



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 3972/2020

Dinesh S/o Shri Babu Lal, Aged About 30 Years, Resident Of
Village Sarvada, Post Kakelau, Jodhpur.

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary,
Department Of Home Affairs, Government Of Rajasthan,
Jaipur.
2. The Director General Of Police, Headquarter, Jaipur.
3. The Superintendent Of Police, Pratapgarh.

-----Respondents

For Petitioner(s) : Mr. Sushil Solanki
For Respondent(s) : Mr. Deepak Chandak &
Ms. Sonal Parihar for
Mr. B.L. Bhati, AAG

JUSTICE DINESH MEHTA

Order

25/11/2024

1. The present writ petition impugns the order dated 20.12.2019 passed by the Superintendent of Police, Pratapgarh, whereby the petitioner has been dismissed with immediate effect from services while invoking the provisions of rule 19(ii) of the Rajasthan Civil Services (Classification, Control and Appeals) Rules, 1958 (hereinafter referred to as 'the Rules of 1958'). The order of Appellate Authority dated 28.05.2021 affirming the said order dated 20.12.2019 is also under challenge.



2. At the request of the learned counsel for the parties and considering that the petitioner has been dismissed from service, the matter was finally heard.

3. Apprising the Court about the needful facts, learned counsel for the petitioner stated that the petitioner is a Constable and the order impugned has been passed on the basis of preliminary inquiry dated 04.12.2019, in which it has been reported that the petitioner was escorting a vehicle containing narcotic substance, which was intercepted and seized by the police resulting in registration of FIR No. 107/2019 against the accused persons.

4. Mr. Sushil Solanki, learned counsel for the petitioner argued that the respondents have illegally invoked rule 19 of the Rules of 1958 and dismissed the petitioner from services.

5. Learned counsel submitted that rule 19(ii) of the Rules of 1958 can be invoked only when the disciplinary authority is satisfied for reasons to be recorded that it is not reasonably practicable to follow the procedure prescribed in the Rules. He argued that the petitioner was serving as Constable and there was no reason or justification with the respondents to dispense with the disciplinary inquiry envisaged under Rules 16 and 17 of the Rules of 1958.

6. It was highlighted that so far as FIR No. 107/2019 is concerned, the petitioner has not even been charge-sheeted.

7. Mr. Chandak, learned counsel for the respondent - State submitted that the petitioner being a Constable in the Police Force, which is entrusted with a responsibility/duty to curb the menace of increasing use and trade of narcotic substance had connived with the persons dealing with such substance and was found escorting



the vehicle carrying contraband substance. He argued that when such facts have come to the notice of the respondents, in order to take quick and effective action, the disciplinary authority invoked the provisions of rule 19(ii) of the Rules of 1958 read with Article 311(2) of the Constitution of India and dismissed the petitioner from services so as to send strong message in the department.

8. Mr. Chandak was, however, not in a position to satisfy the Court as to why it was not reasonably practicable to follow the procedure prescribed under law and dispense with the inquiry.

9. Mr. Solanki, in rejoinder submitted that the allegation against the petitioner is, that he was escorting the vehicle, which was carrying contraband substance, whereas, the same is factually incorrect, inasmuch as, even the investigating officer has not charge-sheeted the petitioner. He argued that the impugned order is a colourable exercise of power.

10. Learned counsel for the petitioner relied upon the judgment dated 14.03.2023 rendered by this Court in the case of **Badri Ram vs. State of Rajasthan (S.B. Civil Writ Petition No. 14681/2019)**.

11. Heard learned counsel for the parties and perused the record.

12. The petitioner has been dismissed from service while invoking rule 19(ii) of the Rules of 1958, which is pari-materia to Article 311(2) of the Constitution of India. The reasons recorded in the order impugned are that the disciplinary inquiry under rules 16 and 17 of the Rules of 1958 is likely to take substantial time and there is a possibility that the petitioner would tamper with the



evidence and influence the inquiry and also because there was strong chances of the breach of departmental secrecy.

13. According to this Court, the reasons recorded by the disciplinary authority are not relevant so far as requirement of rule 19(ii) of the Rules of 1958 is concerned. The possibility that the inquiry is likely to take substantial time, cannot be a reason to do away with the inquiry. That apart, respondents' apprehension that the petitioner would influence the inquiry and tamper with the evidence is reflective of respondent Department's lack of confidence in its own system.

14. So far as chance of tampering of evidence is concerned, the same can be warded off by placing the delinquent under suspension and if the respondents feel that the petitioner, who is a Constable would influence the inquiry and tamper with evidence, they should introspect their working. If these reasons are upheld then the provisions relating to conducting the inquiry would be rendered otiose.

15. The order impugned clearly shows that the State has invoked Rule 19(ii) of the Rules of 1958 which is pari-materia to Article 311(2) of the Constitution. Rule 19(ii) of the Rules of 1958 is reproduced hereinfra:-

"19(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or"

Above quoted provision is unambiguous and does not require any indepth legal understanding to decipher that the same can be resorted to when it is not practicable to hold inquiry or the



procedure prescribed in Rule 16, 17 and 18 of the Rules of 1958 is not feasible. That apart, it mandates the disciplinary authority to record reasons that it is not practicable to follow the procedure. A reading of the order and even reply does not indicate any such satisfaction arrived much less reasons recorded by the disciplinary authority.

16. A perusal of the order dated 28.05.2021 passed by the Appellate Authority shows that the Appellate Authority has simply gone on the quantum of punishment and has held that the petitioner is guilty of misconduct. The Appellate Authority has failed to appreciate that the disciplinary authority has wrongfully invoked powers under rule 19(ii) of the Rules of 1958.

17. The writ petition is, therefore, allowed. The orders impugned dated 20.12.2019 passed by the respondent no.3 so also 28.05.2021 passed by the Appellate Authority are, hereby, quashed and set aside.

18. Learned counsel for the petitioner fairly submitted that the petitioner will not claim salary for the intervening period i.e. from 20.12.2019 to the date of order instant, on the principles of no work no pay. He nevertheless prayed that the respondents be directed to consider such period notionally as served by the petitioner.

19. The respondents shall forthwith reinstate the petitioner preferably within a period of 30 days from today.

20. As a consequence of setting aside the dismissal order, the petitioner shall be treated to be in service and shall be given notional benefits for such period.



21. Needless to observe that the respondents shall be free to proceed against the petitioner in accordance with law.

22. Stay application stands disposed of, accordingly.

(DINESH MEHTA),J

381-Mak/-

