



CWP-21958-2023

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

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CWP-21958-2023

Date of Decision: 21.05.2024

IQBAL SINGH

... PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.S.K.Choudhary, 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 12.11.2020 (Annexure P-2), 16.10.2021 (Annexure P-3) and 01.06.2022 (Annexure P-4) whereby he was dismissed from service without holding inquiry.

2. The petitioner joined Punjab Police as Constable on 31.10.2011. An FIR bearing No.17 dated 05.11.2020, under Section 7 of Prevention of Corruption Act, 1988 and Section 379-B, 120-B, 342, 384, 419 and 506 of Indian Penal Code was registered against him at Police Station Vigilance Bureau Range, District Ferozpur. He came to be arrested on 05.11.2020. He, while in judicial custody, was dismissed vide order dated 12.11.2020 passed by SSP, Moga. He preferred an appeal



before appellate authority which was dismissed vide order dated 16.10.2021 passed by Deputy Inspector General of Police, Faridkot Range, Faridkot. He further unsuccessfully preferred appeal/representation before Director General of Police.

3. Mr. S.K.Choudhary, 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 accepted illegal gratification from accused in aforementioned FIRs, 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 ‘it is in the public interest’ is not compliance of mandate of either Constitution of India or Rule 16.24 of the Punjab Police Rules. The respondent, instead

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.

(JAGMOHAN BANSAL)
JUDGE

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Yes/No

Yes/No