CNR No: PHHC011178692022
2026:PHHC:195429

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24029-2022 (O&M)

Kashmiri Lal ...Petitioner

Versus

State of Punjab & others ...Respondents

Sr. No.	***Particulars***	***Details***
1.	*The date when the judgment is reserved*	*01.10.2026*
2.	*The date when the judgment is pronounced*	*02.11.2026*
3.	*The date when the judgment is uploaded on the website*	*02.11.2026*
4.	*Whether only operative part of the judgment is pronounced or full judgment is pronounced*	*Full*
5.	*The delay, if any, of the pronouncement of full judgment, and reasons thereof*	*N.A.*

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R.K.Arora, Senior Advocate, with
Mr. Shivam Ahuja and Ms. Urvashi, Advocates,
for the petitioner.

Mr. Siddharth Sandhu, AAG, Punjab.

NAMIT KUMAR, J.

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking issuance of a writ of certiorari for quashing the order dated 12.06.2021 (Annexure P-2) passed by respondent No.4-Commissioner of Police, Jalandhar, whereby the petitioner was dismissed from service by invoking the powers conferred under Article 311(2)(b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, as well as the order dated 26.08.2022 (Annexure P-4)

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passed by respondent No.3-Additional Director General of Police, Law & Order, Punjab, Chandigarh, vide which the appeal preferred by the petitioner against the aforesaid order of dismissal was rejected. The petitioner has further sought issuance of a writ of mandamus directing the respondents to reinstate him in service with all consequential benefits along with interest.

2. Briefly stated, the facts of the case are that the petitioner joined the Punjab Police as a Constable on 25.04.1994 and was promoted as Head Constable on 15.10.2010 and thereafter as Assistant Sub Inspector (Local Rank) on 26.02.2020. In the year, 2021, the petitioner was implicated in FIR No.81 dated 28.05.2021, registered at Police Station Sadar Jalandhar, under Sections 384, 506, 120-B IPC [Sections 7(a) & 13 of the Prevention of Corruption Act, 1988 added later on] (Annexure P-1) on the allegations that he (petitioner), while posted at Police Post Jandiala, Police Station Sadar Commissionerate, Jalandhar, formed a gang along with HC Paramjit Singh, Ravi Nahar, Gurwinder Kaur, Prabhjot Kaur and Simran Kaur and the female members of the alleged gang would make telephone calls to lure influential persons into their trap, thereafter the petitioner and his associates would misuse their official positions and uniforms to threaten them with the registration of false criminal cases and extort money from them through intimidation. The petitioner was arrested on the same day i.e. 28.05.2021 and was subsequently released on bail on 09.07.2021. While he was in judicial custody, respondent No.4, being the competent authority, passed the order dated 12.06.2021 (Annexure P-2), dismissing him from service by invoking powers conferred under Article 311(2)(b) of the Constitution of India read with Rule 16.1 of the Punjab Police Rules, without holding a

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regular departmental inquiry. The relevant extract from the said order reads as under:

> *"xx xx xx*
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> *I am satisfied with the facts of the aforesaid report that ASI/LR Kashmiri Lal No.801/Jalandhar while being posted at Police Station Sadar formed a gang with his fellow employees Head Constable (P.R.), Paramjit Singh No.80/654, Ravi Nahar, Gurwinder Kaur, Simranjit Kaur and Prabhdeep Kaur and by getting calls from the female members of the group, they lured the influential/capitalists in their trap and misused their official uniform for fear of filing a false case and used to extort money from them by intimidation. I am also satisfied that regular departmental enquiry under Rule No.16.24 of the Punjab Police Rules, is not practicably possible against this employee for the reasons recorded separately. ASI/LR Kashmiri Lal No.801/Jalandhar being a Government Employee misusing his position/authority formed a gang along with his fellow employees and some private persons and created fear of filing a false case by implicating the influential/capitalist persons. Due to extortion, the image of the police department has been damaged in the general public, which is a very serious crime and this act falls under the decay of moral turpitude. This employee is very shrewd and criminal minded, who is incorrigible and unfit for the Police Department, whose misbehavior has a negative impact on the other employees. Therefore, it will not be possible to keep such an employee in the Police Department.*
>
> *Therefore, keeping in view the aforesaid circumstances in view, I, Gurpreet Singh Bhullar, IPS, Commissioner of Police, Jalandhar being the competent authority to punish in exercise of powers conferred under Article 311(2)(b) of the Constitution of India and Rule No.16.1 of the Punjab Police Rules, hereby order to dismiss ASI/LR Kashmiri Lal No.801/Jalandhar from Government service of the Police Department today on 12.06.2021 afternoon."*

3. Aggrieved by the order of dismissal, the petitioner preferred an appeal dated 27.07.2021 (Annexure P-3). However, the same was rejected

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by respondent No.3, vide order dated 26.08.2022 (Annexure P-4). The relevant extract from the order dated 26.08.2022 reads as under:

