IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE HON'BLE SMT. JUSTICE NANDITA DUBEY

ON THE 28th OF JULY, 2022

WRIT PETITION No.22257/2021

Between:-

1. **SURESH SHARMA S/O LATE SHRI HARI BABU SHARMA, AGED ABOUT 47 YEARS, OCCUPATION: HEAD CONSTABLE (OFFICIATING) (TERMINATED) POSTED AT RELEVANT TIME AT POLICE STATION BARI, DISTT. RAISEN (MADHYA PRADESH)**

2. **KUDDUSH ANSARI S/O KYAMUDDIL ANSARI, AGED ABOUT 27 YEARS, OCCUPATION: CONSTABLE (TERMINATED) POSTED AT RELEVANT TIME AS P.S BARI (MADHYA PRADESH)**

....PETITIONERS

(By Shri D.K. Tripathi, Advocate)

AND

1. **STATE OF M.P. THROUGH SECRETARY HOME DEPARTMENT MANTRALAYA VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **DIRECTOR GENERAL OF POLICE, POLICE HEADQUARTERS, JAHAGIRABAD, BHOPAL (MADHYA PRADESH)**

3. **DEPUTY INSPECTOR GENERAL OF POLICE, HOSHANGABAD RANGE, DISTT. HOSHANGBAD (MADHYA PRADESH)**

4. SUPERINTENDENT **OF POLICE, RAISEN, DISTT. RAISEN (MADHYA PRADESH)**

.....RESPONDENTS

(By Shri Subodh Kathar, Govt. Advocate)

WRIT PETITION No.22662/2021

Between

KESHAV SHARMA S/O LATE SHRI TULSI RAM SHARMA, AGED ABOUT 51 YEARS, OCCUPATION: SUB INSPECTOR (TERMINATED) POSTED AT RELEVANT TIME AS IN CHARGE S.H.O. P.S. BARI DISTT. RAISEN (MADHYA PRADESH)

....PETITIONER

(By Shri D.K. Tripathi, Advocate)

AND

1. **THE STATE OF MADHYA PRADESH THR. SECRETARY HOME DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTER JAHANGIRABAD BHOPAL (MADHYA PRADESH)**

3. **DEPUTY INSPECTOR GENERAL OF POLICE, HOSANGABAD RANGE, DISTT HOSANGABAD (MADHYA PRADESH)**

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4. SUPERINTENDENT OF POLICE, RAISEN, DISTT RAISEN (MADHYA PRADESH)

.....RESPONDENTS

(By Shri Subodh Kathar, Govt. Advocate)

This petition coming on for hearing this day, the court passed the following:

O R D E R

Regard being had to the similitude of the question involved, on the joint request of the parties, the matters are analogously heard and decided by this common order. Facts are taken from W.P. No.22257/2021.

2. This petition under Article 226 of the Constitution of India calls in question the validity of order of dismissal dated 30.09.2021.

3. A report dated 14.09.20201 was forwarded from the desk of Superintendent of Police, Raisen to the office of DIG, Hoshangabad Range, stating that on 08.09.20201, the present petitioners and one Sub-Inspector Keshav Sharma in intoxicated condition without any rhyme and reason misbehaved one Mr. Surendra Tiwari and kept him in the police station, though no

cognizable offence was registered against Mr. Surendra Tiwari nor was he being required in any connection. The report further states that the said incident tarnished Mr. Surendra Tiwari's image which in turn has malign the name of the force. Alongwith the report, a preliminary enquiry conducted by the Additional Superintendent of Police, Raisen was also sent, which reveal that despite no offence being registered against Mr. Surendra Tiwari, nor being he wanted for anything, petitioners and his colleagues forcibly brought him to the police station in handcuffs while abusing and beating him. The report further mentioned that Mr. Surendra Tiwari and his family members were threatened for a compromise. As the act of petitioners and his colleague was derogatory to the dignity of the department and violative of the provisions contained in clause 64 of the M.P. Police Regulations Act, a show cause notice was issued to the petitioners, who submitted their explanation/reply that while on duty for night petrol on 7-8.09.2021, they found Mr. Surendra Tiwari roaming on the road at 12 P.M. in the night. The petitioners when stopped him and asked as to why he is on road at mid night, he misbehaved and used abusive language with the petitioners stating that he is the ex-president of BJP in district Raisen and further threatened to get them removed from the service. According to the petitioners, since Mr. Surendra Tiwari misbehaved with the policemen in duty, he was taken to the police station, where he called higher ranking

police officers and when SDOP came to the police station, he went back to his home.

