



RSA-385 of 1993 (O&M)

2024:PHHC:114906



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-385 of 1993 (O&M)
Reserved on: 13.08.2024
Pronounced on: 03.09.2024

State of Punjab and others

.....Appellants

Versus

Dalbir Singh through his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Rajesh Sehgal, Addl. A.G., Punjab
assisted by Dr. Sheeta Singh, DSP.

Mr. R.S. Bains, Sr. Advocate, with
Mr. Aman Raj Bawa, Advocate, and
Mr. Anmoldeep Singh, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. This Regular Second Appeal, preferred by the State of Punjab, is directed against the judgment and decree dated 24.09.1991, passed by the Court of learned Sub Judge 3rd Class, Jalandhar, whereby suit for declaration filed by the respondent-plaintiff was decreed as well as against the judgment and decree dated 29.08.1992, passed by the Court of learned Additional District Judge, Jalandhar, whereby appeal preferred by the appellants-defendants was dismissed.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration to the effect that he joined the Punjab Police Department as Constable on 07.11.1979 in P.A.P., Jalandhar Cantt.



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After completing his recruit's course, he was inducted as full-fledged Constable in the 75th Bn. P.A.P., Jalandhar Cantt. It was pleaded that he worked honestly and to the satisfaction of his superior officers and was awarded commendation certificates. However, Commandant, 75th Battalion, P.A.P, Jalandhar Cantt., vide order dated 01.01.1988 dismissed the plaintiff from service under Rules 16.1 of the Punjab Police Rules, 1934 read with Article 311(2)(b) of the Constitution of India. It was pleaded by the plaintiff that before passing the said order, neither any charge-sheet was issued nor any enquiry was conducted by the defendants. No opportunity of hearing was afforded to the plaintiff. The appeal preferred by the plaintiff against the dismissal order was also rejected by the Deputy Inspector General of Police, P.A.P. (Admn.), Jalandhar Cantt., vide office order dated 02.03.1981. The suit was contested by the defendants by filing a detailed reply.

3. After appreciating the evidence on record and hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 24.09.1991, decreed the suit of the plaintiff by holding that order passed by the competent authority dispensing with the requirement of holding a departmental inquiry was not appropriate. Aggrieved against the judgment and decree of the trial Court, defendants preferred an appeal, which was dismissed by the lower Appellate Court vide judgment and decree dated 29.08.1992. Hence, this Regular Second Appeal by the defendants.

4. Learned State counsel contended that the Courts below failed to appreciate that the respondent was associated with extremists



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and their unlawful activities in Punjab and holding of departmental inquiry against the respondent was not reasonably practicable, therefore, the punishing authority invoked the provisions of Article 311(2)(b) of the Constitution read with Rule 16.1 of the Punjab Police Rules, 1934. He contended that judgments and decrees of the Courts below being perverse are liable to be set aside. In support of his contentions, learned counsel placed reliance upon judgment of the Hon'ble Supreme Court in *Union Territory, Chandigarh v. Mohinder Singh, 1997(2) S.C.T. 39* and judgments of this Court in *Yunish Masih v. State of Punjab and others, 2011(3) S.C.T. 81; RSA-862 of 1997 – Harvinder Singh v. The State of Punjab and others decided on 21.03.2024* and *RSA-2491 of 1994 – State of Punjab v. Constable Jaswinder Singh decided on 30.05.2024*.

5. *Per contra*, learned Senior counsel for the respondent contended that judgments and decrees of the Courts below are perfectly legal and valid. He contended that order of the appellants dispensing with the inquiry is wholly laconic and is not germane to the provisions of Article 311(2)(b) of the Constitution of India as the satisfaction recorded in the order of dismissal was not supported by any independent material to justify the dispensing with the enquiry. He contended that order of dismissal was wholly arbitrary and was an attempt to deprive the respondent of his rights conferred by Article 311(2) to have a fair hearing in the matter of dismissal, which is an extreme act against an employee. He further contended that action of the authorities was in violation of provisions of Rule 16.38 of the