> *"4. The appellant Ex ASI Kashmiri Lal No.801/Jalandhar had filed appeal dated 27.07.2021 in this office against the aforesaid orders. The appeal of the appellant, service record, para-wise comments on the appeal were obtained from the Commissioner of Police, Jalandhar and the same were considered and the appellant was also heard personally by me on 08.07.2022.*
>
> *5. The service record of the appellant, departmental enquiry and legal opinion given by the Law Officer, C.P.O., in this has been considered. After considering the aforementioned facts and the submissions made by the appellant during personal hearing, having found no valid ground in the appeal, I hereby dismiss his appeal."*

4. Reply by way of an affidavit of Mr. Vatsala Gupta, (IPS), Deputy Commissioner of Police (Headquarters), Police Commissionerate, Jalandhar, has been filed on behalf of the respondents, wherein the facts stated hereinabove have not been disputed. However, with regard to dispensing with the regular departmental enquiry, it has been stated that the competent authority, before passing the impugned order of dismissal, had recorded separate reasons in writing, which are annexed as Annexure R-1/T, expressing its satisfaction that it is not practicably possible to conduct a regular departmental enquiry against the petitioner in the manner provided under Rule 16.24 of the Punjab Police Rules.

5. The petitioner has filed replication controverting the averments made in the reply filed on behalf of the respondents.

6. Learned senior counsel appearing for the petitioner has submitted that the impugned order of dismissal does not contain any cogent or legally sustainable reason for dispensing with the regular departmental enquiry. It has further been submitted that although the impugned order

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records that reasons for dispensing with the enquiry had been recorded separately, however, no such reasons were ever communicated to the petitioner either by the punishing authority or by the appellate authority. Learned senior counsel contends that dismissal from service, being a major penalty, ordinarily cannot be imposed without conducting a regular departmental enquiry in accordance with the prescribed procedure and that recourse to Article 311(2)(b) of the Constitution is permissible only in exceptional circumstances where the competent authority records a constitutionally sufficient satisfaction that it is not reasonably practicable to hold such enquiry.

7. Learned senior counsel has further submitted that the punishment imposed upon the petitioner is also contrary to Rule 16.2 of the Punjab Police Rules, particularly when the petitioner had rendered approximately 27 years of service and had a clean service record, apart from having earned Commendation Certificates for excellent performance of duties. It has further been submitted that mere registration of FIR against a government employee is not the conclusive proof unless & until he is convicted by the criminal Court and in the present case, only FIR is registered against the petitioner and further the matter was not enquired by the department before passing the order of dismissal against the petitioner. Learned senior counsel further contended that the petitioner's claim for pension has also not been duly considered. It was lastly submitted that none of the points raised by the petitioner in his appeal were considered by the appellate authority while deciding the appeal and has rejected the same by passing a cryptic and non-speaking order.

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8. Per contra, learned counsel appearing for the respondents-State has submitted that the conduct attributed to the petitioner demonstrated that he was incorrigible and unfit to continue in the police department. It has further been submitted that a separate detailed order dated 12.06.2021 (Annexure R-1/T) was passed by the competent authority, specifically recording the reasons for dispensing with the regular departmental enquiry. The relevant extract thereof reads as under:

> *"xx xx xx*
>
> *I am also satisfied from this thing that it is not possible to conduct a regular departmental enquiry against him in the manner provided under Rule 16.24 of Punjab Police Rules. As this employee by making a gang was committing incidents, who is a very cunning and criminal mind of person, whose contacts with bad elements have been established. From the enclosed documents/call details record it is proved that this employee was in contact with other accused since a long time prior from registration of case. The associates of this employee are threatening the complainant on his phone that if the complainant cooperates with the police then he would have to face its dire consequences, regarding which, on telling by complainant to investigating officer the report No.25 dated 03.06.2021 has been registered in the Roznamcha (DDR) Police Station Sadar Jalandhar. It is apprehension that if the departmental enquiry regarding the case under the charge of taking bribe and serious crimes is initiated against the employee then he by bringing the complainant/witnesses under his influence can take undue benefit in this departmental enquiry and in that eventuality no witness would be able to give evidence freely in the departmental enquiry.*
>
> *Keeping in view the above position, I have reached at this conclusion that ASI/LR Kashmiri Lal No.801/Jalandhar who is posted at Police Post Jandiala Police Station Sadar, Jalandhar and being posted on a responsible post and due to his act of making a gang in connivance with fellow personnel and some private persons by misusing his post/powers and further by implicating the capitalists/influential persons and by scaring and threatening them*

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and creating a fear of registration a false case against them and by charging of money from them forcibly has spoiled image of police department in general public. The act of above said employee is a grave misconduct which falls within a purview of (Moral Turpitude). From which it is proved that he is a person of criminal nature, which is incorrigible and unfit for police department, due to his misconduct bad effect is being made on other employees. Due to which it is unfit to keep him in the police department and services of this employee in the police department are also not in public interest.

