

(2024) 01 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6029 Of 2021

Raj Babu Singh (UBC/295)

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 29-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 311, 311(2), 311(2)(b), 311(3)
Indian Penal Code, 1860 — Section 34, 120B, 364A, 365, 448
Police Act, 1861 — Section 7

Citation : (2024) 01 GAU CK 0033

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : I Rafique

Final Decision : Allowed

Judgement

1. Heard Mr. I Rafique learned counsel for the petitioner. Also heard Mr. T Chutia, learned Additional Senior Govt. Advocate appearing for the respondents.

2. The present writ petition is filed assailing an impugned order dated 11.10.2021 issued by the respondent No.6, whereby in exercise of power under sub-clause (b) of the provision 2 of Article 311 of the Constitution of India, the petitioner, namely UBC Raj Babu Singh was dismissed from service with immediate effect.

3. The background facts leading to filing of the present petition can be summarized as under:

I. The petitioner while working as constable (UBC/295) posted at Fancy Bazar Outpost, Guwahati, an FIR was lodged before the Officer-in-charge Latashil PS on 23.06.2021 alleging that on the said date at around 6.45 am some persons forcibly trespassed into the house of the informant and kidnapped his father from the house.

II. On the basis of the said FIR, Latashil PS Case No.217/2021 was registered

initially under sections 448/365/34 IPC and later on, section 364A/120(B) IPC was added. The petitioner was arrested in connection with the aforesaid Latashil PS case on 29.06.2021. Subsequently, the petitioner was granted bail by this court by an order dated 29.09.2021 passed in Bail Application No.2510/2021. Thereafter the impugned order dated 11.10.2021 was passed dismissing the petitioner from service as discussed hereinabove and such order is under challenge.

4. Mr. I Rafique, learned counsel for the petitioner submits that the condition precedent for invoking the extra ordinary power under Article 311 (2)(b) of the Constitution of India was not available in the given facts and circumstances of the present case inasmuch as a bare perusal of the impugned order dated 11.10.2021 reflects that there is no satisfaction regarding the non-practicability of holding a departmental proceeding.

5. Mr. Rafique, learned counsel for the petitioner also submits that when a person is dismissed in exercise of power under Article 311 (2) (b) of the Constitution of India, merit of the allegation cannot be determined, rather the disciplinary authority is to come to a satisfaction that it is not reasonably practicable to hold an enquiry and in the present case no such satisfaction is reflected, either in the order impugned or in the affidavit-in-opposition filed by the respondent authority. In support of such submission, Mr. Rafique relies on the judgment of Hon'ble Apex court passed in Reena Rani vs. State of Haryana and Others reported in (2012) 10 SCC 215 and the case of Hari Niwas Gupta vs. the State of Bihar and another reported in (2020) 3 SCC 153.

6. Per contra, Mr. T.C. Chutia, learned Additional Senior Government Advocate submits that the scope of judicial review of an order passed in exercise under Article 311 (2) (b) of the Constitution of India is very limited. The disciplinary authority has come to a conclusion that the involvement of the petitioner was established and such action of the petitioner being a part of disciplined force is not acceptable inasmuch the conduct on the part of the petitioner is unbecoming of an official serving to protect the citizens. Such subjective satisfaction of the employer cannot lightly be interfered in exercise of power of judicial review.

7. It is submitted by Mr. Chutia that when a member of disciplined force commits crime against citizen, who are otherwise to protect such citizen from crime, it is not practicable to hold an enquiry, more so in view of the fact that report of the Assistant Commissioner of Police, Panbazar, Guwahati clearly establishes involvement of the petitioner in committing the offence. Relying on the judgment of the Hon'ble Apex Court passed in Satyavir Singh and Other vs Union of India and others reported in (1985) 4 SCC 252, Mr. Chutia urges that as the authority by giving due reason passed the order, this court may not like to sit as an appellate authority to decide the relevancy of such reason like a court of appeal.

8. Mr. Chutia further submits that this court while judicially reviewing the order impugned, needs to consider the then prevailing situation. Mr. Chutia submits

that when a member of disciplined force acts in a way which is detrimental to right of citizen. It is not reasonably practicable to continue with a disciplinary proceeding, more so when his involvement was established by a report of none other than the Superintendent of Police. In fact, such action is detrimental to the security of the State. Therefore, Mr. Chutia submits that the writ petition is devoid of any merit and liable to be dismissed.

9. Since the issue involves exercise of power under Article 311(2) (b) of the Constitution of India, the same is quoted hereinbelow:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

[(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-]

(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"

10. There is no dispute that the service of the petitioner is governed by Police Act, 1861 and Assam Police Manual. Section 7 of the Act, 1861 being relevant is quoted hereinbelow:

"7. Appointment, dismissal, etc., of inferior officers.-[Subject to the provisions of Article 311 of the Constitution, and to such rules] as the [State Government] may from time to time make under this Act, the Inspector- General, Deputy Inspectors-General, Assistant Inspectors General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks] whom they shall think, remiss or negligent in the discharge of his duty or unfit for the same;

[or may award any one or more of the following punishments to any police officer [of the subordinate ranks] who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:-

(a) fine to any amount not exceeding one month's pay;

(b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;

(c) deprivation of good conduct pay;

(d) removal from any office of distinction or special emolument.]”

