

(2012) 07 P&H CK 0293

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1460 of 1994 (O and M)

The State of Punjab and others

APPELLANT

Vs

Dalbir Singh

RESPONDENT

Date of Decision: July 3, 2012

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: (2012) 168 PLR 424 : (2013) 1 SCT 140

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Satish Bhanot,A.A.G., Punjab, for the Appellant; G.S. Bal, for the Respondent

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.

Dalbir Singh, who was serving as a Head Constable with the Punjab Police filed a suit for declaration impugning the order dated 27.6.1986 passed by the Senior Superintendent of Police, Amritsar dismissing him from service in terms of invoking the power under Article 311 sub clause (2) of the Constitution of India thereby dispensing with the regular departmental inquiry as contemplated under the police rules. Plaintiff further impugned the orders dated 30.9.1986 and 13.6.1987, whereby his appeal as also revision has been dismissed by the Additional Deputy Inspector General of Police, Jallandhar Range, Jallandhar and Inspector General of Police, Punjab respectively. The Trial Court vide judgement and decree dated 3.6.1992 decreed the suit filed by the plaintiff and held the orders dated 27.6.1986, 30.9.1986 and 13.5.1987 to be illegal and set aside the same thereby holding the plaintiff to be entitled to all the consequential benefits. However, liberty was granted to the competent authority to initiate regular departmental proceedings against the plaintiff in accordance with the provisions of law. A civil appeal preferred by the State of Punjab was dismissed by the Additional District Judge, Amritsar vide judgement dated 19.8.1993 thereby affirming the judgement and decree passed by

the Trial Court. Resultantly, the State of Punjab is in second appeal before this Court.

2. I have heard Mr. Satish Bhanot learned Addl. A.G., Punjab appearing on behalf of the appellants and Mr. G.S. Bal, Advocate appearing on behalf of respondent at length.

3. Learned counsel appearing for the State-appellants vehemently contended that the scope of judicial review by the courts in such matters would be extremely limited and as such the courts below had erred in terms of sitting over the opinion of the punishing authority as a court of appeal. Learned counsel would contend that the decision to invoke the provisions of Article 311 sub clause (2) of the Constitution of India and thereby dispensing with the inquiry was to the satisfaction of the punishing authority and the reasons recorded in the order of dismissal dated 27.6.1986 passed by the Senior Superintendent of Police, Amritsar would clearly demonstrate that there had been due application of mind and that there were sufficient and cogent reasons for having invoked the power under Article 311 sub clause (2) of the Constitution of India. On the other hand, learned counsel appearing for the respondent would submit that there was no material that had been placed before the courts below that could justify the decision of the punishing authority in terms of holding that it had not been reasonably practicable to hold an inquiry. Learned counsel appearing for the respondent would submit that the impugned judgements passed by the courts below are well reasoned and would not call for any interference in second appeal before this Court.

4. The order imposing penalty of dismissal dated 27.6.1988 (Ex.P-1) passed by the Senior Superintendent of Police, Amritsar recited certain reasons for having dispensed with the regular departmental inquiry and for having invoked the provisions of Article 311 sub clause (2) of the Constitution of India. As noticed in the judgement of the Trial Court in the order dated 27.6.1988 it had been stated that two gunmen including the plaintiff had been provided to Sant Baba Jaswant Singh. It was further recorded in the order that both the gunmen absented themselves from duty on 26.6.1986 at 8 p.m. and in their absence Sant Baba Jaswant Singh was abducted and later on found murdered. The Senior Superintendent of Police, Amritsar took a view that it was not reasonably practicable to hold a regular departmental inquiry as envisaged under Rule 16.24 of the Punjab Police Rules as no witness was likely to depose against him as also for the fact that the plaintiff had links with extremists. Be that as it may, no evidence/material had been adduced on record before the Trial Court that could justify the formulation of such conclusion. No evidence had been led to demonstrate that witnesses had refused to depose against the plaintiff or that the witnesses were actually summoned but did not appear before the authority concerned. The absence of the plaintiff as alleged must have been recorded in the Daily Roznamcha of the police station. The concerned S.H.O. of the police station or any other concerned police official had not deposed as regards the links of the plaintiff-respondent with the extremists. It is not that the

plaintiff-respondent was holding a very high position in the police force. He was holding the post of a Head Constable and no cogent material had been adduced to justify the reasoning in the impugned order of dismissal dated 27.6.1988 whereby it could be held that the plaintiff respondent enjoyed such a patronage on account of which an inquiry was impracticable.

5. The Hon'ble Apex Court in case of Sudesh Kumar v. State of Haryana & others, 2005 (11) SCC 525 had held that an inquiry under Article 311 sub clause (2) of the Constitution of India is a rule and dispensing with the inquiry is an exception. It was also held that the authority dispensing with the inquiry under Article 311 sub clause (2) (b) of the Constitution of India must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. It is by now well settled in a catena of judgements that the subjective satisfaction of the competent authority for dispensing with a regular departmental inquiry must be based on cogent material and a regular inquiry cannot be dispensed with solely on the ipse dixit of the concerned authority. Subjective satisfaction for dispensing with the inquiry not supported by any material cannot be held to be justified. An order of dismissal, where the same is found based on material available before the punishing authority in the form of a preliminary inquiry, information etc. which could be made the basis for forming an opinion that it was reasonably impracticable to hold a regular departmental inquiry would certainly not call for any interference but in a situation where no such material was available as is the case in the present situation, the exercise of power under clause (b) of the second proviso to Article 311 sub clause (2) would have to be held to be arbitrary and illegal.

6. Apart from the concurrent finding recorded by the courts below, wherein it has been held that no material had been placed on record to justify the opinion formed by the punishing authority to dispense with the regular departmental inquiry, it may be noticed that even in second appeal on a pointed query having been raised by this Court to the learned counsel appearing for the State no material whatsoever had been made available to justify the passing of the order dated 27.6.1986 passed by the Senior Superintendent of Police, Amritsar. For the reasons recorded above, I find no basis to interfere with the impugned judgements and decrees passed by the courts below. No question of law much less a substantial question of law arises for consideration in the present second appeal. The appeal, accordingly, is dismissed.

Appeal dismissed.