4. Reply submitted by petitioners was found not satisfactory, the respondent authority considering that the action of petitioners was in utter disregard and standard set up by the Human Rights Commission and violative of the Police Regulations and as the above incident had malign and lowered the dignity and name of the force and also created a law and order situation, reached to a conclusion that the continuation of the petitioners in the service is not in the interest of police force and dismissed them from service taking recourse to Article 311(2)(b) of the Constitution of India.

5. The aforesaid order is assailed on the ground that major penalty of dismissal has been affected upon the petitioners without conducting any regular departmental enquiry. It is urged that the complaint was not filed by the alleged victim, i.e., Mr. Surendra Tiwari, but by a third person, i.e., Pankaj Shrivastava, who is the BJP Mandal Adhyaksh after two days of the incident at the instance of local politicians, who pressurized the higher police authorities to put the petitioners under suspension and then only on the basis of preliminary enquiry in which petitioners were never afforded any opportunity of hearing, removed the petitioners from service. It is argued that the reasons assigned for dispensing with

the regular enquiry is also not as per the provisions of Article 311 (2)(b) of the Constitution of India. Learned counsel placed reliance on **(2006) 13 SCC 581 Tarsem Singh Vs. State of Punjab** in support of his contentions.

6. Per contra, Shri Subodh Kathar, Govt. Advocate for the respondent/State has supported the order of dismissal and stated that provisions of Article 311(2) of the Constitution of India has been rightly applied while removing the petitioners from service. It is contended that petitioners in intoxicated condition misbehaved and abused Mr. Surendra Tiwari and brought him to the police station in handcuffs in violations of Police Regulations. It is argued that in preliminary enquiry the petitioners were found guilty on the basis of statement of witnesses and photographs. After going through the preliminary enquiry report, the authority reached to a subjective satisfaction to do away with the regular departmental enquiry, no interference is therefore, warranted.

7. Considered the rival submissions of the parties and perused the record.

8. Article 311 of the Constitution of India provides for dismissal, removal or reduction of rank of persons employed in the civil capacities under the Union or the State:-

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply:—

> *(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
>
> *(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
>
> *(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.*

> *(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.*

9. Clause (i) states that the persons employed in the civil services or post shall not be dismissed, removed or reduced in rank by an authority subordinate to that by which he/she was appointed; whereas clause (ii) provides that such a person could be dismissed or removed or reduced in rank only after an enquiry in which he has been informed of the charges against him and after being given a reasonable opportunity of being heard in respect of those charges. The second proviso incorporates exception when the need for holding an enquiry under clause (ii) can be dispensed with.

10. Clause (b) of the second proviso to Article 311 (2) can be invoked to impose a punishment of dismissal, removal or reduction in rank on satisfaction to be recorded in writing that it is not reasonably practicable to conduct an enquiry before imposing the punishment. The obligation of the competent authority to record reason when passing an order under Clause (b) of second proviso to Article 311, is mandatory. Thus, the authority to invoke the power under clause (b) to second proviso of Article 311 to

dispense with departmental enquiry must record a specific finding/reason as to why such an enquiry cannot be conducted.

11. In **Union of India Vs. Tulsiram Patel (1985) 3 SCC 398**, the Supreme Court has held 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. It is not possible*

to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. 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 finality given to the decision of the disciplinary authority by Article 311(3) not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India and others, [1984] 3 S.C.R. 302, is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being

the main accuser, the chief witness and also the judge of the matter.

12. The Supreme Court in the case of **Tarsem Singh** (supra) relying on **Jaswant Singh Vs. State of Punjab and others (1991) 1 SCC 362** and has observed thus :-

12. Even the Inspector General of Police in passing his order dated 26.11.1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate authority, also proceeded on the basis that the appellant was guilty of commission offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry. This aspect of the matter has been considered by this Court in Jaswant Singh Vs. State of Punjab (1991) 1 SCC 362, wherein relying upon the judgment of the Constitution Bench of this Court, inter alia, in ***Union of India Vs. Tulsiram Patel, (1985) 3 SCC 398,*** *it was held :-*

"Although Clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or

> *motivated by extraneous considerations or merely a ruse to dispense with the enquiry."*

13. Similar view is held in **(2015) 8 SCC 86 Ved Mittal Gill Vs. Union Territory Administration, Chandigarh and (2020) 3 SCC 153 Hariniwas Gupta Vs. State of Bihar and another.**

14. It is settled preposition of law that dismissal without conducting a departmental enquiry on the ground of being not reasonably practicable is open for judicial review [see **(1993) 4 SCC 269 Union of India Vs. R. Reddappa, (1991) 1 SCC 362 Jaswant Singh Vs. State of Punjab and others, (2003) 9 SCC 75 Sahadeo Singh Vs. Union of India**].