Therefore, I, being a competent punishing authority, have reached this conclusion that in the exercising the powers conferred upon me under Article 311 (2)(b) of constitution of India and rule 16.1 of Punjab Police Rules do hereby dismiss ASI/LR Kashmiri Lal No. 801/Jalandhar from police department on this day today dated 12.06.2021."

It is, thus, submitted that the petitioner has rightly been dismissed from service by invoking the exceptional power contained in Article 311 (2)(b) of the Constitution of India.

9. I have heard learned counsel for the parties and have perused the record with their able assistance.

10. Admittedly, the petitioner was dismissed from service on the basis of the registration of the aforesaid FIR by invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India. The relevant constitutional provision reads as under:

*"**311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a 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 a 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

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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."

11. A plain reading of the aforesaid Article makes it clear that the authority who is empowered to dismiss or remove a person or to reduce his rank without holding a regular departmental inquiry, has to record reasons in writing as to why it is not reasonably practical to hold such inquiry. However, a perusal of the impugned order dated 12.06.2021 (Annexure P-2) reveals that the punishing authority, after noticing the facts, has merely observed that he is satisfied that regular departmental inquiry under Rule 16.24 of the PPR, is not practicably possible against the petitioner and that reasons have been recorded separately and accordingly, dismissed the

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employee from service. The impugned order itself does not disclose the circumstances, which rendered the holding of an enquiry impracticable.

12. It is true that the respondents have placed on record a separate order dated 12.06.2021 (Annexure R-1/T), stated to contain the reasons for dispensing with the departmental enquiry. However, even a perusal of the said order reveals that no plausible or cogent reason, satisfying the constitutional mandate, has been recorded therein. The main reason assigned is that the petitioner was allegedly in contact with the other accused persons and that there was an apprehension that, in the event of a departmental enquiry, he might influence the complainant or other witnesses. Mere apprehension that a delinquent employee may influence the complainant or witnesses cannot constitute sufficient compliance with the requirements of Article 311(2)(b) of the Constitution of India or Rule 16.24 of the Punjab Police Rules. The disciplinary authority was required to disclose the specific factual circumstances which rendered it reasonably impracticable to hold the departmental enquiry. It was necessary for the authority to demonstrate, on the basis of the material available on record, as to why the complainant or witnesses could not be adequately protected or examined in accordance with the prescribed procedure so as to ensure a fair departmental enquiry. Similarly, the nature and gravity of the allegations against the petitioner, including the alleged formation of a gang, his alleged association with criminal elements, or the alleged adverse impact of his conduct on the image of the police department, may furnish justification for initiating disciplinary proceedings and may also be relevant while determining the appropriate punishment, if the charges are ultimately established. Mere registration of an FIR cannot constitute a sufficient ground

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for invoking Article 311(2)(b) of the Constitution of India. The exceptional power under the said provision cannot be exercised merely because the allegations against the delinquent employee are grave or because the disciplinary authority considers him unfit to continue in service. More so, the reasons purportedly recorded for dispensing with the departmental enquiry were never communicated to the petitioner, thereby depriving him of an opportunity to know the basis on which the ordinary procedure of departmental enquiry had been dispensed with.

13. This Court in ***Gursher Singh Sandhu v. State of Punjab and others, 2026 Law Finder (P&H) 26471***, while considering the settled legal position enunciated by the Hon'ble Supreme Court in ***Union of India v. Tulsiram Patel, (1985) 3 SCC 398***, which has subsequently been reiterated in a catena of judgments, has also reaffirmed that the normal rule is that an employee can be dismissed, removed or reduced in rank only after holding a departmental enquiry, in which the charges are communicated to him and he is afforded a reasonable opportunity of defending himself. It has been observed as under:

> *"35. It is trite law that the decision of the appointing authority on the issue of 'recording reasons in writing on its satisfaction as to why holding an inquiry is not reasonably practicable' may be subject to judicial review under Article 226 by the High Court. The Constitution Bench of the Hon'ble Supreme Court in* ***Tulsiram Patel's case (supra)****, has reiterated the legal position and authoritatively explained the scope and ambit of Article 311(2) and the second proviso thereto. The Court has made it clear that the power under Article 311(2)(b) is an exceptional power and cannot be exercised arbitrarily or merely for the purpose of avoiding a departmental enquiry. The condition precedent for invoking Clause (b) is the existence of circumstances which render the holding of an*

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enquiry not reasonably practicable and the recording, in writing, of reasons for the satisfaction of the disciplinary authority. It has been held as under:

> *"32. The arguments advanced on behalf of the government servants on the pleasure doctrine and the second proviso to Article 311 (2) may be sketched in broad outlined as under:*
>
> *(1) The pleasure doctrine in England is a part of the special prerogative of the Crown and has been inherited by India from England and should, therefore, be construed strictly, that is, strictly against the Government and liberally in favour of government servants.*
>
> *(2) The second proviso which withdraws from government servants the safeguards provided by clause (2) of Article 311 must be also similarly construed for, unless a liberal construction were placed upon it, great hardship would result to government servants as they could be arbitrarily thrown out of employment and they and their dependents would be left without any means of subsistence.*
>
> *(3) There are several stages before a government servant can be dismissed or removed or reduced in rank, namely, serving upon him of a show cause notice or a charge-sheet, giving him inspection of documents, examination of witnesses, arguments and imposition of penalty. An inquiry starts only after a show cause notice is issued and served upon a government servant. A show cause notice is thus preparatory to the holding of an inquiry and even if the entire inquiry is dispensed with, the giving of a show cause notice and asking for the explanation of the government servant with respect there to are not excluded.*
>
> *(4) It is not obligatory upon the disciplinary authority to dispense with the whole of the inquiry. Depending upon the circumstances of the case, the disciplinary authority can dispense with only a part of the inquiry.*
>
> *(5) Imposition of penalty is not a part of the inquiry and once an inquiry is dispensed with, whether in whole or in part, it is obligatory upon the disciplinary authority to give an opportunity to the government servant to make a*

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representation with respect to the penalty proposed to be imposed upon him.

(6) Article 311 is subject to Article 14. Principles of natural justice and the audi alteram partem rule are part of Article 14 and, therefore, a show cause notice asking for the explanation of the government servant with respect to the charges against him as also a notice to show cause with respect to the proposed penalty are required to be given by Article 14 and the not giving of such notices or either of them renders the order of dismissal, removal or reduction in rank invalid.

33. The submissions on behalf of the Union of India can be thus summarized :

(1) The second proviso must be construed according to its terms. It is unambiguous and does not admit of any such interpretation as canvassed for on behalf of the government servants.

(2) Where under the second proviso, clause (2) of Article 311 is made inapplicable, there is no scope for holding any partial inquiry.

(3) In any event, the very contents of the three clauses of the second proviso show that it is not necessary or not practicable or not expedient that any partial inquiry could be or should be held, depending upon which clause applies.

(4) Article 14 does not govern or control Article 311. The Constitution must be read as a whole. Article 311(2) embodies the principles of natural justice including the audi alteram partem rule. It thus expressly states what is required under Article 14 as a result of the interpretation placed upon it by recent decisions of this Court. Once the application of clause(2) is expressly excluded by the Constitution itself, there can be no question of making applicable what has been so excluded by seeking recourse to Article 14.

(5) Consideration of sympathy for the government servants who may be dismissed or removed or reduced in rank are irrelevant to the construction of the second proviso.

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The doctrine of tenure at pleasure in Article 310 and the safeguards given to a government servant under clauses (1) and (2) of Article 311 as also the withdrawal of the safeguard under clause (2) by the second proviso are all enacted in public interest and where public interest conflicts with private interest, the latter must yield to the former.

The Pleasure Doctrine:

34. The concept of civil service is not now or of recent origin. Governments - whether monarchial, dictatorial or republican - have to function; and for carrying on the administration and the varied functions of the government a large number of persons are required and have always been required, whether they are constituted in the form of a civil service or not. Every kingdom and country of the world throughout history had a group of persons who helped the ruler to administer the land, whether according to modern notions we may call that group a civil service or not, because it is not possible for one man by himself to rule and govern the land and look after and supervise all the details of administration. As it was throughout history, so it has been in England and in India.

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The Second Proviso to Article 311(2):

60. Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310(1) is abridged because Article 311(2) is a express provision of the Constitution. This safeguard provided for a government servant by clause (2) of Article 311 is, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause(1) of Article 311, however, remains intact

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and continues to be available to the government servant. The second proviso to Article 311(2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso. These cases are:-

(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; and

(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.

The Construction to be placed upon the second proviso and the scope and effect of that proviso were much debated at the Bar. In ***Hira Lal Rattan Lal etc. v. State of U.P. & Anr., [1973] 2 S.C.R. 502*** *this Court observed (at page 512) ;*

"In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislature intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so called proviso has substantially altered the main section."

In ***Commissioner of Income Tax, Madras v. Madurai Mills Co. Ltd., [1973] 3 S.C.R. 662****, this Court said (at page 669):*

"A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. Further, if the language of

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the enacting part of the statute is plain and unambiguous and does not contain the provisions which are said to occur in it, one cannot derive those provisions by implication from a proviso."

61. The language of the second proviso is plan and unambiguous. The key-words in the second proviso are "this clause shall not apply". By "this clause" is meant clause(2). As clause(2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason to given them any meaning different from the plain and ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.

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129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary or subsistence allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably

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practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause (b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrolable. Not taking prompt action may also be construed by the trouble- makers and agitators as sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, clause (b) is not meant to be applied in ordinary, normal situations but in such situations where is not reasonably practicable to hold an inquiry.

