

Court No. - 5

Case :- WRIT - A No. - 13044 of 2024

Petitioner :- Amit Kumar @ Amit Kumar Malik

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Abhinav Gaur, Sr. Advocate, Vibhu Rai

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir, J.

Order on Writ Petition

By the order impugned dated 07.08.2024, the Deputy Commissioner of Police, Headquarters, Gautam Buddh Nagar has *prima facie* exceeded his jurisdiction under Rule 8(2)(b) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 in ordering dismissal of the petitioner, a Head Constable in the Police, from service.

We are of this opinion *prima facie* that the jurisdiction has been exceeded because the reasons to be recorded by the Authority, exercising the power in writing, why it would not be reasonably practicable to hold an inquiry, have not been recorded, but remarked that reasons would be recorded in future. Before the extraordinary powers under Rule 8(2)(b) corresponding to clause (b) of the second proviso to Article 311 of the Constitution are exercised, the conditions have to be strictly complied with.

This Court does not encourage exercise of such drastic powers striking a departure from the rule for holding an inquiry against Government servants except for the valid and compelling reasons that are put in writing in the order itself, by the Disciplinary Authority which exercises the power.

Mr. Anoop Trivedi, learned Senior Advocate assisted by Mr.

Vibhu Rai, learned Counsel for the petitioner has placed reliance upon the authority of this Court in **Writ-A No. 16247 of 2019, Kushal Pal Singh vs. State of U.P. and another** and **Writ Petition (S/S/), No. 5359 of 2006, Alok Sharma vs. State of U.P. and others.**

Reliance has also been placed upon the law laid down by the Supreme Court in regard to exercise of cognate power under Article 311 of the Constitution in **Union of India and another vs. Tulsiram Patel, AIR 1985 SC 1416** and **Jaswant Singh vs. State of Punjab and others (1991) 1 SCC 362.** Likewise, is the decision of the Supreme Court in **Reena Rani vs. State of Haryana (2012) 10 SCC 215.**

This Court has consistently discouraged as have their Lordships of the Supreme Court, exercise of this drastic power under Rule 8(2)(b) of the Rules of 1991 recklessly, by the superior officers of the police.

The Court is also informed by the learned Standing Counsel that some circular has been issued directing the superior officers of the Police not to invoke their discretionary power of Rule 8(2)(b). Yet, in this case the Deputy Commissioner of Police, Headquarters, Gautam Buddh Nagar has resorted to exercise that power.

Admit.

Issue notice.

Notice on behalf of all the respondents is accepted by Mr. Sharad Chandra Upadhyay, learned Standing Counsel. He is granted three weeks' time to file a counter affidavit.

Issue notice to Ravi Shankar Nim, Deputy Commissioner of Police, Gautam Buddh Nagar will show cause why appropriate action in the matter may not be directed against him for passing

an order contrary to the consistent authority of law, laid down by the Supreme Court and this Court.

The Deputy Commissioner of Police, Headquarters, Gautam Buddh Nagar will file his own affidavit sworn at the station where he is posted on or before 26.09.2024, answering the writ petition.

List for **orders** on **26.09.2024** at **02:00 p.m.**

Order on Civil Misc. Stay Application No. 1 of 2024

Issue notice.

Until further orders of this Court, operation of the impugned order dated 07.08.2024 passed by the Deputy Commissioner of Police, Headquarters, Gautam Buddh Nagar shall remain **suspended** and the petitioner shall be permitted to discharge his duties and paid salary regularly.

Let this order be communicated to Ravi Shankar Nim, Deputy Commissioner of Police, Headquarters, Gautam Buddh Nagar through the Chief Judicial Magistrate, Gautam Buddh Nagar by the Registrar (Compliance) **within 24 hours**.

Order Date :- 4.9.2024

Deepak