Before Ranjit Singh, J.

SUSHILA SHARMA AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 20519 of 2009

22nd September, 2010

Constitution of India, 1950—Art. 226 & 311(2)—Punjab Police Rules, 1934—Rl. 16.2—Head Constable elected as President of Association—President & Vice-President issuing press note making allegations against senior officers—Charge sheet—Enquiry Officer recommending action against both employees—Dismissal of Head Constable by invoking powers under proviso (b) to Art.311(2)—Punishment of 3 annual increments only imposed on Vice-President of association—No valid justification for dispensing with requirement of holding an enquiry—Long service of 27 years rendered by Head Constable not viewed in any manner by DGP while passing order of dismissal—High Court earlier setting aside punishment of dismissal while directing respondents to reconsider same in light of punishment imposed on another employee—Despite opportunities respondents failing to consider on quantum of punishment afresh—Petition allowed, order of dismissal set aside while holding Head Constable deemed to have compulsorily retired from date of order of dismissal.

Held, that the decision to dispense with the enquiry was not justified. Merely because, late HC Raja Ram had not joined the enquiry could not have been a valid ground to dispense with the holding of an enquiry by invoking proviso (b) to Clause (2) of Article 311 of the Constitution. No justification has been given in the order as to why this decision was taken to dispense with the enquiry. Non-joining of enquiry by late HC Raja Ram is the sole reason, which though not so mentioned, may appear from the record to dispense with enquiry. If that was the basis to dispense with enquiry, then it cannot be a valid reason under law as the enquiry officer could easily have held *ex parte* enquiry, a procedure which is well known

and understood in such like cases. It canot be said that it was not reasonably practicable to hold enquiry in such a situation. Even in the impugned order now, it has not been considered as to why HC Raja Ram was required to be dismissed, whereas the co-accused similarly situated could be left with a punishment of stoppage of increments only. The reasons for dispensing with the departmental enquiry as now disclosed, are found to be farcical. There is no valid justification for dispensing with the requirement of holding an enquiry.

(Paras 17 & 23)

Further held, that relevant consideration for imposing the sentence of dismissal has not been kept in view. The provisions of Rule 16.2 of the Rules which have been held to be mandatory, have been completely ignored. The long service of 27 years rendered by late husband of petitioner No. 1 has not been viewed in any manner by the DGP while passing the order of dismissal. The right of late HC Raja Ram to earn pension was to be considered and kept in view in the light of the contents of Rule 16.2 of the Rules. The respondents were under legal obligation to consider this aspect and also if any lesser punishment, like compulsory retirement etc. would have met the ends of justice. Number of precedents can be noticed, though orders were passed while dealing with the cases of dismissal under Clause (a) of the second proviso to Article 311(2) of the Constitution of India, where it has been observed that order of dismissal passed in a huff without applying its mind to the penalty which could appropriately be imposed may not be allowed to stand.

(Para 24)

Further held, that enquiry had been dispensed with without any justifiable cause. This in itself was enough to render the impugned order of dismissal to be bad on that count. The earlier order upholding the dismissal was passed in *limine* without disclosing reasons and that order as such would not act as *res judicata* to see the validity of the impugned order now put to challenge. I am persuaded to take this view in the background that even on the earlier occasion also, the Court had set aside the punishment of dismissal with a direction to the respondents to reconsider the same in the light of punishment imposed on another employee, who was identically placed and accused of similar allegations, but had been awarded

the punishment of only stoppage of increments. Despite opportunities, the respondents had not made any mends and, thus, no useful purpose would now be served for remitting the case back to the respondents for considering the quantum of punishment afresh.

(Para 27)

None for the petitioners.

Harish Rathee, Sr. DAG, Haryana, for the State.

RANJIT SINGH, J.

(1) Petitioner No. 1 is an unfortunate widow of late Head Constable Raja Ram. Petitioner Nos. 2 to 4 are his sons. They all have invoked the jurisdiction of this Court for setting aside/quashing the order dated 19th September, 2001, whereby late Raja Ram was dismissed from service by invoking the powers conferred on the Disciplinary Authority under proviso (b) to Article 311(2) of the Constitution of India. The claim made in the petition is also to quash the subsequent order passed by the respondents on 19th December, 2005, which was so made pursuant to the direction issued by this Court in an earlier writ petition filed by the petitioners, directing the respondents to consider the plea in regard to quantum of punishment imposed. This was on the ground that one Jaivir Singh Dalal, who was similarly situated was imposed punishment of stoppage of three increments, whereas late Raja Ram was dismissed from service.

