
(2022) 05 P&H CK 0139

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12064 Of 2019 (O&M)

Ex. Asi Ajaib Singh

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 31-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 311, 311(2)(a), 311(2)(b)

Citation : (2022) 05 P&H CK 0139

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : R.K. Arya, Pankaj Gupta

Final Decision : Allowed

Judgement

Jaishree Thakur, J

1. By way of instant writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks to quash order dated 15.6.2017 (Annexure P/9) by which the petitioner stands dismissed from service by respondent No.5, while invoking the provisions of Article 311 (2) (b) of the Constitution of India, and orders dated 12.2.2018 and 14.11.2018 (Annexures P/10 and P/12 respectively), vide which the appeal and the revision filed by the petitioner against the order dated 16.5.2017 were dismissed by Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt. and the Director General of Police, Punjab.

2. In brief, the facts of the case are that the petitioner was appointed as Constable on 22.1.1969, promoted as Head Constable on 1.2.2008 and as ASI on 12.10.2016. On 12.6.2017 a FIR No. 1 under Sections 59 (2) (b) of the NDPS Act, 1985, under Section 218, 466, 471, 120-B IPC came to be registered against LR/Inspector Inderjit Singh and others. During the investigation of the aforesaid FIR, the petitioner suffered a disclosure statement, which led to the recovery of a revolver, 1536 drug capsules, 04 injection bottles of pheniramine maleate, 04 bottles without labels and 55 injections of pentazocine lactate.

Based on these recoveries Sections 21, 22 of the NDPS Act and Section 25 of the Arms Act were added to the FIR. On the registration of the FIR, the Senior Superintendent of Police, Kapurthala— respondent No. 5 dismissed the petitioner from service on 15.6.2017, by invoking Article 311 (2) (b) of the Constitution of India, holding that in case the petitioner continues to serve in the police force, no witness from public or from police force, will come forward to depose against the petitioner for fear of their life and property. He shall be in a position to harm these witnesses and influence the investigation. Therefore, it was held that it is neither reasonable nor practicable to hold departmental inquiry.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner has clean service record and he had 28 years of service to his credit and he never involved any illegal activities during his service career. A false and frivolous FIR was registered against the petitioner. The falsity of the case is established from the fact that though challan under Section 173 of the Code of Criminal Procedure was presented against the petitioner under Sections 21/22 of the NDPS Act, 1985 and Section 25 of the Arms Act, however, charges were framed only under Section 25 of the Arms Act and the charges under the provisions of the NDPS Act were dropped, as no offence was made out on other count. It is also submitted that the petitioner was working under Inspector— Inderjeet Singh, against whom initially FIR 1 dated 12.6.2017 was registered. After arrest of Inderjeet Singh, the higher officers pressurized the petitioner to become a witness against said Inspector and when he declined to become a false witness, the higher officer got annoyed and thus falsely implicated the petitioner in the said case and recovery was planted. It is submitted that the order of dismissal does not contain any cogent reason for dispensing with the departmental inquiry. Learned counsel relies upon judgments rendered in Prem Saran Bansal Versus State of Punjab and others 2014 (4) SCT 481, Gurcharan Singh Versus State of Punjab 2017 (1) SCT 712, CWP No. 14712 of 2017 titled Rakesh Kumar Versus State of Punjab and others decided on 25.4.2022, CWP No. 21419 of 2020 titled Bikramjit and another Versus State of Punjab and others decided on 23.2.2022, CWP 13847 of 1995 titled Constable Harinder Kumar Versus State of Punjab and another decided on 24.10.2013, CWP No. 890 of 2011 titled Pammi Ram Versus state of Punjab and others decided on 4.2.2013, CWP No. 10423 of 2020 titled Sarabjit Singh Versus state of Punjab and another decided on 1.9.2020 and Baljit Singh Versus Senior Superintendent of Police, Amritsar 2008 (1) S.C.T. 686, in support of his argument, that a regular departmental inquiry can be dispensed with only under exceptional circumstances. It is argued that no cogent reason has been given for dispensing with the inquiry proceedings. There has to be some material available to hold that it would not be practical to hold a departmental inquiry.

4. Per contra, learned counsel appearing on behalf of the respondents—State would submit that the petitioner herein has been indulging in activities which are unbecoming of a government servant and indulged in activities pre-judicial to both public interest and security. Recovery of illegal arms and drugs/narcotics

have been made from a serving Police Officer, whose duty was to prevent such activities. However, instead he has himself indulged and abetted drug trafficking in the State. In case, he continues to serve in the police force, which is a disciplined force, no witness from public or from police force will come forward to depose against him for fear of their life and property and, therefore, the petitioner was rightly dismissed from service by the impugned order.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

6. The petitioner stands dismissed from service by taking into account the FIR that has been filed against him. His dismissal is by invoking Article 311 (2) (b) of the Constitution of India thereby dispensing with the normal procedure of holding a departmental inquiry under Rule 16. 24 of the Punjab Police Rules 1934. Article 311 (2) (b) of the Constitution of India 1949 reads as:

"(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 bare reading of the Article itself would show that the authority who is empowered to dismiss or remove a person or to reduce his rank without holding a departmental inquiry, has to record reasons in writing as to why it is not reasonably practical to hold such inquiry. This reasoning is missing in the impugned order, wherein the only consideration is that "In case he continues to serve in the police force, no witness from public or from police force, will come forward to depose against him for fear of their life and property. He shall be in a position to harm these witnesses and influence the investigation..."

8. In the case of Union of India Vs. Tulsiram Patel, 1985 (Suppl) 2 SCR 131, the Hon'ble Supreme Court observed that clause (b) of the second provision to Article 311 of the Constitution can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental inquiry. Relevant observations in this regard are as under: -

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail."

9. Mere registration of a FIR would not be sufficient ground to invoke Article 311 (2) (b) of the Constitution of India to dispense with holding of a departmental inquiry before dismissing a delinquent employee. In case of conviction, the situation is altogether different as has been specified in Article 311 (2) (a) of the Constitution of India. As noticed above, adequate reasons have to be given in the order of dismissal as to why it would not be reasonably practicable to hold a departmental inquiry. In Constable Harinder Kumar's case (Supra), the delinquent was dismissed from service on registration of two FIRs, one under Section 401 IPC and the other under Section 25 Arms Act, 1959 without holding any departmental inquiry on the grounds that the activities of the delinquent were highly prejudicial and detrimental to police working as well as against public interest, therefore he was not fit to be retained in the police force. It was held that mere registration of FIR is not valid ground to dispense with holding a regular inquiry. A similar view has been taken in the cases of Prem Saran Bansal and Gurcharan Singh's cases (Supra).

10. On perusal of impugned order of dismissal, it is apparent that no reasons whatsoever have been recorded to show as to why it is not possible to hold an inquiry. A mere observation that "in case he continues to serve in the police force, no witness from public or from police force, will come forward to depose against him for fear of their life and property. He shall be in a position to harm these witnesses and influence the investigation", would not satisfy the stringent conditions imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

11. Consequently, the writ petition stand allowed and the impugned order dismissing the petitioner from service vide order dated 15.6.2017 (Annexure P/9) is set aside, leaving it open to the Department to take departmental action in accordance with law.