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Punjab Police Rules, 1934. He contended that judgments and decrees of the Courts below do not call for any interference by this Court and the appeal of the appellant is liable to be dismissed. Learned Senior counsel in support of his contentions relied upon the judgments passed by the Hon'ble Supreme Court in *Jaswant Singh v. State of Punjab and others*, (1991) AIR (SC) 385; *Chief Security Officer and others v. Singasan Rabi Das*, (1991) AIR (SC) 1043; *Union of India v. Ram Kishan*, (1971) AIR (SC) 1402; *Delhi Administration v. Chanan Shah* (1969) SLR 217; *Risal Singh v. State of Haryana and others*, (2014) 13 SCC 244; *Reena Rani v. State of Haryana and others*, (2012) 10 SCC 215; *Sahadeo Singh and others v. Union of India (UOI) and others*, (2003) 9 SCC 75 and *A.K. Kaul and another v. Union of India and another*, (1995) 3 SCT 15 and of this Court in *Daljit Singh v. State of Punjab and others*, (2015) SLR 183; *Ex. Constable Balwinder Singh v. State of Punjab*, 1996 (1) SCT 131; *Ex. Asstt. Sub Inspector Narender Singh v. State of Punjab*, 1995 (4) SCT 830; *Ex. Sub Inspector Mohinder Singh Cheema and others v. State of Punjab through Home Secretary Chandigarh and others*, (1990) 5 SLR 690; *Ashok Kumar v. State of Punjab and others*, (1990) 3 SLR 127.

6. I have heard learned counsel for the parties and perused the record.

7. Vide order dated 15.02.1993, execution of the judgment and decree of the lower appellate Court was stayed and thereafter matter was admitted on 12.12.1994.



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8. During the pendency of the appeal, it has come on record that whereabouts of Dalbir Singh-respondent were not known, therefore, for effecting service upon the respondent, publication was ordered by this Court vide order dated 08.04.1994. Thereafter, Civil Miscellaneous application No.5982-C of 2001 was moved by the legal representatives of the respondent, whose whereabouts were not known for the last nine years, for their impleadment, which was allowed on 13.08.2001.

9. During the pendency of the present appeal, the State of Punjab filed an application for permission to bring on record the additional evidence to support the satisfaction recorded by the Department, which was allowed by a Co-ordinate Bench of this Court vide order dated 06.11.2023. The order dated 06.11.2023 reads as under: -

“CM-9395-C-2023

1. *An application for permission to lead secondary evidence has been filed by the State of Punjab. The services of respondent were dispensed with in terms of Clause B of Article 311(2) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, 1934, vide order dated 01.01.1988. The aforesaid order is already exhibited as Ex.P-1. Now, the State of Punjab is praying for permission to produce the documents that are in the form of secret information, secret report and interdepartmental communication in between various officers, to support the order passed.*

2. *Both the Courts have held that the order passed by the competent authority dispensing with the requirement of holding a departmental inquiry was not appropriate. The*



documents sought to be produced in additional evidence are stated to be part of the official record.

3. *On the other hand, the learned Senior counsel representing the respondent submits that after a passage of nearly 35 years, this Court should not permit the production of additional evidence particularly when the documents were not only in the knowledge of the State but also in their possession.*

4. *This Court has considered the submission of the learned counsel representing the parties.*

5. *The basic order dated 01.01.1998, is already a part of record. The material to support the aforesaid order is in the form of documents, which are sought to be produced in additional evidence. In this case, the Court is required to form an opinion with regard to the correctness of the order passed by the disciplinary authority while dispensing with the requirement of holding departmental inquiry. The documents sought to be produced shall be helpful in adjudicating the case in a just manner.*

6. *Keeping in view the aforesaid facts, the application to lead additional evidence is allowed.*

7. *The appellant is permitted to produce the documents in additional evidence. These documents are required to be formally proved. The respondent shall also be required to be given an opportunity to lead evidence to rebut the evidence led by the State of Punjab.*

8. *Keeping in view the aforesaid facts, the report is sought from the trial Court. The trial Court will record the evidence of both the parties and forward the same to this Court within a period of six months, from today.*

9. *The parties through their learned counsel are directed to appear before the trial Court on 24.11.2023.*

10. *The office is directed to list the appeal after receipt of report from the trial Court.”*



