Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2839 OF 2011

Risal Singh Appellant

VERSUS

State of Haryana & Ors. Respondents

J U D G M E N T

Dipak Misra, J.

In this appeal, by special leave, the assail is to the defensibility of the judgment and order dated 21.11.2008 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 19816/2008 whereby the Division Bench has concurred with the order of dismissal of the appellant passed by the Government after dispensing with the inquiry as provided under Article 311(2)(b) of the Constitution.

2. The broad essential facts which need to be adumbrated for the decision of the present appeal are that the appellant, an Assistant Sub-Inspector (Ad hoc Sub-Inspector) serving in the Department of Police in the State of Haryana, as alleged, was involved in a corruption sting operation in a television channel. Because of the said alleged sting operation, the Superintendent of Police, Mewat at Nuh, vide order dated 19.06.2008, after referring to the news item in the television channel, proceeded to pass the following order:

> "....
>
> 2. The above said act on the part of above official shows his criminal activities. He being a member of a disciplined force is responsible for protecting the life and property of the citizen of this country, but instead of discharging his duty honestly and sincerely he himself has indulged in criminal activities. As such he has not only tarnished the image of the Haryana Police but also has rudely shaken faith of the citizens of Haryana in the entire Police force, who is supposed to be their protectors. He has acted in a most reprehensible manner. Which is unexpected from a member of disciplined force and undoubtedly extremely prejudicial to the person safety and security of citizen.

> 3. The involvement of said police official in such a shameful criminal activity has eroded the faith of common people and his continuance in the force is likely to cause further irreparable loss to the functioning and credibility of Haryana Police. The defaulter has acted in a manner highly unbecoming of police official. After such act of serious misconduct. If he is allowed to continue in the Police force, it would be detrimental to public interest.
>
> 4. Keeping in view the overall circumstances of above operation, I K.K. Rao, IPS, Superintendent of Police, Mewat at Nuh, in exercise of the powers conferred under Article 311(2)(b) of Constitution of India I hereby order the dismissal of SI Rishal Singh No. 133/GGN with immediate effect. A copy of this order be delivered to him free of cost."

3. Being aggrieved by the aforesaid order, the appellant preferred a civil writ petition and the High Court without adverting to the essential contention that no reason had been ascribed for dispensing with the inquiry under Article 311(2)(b) opined that prompt action was required to be taken to avoid spreading of trouble and, therefore, the order passed by the authority was justified.

4. Ms. S. Janani, learned counsel for the appellant has submitted that the power with the employer rests

to dispense with the inquiry invoking the constitutional provision, yet appropriate reasons have to be ascribed and in absence of ascription of reasons, the order is vitiated in law and the eventual consequence would be quashment of the order of dismissal.

5. Mr. Manjit Singh, learned counsel for the State submitted that regard being had to the nature of allegations, the Superintendent of Police, who is the competent authority, thought it appropriate to dispense with the inquiry and, hence, the order of dismissal cannot be flawed.

6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in ***Union of India and Anr.*** **v.** ***Tulsiram Patel***[1] is apposite. In the said case the

1 (1985) 3 SCC 398

Constitution Bench, while dealing with the exercise of power under Article 311(2)(b), has ruled thus:

> "**130.** The condition precedent for the application of clause (*b*) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the *Oxford English Dictionary* "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". *Webster's Third New International Dictionary* defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". *Webster's Third New International Dictionary* defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (*b*). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

7. In ***Jaswant Sing* v. *State of Punjab and Others***[2] the Court, while dealing with the exercise of

2 (1991) 1 SCC 362

power as conferred by way of exception under Article 311(2)(b) of the Constitution, opined as follows:

> "Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case: (SCC p.504, para 130)
>
> > "A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the government servant is weak and must fail."
>
> 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."

8. After so stating, the two-Judge Bench quashed the order of dismissal and directed the appellant to be reinstated in service forthwith with the monetary benefits. Be it noted, it was also observed therein that

it would be open to the employer, if so advised, notwithstanding the lapse of time, to proceed with the disciplinary proceedings.

9. Recently, in ***Reena Rani* v. *State of Haryana***[3], after referring to the various authorities in the field, the Court ruled that when reasons are not ascribed, the order is vitiated and accordingly set aside the order of dismissal which had been concurred with by the Single Judge and directed for reinstatement in service with all consequential benefits. It has also been observed therein that the order passed by this Court would not preclude the competent authority from taking action against the Appellant in accordance with law.

10. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the

3 (2012) 10 SCC 215

High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction.

11. Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per rules. However, we may hasten to clarify that our observations herein

should not be construed as a mandate to the authorities to initiate the proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it. There shall be no order as to costs.

.....J.
(DIPAK MISRA)

.....J.
(N.V. RAMANA)

NEW DELHI
MAY 13, 2014