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

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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) is not binding upon the court so far as its power of judicial review is

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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.

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133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

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41. In view of the settled proposition of law, as discussed above, and on overall analysis of the intent of Article 311(2) of the Constitution, it is vivid that an employee can only be dismissed or removed or reduced in rank after an inquiry by supplying the charges against him and giving a reasonable opportunity of being heard in respect of those charges, however, the applicability of the exceptional proviso of clause (b) of second proviso to Article 311 (2) of Constitution of India is restricted to a situation, wherein conduct of the delinquent led to his conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank, records reason in writing upon satisfaction that it is not 'reasonably practicable' to hold an enquiry against him. The disciplinary authority must not dispense with an enquiry merely on the basis of its subjective satisfaction or by mechanically reproducing the language of Article 311(2)(b) of the Constitution. The reasons must demonstrate the existence of circumstances which genuinely render the holding of the enquiry impracticable. Ordinarily, circumstances such as witnesses being unwilling to depose on account of threats, intimidation or coercion may constitute relevant considerations. However, the mere seriousness of the allegations or the possibility that the delinquent employee may not cooperate cannot, by itself, satisfy the constitutional requirement. The wording as used in clause (b) of the second proviso indicates the satisfaction of the Disciplinary Authority by using the word "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. The Hon'ble Supreme Court emphasized the meaning of "not reasonably practicable" as juxtaposed against not "impracticable". The Hon'ble Supreme Court clarified that the disciplinary authority is not expected to dispense with a departmental 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 may fail. Further, the Court emphasised the words used in clause (b) of second proviso that the disciplinary authority should record its reasons in writing for its satisfaction that holding an inquiry is not reasonably practicable. In case, such reason is not

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recorded in writing or not valid and justifiable, the order dispensing with the inquiry and the order of penalty flowing therefrom would be void and unconstitutional. In that situation, it remains always open to the Court to take the case out of purview of that clause and the order of penalty would stand invalidated."

14. In ***Gursher Singh Sandhu's*** case (supra), this Court had also taken into consideration the guidelines/instructions dated 02.09.2022 issued by the Director General of Police, Punjab, Chandigarh, in compliance with the directions issued by this Court vide order dated 04.07.2022 passed in **CWP-13285-2022,** titled ***Ex. Constable Vikas No.950/FZR v. State of Punjab and others***. The said guidelines were noticed in the backdrop of the manner in which the provisions of Article 311(2)(b) of the Constitution of India had been invoked by the State of Punjab in a large number of cases without strict adherence to the constitutional safeguards for dispensing with regular departmental enquiry. While considering the aforesaid aspect, this Court observed as under:

"42. This Court has also noticed the manner in which the State of Punjab has invoked Article 311(2)(b) of the Constitution in a large number of cases. In ***CWP-13285-2022*** *titled* ***'Ex. Constable Vikas No.950/FZR Vs. State of Punjab & others'*** *this Court, vide order dated 04.07.2022, observed as under:*

"xx xx xx

This Court has noticed while dealing with the current roster, that a large number of writ petitions are being filed against the order of dismissal invoking Article 311(2)(b) of the Constitution of India. The competent authorities are ignoring the law as settled by the Supreme Court regarding dismissal of an employee under Article 311(2)(b) of the Constitution of India, which leads to the impugned orders being set aside.

It might be appropriate for the State Governments to look into this issue and apprise the competent authorities

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about the relevant case law pertaining to invoking Article 311(2)(b) of the Constitution of India at the time of seeking to summarily dismiss the Government employees.

Let a copy of this order be conveyed to the Chief Secretaries of the States of Punjab and Haryana as well as the Advisor to Administrator, U.T., Chandigarh."

43. In compliance of said directions, the office of the Director General of Police, Punjab, Chandigarh, issued guidelines/instructions dated 02.09.2022, which reads thus:

"Subject:- Guidelines/Instructions for compliance of the Orders of the Hon'ble Punjab and Haryana High Court, pertaining to invoking Article 311 (2) (B) of the Constitution of India in cases involving dismissal of an employee/official.

Memo

1. In this regard, the Hon'ble Punjab and Haryana High Court has issued directions in the Civil Writ Petition 13285 of 2022 titled as Ex Constable Vikas No. 950/FZR Vs State of Punjab and others on 04.07.2022 that:-

"xx xx xx"

2. That in compliance with the aforesaid directions of the Hon'ble High Court, this office is issuing guidelines/instructions for the basic understanding of the Article 311 (2) (b) while invoking the same in cases of dismissal, removal or reduction in rank of the employee/official. It has been seen in many cases that the order passed by the Competent Authorities under Article 311 (2) (b) have failed in the Hon'ble Courts and the Hon'ble Courts have set aside such dismissal order of the personnels time and again and reinstated them in service. The Hon'ble Courts have also observed in numerous cases that decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the concerned authorities. It is well settled proposition of law that due reasons are necessary to be recorded in writing as to why it was not practicably possible to conduct an enquiry.