(2) Late Raja Ram, husband of petitioner No. 1 had joined as Constable with Haryana Police on 30th September, 1976. Later, he was promoted as Head Constable. The deceased husband of petitioner No. 1 was elected as President of the Association, which was formed after grant of due permission by the Government to form such an Association. The election to elect the office bearers of this Association were held under the directions of DGP, Police Haryana on 8th November, 2000. This was on account of a writ petition filed by the late husband of petitioner No. 1. He had also to file contempt petition impleading the Financial Commissioner and Secretary Home and the Director General of Police as respondents. As per the petitioners, they accordingly carried a grudge against the late husband of petitioner No. 1 on this count.

(3) It is alleged that a press note was issued in the Newspaper on behalf of HC Raja Ram, who was President of the Association, for which he was charge-sheeted along with Constable Jaivir Singh Dalal, Vice President of the Association. The allegations made were that press note was issued against the senior police officer reciting "RAJYA POLICE PRAMUKH PAI POLICE KARMIIYON KE HITON KI UPEKSHA KA AAROP". This was stated to be against the rules and regulations. Late HC Raja Ram submitted his reply to the charge-sheet on 28th January, 2001. A DSP was detailed to conduct preliminary enquiry. It is pleaded that the said DSP did not conduct proper enquiry and also did not associate late HC Raja Ram with the enquiry in any manner. The Enquiry Officer recommended action against late HC Raja Ram as well as against Jaivir Singh Dalal. FIR was also registered against the HC under Sections 153A/ 500/501 IPC. Petitioner No. 1 would plead that her husband could not join the enquiry as he was admitted in the hospital. Late HC had also filed Writ Petition No. 13266 of 2001, challenging the enquiry proceedings. The wirt petition, however, was got dismissed as withdrawn. Without considering the long service rendered by the late HC Raja Ram, he was ordered to the dismissed from service on 19th September, 2009. The Vice-President Jaivir Singh Dalal, however, was let off with punishment of stoppage of three annual increments only.

(4) Unfortunately, HC Raja Ram expired on 19th June, 2002. The petitioners, thereafter filed Writ Petition No. 7026 of 2004 for quashing the order of dismissal. This Court had then remitted the case to the respondents to consider the quantum of punishment. The order passed by this court reads as under :—

> "We have gone through the impugned order as well as the written statement. We are of the opinion that Raja Ram, the predecessor in interest of the petitioner, was clearly guilty of mis-conduct and under the circumstances, he had been rightly punished. Mr. Saini, however, has argued that the punishment has been wrongly awarded. He has pointed out that the press report, Annexure P-2, had been issued by Raja Ram and one Jaivir Singh and that in the case of the latter the respondents had imposed a punishment of stoppage of three increments with cumulative effect whereas in the case of Raja Ram, an

order of dismissal had been made. We accordingly remit the matter to the respondents only on the quantum of penalty in the above facts. The respondents are also directed to take a decision on the matter within a period of four months from the date that a certified copy of this order is supplied to them.

The writ petition is disposed of in the above terms".

(5) Without taking into consideration the relevant factors and the legal position, especially the long service rendered by late HC Raja Ram, the respondent-DGP has upheld the order of dismissal by rejecting the pleas raised by the pejtitioners. The petitioners had made representation before the Hon'ble Chief Minister and have remained unsuccessful in getting any relief. The petitioners have, thus, again approached this court against this order passed by the DGP.

(6) Reply is filed by Superintendent of Police, Karnal on behalf of respondent Nos. 1 to 4. It is pointed out that the late HC Raja Ram had been indulging in activities prejudicial to the maintenance of discipline among members of Police force by attempting to spread disaffection amongst the Police Force and exhorting them to resort to General Disobedience of the order of the competent authority. It is disclosed that preliminary enquiry was got conducted through DSP Raj Singh, who had submitted the report that late HC Raja Ram had issued press note on 15th July, 2001 without obtaining prior permission of the competent authority. A regular departmental enquiry was then ordered for acts of gross misconduct, negligence and indiscipline allegedly committed by late HC Raja Ram. As per the stand in the reply, late HC Raja Ram failed to appear before the Enquiry Officer. Superintendent of Police, Karnal, therefore, was constrained to pass the order dismissing the late HC from service. The appeal against the same was dismissed on 28th February, 2002. The action against late HC Raja Ram is justified and it is urged that no case for interference is made out.