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10. In terms of the above orders, Ravinder Singh, Assistant Commandant, 75th Battalion, PAP, Jalandhar Cantt., tendered into evidence his duly sworn affidavit in the shape of additional evidence i.e. Ex.DWA/1 along with certain other documents (Ex.D1 to Ex.D8) and the relevant documents (Ex.D2 to Ex.D7) are reproduced as under:-

“Ex- D-2

Case of Ex. Const. Dalbir Singh No.75/355 of PAP

1. Name and No.- Ex. Const. Dalbir Singh No.75/355
2. Parentage and Casts; S/o Sh. Kapoor Singh Jath Sikh.
3. Residential Address; Village Khadur Sahib, P.O. Khadoor Sahib, P.S. Tarn Taran, District Amritsar.
4. Date of Birth; 1-5-1957
5. Date of Enlistment; 7-11-7979
6. Date of Promotion; Nil
7. No. of Courses: Two Courses;
Passes and Name. i) Recruits Training Course From RTC/PAP Jalandhar Cantt.
ii) M.T. Training from PAP Jull. Cantt.
8. No. of Good Entries; 7 (Seven)
9. No. of Bad Entries 2 (Two)
and their nature. i) One day's LWP for absence from duty on 16.02.83.
ii) Punishment of Censure was awarded in Deptt., enquiry for quarrelling after taking liquor in the year 1982-83.

Other Damaging Material

1. IGP/Intelligence, Punjab vide his Memo. No.1021/BDSBTS dated 12.10.87 and D.O. letter No.1030/ BDSBTS dated 16.10.87 addressed to Shri R.K. Sharma, IPS, IGP/PAP & OPS, has intimated that Const. Dalbir singh No.75/355 has leanings towards the extremists. He used to praise the militants for their action is called as Babaji by other Consts.



2. This fact was verified on enquiry through R.I and DSP/ADJ. He is also reported to have had close links with HC. Ajit Singh of 27th, Bn, who was involved in attack on DG (P) Sh. J.F. Ribciro & was dismissed consequently.

3. The Deputy Inspector General of Police, Jullundur Range vide his office endst. No.30659/JR/S/SIS dated 30.11.87 has intimated that during operation Blue Star, Const. Dalbir Singh was present in his village and led a Jatha towards the Golden Temple, Amritsar as a protest against Blue Star Operation, but he came to know about the death of Sant Jarnail Singh Bhindranwale, he returned to his village. He used to visit Khadoor Sahib off and on. He was having links with extremists and anti-social elements.

4. From the above said reports/record, it is quite evident that Const. Dalbir Singh No.75/355 is indulging in anti-national and anti-social activation secretly and is a bad influence and others causing disaffection in the force and presents a threat to the life of senior officers. From these grave acts of misconduct on part of Const. Dalbir Singh No.75/355. I am of the considered view that he is not fit to be retained in the Police Force in public interest or for public good. So resort to the provisions of PPR.16.1 and Article 311 (2) (b) of the Constitution of India is taken and the departmental enquiry proceedings against him are dispensed with on the following grounds:-

(a) If the department proceedings under PPR 16.24 are held then it will consume a considerable time and nobody will come forward to depose against him for fear of life at the hands of terrorists and because of the prevailing tense law and order situation in the State.

(b) His continuance in service shall be big security risk and not in public interest or public good to retain him in



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service. Thus he has been found much wanting in the efficient performance/discharge of his duties.

(c) Important official documents of highly sensitive and secret nature are bound to be exposed during such an enquiry to bad elements, which will certainly misuse it for future violent and subversive action against innocent people and Law Informing Agencies. It will not be possible to avoid this situation during an enquiry.

(d) An enquiry under the peculiar nature of this case would result in an irreparable damage to the whole fabric of Police Intelligence and system of VIP Security in the Campus.

(e) It is also apprehended that due to tense law and order situation in the State there is every possibility that he may create indiscipline in the force by instigating his fellowmen.

Keeping in view the above circumstances, it is not reasonably practicable to order a regular departmental enquiry and so resort to the Provisions of PPR 16.1 and Article 311.(2) (b) of the Constitution of India is taken. No doubt, according to PPR 16.2 dismissal is only to be awarded for gravest act of misconduct proving incorrigibility and complete unfitness for the Police are quite grave warranting the maximum punishment.

