any such order was passed, the same be placed on record on the next date of hearing.

It is specifically made clear that the reply should be very specific and categoric and should not be evasive as the earlier replies.

List again on 31.1.2024.”

3. Mr. Sehajbir Singh Aulakh, Assistant Advocate General, Punjab submits that as per affidavit dated 16.01.2024 of Gurpartap Singh, P.P.S., Deputy Superintendent of Police (Headquarter), no separate order to dispense with inquiry contemplated by Article 311 of Constitution of India was passed.

4. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

5. From the perusal of record, it is evident beyond the pale of doubt that petitioner was dismissed from service without conducting inquiry as contemplated by Rule 16.24 of Punjab Police Rules read with Article 311 of the Constitution of India. As per second proviso to Article 311 (2) of the Constitution of India, inquiry may be dispensed with (i) where person is



dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or (ii) where the competent authority finds that it is not reasonably practicable to hold such inquiry or (iii) where President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. For ready reference, Article 311(2) of the Constitution of India is reproduced hereinbelow:-

“311(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”*



6. A conspectus of aforesaid Article reveals that in case of conviction, inquiry may be dispensed with. Inquiry may also be dispensed with where it is not reasonably practicable to hold such inquiry.

7. In the case in hand, respondent invoked second proviso to Article 311(2) of the Constitution of India to dispense with inquiry. The Disciplinary Authority invoked aforesaid proviso and causally observed that it is not in the public interest to keep this employee in police department and to comply with the mandate of second proviso to Article 311(2) of the Constitution of India, separate order has been passed, however, as per the additional affidavit dated 16.01.2024 filed by respondent-State, no separate order has been passed. The relevant extract of the additional affidavit dated 16.01.2024 read as:

“4. That in compliance of above said order of this Hon’ble Court, it is mentioned here that no regular departmental inquiry was conducted against the petitioner by the SSP, Fatehgarh Sahib of that relevant point of time and also there was no separate order of dismissal of petitioner had been passed by the above said SSP of that relevant point of time, as per last paragraph of Letter No.776/5A/SP/PBI/FGS, dated 17-11-2023 (Annexure R-1) of Supdt. of Police/Punjab Bureau of Investigation, Fatehgarh Sahib to SSP/Fatehgarh Sahib with regard to Article 311(2)(b) of Constitution of India.”

Supreme Court in Constitutional Bench judgment of ***Union of India v. Tulsiram Patel, (1985) 3 SCC 398***, has observed that while invoking the rigor of clause (b) of second-proviso to Article 311(2), if disciplinary authority failed to record any reason as to why it is not practicable to hold



inquiry such an order is void and unconstitutional. The relevant extracts of the judgment read as:

“133. The second condition necessary for the 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 contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. “

8. No reason has been advanced by Senior Superintendent of Police for dispensing with inquiry as contemplated by second proviso to Article 311 (2), thus, he wrongly and without any justification dispensed with enquiry. The respondent can dispense with inquiry if actually it is not practicable to hold inquiry. Mere writing one line in the impugned order ‘*it is not in public interest to keep the employee in police department*’ is not compliance of mandate of either Constitution of India or Rule 16.24 of the Punjab Police Rules. The respondent, instead of straightaway dismissing the petitioner, could have put him under suspension and thereafter conduct inquiry.

9. In the wake of above discussion and findings, this Court is of the considered opinion that respondents without any logical reason dispensed with mandatory inquiry. The impugned orders deserve to be set aside and accordingly set aside.

10. It is made clear that petitioner, as conceded, shall not be entitled to back wages. The respondent shall be free either to conduct departmental



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inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings.

(JAGMOHAN BANSAL)
JUDGE

29.05.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>