(7) When this case came up for hearing, it was noticed that late HC Raja Ram had died after rendering 27 years of service. This court accordingly observed that considering this fact and also that the husband of the petitioner was no more, the case may require consideration with some sympathy or compassion. State counsel was accordingly required to have instructions if something could be done to enable the petitioner-wife left

behind by the late Head Constable, to have her means of livelihood. The observations so made by the Court were recorded in its order dated 12th August, 2010 which are as under :—

> "Considering the fact that the predecessor-in-interest of the petitioners had died, the award of punishment to the deceased may need consideration with some sympathy and compassion. Let Mr. Nehra have instructions in this regard, if something can be done to enable the wife left behind to earn livelihood, considering the fact that the deceased had died after rendering 27 years of service".

(8) Despite grant of opportunities, the State counsel came up with the instructions that respondents were not willing to show any sympathetic consideration to the case of the petitioners. Thus, the service of over 27 years rendered by late HC Raja Ram was put to naught. The case was, thus, heard on merits.

(9) Concededly, late Head Constable Raja Ram was elected as President of the Association, which was formed after due permission given by the respondents. Allegations against late Head Constable Raja Ram and Jaivir Singh Dalal were identical. They had allegedly issued a press statement, copy of which is annexed as Annexure P-1. The perusal of this statement would show that the late HC Raja Ram is alleged to have made a statement that the treatment meted out by the Head of the Police has resulted in dissatisfaction. It is also given out in the statement that despite order passed by the the High Court, elections have not been conducted for electing the office bearers of Police Association, for which a contempt petition had to be filed. For issuing this statement to the press, late HC Raja Ram was charged for indulging in activities prejudicial to the maintenance of discipline amongst the police force by attempting to spread disaffection and by exhorting them to resort to general disobedience. On the basis of a preliminary enquiry, the late HC Raja Ram was dismissed from service by invoking proviso (b) to Article 311(2) of the Constitution of India. There is no justification disclosed in the impugned order for dispensing with the need to hold enquiry. As per settled position of law, authorities are under obligation to give reasons as to why it was not practicable to hold enquiry and for invoking proviso (b) to Article 311(2) of the Constitution.

(10) Issuance of a press statement for requiring the DGP to hold election for the Association in view of the directions issued by this court, *prima facie* may not lead to the allegations of spreading disaffection or an act of indicipline. There is nothing to indicate in Annexure P-1 that the late HC Raja Ram had exhorted the police to resort to general disobedience of the order of the competent authority. The fact that late HC Raja Ram could not participate in the preliminary enquiry is well evidenced by his death, which is a subsequent event. The plea raised in the petition is that late HC Raja Ram was admitted in the hospital, a fact which was completely ignored by the Enquiry Officer. In addition, while passing the impugned order, no consideration apparently was attached to the long service of 27 years of late HC Raja Ram.

(11) It has consistently been held by this court while interpreting the provisions of Rule 16.2 of Punjab Police Rules (for short "the Rules") that dismissal is awardable only for gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. While imposing such a punishment, regard shall have to be had to the length of service of the offender and his claim to pension. Where the punishing authority is not seen alive to long length of service, previous record of service, then this reveal violating of the rule contained in Rule 16.2 of the Rules. Rather, this rule has been held to be mandatory in nature. Reference here may be made to the case of **Randhir Singh** *versus* **Dy. Inspector General of Police, Ambala Range, Ambala Cantt. and another(1).** In this case, the Punishing Authority while imposing punishment of dismissal did not take into consideration the fact that the petitioner had rendered more than 10 years service entitling him to pensionary benefit. It is held that it would be mandatory for the Punishing Authority to take into consideration the length of service of an employee and his claim to pension before inflicting the punishment of dismissal from service under Rule 16.2 of the Rules. While taking this view, reliance was placed on **Constable Shiv Charan** *versus* **The Superintendent of Police, Gurgaon District Gurgaon (2).** In **Constable Om Parkash** *versus* **State of Haryana (3),** this Court had observed that the disciplinary authority was under an obligation to take into consideration the length of service and the right to the pension in respect of an employee.