After going through all the relevant record on the file and after dispensing with the departmental enquiry proceeding for reasons mentioned above, the action under PPR 16.1 & Articles 311 (2) (b) of the Constitution of India is taken and by virtue of powers conferred upon me by the said provisions of Law. I hereby order the dismissal of Const. Dalbir Singh No.75/355.

*Sd/-
Commandant, 75th Battalion,
PAP Jullundur Cantt.*

Ex- D-3**Top Secret/Immediate***From**The Inspector General of Police,
Intelligence, Punjab.**To**The Inspector General of Police,
P.A.P. and Operations, Punjab,
Jalandhar Cantt. (By name)**No.1021/BDSB/TS Dated Chandigarh, the 12-10-1987***Memo.**

It has been reported that Constable Dalbir singh No.75/355, Sardara Singh No.75/682, Satnam Singh No.75/779, Beant Singh No.75/694 and Balwinder Singh No.75/405 are getting training of M.T. in P.A.P lines Jalandhar. Const. Sardara Singh No.75/682 is reported to have been sent back general duty, but they all reside in one barrack. Out of them, Const. Dalbir Singh No.75/355 and Const. Balwinder Singh 75/405 are Amrit Dharis. It is further learnt that they are indisciplined and have leaning towards the extremists. While talking with each other they praise the militants for their actions. Const. Dalbir Singh No.75/355 is their leader and is called "Babaji".

2. This is for your information and necessary action. A report in this regard may please be sent to this office at the earliest.

*Sd/-
for Inspector General of Police,
Intelligence, Punjab.*

Ex- D-4**TOP SECRET**

*GURBACHAN JAGAT, IPS, DO NO.1030/BDSB.TS
DIG (INTELLIGENCE)*

*Office of the
Inspector General of Police,*

Intelligence, Punjab.

October 16, 1987

Dear Shri R.K. Sharma,

In continuation this office Top Secret/ Immediate Memo No.1021/BDSB/TS dated 13.10.1987 regarding Constable Dalbir Singh NO.75/355. Sardara Singh No.75/682, Satnam Singh No.75/779, Beant Singh No.75/694, Balwinder Singh No.75/405 being indisciplined and have leanings towards the extremists.

2. A copy of this reference was put up to DGP for his information, who has observed as under:-

If so we should get rid of them immediately.

3. You may, therefore, please take necessary action in the light of DGP's above orders.

*Yours Sincerely,
Sd/-
(Gurbachan Jagat)*

Ex -D-5

SECRET REPORT

Sir,

In compliance of your order, secret investigation has been conducted from which it revealed that Constable Dalbir Singh 75/355 Sardar Singh 75/682, Satnam Singh 75/779, Beant Singh 75/694, Balwinder Singh 75/405 all these had gone for the training of M.T. from 75th Battalion to 7th Battalion, for their course. But their residence was in Line 75th Battalion. All these are residing jointly and they have constituted a group who used to lord it over other employees. Previously they had beaten up Constable Swaran Singh 75/716 in evening and gave him threatening not to be closure of Senior Officers. Due to which a terror has been created by this group in PAP Lines. Generally, they all held secret meetings in the evening from which it came into knowledge they all used

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to discuss in favour of terrorist who died in encounters. One similar meeting was held by them on 10.10.1987 and they cursed the police that they are killing Sikhs without any reason. Their leader is Dalbir Singh 75/355 who is known by the name of Baba ji.

The said Dalbir Singh 75/355 had closed relations with Baba Ajit Singh Havaladar 27th Battalion who was involved in the attack against DGP Mr. Rebero and consequently he was dismissed from service.

Report is submitted please.

*Sd/- 20.10.1987
R.I.
75th Battalion P.A.P.
Jalandhar Cantt.*

DSP/ADJ

Sir,

I agree with the report of R.I. Constable Ajit of 27th Battalion has been dismissed, who was close to Dalbir Singh. Earlier Ajit Singh was called by the name of Baba ji and now all has started calling Dalbir Singh by the name of Baba Ji. As such, it is necessary to keep Dalbir Singh under surveillance.

*Tarlok Nath
20.10.87*

Comdt.

This is a new development. Continue surveillance. Put up his record for my perusal.

