



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

**CWP-5683-2016 (O&M)
Date of Decision: 14.11.2025**

Shamsher Singh

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ankit Rana, Advocate and
Mr. Kuldeep Sheoran, Advocate
for the petitioner.

Mr. Ravi Partap Singh, DAG, 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 orders dated 17.12.2015 and 02.03.2016.

2. The petitioner joined Haryana Police Force as Constable on 02.12.1988. He was promoted as Head Constable in 2005 and EASI in 2011. He was implicated in FIR No.295 dated 13.12.2015 registered under Section 13A/3 of Gambling Act, 1867 and Section 66 of Information Technology Act, 2000 alleging that he was consuming liquor at the spot. He was dismissed from service vide order dated 17.12.2015 invoking Clause (b) of second proviso to Article 311(2) of Constitution of India. He preferred an appeal before appellate authority which dismissed the same vide order dated 02.03.2016.

3. Learned counsel representing the petitioner submits that petitioner was dismissed from service on account of aforesaid FIR,

however, no police report was filed against him under Section 173 of Cr.P.C. The respondent without any reason dispensed with inquiry contemplated by Rule 16.24 of Punjab Police Rules, 1934 (as applicable to State of Haryana) (in short 'PPR') read with Article 311 (2) of the Constitution of India. It is settled proposition of law that departmental inquiry cannot be dispensed with mechanically. The Appellate Authority did not appreciate submissions of the petitioner and passed impugned orders.

4. *Per contra*, learned State counsel submits that it is factually correct that police report was not filed against petitioner in aforesaid FIR, however, he was dismissed without holding inquiry because he was involved in other cases. The authorities were bound to dispense with inquiry.

5. On being asked, learned State counsel confirmed that petitioner was never subjected to major penalty.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. The petitioner was dismissed without conducting inquiry. From the perusal of record, it is evident beyond the pale of doubt that he was dismissed from service without conducting inquiry as contemplated by Rule 16.24 of PPR 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.”

8. 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.”

9. In the case in hand, while dispensing with departmental inquiry, the disciplinary authority vide order dated 17.12.2015 (Annexure P-2) has observed as under:-

“After such act of serious misconduct if he is allowed to continue in the Police Force, it would be detrimental to public interest. Besides, it is common experience that intimidating the witnesses so as not to come forward to depose against the delinquent in a departmental enquiry is a practice adopted by defaulter. It requires great courage to depose against such a desperate person and the task becomes more acute and difficult where the delinquent is a police officer who has no respect for law and moreover he may use his job to influence statements/deposition. Moreover, he is well linked to criminals of the area and he can also utilize them to brow beat the witnesses. Therefore, it is not practicable to hold a regular departmental enquiry.”

10. The reasons advanced by Superintendent of Police, Sirsa for dispensing with inquiry are not plausible reasons. The respondent can dispense with inquiry if actually it is not practicable to hold the inquiry. Mere writing that it is not practicable to hold inquiry is not compliance of mandate of either Constitution of India or Rule 16.24 of PPR. The respondent instead of straight away dismissing the petitioner could put him under suspension and thereafter conduct inquiry.

11. In the wake of above discussion and findings, the instant petition deserves to be allowed and accordingly allowed. The impugned orders are hereby set aside. The respondent is at liberty to hold inquiry as contemplated by Rule 16.24 of PPR read with Article 311(2) of the Constitution of India. If respondent decides to initiate inquiry, it shall be concluded within six months from today. If inquiry is not completed within six months from today, the petitioner shall be deemed to be reinstated. The petitioner, as conceded by him, shall not be entitled to back wages, however, shall be entitled to counting of past service and notional benefits of period during which he remained out of service.

12. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

14.11.2025
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No