(1) 2005 (1) S.L.R. 259
(2) 1998 (4) S.L.R. 556
(3) 1994 (6) S.L.R. 228

(12) There is no indication in the order that the punishing authority was alive to the above-said requirement of the rule. It is an apparent case showing complete violation of Rule 16.2 of the Rules. The impugned order of dismissal does not indicate in any manner if the punising authority was conscious of the requirement of Rule 16.2 of the Rules. The impugned order is totally silent so for as this aspect of case is concerned. This is the position even when the case was remanded by this court for reconsidering the issue of quantum of punishment as imposed.

(13) Besides, there are some other serious infirmities noticed in the impugned order/action taken against late HC Raja Ram.

(14) This court had primarily remanded the case to the respondents in view of different treatment meted to HC Raja Ram and another employee. There is no reason forthcoming as to why Constable Jaivir Singh Dalal, accused along with late HC Raja Ram for the same allegations was let off only with the punishment of forfeiture of increments and HC Raja Ram treated so harshly even ignoring his long length of service. Not only that, the order of dismissal has been passed by invoking proviso (b) under Article 311 (2) of the Constitution without disclosing any reason in the order as to why it was not practicable to hold enquiry in this case. The authorities were bound to consider if lesser punishment, like removal or reduction in rank, would have sufficed, especially so when a similar accused employee was let off with lesser penalty.

(15) Even no reasons are forthcoming as to why it was not reasonably practicable to hold an enquiry while directing dismissal of late HC Raja Ram. The requirement of holding an enquiry can not be lightly dispensed with. Reference here may be made to **Jaswant Singh** *versus* **State of Punjab & others, (4),** wherein it is observed that decision to dispense with departmental enquiry cannot be rested solely on the ipse dixit of the concerned authority and when the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on the officer to 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. In the case of **Union of India** *versus* **Tulsi Ram Patel, (5)** the Hon'ble

(4) AIR 1991 S.C. 385

(5) 1985 (Suppl.) 2 S.C.R. 131

Supreme Court observed that clause (b) of the second provisio to Article 311 (2) of the Constitution 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. The reference can be made to **Ex. Sub Inspector Puran Chand** *versus* **State of Punjab, (6)** where the enquiry was dispensed with being not reasonably practicable. No reference was made to any material while recording satisfaction reached that enquiry is not possible due to the reasons recorded. The order of punishment was held vitiated. In **Lalji Dass** *versus* **State of Punjab and others (7)** it was held that the enquiry cannot be dispensed with lightly or arbitarily or out of ulterior motive or to avoid inquiry or because of the case of department is weak and is likely to fail. Order of termination in this case was quashed with liberty to proceed in accordance with law. In **Darshan Jit Singh Dhindsa** *versus* **State of Punjab (8),** Division Bench of this court held that the enquiry against the petitioner therein was dispensed with on excusals. It was further held that cardinal principle of natural justice cannot be dispensed with on mere pretexts.

(16) As held in **Lalji Das, Ex-Constable** *versus* **State of Punjab and others (9),** conditions precedent which must be satisfied before action under clause (b) of second proviso is taken against a government servant and that there must exist a situation which makes holding of an enquiry contemplated by Article 311(2) not reasonably practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(17) Examined in the context of law as noticed above, a view is possible that the decision to dispense with the enquiry was not justified. Merely because, late HC Raja Ram had not joined the enquiry could not have been a valid ground to dispense with the holding of an enquiry by invoking proviso (b) to Clause (2) of Article 311 of the Constitution. No justification has been given in the order as to why this decision was taken to dispense with the enquiry. Non-joining of enquiry by late HC Raja Ram is the sole reason, which though not so mentioned, may appear from the record to dispense with enquiry. If that was the basis to dispense with