*Sd/- Rajan Gupta
22.10.1987*

Ex- D-6

SECRET

From

*Rajan Gupta, IPS
Supdt. Of Police/PAP Campus Security &
Commandant, 75th Battalion PAP
Jalandhar Cantt.*

To

*The Deputy Inspector General of Police,
Jalandhar Range, Jalandhar Cantt.*



No.790/St dated Jalandhar Cantt, the 27.10.1987

It has been brought to my notice that H.C. Iqbal Singh S/o Kishan Singh Jat r/o village Beehla Teja, P.S. Fatehgarh Churian, District. Gurdaspur and Constable Dalbir Singh, S/o Kapur Singh Jat r/o Khadoor Sahib, PS Tarn Taran, District Amritsar have extremists leanings and have been associating with dismissed Head Consts Ajit Singh ad Tarsem Singh (both involved in attack on DGP Punjab). They have also associations and links with Const. Balwant Singh No.75/646 of 75th Bn. PAP who has recently joined Khalistan Commando Force.

2. Iqbal Singh was earlier actively involved in Police Agitation of 1978 and had been dismissed and had Communist leanings at that time. After 'Blue Star Operation' he has become Amrit Dhari and is very cleverly involved in brain-washing of lower constabulary so that they have sympathies for the extremists.

3. Dalbir Singh is praising militants for their action and is a leader of like minded police officers who have sympathies for extremists. He is popularly called Baba Ji as he has taken Amrit.

4. It is suspected that these officers have been sheltering the extremists now and then. It is, therefore, requested that their further links with the extremists may kindly be got verified.

Sd/-

(Rajan Gupta) IPS
Supdt. Of Police/PAP Campus Sec.-
Cum-Commandant, 75th Bn. PAP
Jalandhar Cantt.

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Ex- D-7

Copy of secret memo No.63369/9 dated 20.11.1987 from the Sr. Superintendent of Police, Amritsar to the Deputy

Inspector General of Police, Jalandhar Range, Jalandhar Cantt.

Kindly refer to your office endst. No.29020/JR-S/SIS dated 4.11.87 regarding Constable Dalbir Singh s/o Kanpur Singh Jat r/o Khadoor Sahib P.S.. Verowal.

2. Enquiries made have revealed that Constable Dalbir Singh joined P.A.P about 10/11 years back. It is reported that Dalbir Singh was posted at Jalandhar. He had visited village Khadoor Sahib and told his parents that he has been transferred to Amritsar for Rail Escort.

3. Further enquiries made have revealed that during operation Blue Star he was present in his village. He lead a Jatha towards the Golden Temple, Amritsar as a protest against Blue Star Operation but when he come to know about the death of Bhindranwale he returned to his village. He visits village Khadoor Sahib off and on. It is evident that he has got links with the extremists and anti-social elements. SHO P.S. Verowal and I/C P.P. Khadoor Sahib have been directed to keep a strict watch on his activities. Anything of interest if comes to now your office will be informed accordingly.

xx xx xx xx xx"

11. Perusal of the above-referred record shows that there was sufficient material with the Department that respondent was involved in unlawful activities and had links with extremists in the State of Punjab, therefore, it was not reasonably practicable to hold enquiry against him nor any witness could be associated in the enquiry, therefore, on the basis of above documents, the order of his dismissal was rightly passed by dispensing with the departmental enquiry.

12. The Division Bench of this Court in ***Yunish Masih's*** case (supra) while considering the similar issue has held that the condition precedent for the application of Clause(b) of Article 311(2) is the satisfaction of the disciplinary authority that it is not reasonably practicable to hold an inquiry and it is a matter of assessment to be made by the said authority and it is best Judge of the situation. In the said judgment it has been held as under: -