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3. That the Hon'ble Supreme Court of India and Hon'ble High Courts, in catena of judgments have specifically made clear that order of dismissal is not to be passed in a mechanical manner. It has also been held that only in cases where disciplinary authorities are satisfied on the basis of material available on file that the case is of such a nature that it is not practicable possible to hold an enquiry in view of threat, inducement, affiliation with criminals etc. that article 311(2) (b) of Constitution of India, is to be invoked.

4. That the Hon'ble Supreme Court of India and High Courts have delivered various judgments on the interpretations of Article 311 (2) (b). Few are mentioned here and are required to be followed in letter and spirit while dealing in cases involving Article 311 (2) (b) of the Constitution of India.

*1. The Hon'ble Supreme Court of India in **Union of India Vs Tulsi Ram Patel & others**, judgment dated 11.07.1985 is well traversed and has clarified the constitutional provisions as embodied in Article 311(2) of the Constitution. The judgment is detailed and is a settled law pertaining to matters involving article 311(2)(b) of the Constitution of India.*

*2. In **CWP No.15903 titled as Dinesh Singh Vs State of Punjab & others decided on 30.08.2016**, the Hon'ble Court has held "Constitution of India, 1950 Article 311 (2) due reasons are necessary to be recorded as to why it was not practicably possible to conduct an enquiry or how it was not convenient to authority or inquiry officer to conduct an enquiry-said provisions are attracted by exercising extraordinary powers under extraordinary circumstances- absence of extraordinary circumstances while invoking provisions of article 311 (2) (b) can be termed as misuse of power and as such, action of the authority is not sustainable in the eyes of law.*

*3. The Hon'ble Punjab & Haryana High Court in **CWP No. 10423 of 2020 titled Sarabjit Singh Vs State***

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of Punjab & others *has held that authority chose to dismiss petitioner without holding Inquiry- careful reading of the impugned order shows that there is total absence of reasons in this regard- mere observation that departmental enquiry at this stage does not appear to be justified is not sufficient to invoke powers under clause (b) of the 2nd proviso to article 311(2) of the Constitution of India. Petitioner directly to be re-instated.*

5. It should also be ensured that recording in writing of the reasons for dispensing with the enquiry must precede an order imposing the penalty. Legally speaking the reasons for dispensing with the enquiry need not find place in the final order itself though they should be recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate the reasons which lead the disciplinary authority to the conclusion that it was not reasonably practicable to hold an enquiry. The reasons so given should not be vague or they should not be just a repetition of the language of the relevant rules.

6. That the aforementioned guidelines/instructions and the relevant detailed case laws are to be examined and followed by the concerned disciplinary authority while invoking article 311(2)(b) Constitution of India. These guidelines/instructions alongwith relevant case laws are to be strictly adhered and their meticulous compliance is to be ensured."

44. It has also been noticed by this Court that, in a number of cases, Police Officers/Officials have been dismissed from service by invoking the provisions of Article 311(2)(b) of the Constitution merely on account of registration of an FIR against them……

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54. It is also apt to state here that the State Government itself, through the guidelines/instructions dated 02.09.2022, issued by the office of the Director General of Police, Punjab, had drawn the attention of the competent authorities to the settled legal position

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that orders under Article 311(2)(b) of the Constitution should not be passed mechanically and that reasons for dispensing with the enquiry must be supported by material available on record. The said guidelines specifically caution that the decision to dispense with a departmental enquiry cannot rest merely upon the ipse dixit of the competent authority and that the reasons must not be vague or merely reproduction of the language of the relevant constitutional provision.

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56. While considering the provisions of Article 311(2)(b) vis-à-vis Punjab Police Rules, 1934, a Coordinate Bench in ***Baljinder Singh v. State of Punjab & others****, (****CWP-8612-2021 decided on 13.05.2024****), observed as under:*

> *"3. Mr. Anupam Bhardwaj, Advocate submits that there was no occasion to dispense with mandatory inquiry contemplated by Article 311 of Constitution of India read with Rule 16.24 of the 1934 Rules. The respondents acting in a mechanical manner dispensed with inquiry and dismissed the petitioner from service. The co-accused was initially suspended and he has been re-instated.*
>
> *4. Per contra, Mr. Pawan Kumar, DAG, Punjab submits that petitioner accepted illegal gratification from accused in aforementioned FIRs, thus, it was indispensable to dismiss him from service. It was not possible to conduct inquiry, thus, he was dismissed without conducting inquiry.*
>
> *xx xx xx*
>
> *8. The reason advanced by SSP for dispensing with inquiry is not the actual reason because same reason has been advanced in every case where there is FIR against serving police officer. The respondent can dispense with inquiry if actually it is not practicable to hold inquiry. Mere writing one line in the impugned order that it is not practicable to hold inquiry is not compliance of mandate of either Constitution of India or Rule 16.24 of the Punjab Police Rules. The respondent instead of straight away dismissing the petitioner could put him under suspension and thereafter conduct inquiry. This course was adopted in the*

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case of co-accused, thus, there was no reason to adopt different course in the case of petitioner. It is interesting to note that FIR was registered against the petitioner as well as HC Jatinder Singh and he has been re-instated before awaiting conclusion of criminal proceedings.