15. In the present case, a written complaint dated 08.09.2021 was filed by one Pankaj Shrivastava, BJP Mandal Adhyaksh, Bari stating that the petitioners' in an intoxicated condition misbehaved with Mr. Surendra Tiwari and without any reason took him to the police station, due to their action, the image of Mr. Surendra Tiwari has been tarnished, therefore, petitioners be immediately suspended. There is no allegation in the complaint that Mr. Surendra Tiwari was handcuffed or his mobile or specs were broken.

16. Complaint filed by Mr. Pankaj Shrivastava is reproduced as under :-.

प्रति,

श्रीमान पुलिस अधीक्षक महोदय
जिला रायसेन (म.प्र.)

विषयः– अभद्र व्यवहार करने बावत।

महोदय,

उपरोक्त विषयांतर्गत लेख है कि मैं प्रार्थी बाडी का निवासी हूं।

यह कि बाडी नगर के प्रतिष्ठ व्यक्ति भाजपा पूर्व जिला अध्यक्ष सम्मानीय श्री सुरेन्द्र तिवारी के साथ रात्रि में नशें की हालत में थाना प्रभारी केशव शर्मा प्रधान आरक्षक सुरेश शर्मा आरक्षक कुदुश द्वारा अभद्र व्यवहार किया गये वेवजह थाना में ले जाकर बैठाया।

यह कि तीनों नशे की हालत में इनके द्वारा किये अभद्र व्यवहार से सम्मानीय श्री सुरेन्द्र तिवारी जी प्रतिष्ठा धूमिल हुई है।

<u>यह कि भाजपा मंडल के समस्त कार्य कर्ताओं में भारी रोष उपरोक्त तीनों को तत्काल निलंबित किया जाए</u>।

श्री मान के समक्ष कार्यवाही के लिए आवेदन पत्र प्रस्तुत है।

भवदीय
पंकज श्रीवास्तव
भाजपा मंडल अध्यक्ष बाडी

17. Pursuant to this complaint, immediate action was taken and petitioner No.1 was suspended on the same day, i.e., 08.09.2021 and petitioner No.2 on the next day, i.e., 09.09.2021.

On the same day, Narendra Singh Rathore, SDOP Bari was directed to conduct the preliminary enquiry but within hours that order was modified and Amrit Meera, Addl. Superintendent of Police, Raisen was appointed as Preliminary Enquiry Officer, who within four days submitted his report on 12.09.2021 and thereafter within seven days, the petitioners were dismissed from service.

18. A perusal of impugned order reveals that the enquiry was dispensed with for two reasons :- (i) the petitioners have given threats to the complainant to take back the complaint, hence there is a possibility that in future they will try to influence the enquiry, (ii) the main witnesses of the police enquiry are police personnels posted at the police station and there is a possibility that they could be influenced, and will not come forward to record their statements.

19. In my considered opinion, these reasons are based on extraneous considerations and political pressure and totally not sufficient for dispensing with regular departmental enquiry. Indisputedly, the preliminary enquiry was duly conducted and there was no allegation that the department found any difficulty in examining the witnesses in the said enquiry. If a preliminary enquiry could be conducted, I failed to see any reason, why a formal departmental enquiry could not have been initiated against the petitioners. Thus, I am of the opinion that the enquiry has

been dispensed with by invoking Article 311(2)(b) of the Constitution of India without any valid reason.

20. In **Suresh Kumar Vs. State of Haryana and others (2005) 11 SCC 525**, the Supreme Court has observed that a reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution of India would include an opportunity to the delinquent to defend himself and establish his innocence by cross-examining the witness produced against him and by examining the defence witness in his favour, if any. This can do only if enquiry is held where he has been informed of the charges levelled against him.

21. Dismissal from service is a major penalty. In the present case, before passing the order of dismissal for the alleged act of misconduct by the petitioner, the respondent should have issued a show cause notice to the petitioners, calling upon them to show cause as to why the order of dismissal should not be passed against them. Further more, the termination order is vitiated since it is disproportionate to the gravity of misconduct alleged against them. I am of the view that since the department has not followed the principle of natural justice and has acted arbitrarily and capriciously while inflicting the punishment of dismissal from service upon the petitioners, the same is vitiated in law and liable to be set aside.

22. In the result, the petitions are allowed, the impugned order is set aside. The petitioners are reinstated in service.

23. It is made clear that this order shall not preclude the competent authority from taking action against the petitioners in accordance with law. Payment of back wages shall abide by the result of such enquiry.

24. With the aforesaid, the petitioners are allowed.

(Nandita Dubey)
Judge

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