“18. It was on the basis of the aforesaid statement made during interrogation of Jaspal Singh alias Kulwant Singh in case FIR No. 159/92, dated 28.12.1992, that the competent authority, namely, Senior Superintendent of Police, Amritsar, has formed an opinion that holding of departmental inquiry against the petitioner appellant would not be reasonably practicable and has accordingly invoked the provision of Article 311(2)(b). The requirement of the aforesaid provision have been stated in paragraphs 130, 133 and 135 of the 5- Judge Constitution Bench judgment of Honble the Supreme Court rendered in the case of Tulsiram Patel (supra). It has been held that the condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that it is not reasonably practicable to hold an inquiry contemplated by clause (2) of Article 311. The Constitution Bench further held that it was not possible to enumerate the cases in which it would not be reasonably practicable to hold an inquiry. The decision to conclude that it is not reasonably practicable to hold an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is available on the spot and knows what is happening. It is because the disciplinary authority is the best Judge of the situation which has resulted in insertion of clause (3)



under Article 311 making the decision of the disciplinary authority on this question final. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the Court so far as its power of judicial review is concerned. The Constitution Bench also observed that it is not necessary first to constitute the inquiry and only after the witnesses are attacked or Enquiry Officer is subjected to violence that the Government should form an opinion that it was not reasonably practicable to hold an inquiry. In para 132, the following pertinent observation has been made:

"132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the Government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the Government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the Government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b)

or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the Government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2)."

19. *The second condition necessary for valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry as contemplated by Article 311(2). In the absence of recording of reason in writing, the order dispensing with the inquiry and the order of penalty would both be void and un-constitutional. However, it has been clarified in para 135 that such reasons are not required to be necessarily communicated and it would suffice if the same are recorded in the file.*

20. *When we apply the aforesaid principles to the facts of the present case, it becomes patent that the order dated 17.6.1993 (P-28) would satisfy both these requirements. During the course of arguments we asked the learned Additional Advocate General as to how the statement made by Jaspal Singh alias Kulwant Singh would have any relevance to the investigation of case FIR No.159/92, dated 28.12.1992. A satisfactory answer has been given by Mr. Sehgal revealing that Jaspal Singh alias Kulwant Singh was absconding and was not available for interrogation in the aforesaid case registered against him. In order to satisfy the authorities about his absence, he had revealed the mysterious activities of the petitioner-appellant. A perusal of the Zimni No. 14, dated 13.6.1993, would make it patent that the appellant had close connection with various terrorist organizations as he used*

to pass on information to them with regard to movement of the police. The hard/nonhardcore terrorist like Jaspal Singh alias Kulwant Singh was the beneficiary and he also disclosed that there were other terrorist organisations who were beneficiary of the disclosure of information by the petitioner-appellant. It was, therefore, rightly concluded by the authorities that it was not reasonably practicable to hold an inquiry in accordance with Article 311(2) of the Constitution because of the links of the appellant-petitioner with the terrorist organisations.

21. It is also pertinent to notice that their Lordships of Hon'ble the Supreme Court in two judgments have noticed the situation which was obtaining in the State of Punjab during the period 1990-1991. In Mohinder Singh's case (supra) inquiry was dispensed with on the report submitted by the Superintendent of Police, Intelligence. In para 6 it has been held that there were sufficient grounds for dispensation of regular departmental inquiry and the terrorists were not likely to depose against the petitioner in that case particularly when the terrorism was at its peak in Punjab at that time i.e. 1991. It is further pertinent to mention that the judgment rendered in Mohinder Singh's case (supra) would also apply to the facts of the case in hand. There the Senior Superintendent of Police, Chandigarh, had dispensed with holding of inquiry by invoking Article 311(2)(b) by citing the reason that the witness would not come forward to depose against that officer in a regular departmental inquiry. In that case the order dispensing with the inquiry was based on a report submitted by the Superintendent of Police revealing gross misuse of power and extortion of money by illegally detaining and torturing innocent persons by that delinquent officer. He was regarded as a terror in the area while discharging his duty as Sub-Inspector of Police. The



view of Hon'ble the Supreme Court is discernible from para 6 of the judgment, which reads thus:

"6. Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the Court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the Court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit Singh who appeared to be visibly terrified of this Sub-Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation - and keeping in view that all this was happening in the year 1991, in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent."

22. Therefore, the issue in the present case in a way is similar to the one which has been decided by Honble the



Supreme Court in Mohinder Singhs case (supra). In the case in hand it was the Zimni recorded by SI Gurbachan Singh of Police Station B Division, Amritsar in case FIR No. 159/92, dated 28.12.1992, which has been made the basis for formation of an opinion as already observed in the preceding paras.