11. Rule 66 of the aforesaid Manual provides the followings:

“66.

III. No order of major punishment shall be passed on a member of the service (other than an order based on facts which have led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement on his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases for special and sufficient reasons to be recorded in writing, be waived where there is a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged.”

12. Section 7 of the Act, 1861 empowers certain officials to dismiss, suspend or reduce in rank any police officer, if they are satisfied that remiss or negligent in discharge of their duties or unfit for the same, subject to provision of Article 311 of the Constitution of India. The relevant police rule provides that no major punishment shall be passed on a member of police unless he has been informed in writing of the grounds on which it is proposed to take action and the said provision further mandates that such person shall be afforded an adequate opportunity of defending himself. Such proposed grounds needs to be reduced to the form of definite charge(s), which is further required to be communicated to the person concerned. Thus it is apparent that the Police Act read with the Police Manual contemplates adherence of Article 311 and principle of natural justice.

13. The Constitution Bench of the Hon’ble Apex Court in the case of Union of India vs. Tulsiram Petal reported in (1985) 3 SCC 398 extensively dealt with the provision of Article 311 including Sub-Article 2 (b). The judgment relied on by Mr.

Rafique, learned counsel, i.e. Reena Rani (supra) and Hari Niwas Gupta (supra), and judgment relied on by Mr. Chutia, learned Additional Senior Government Advocate i.e. Satyaveer Singh (supra) also followed the ratio of Tulsiram (supra). The ratio relating to Article 311 (2) (b) are discernable at paragraphs 130 to 134 of Tulsiram (supra). The ratio of the said judgment can be summarized as follows:

(I). The condition precedent for applying proviso (b) is satisfaction of disciplinary authority that "it is not reasonably practicable to hold" the enquiry contemplated by Sub-Article 2 of Article 311 of the Constitution of India.

(II). Whether it was practicable to hold the enquiry or not must be judged in the context whether it was practicable to do so.

(III). The requisite is that the holding of enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(IV). The practicability of holding of enquiry is a matter of assessment to be made by disciplinary authority.

(V). The finality given to the decision of disciplinary authority by Article 311 (3) is not binding upon the court so far its power of judicial review is concerned and in a given case, the court can strike down order dispensing with enquiry as also order imposing penalty.

(VI). Writing reason for satisfaction that it was not reasonably practicable to hold the enquiry contemplated under Article 311, is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the enquiry and order of penalty following thereupon would, both be void and unconstitutional.

(VII). The recording the reason in writing for dispensing with enquiry must precede the order imposing penalty. (VIII). The reason of dispensing with enquiry need not contain detail particulars, but reason must not be vague or just a repetition of the language of clause (b) of the second proviso.

14. Now coming to the impugned order, a bare reading of the same reflects the followings

(I). The disciplinary authority is satisfied that it is not necessary to hold any further enquiry.

(II). The reason for such satisfaction is the sufficiency of evidence regarding involvement of the petitioner in committing the crime, and such evidences are available in the report of Assitt. Commissioner of Police (Panbazar), Guwahati dated 09.07.2021.

(III). On the basis of such report the disciplinary authority came to a conclusion that involvement of the petitioner has been proved beyond any doubt and therefore the disciplinary authority was satisfied that it is not necessary to hold any further enquiry.

(IV). The further conclusion is that the disciplinary authority is satisfied that

continuation of service of the petitioner is detrimental to the society, threat to peace and tranquility of the society.

(V). It is the further satisfaction of the disciplinary authority that the action of the petitioner will adversely affect the discipline, accountability, integrity and image of Assam Police and will affect the greater interest of police department in rendering service.

15. Therefore, it is crystal clear that the aforesaid order of dismissal was passed on being satisfied with the merit of allegation against the petitioner and disciplinary proceeding was not dispensed with for any reason of impracticability.

16. The impugned order of dismissal nowhere reflects any satisfaction that it was not practicable to hold an enquiry. No assessment even was made to come to such a conclusion. No separate reason in writing for dispensing with enquiry were recorded or preceded the order impugned.

17. Therefore, this court unhesitantly holds that while issuing the order of dismissal, the respondent authority has failed to perform its constitutional obligation under Article 311 of the Constitution of India inasmuch as without there being any reason in writing dispensing with regular enquiry contemplated under Article 311 of the Constitution of India and under Rule 66 of Police Manual, the petitioner could not have been dismissed from service and therefore the impugned order dated 11.10.2021 is set aside and quashed.

18. Consequently, it is directed that the petitioner be re-instated in his service.

19. However, it is made clear that this order shall not be a bar for the respondents to proceed afresh against the petitioner strictly in accordance with law, if so advised.

20. In the aforesaid terms, this writ petition is allowed, however no order as to cost.