
(2010) 09 P&H CK 0438
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7870 of 2010

Ex. Constable Reena Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (2011) 161 PLR 540

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—Petitioner, a lady Constable, has been dismissed from service by invoking the provisions of Article 311(2)(b) of the Constitution of India by dispensing with the departmental enquiry. She has accordingly filed this writ petition to impugn the said order, alleging that the mode and method as adopted by the Respondents are illegal and unconstitutional.

2. The Petitioner was enrolled as a Constable in the Haryana Police on 26.2.2007. The Petitioner is accused of having got involved with one accused criminal, named, Mustak, who is stated to be facing trial in various criminal cases. As per the allegation, the Petitioner was detailed for duties, when she got involved with this criminal, which was detected on the basis of contact established by the Petitioner with the said accused, under trial through his mobile phone calls.

3. The Petitioner, on the other hand, would urge that this action has been taken against her as she refused to perform the duties at the residence of Superintendent of Police, Nuh, where she was detailed for official work. The Petitioner would further claim that she had known the accused, Mustak, while he was studying in B. Sc. Non-medical, whereas the Petitioner was doing her B.A. and the family of the Petitioner wanted her to marry Mustak. The Petitioner would even go to the extent of saying that accused Mustak had been falsely implicated in the cases and out of the 6-7 cases alleged against him, he had been acquitted in two cases. The Petitioner, thus, would challenge the action of

the Respondents in dismissing her without holding enquiry and would also urge that she had not helped the accused in any manner, being a police employee. The Petitioner's plea is that her only fault was that he contacted the accused on mobile, who has promised to marry her.

4. In the written statement filed, the Respondents would disclose the true contours of the allegations standing against the Petitioner. It is stated that the Petitioner was deployed in police escort guard, Nuh, when she developed personal relations with criminal, Mustak. She is also accused of disclosing important information regarding police, which could prove dangerous for the Police Department as well as the Society. It is, thus, alleged that the Petitioner had helped accused Mustak by going out of her way and forgetting the call of her duties. Therefore, the action taken against her has been justified. Even the true transcript of the telephonic conversation exchanged between the Petitioner and accused Mustak is placed on record. The nature of the conversation, as can be seen from the transcript, would indicate the extent of help the Petitioner had attempted to provide to the accused.

5. The issue involved in the light of above stands taken by the parties is to see if the Respondents were justified in dispensing with the enquiry and to invoke the provisions of Articles 311(2)(b) of the Constitution of India. The justification, as offered, in this case would be that it was not reasonably practicable to hold enquiry in this case. The involvement of the Petitioner surfaced only on interception of the calls made by her to a hardened criminal. It revealed involvement of the Petitioner in helping a criminal accused of serious offence. The fact that the Petitioner indeed was involved with Mustak and had also been in contact with him on telephone is not denied by her. The Petitioner had also not refuted the contents of transcript annexed with the reply or has not come forward to say that it is not a true transcript of her conversation with Mustak. The nature of conversation can not be considered very palatable to the Petitioner, a police constable. In the enquiry, the only relevant evidence would have been that of accused Mustak, who alone could confirm or deny this fact. It is possible to view that he would not have come forward to support the allegations in any manner. View, thus, is possible that it was impracticable to hold enquiry having regard to the facts and circumstances of this case, which are so very peculiar.

6. No doubt, it has consistently been held that subjective satisfaction of the concerned authority to dispense with the departmental enquiry must be fortified by independent material and that the decision to dispense with the enquiry can not solely rest on the ipsi-dixit of the concerned authority. It is true that when satisfaction of the concerned authority is questioned in a court of law, it is incumbent upon those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whims or the caprices of the concerned officer. In this regard, reference is made by counsel for the Petitioner to the case of *Jaswant Singh Vs. State of Punjab and others*, . Even in *Union of India and Anr. v. Tulsiram Patel* 1985 (2) SLR 576, it was viewed that

disciplinary authority is not expected to dispense with the enquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid holding of an enquiry or because the department's case against the Government servant is weak and must fail.

7. From the facts as these would emerge in this case, it can not be viewed that decision to dispense with the departmental enquiry was on account of any ulterior motive or it was merely to avoid holding the enquiry. It is not such a case where the case of the Respondents is weak in any manner. A police official, who acts in a manner to get involved with an accused facing number of criminal cases and adopts means and methods to suggest measures to help such a criminal, would be a action, which is highly uncalled for by an employee who is a constituent of disciplined force like Police. Police is required to deal with the criminals in order to protect the citizens. If the protectors of law becomes a conspirator to help the violators of law, the very purpose of policing will get defeated. View also is possible that in the facts and circumstances of this case, it was not reasonably practicable to hold an enquiry in this case. The only witness, who was relevant and who could have thrown light on the involvement of the Petitioner in this case is the benefactor of the Petitioner and highly interested to save her. It was, thus, not reasonably practicable to hold an enquiry. The conditions precedent, which are to be satisfied under Clause (b) of the proviso (2) of Article 311 of the Constitution of India, are that there must exist a situation which makes the holding of an enquiry contemplated under the Article not reasonably practicable. In other words, holding of an enquiry is not practicable in the opinion of a reasonable man, taking a reasonable view of the prevailing situation. Tested on the touch stones of this requirement, it can be said that holding of enquiry in this case was not practicable and this opinion can so be formed by any reasonable man, taking a reasonable view of the situation at hand. I have not been able to persuade myself to view that there is any extraneous reason for dispensing with the enquiry in this case. To me, it is clear that the decision to dispense with the enquiry and in turn to dispense with the services of the Petitioner was primarily reached on the basis of peculiar facts in this case. Thus, no case for interference is made out.

The writ petition, therefore, is dismissed.