

## **HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

LPASW No. 103/2011  
CMA No. 124/2011

**Date of Order: 15.10.2012**

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<b>State &amp; ors.</b>	<b>Vs.</b>	<b>Showkat Ali</b>
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### **CORAM:**

**Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge.  
Hon'ble Mr. Justice J.P.Singh, Judge.**

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### **Appearing Counsel:**

For Appellant(s) : Mr. Gagan Basotra, Sr. AAG.  
For Respondent(s) : Mr. V. Bhushan Gupta, Advocate.

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| i)  | Whether approved for reporting<br>in Press/Media | : Yes/No |
| ii) | Whether to be reported<br>in Digest/Journal      | : Yes    |
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### **J.P.Singh-J :**

Exercising power under Section 126(2)(b) of the Constitution of Jammu and Kashmir in dispensing with the enquiry contemplated under Section 126(2) of the Constitution, the respondent-Showkat Ali, a Selection Grade Constable in the Police Department of the State Government was dismissed from service vide Police Headquarter Doda's Order No. 488 of 2000 dated 27.03.2000.

The respondent questioned his dismissal by Writ Petition SWP No. 2418/2001, *inter alia*, urging that there was no justification in dispensing with the Departmental Enquiry, in that, if the Investigating Agency could record the statements of eight witnesses during the investigation of FIR No. 49/2000 registered against him under Sections 302/307/147/148/149/342/323 RPC before issuance of the dismissal order,

there would have been no genuine impediment of any type whatsoever in holding enquiry against him.

Relying on Judgment delivered in *Ex. Constable Chhote lal v. Union of India and others, reported as (2000) 10 SCC 196*, a learned Single Judge allowed the Writ Petition quashing the Headquarters' order, leaving, however, the State free to initiate enquiry against the respondent. The issue of back wages was also left open for the decision of the competent authority.

The State of Jammu and Kashmir and its functionaries in the Police Department have appealed against the Judgment and order dated 21.07.2010 of the Writ Court.

We have heard learned counsel for the parties and perused the Writ Records.

In terms of the provisions of Section 126 (2) (b) of the Constitution of Jammu and Kashmir, enquiry before directing dismissal or reduction in rank of a Government Servant may be dispensed with, on satisfaction of the Competent Authority that it was not reasonably practicable to hold such enquiry. The satisfaction contemplated by the provision must, however, be real, resting on some or the other material, and not on mere *ipse dixit* of the Competent Authority.

The specific case set up by the petitioner in the Writ Petition that the Investigating Agency had recorded the statements of as many as eight witnesses during investigation of the case registered against the respondent under Sections 302/307/147/148/149/342/

323 RPC was not specifically denied by the appellants. The plea, therefore, stands impliedly admitted. Thus, proceeding on the premise that if the Investigating Agency of the State Government could record the statements of as many as eight witnesses against the respondent indicating his involvement in heinous offences including that of Murder, it could not have faced any difficulty in recording the statement of the witnesses during enquiry, into respondent's misconduct, that led to his dismissal.

The appellants did not produce any material before the Writ Court as also in this Court on the basis whereof the satisfaction recorded by the Competent Authority in dispensing with holding of enquiry against the respondent be justified, for, the Competent Authority does not appear to have satisfied himself that the holding of enquiry against the respondent was impracticable. The Communication addressed by Additional Superintendent of Police, Doda to the Senior Superintendent of Police, Doda on the day when the dismissal order was issued indicating that it was not possible to conduct Departmental Enquiry, within three days of the transfer of enquiry to him, too does not reveal any steps to have been taken by the Additional Superintendent of Police, Doda to initiate enquiry against the respondent. His report to the Senior Superintendent of Police that enquiry was not possible, appears to be just an excuse to justify respondent's dismissal without enquiry.

The prime reason for dismissing the respondent from service as it so appears from Paragraph No.10 of the dismissal order was the act attributed to him, which, according to the Competent Authority, had ignited communal tension in whole of the District and for which he needed severe action to maintain discipline and higher standard of efficiency, impartiality and human virtue in police force.

The enquiry appears to have been dispensed with only to achieve the above purpose and there does not appear any practical difficulty in holding the enquiry as such.

Although the act attributed to the respondent, is of such a nature that, no doubt, may warrant his dismissal from service, but such dismissal could, in law, be ordered, only after holding enquiry against him, unless, of course, there was sufficient material available with the Authority to come to the conclusion that holding of enquiry against the respondent was not practicable.

Therefore, in the absence of any justifiable material with the Disciplinary Authority for recording satisfaction that it was not reasonably practicable to hold enquiry against the respondent, the respondent's dismissal cannot be justified in the absence of enquiry against him.

This apart, the facts brought on records reveal that if the State Police could record the statements of the witnesses under Section 161 Cr.P.C during investigation of the case, there appears no reason for the

witnesses for not coming to depose against the respondent in the Departmental Enquiry.

Learned State counsel's plea that the learned Single Judge erred in acting as Appellate Authority substituting Competent Authority's satisfaction by its own, is found without merit, in that, no material has been produced by the appellants on records to demonstrate that if they could record the statements of the witnesses in the Criminal Case against the respondent, what prevented them in holding Departmental Enquiry against him.

For all what has been said above and in view of the law laid down by Hon'ble Supreme Court of India in *Jaswant Singh v. State of Punjab, reported as (1991) 1 SCC, 362* holding that the Disciplinary Authority is obliged to prove the objective facts on the basis whereof it had come to the conclusion that it was not reasonably practicable to hold enquiry against the delinquent employee, which the Competent Authority has failed to demonstrate in the present case, we find no ground to interfere with the view taken by the learned Single Judge additionally in view of respondent's acquittal of the *Charges* framed against him by the Competent Court of Jurisdiction.

This Appeal is, therefore, found without merit, hence dismissed.

(J. P. Singh)  
Judge

(Mansoor Ahmad Mir)  
Judge

**JAMMU:**

**15.10.2012**

Pawan Chopra