9. In the wake of above discussion and findings, this Court is of the considered opinion that respondents without any logical reason dispensed with mandatory inquiry. The impugned orders deserve to be set aside and accordingly set aside.

It is made clear that petitioner, as conceded, shall not be entitled to back wages. The respondent shall be free either to conduct departmental inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings."

57. In ***Rakesh Kumar v. State of Punjab & others****, (****CWP-14712-2017 decided on 25.04.2022****), this Court observed as under:*

"8. The petitioners were appointed as Constables with the Punjab Police and were dismissed from service by invoking Article 311(2) (b) of the Constitution of India as FIR No.74 dated 25.07.2014, under Section 384 of the IPC and Section 7 and 8 of the Prevention of Corruption Act, 1988 came to be registered against them. The date of dismissal is the same date as the date of registration of the FIR. While dismissing a government servant under Article 311 (2) (b), the appropriate disciplinary authority has to record reasons in writing that it does not consider it reasonably practicable to give to the person an opportunity of showing cause. The satisfaction under this clause has to be of the disciplinary authority that has the power to dismiss, remove or reduce the Government servant in rank. As a check against an arbitrary use of this exception, it has been provided that the reasons for which the competent authority decides to do away with the prescribed procedure must be recorded in writing setting out why it would not be practicable.

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9. On perusal of impugned order of termination, it is apparent that no reasons whatsoever have been recorded to show as to how the provisions of Article 311 (2) (b) have been attracted. A reading of the impugned order would show that the reason for dispensing of holding a regular enquiry is that a finding is given that no witness is likely to come forth to depose and that the petitioner has a criminal mentality, but there is no material available to support this ground.

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11. The law is this regard is no longer res intergra, as can be noticed from the judgements as cited above. Therefore the impugned orders would not be sustainable.

12. Another reason for setting aside the impugned orders is that a co-accused in the FIR, who was also dismissed by the authorities while dispensing with regular enquiry, had filed an appeal before the Additional Chief Secretary Government of Punjab, Department of Home Affairs and Justice and the said appeal was allowed holding that it was not fair to dismiss the appellant with hearing and that departmental proceedings were liable to be initiated. The appellant Harjap Singh stood reinstated and the period from date of dismissal till reinstatement was to be treated as Non Duty Period. The petitioners who are similarly situated as said Harjap Singh, too should be given an opportunity of hearing.

13. Consequently the writ petitions are allowed and the impugned order dismissing the petitioners from service vide order 25.07.2014 (Annexure P-3) and the orders passed on the statutory appeal dated 02.03.2016 (Annexure P-6), by respondent No.4 and order dated 16.04.2016 (Annexure P-8) passed by respondent No.3 in revision, are set aside leaving it open to the department to take departmental action against the petitioners in accordance with law, if needed."

58. The power under Article 311(2)(b) cannot, therefore, be invoked merely because the disciplinary authority apprehends that the delinquent employee may not cooperate with the proceedings. There must exist some objective circumstance which makes a fair

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enquiry genuinely impracticable. Circumstances, such as, threats, intimidation or coercion of witnesses, interference with the Enquiry Officer, or tampering with evidence may ordinarily furnish a valid basis. However, no such circumstance has been demonstrated in the present case."

15. Recently, the Hon'ble Supreme Court in ***Manohar Lal v. Commissioner of Police & others, 2026 SCC OnLine SC 363*** has again held that the reasons recorded by the disciplinary authority must establish the existence of circumstances which render the holding of a departmental enquiry not reasonably practicable. The power cannot be exercised on the basis of a mere *ipse dixit* or an unsubstantiated apprehension. It has been held as under:

"35. In the case at hand after registration of the FIR when the appellant was in custody the order of dismissal was passed. He was released only thereafter. As such, without indicating any instance of intimidation, traumatising, threatening or persuading the complainant or the witness to turn hostile from inside the jail, the belief or presumption as recorded by the disciplinary authority is not sufficient to bring the present case within the exception to Article 311 (2) by applying clause (b) of second proviso thereto. Thus, in our view, the reasoning contemplated in the judgment of ***Jaswant Singh (Supra)*** *applies in the case at hand.*

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40. On overall analysis of the intent of Article 311(2), it is vivid that an employee holding a post in Union or State ought not to be dismissed or removed by an authority subordinate to the one by which he was appointed. It is further specified that a person shall be dismissed or removed or reduced in rank after an inquiry supplying the charges if any against him and giving a reasonable opportunity of being heard in respect of those charges. The applicability of the said clause is restricted in a situation wherein his conduct led to his conviction of criminal charges or where the authority empowered who dismissed, removed or reduced in rank records reason in

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writing upon satisfaction that it is not 'reasonably practicable' to hold an enquiry against him. In addition, where such power has been exercised by the President or the Governor it may be in the interest of security of the State or if not expedient to hold such an enquiry, then exceptional power under clause (c) of second proviso to Article 311 ought to be exercised.

