



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

132

CWP-684-2025

Date of Decision: 14.01.2025

Ashok Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. R.N. Lohan, Advocate and
Mr. Ajay Kumar Yadav, Advocate for the petitioner
Ms. Rajni Gupta, Additional Advocate General, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of: -

- i. order dated 13.08.2020 (Annexure P-2) passed by Deputy Commissioner of Police, Headquarter, Faridabad-respondent No.4;
- ii. order dated 12.10.2020 (Annexure P-3) passed by Commissioner of Police, Police Headquarter, Faridabad-respondent No.3; and
- iii. order dated 24.09.2024 (Annexure P-7) passed by Director General of Police, Haryana-respondent No.2.

2. The petitioner joined Haryana Police as Constable on 06.10.1988. Time and again, he was promoted and at the time of alleged incident, he was holding post of Assistant Sub-Inspector. An FIR No.389 dated 18.07.2020 under Section 354-D of Indian Penal Code, 1860 and



against him at Police Station Mujesar, District Faridabad. The respondent, though initiated departmental inquiry but before its conclusion, disciplinary authority invoking proviso to Article 311(2)(b) of the Constitution of India dispensed with the inquiry and dismissed the petitioner from service. He unsuccessfully preferred appeal and revision before higher authorities. He approached this Court by way of *CWP No.12298 of 2021* seeking setting aside of orders of authorities whereby he was dismissed from service. This Court vide order dated 17.05.2024 (Annexure P-6) remanded the matter back to Director General of Police, Haryana who has reiterated his earlier order.

3. Learned counsel for the petitioner submits that there was no reason to dispense with departmental inquiry as contemplated by Rule 16.24 of Punjab Police Rules, 1934 (for short '**1934 Rules**') as applicable to State of Haryana and Article 311 of the Constitution of India. It is a settled proposition of law that departmental inquiry can be dispensed with in exceptional circumstances and in the case in hand, there was no exceptional circumstance warranting dispensation of inquiry.

4. Notice of motion.

5. Ms. Rajni Gupta, Additional Advocate General, Haryana, who on advance notice is present in Court, accepts notice on behalf of respondent-State and waives service.

6. With the consent of both sides, the matter is taken up for final adjudication.

7. Learned State counsel submits that petitioner was found involved in a serious offence. He pressurized the complainant and matter



was compromised. This Court, on the basis of compromise, set aside FIR. The departmental authorities, considering act and conduct of petitioner, dispensed with the inquiry and passed impugned order of dismissal from service. There was likelihood that petitioner could pressurize the complainant, thus, inquiry was dispensed with.

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

9. 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 1934 Rules read with Article 311 of the Constitution of India. As per Clause (b) of 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.”

10. The reason advanced by Deputy Commissioner of Police-respondent No.4 for dispensing with inquiry is not the plausible reason because same reason is advanced in every case where there is FIR against serving police officer. The respondent can dispense with inquiry if actually it is not practicable to hold inquiry. Mere writing one line in the impugned order that it is not practicable to hold inquiry is not compliance of mandate of either Constitution of India or Rule 16.24 of the 1934 Rules. The respondent instead of straight away dismissing the petitioner could put him under suspension and thereafter conduct inquiry.

11. A Constitutional Bench in ***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.”

12. In the case in hand, while dispensing with departmental inquiry, the disciplinary authority vide order dated 13.08.2020 has observed as under: -

“And whereas I, the undersigned after carefully going through the report of Assistant Commissioner of Police, Crime Against Women, Faridabad, am fully satisfied that it is not reasonably practicable to hold a regular enquiry in the prescribed manner for the reasons that (i) it would be highly prejudicial to the general interest and discipline of police force, (ii) it is apprehended that the delinquent official would terrorize the witnesses and create various difficulties and put impediments in holding of the enquiry, (iii) it would generate further unrest among the public. Under these circumstances, I am of the considered view that it is not reasonably practicable to hold a regular enquiry in this case.”

13. The petitioner was having 32 years' service to his credit. There is nothing on record disclosing that he was involved in any other case. The findings recorded by disciplinary authority while dispensing with inquiry are general and casual in nature. The authority has made mechanical observations. This Court does not find that there were compelling circumstances to dispense with requirement of departmental inquiry. The petitioner has been deprived from his valuable right without any basis.

14. 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.

15. The Department would be at liberty to conduct inquiry as per Article 311 of Constitution of India and Rule 16.24 of 1934 Rules. The petitioner, as conceded by him, would be entitled to reinstatement if departmental inquiry followed by final order is not concluded within eight months from today. The fate of the petitioner would be as per the outcome of said inquiry.

16. It is hereby made clear that petitioner, as conceded, shall not be entitled to back wages and interest on arrears, if any.

(JAGMOHAN BANSAL)
JUDGE

14.01.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes