



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

234

CWP-4515-2022 (O & M)
Date of decision: 24.03.2025

Shingara Singh

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. A.K.Walia, Advocate,
for the petitioner.

Ms. Shruti, AAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Learned counsel for the petitioner states that the impugned orders of punishment of forfeiture of 5 years service with permanent effect as well as increments and dismissal of appeal have been challenged on the ground that the respondents did not conduct enquiry and wrongly took recourse to Article 311(2) (b) of the Constitution of India, without assigning any reasons for dispensing it.

2. Reliance in the index of the petition had been placed on the pendency of CWP-14013-2015 and CWP-7172-2021, titled as **Kulwant Singh vs. State of Punjab and others**, which now stands disposed of, vide judgment dated 17.03.2023, giving liberty to the authority to hold the departmental inquiry, if so advised, relevant of which reads thus:

“5. On 10.08.2015, while issuing the notice of motion, the following order was passed:-

"Contends that the petitioner's duty started in jail after the jail break. He was dismissed under Article 311 (2)(b) in the first instance which has been scaled down by the appellate authority to forfeiture of 5 years of service permanently which is not even enlisted punishment in Punjab Police Rules, 1934.

The further argument is that when resort was taken to Article 311 (2)(b), the petitioner could have only been visited by one of the three punishments mentioned in the Constitution and in case, a 4th was contemplated, the entire action should be declared misguided and unconstitutional. This is because Article 311 (2)(b) contemplates that in case where the Courts come to the opinion that enquiry was necessary on judicial review, then such an enquiry can be confined to meet out any of the punishments in Article 311 (2) or prescribed in the rules.

Notice of motion, returnable by 17.11.2015."

6. Moreover, it is evident from the perusal of the order passed by the competent authority on 15.01.2013 that the competent authority has failed to record the justifiable reasons to not hold the departmental inquiry and dispensing the service without inquiry. The powers under Clause (b) of 2nd proviso to Article 311(2) of the Constitution of India can be invoked only when the competent authority in writing records sufficient reasons to hold that it is not reasonably practicable to hold such an inquiry. Moreover, as per the appellate order, the petitioner has been awarded the penalty of forfeiture of five years of approved service, which is not one of the punishments which can be passed in exercise of the powers under Clause (b) of 2nd proviso to Article 311(2) of the Constitution of India.

7. Keeping in view the aforesaid facts and discussion, the orders dated 15.01.2013, 08.08.2013 and 01.10.2020, are set aside with the liberty to the competent authority to hold the departmental inquiry, if so advised.

8. With these observations the writ petitions are disposed of."

3. Based on the above, learned counsel prays for disposal of the matter in terms thereof, which learned State counsel despite best efforts has not been able to controvert regards the factual position and draw out

any distinctive aspects in the afore-mentioned judgment or cite any contrary law.

4. Ordered accordingly.

24.03.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No