
(1999) 05 AHC CK 0201
In the Allahabad High Court
Case No : C.M.W.P. No. 34963 of 1993

Shiv Kumar, Mukhya Arakshi	Vs	APPELLANT
State of U.P. and another		RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Penal Code, 1860 (IPC) — Section 352, 504, 506

Citation : (1999) 3 AWC 2158 : (1999) 2 UPLBEC 1218

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : D.S.M. Tripathi, S.K. Singh, V.K. Singh, V.C. Dixit and S.K. Gaur, for the Appellant;

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The short question that arises for consideration in this writ petition is whether the petitioner can be dismissed from service under the second proviso to Article 311(2) of the Constitution without holding any disciplinary enquiry against the petitioner.

2. The petitioner was a permanent constable appointed in the year 1981 in P.A.C. A First Information Report was lodged by one Shiv Kumar Gupta against the petitioner and one Shamim Ahmad u/s 352/504/506, I.P.C at Police Station, Soraon, Allahabad being Case Crime No. 352 of 1993 and 353 of 1993. The allegation made in the First Information Report was that the petitioner along with Shamim Ahmad threatened the complainant Shiv Kumar Gupta not to do pairvi in the case against his wife Smt. Pushpa Devi pending in Family Court, Allahabad. Thereafter, the Senior Superintendent of Police, Allahabad on 17.8.1993 dismissed the petitioner from service under the second Proviso to Article 311(2) of the Constitution. The petitioner has challenged the dismissal order dated 17.8.1993 by means of the present writ petition. Learned standing counsel appearing for the State supported the dismissal order and argued that the

petitioner has got a remedy of statutory appeal and revision under the U. P. Police Regulation and therefore, the writ petition should be dismissed on the ground of alternative remedy. The other argument of the standing counsel is that the petitioner has rightly been dismissed from service under the second proviso to Article 311(2) of the Constitution as due to his act the image of the department was lowered.

3. Both the arguments of standing counsel cannot be accepted. No doubt there exists an alternative remedy of filing an appeal or revision against the impugned dismissal order but this Court has ample Jurisdiction to Interfere in a matter where the order is either wholly illegal or without jurisdiction or where the principles of natural justice have been violated. The Apex Court in *Whirlpool Corporation v. Registrar of Trade Marks* 1998 (8) SCO 1 has laid down that even where there is statutory alternative remedy available, the High Court can interfere (i) for enforcement of fundamental rights (ii) where natural justice is violated and (iii) where the order or proceedings are wholly without jurisdiction or the vires of Act is challenged. No doubt under the second proviso to Article 311(2), principles of natural justice do not apply but there has to be material on record to show that the dismissal order of the petitioner was justified under the aforesaid proviso. No material has been disclosed in the counter-affidavit or in the impugned order of dismissal which can form the basis for forming an opinion by the punishing authority that departmental disciplinary proceedings cannot be taken against the petitioner and he should be dismissed from service under the second proviso to Article 311(2). In my opinion, the impugned order In absence of any material to justify proceedings under Article 311(2) cannot prevent the petitioner from approaching this Court under Article 226 of the Constitution of India.

4. The impugned dismissal order as well as the counter-affidavit states only that due to the act of the petitioner threatening Shiv Kumar Gupta, the image of the department has been lowered down due to which It is not possible to hold a departmental disciplinary proceedings against the petitioner and he should be dismissed from service under the second proviso to Article 311(2). The Apex Court in the case of *Jaswant Singh v. State of Punjab and others*, 1991 (62) FLR 137, has held that for passing an order under the second proviso to Article 311(2), two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any enquiry "not reasonably practicable" ; and (ii) disciplinary authority must record in writing its reasons in support of its satisfaction.

5. In another decision in the case of *Union of India and another v. Tulsi Ram Patel and others* 1985 (51) FLR 326, the Apex Court laid down as under :

"A disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives 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. The departmental enquiry cannot be dispensed with on the

ipse dixit of the authority concerned and when the satisfaction of the concerned authority is challenged in a Court of law then it is Incumbent upon the concerned authority to show that his satisfaction was based on certain objective facts and is not outcome of the whim or caprice of the officer concerned. Neither in the impugned order of dismissal nor in the counter-affidavit any material has been disclosed by the respondents to show that it was not reasonably practicable to hold departmental proceedings against the petitioner. Since the impugned order or the counter-affidavit does not disclose any independent material to Justify dispensing with the enquiry envisaged under Article 311(2) the impugned order of dismissal cannot be sustained and is liable to be quashed."

6. It is not necessary to emphasis that the Apex Court has made it clear that the exercise of power under proviso to Article 311(2) must be an exception and not the rule. In the case of Tulsi Ram Patel (supra), the Court said that once the action Is challenged, the authority is bound to show the material on which satisfaction was arrived. But the respondents have not placed any material to show why it was not reasonably practicable to hold an enquiry. The order in absence of any material or circumstances justifying such extreme action became arbitrary.

7. In the result, the writ petition succeeds and is allowed. The impugned order of dismissal dated 17.8.1993 passed by respondent No. 2 is quashed. The respondent No. 2 is directed to reinstate the petitioner in service with all consequential benefits of service within a period of two moths from the date of production of a certified copy of this order before him.

8. There shall be no order as to costs.