23. However, the facts of Kuldip Singh's case (supra) are akin to the facts of the present case. Kuldip Singh was a Head Constable of Police and he was dismissed from service like the petitioner-appellant without holding an inquiry because the Senior Superintendent of Police has invoked second proviso (b) appended to clause (2) of Article 311 for dispensing with the inquiry opining that it was not reasonably practicable to hold such an inquiry in his case. After exhausting departmental remedy he lost before this Court. The Appellate Authority had found in Kuldip Singh's case (supra) that he was mixed up with the terrorists and he was supplying secret information of the police department to them, which created hindrance in its smooth functioning. He was interrogated in a case (FIR No. 219/1990) where he admitted to have links with the terrorists like Major Singh Shahid and Sital Singh Jakhar. Despite the fact that he was acquitted in case FIR No.219/1990, the use of the aforesaid interrogation and his admission was not considered irrelevant for the purposes of concluding that inquiry was not reasonably practicable to be held. Their Lordships of Hon'ble the Supreme Court have gone to the extent that even if the confession has been made to the police or while in custody of the police, it would not be of much consequence as long as it is germane to the requirement of Article 311(2)(b) and inspires confidence. The view of Hon'ble the Supreme Court is evident from the perusal of para 11, which reads thus:

"11. In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (b) is held to have been validly invoked, the Government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the

facts said to have been found against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some others caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of mala fides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority."

24. In view of the aforesaid, we find that in the present case the condition that there are sufficient reasons, which are germane to the provisions of Article 311(2)(b), stands satisfied. Once it has been found, while investigating case FIR No. 159/92, dated 28.12.1992, that Jaspal Singh alias



Kulwant Singh had revealed that the petitioner-appellant was mixed up with the terrorists and was passing on secret information to them then no fault can be found with the order dated 17.6.1993 (P-28). The report of the Senior Superintendent of Police, Amritsar, dated 15.6.1993, based on the interrogation has also been placed on record along with the affidavit dated 8.2.2011, which reads as under:

" ASI Yunis Masih No. 2077/ASR has been found to be mixed up with terrorists. It is not practicable to hold regular departmental enquiry against him in public interest and as such it is dispensed with by virtue of power conferred upon me by Article 311(2)(b) of Constitution of India read with PPR 16(1). ASI Yunis Masih No. 2077/ASR is hereby dismissed from service w.e.f. 15.06.1993 F.N."

x x x x

26. It is, thus, evident that even second condition that the reason in writing should be cited in the order, stands satisfied. On further examination of the original record the aforesaid fact is fully substantiated. Therefore, the view taken by the learned Single Judge deserves to be approved, which has upheld the order dated 17.6.1993 (P-28) and the subsequent appellate order (P-29)."

13. Hon'ble Supreme Court in the case of **Mohinder Singh** (*supra*) has held as under: -

"6. Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the court or the

Tribunal should completely shut its eyes. Nor are we suggesting that in every case the court should blindly accept that recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit Singh who appeared to be visibly terrified of this Sub Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation - and keeping in view that all this was happening in the year 1991 in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent."

14. Dismissal of the respondent was based upon having his contacts with terrorists. This Court is of the opinion that at the relevant time, terrorism was at its peak in the State of Punjab, therefore, there were sufficient grounds for dispensation of regular departmental inquiry against the respondent as no witness would have come forward to depose against the respondent-plaintiff. The departmental inquiry would have taken a long time and keeping him in service till its completion, during those days could have been harmful/risky and not in public interest. Hence, it was not reasonably practicable to hold such an inquiry in this case.

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15. It is true that for holding a departmental inquiry, the provisions of Rule 16.38 of the Punjab Police Rules, 1934 might be mandatorily adhered to. However, same is not applicable to the cases where no departmental inquiry is to be held. In the present case, departmental inquiry was dispensed with as the same was not practicable, therefore, Rule 16.38 would not be applicable to the facts of the present case.

16. Rule 16.38 of the Punjab Police Rules, 1934, reads as under:-

"16.38. Criminal offences by police officers and strictures by Courts - Procedure regarding.-

(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Executive Magistrate.

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed."

17. The concurrence of the District Magistrate for holding the departmental enquiry is needed where commission of criminal offence in connection with the officials relation with the public of the appellant



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is *prima facie* established, therefore, in the circumstances of the present case, there was no requirement of concurrence of the Deputy Magistrate.