41. In case such a decision invoking the extraordinary power is taken by the competent authority in light of the judgment ***Tulsiram Patel (Supra)*** *within the parameter as discussed, the scope of judicial review is available to the Constitutional Courts wherein the reasons as assigned for satisfaction of the authority must be reasonable, valid, justified and in writing. In addition, the satisfaction as recorded must be the objective satisfaction on the basis of material brought on record which ordinarily the disciplinary authority may take as a prudent person. Otherwise, dispensing with the enquiry is not permissible in law. In the present case, Section 21 of the 1978 Act confers power of punishment and Section 22 prescribes the procedure for awarding such punishment. The procedure as contemplated has been elaborated under the 1980 Rules. In the present case, in our view, the power exercised by the authority is completely without application of mind, thus, the question of recording of satisfaction as affirmed by the appellate authority, the CAT and the High Court does not arise. Therefore, we can hold that the order dispensing with the regular procedure of inquiry is arbitrary and consequently the order of dismissal of the appellant is liable to be quashed and the orders of the CAT and the High Court affirming the said dismissal order stand set aside."*

16. Applying the aforesaid principles to the facts of the present case, this Court is of the considered view that the reasons recorded by the competent authority are not in compliance of mandate prescribed under Article 311(2)(b) of the Constitution or Rule 16.24 of the PPR. The reasons proceed on the basis of an apprehension that the petitioner may influence the complainant or witnesses. Such apprehension, without disclosure of any

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concrete circumstances, cannot constitute a valid basis for dispensing with the enquiry.

17. This Court also finds that, although the petitioner had preferred a detailed appeal against the order dated 12.06.2021 (Annexure P-2), but the appellate authority, while passing the order dated 26.08.2022 (Annexure P-4), failed to examine whether the essential conditions for invoking Article 311(2)(b) of the Constitution of India were satisfied or not. The appellate authority, after merely reproducing the allegations levelled against the petitioner, rejected the appeal by observing that no valid ground had been made out. However, no consideration has been given to the length of 27 years of service and credential service record. Neither the appellate authority has independently considered the reasons recorded by the punishing authority for dispensing with the departmental enquiry, nor has it examined whether the circumstances actually rendered the holding of such enquiry reasonably impracticable within the meaning of Article 311(2)(b) of the Constitution of India. Therefore, this Court is of the opinion that the respondents without any justifiable reason, circumstance or substance dispensed with the mandatory fair enquiry.

18. This Court also finds merit in the submission of learned senior counsel for the petitioner that the punishment imposed upon the petitioner is harsh and not in consonance with Rule 16.2 of the PPR. Rule 16.2 of PPR is reproduced as below:

> *"**16.2. Dismissal.** - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.*

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(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed:

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette."

19. A perusal of the above Rule makes it evident that dismissal shall be awarded only for the gravest acts of misconduct or where the cumulative effect of continued misconduct establishes the incorrigibility and complete unfitness of the delinquent official for police service. It is further evident that, while awarding such a punishment, due regard shall be had to the length of service rendered by the delinquent official and his claim to pension. In the present case, the petitioner had admittedly rendered approximately 27 years of service in the Punjab Police and had earned Commendation Certificates for his performance of official duties. These relevant factors were, therefore, required to be duly taken into account by the competent authority while awarding penalty of dismissal. However, neither the order of dismissal dated 12.06.2021 (Annexure P-2) nor the

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order dated 26.08.2022 (Annexure P-4) rejecting the petitioner's appeal reflects any consideration of the length of service rendered by the petitioner, his past service record or his claim to pension, as specifically mandated under Rule 16.2 of the PPR.

20. In view of the above discussion, this Court is of the opinion that the impugned order dated 12.06.2021 (Annexure P-2) suffers from non-compliance with the mandatory requirements of Article 311(2)(b) of the Constitution of India. The appellate order dated 26.08.2022 (Annexure P-4), which merely affirms the said order of dismissal without curing the fundamental defect, also cannot be sustained.

21. Consequently, the present petition is allowed. The order/s dated 12.06.2021 (Annexure P-2) and 26.08.2022 (Annexure P-4) are hereby quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits.

22. However, the setting aside of the impugned orders and direction for reinstatement shall be without prejudice to the right of the respondents to take recourse in accordance with law. The respondents shall be free either to conduct departmental inquiry after following due procedure prescribed by Punjab Police Rules or take appropriate decision after conclusion of criminal proceedings.

02.11.2026 **(NAMIT KUMAR)**
Vimal/mkkoundal **JUDGE**

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**

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