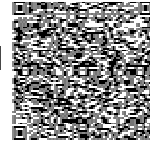


CWP-21741-2022

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2024:PHHC:074281



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

214

CWP-21741-2022

Date of Decision : 24.05.2024

SANDEEP SINGH

... PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

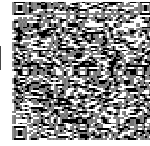
Present : Mr.Anupam Bhardwaj, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of orders dated 24.04.2020 (Annexure P-1) and 22.01.2021 (Annexure P-2) whereby he was dismissed from service without holding regular inquiry.

2. The petitioner joined Punjab Police as Constable on 22.10.2011. An FIR bearing No.76 dated 24.04.2020, under Sections 21, 61, 85 of NDPS Act and Section 270 of IPC was registered against him at Police Station Kotwali, District Bathinda. On account of registration of FIR, he was dismissed vide order dated 24.04.2020 (Annexure P-1) passed by SSP, Bathinda. He preferred an appeal before appellate



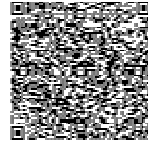
authority which was dismissed vide order dated 22.01.2021 (Annexure P-2) passed by Inspector General of Police, Bathinda Range, Bathinda.

3. Mr. Anupam Bhardwaj, Advocate submits that there was no occasion to dispense with mandatory inquiry contemplated by Article 311 of Constitution of India read with Rule 16.24 of the 1934 Rules. The respondents acting in a mechanical manner dispensed with inquiry and dismissed the petitioner from service.

4. Per contra, Mr. Aman Dhir, DAG, Punjab submits that petitioner is member of Disciplined Force but he was involved in the offence punishable under NDPS Act, thus, it was indispensable to dismiss him from service. It was not in the public interest to conduct inquiry, thus, he was dismissed without conducting inquiry.

5. I have heard counsel for the parties and perused the paper book with their able assistance.

6. 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 the ready reference, Article 311(2) of the Constitution of India is reproduced hereinbelow:-

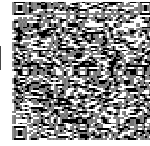
“311(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

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.”*

7. 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. In the case in hand, respondent invoked second proviso to Article 311(2) of the Constitution of India to dispense with inquiry. The Disciplinary

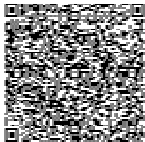


Authority invoked aforesaid proviso and causally observed that it is in the public interest.

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. The reason advanced by SSP for dispensing with inquiry is not even 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 “Against this official there is no need to hold an enquiry prescribed under Punjab Police rule 16.24 as it is not in the interest of public because it will take time to conclude the departmental inquiry” is not compliance of mandate of either Constitution of India or Rule 16.24 of the Punjab Police Rules.



The respondent, instead of straight away 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.

It is made clear that petitioner, as conceded, shall not be entitled to back wages. The respondent shall be free either to conduct departmental inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings.

(JAGMOHAN BANSAL)
JUDGE

24.05.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>