18. This Court in ***Constable Pale Ram vs. State of Haryana and others passed in CWP No. 24413 of 2012, decided on 14.12.2012*** held that “the said Rule i.e. Rule 16.38, comes into operation in case the punishing authority i.e. the Superintendent of Police instead of proceeding against the delinquent employee for judicial prosecution decides not to proceed for the same purpose and instead decides to take action departmentally. It is in this situation that the concurrence of the District Magistrate has to be obtained.” Reliance is also placed on the judgments of this Court in ***RSA-963 of 2000 – Surinder Pal v. Haryana State and another decided on 15.05.2024; RSA-2491 of 1994 – The State of Punjab v. Constable Jaswinder Singh decided on 30.05.2024*** and ***RSA-2797 of 1999 – Ved Parkash and others v. State of Haryana decided on 31.05.2024***.

19. This Court finds that judgments and decrees of the learned Courts below are perverse and contrary to law as the Courts below have failed to appreciate that respondent-plaintiff had links with the terrorists, therefore, it was not reasonably practicable to hold departmental inquiry and the order of dismissal of the respondent was rightly passed by dispensing with the departmental inquiry.

20. The judgments relied upon by the learned Senior Counsel for the respondents as mentioned above are clearly distinguishable and not applicable to the facts of the present case. In the case of ***Jaswant***

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Singh (supra), the appellant was placed under suspension on April 19, 1978 on the ground he absented himself from duty to attend the Annual Nirankari Samagam held on April 13, 1978. After enquiry, he was exonerated and taken back in service. Thereafter, two departmental enquiries were initiated against him. As per outcome of the first enquiry, he was reverted to the lower post of Constable; the second enquiry resulted in his dismissal from service. The enquiry orders pertain to dated 27.4.1979 and 12.10.1979 respectively. These orders were challenged by two separate appeals which were dismissed vide orders dated March 18 and 19, 1980. Aggrieved by, two separate revision applications were filed and allowed on October 13, 1980 and both the cases were remanded to re-consider the inquiry report and pass fresh orders. The enquiry officer was directed to reinstate the appellant and then issue fresh show cause notices. The appellant rejoined duties as Head Constable on March 5, 1981. He was again placed under suspension forthwith and show-cause notice was issued to him why he should not be dismissed from service. Before the service of these show cause notices an incident occurred and allegation against the appellant was that he tried to plunge his chest with a knife to commit suicide. The appellant was charge-sheeted under Section 309 Cr.P.C. and was sent to the hospital for treatment. While he was in hospital the two show-cause notices were served on him on April 6, 1981 even though he was allowed 10 days time to show cause, the respondent who was biased against him passed the impugned order of dismissal on April 7, 1981. The Hon'ble Supreme Court held that the earlier departmental enquiries

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were duly conducted against the appellant and there is no allegation that the department had found any difficulty in examining witnesses in the said enquiries, then what impelled respondent to terminate the services of the appellant forthwith without holding an inquiry as required by Article 311(2). Learned Counsel for the respondents submitted that the order date 7.4.1981 was passed as the petitioner's activities were objectionable. He was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty, spreading discontentment and hatred, etc. and his retention in service was adjudged harmful. The Hon'ble Supreme Court held that the decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. Whereas the facts and circumstances of the present case are different from the judgment relied upon by learned Senior Counsel for the respondent. The respondent was dismissed upon having its contacts with extremists and his conduct, and evidence in this regard, has been adduced by the State by way of additional evidence Ex D-2 to D-8 which in no doubt strengthen the case of the State-appellant. At the relevant time, terrorism was at its peak in the Punjab State, therefore, impugned order rendered by the concerned authority for dispensation of regular enquiry was just and proper as no witness would have come forward to depose

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against the respondent-plaintiff. The subjective satisfaction recorded in the impugned order stands verified by way of the additional evidence brought on record. Equally distinguishable are the other judgments rendered by the Hon'ble Supreme Court and this Court as relied upon.

21. No other point has been urged.

22. In view of the above, appeal is allowed. Judgments and decrees of the Courts below are set aside. Decree-sheet be prepared accordingly.

23. Pending application(s), if any, stand disposed of accordingly.

03.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No