(6) 1996 (1) S.C.T. 625
(7) 1996 (1) S.C.T. 821
(8) 1993 (1) S.C.T. 338
(9) 1996 (1) R.S.J. 285

enquiry, then it cannot be a valid reason under law as the enquiry officer could easily have held ex parte enquiry, a procedure which is well known and understood in such like cases. It cannot be said that it was not reasonably practicable to hold enquiry in such a situation. In somewhat similar situation, this court in **CWP No. 4875 of 2009 (Ex. Const. Narinder Kumar** *versus* **State of Haryana and others),** decided on 10th September, 2009 has observed as under :—

> "If a delinquent employee declines to join enquiry or does not appear despite notice, it cannot be said that it is not reasonably practicable to hold enquiry. Holding of ex parte enquiry is a procedure which is well known and in case delinquent official does not appear despite due notice and service, then it is always open to conduct an ex parte enquiry, which is a legal course open in such situation and eventuality. To say that holding of enquiry was not possible and to invoke the proviso under Article 311(2)(b) would not sound legally proper. In large number of judgments as noticed above, it has consistently been observed that decision to dispense with the enquiry does not rest on the ipse dixit of the authority. The authorities concerned are required to satisfy the courts on the basis of objective facts that holding of enquiry was not reasonably practicable. Such satisfaction is to be based on some independent material. It canot be said in the facts of the present case that the subjective satisfaction of the concerned authority to dispense with the departmental enquiry and to dismiss the petitioners by invoking Article 311(2)(b) is fortified by any material. As observed in **Tulsi Ram Patel's case** (supra), the disciplinary authority is not expected to dispense with the enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid holding of an enquiry. May be that the case of the department was very strong and the allegations against the petitioners were serious. That alone cannot be a ground to deny the procedural safeguards which are constitutionally guaranteed to an employee. Once the decision was taken to dispense with the enquiry, it is required to be justified on the ground that it was not reasonably practicable to hold such enquiry. The importance of procedural

safeguards was well noticed by the Hon'ble Supreme Court in the case of **Ranjit Thakur** *versus* **Union of India,** AIR 1987 Supreme Court 2386. The reasons in the present case are totally absent. The order of dismissal passed in this background, thus, cannot be sustained. The enquiry in this case has been dispensed with without proper application of mind."

(18) The impugned order, thus, may not be sustainable on this short ground.

(19) There is, however, one difficulty which may have to be addressed while adopting this course. The earlier order passed by Division Bench of this court, while remitting the case back to the respondents had observed that the petitioner was clearly guilty of mis-conduct and had been rightly punished. It is, thus, to be seen if the impugned order can be so interfered with now at this stage.

(20) I have considered this issue with all seriousness that it deserves. In my considered view, the order passed by Division Bench may not come in the way to consider the legality or validity of the impugned order. Firstly, the Division Bench had not upheld the punishment awarded and had remitted the case back to the respondents for taking fresh decision. Secondly, the Division Bench had passed the order in limine without considering the issue of dispensing with the enquiry in the background of settled position of law. The challenge now is made to the fresh order passed which still would not satisfy either the requirements of law or the reasons for which the case was remitted to the respondents for passing a fresh order.

(21) Let us now see what is the legal position of an order passed in a writ petition in limine.

(22) Hon'ble Supreme Court in the case of **State of Manipur** *versus* **Thingujam Brojen Meetei, (10)** has observed while dealing with the dismissal of Special Leave Petition in limine that when Special Leave Petition is dismissed without expressing any opinion on merits of the impugned judgment by a non-speaking order which does not contain a reason for dismissal, it does not amount to acceptance of correctness of the decision sought to be appealed against. Talking about the effect of such a non-

(10) 1996 (4) S.L.R. 13

speaking order of dismissal without anything more, the Court held that it only means that the court has decided only that it was not a fit case where Special Leave Petition should be granted. Such an order, was not held to constitute law laid down by the Supreme Court under Article 141 of the Constitution of India. Reference in this regard is made to **M/s Rup Diamonds and Ors.** *versus* **Union of India and Ors (11). Late Nawab Sir Miir Osman Ali Khan** *versus* **Commissioner of Wealth Tax, Hyderabad, (12)** and **Supreme Court Employees Welfare Association** *versus* **Union of India, (13).** It can, thus, be said that dismissal of the petition in limine would not act as a precedent or res- judicata when a petition has been dismissed without giving any reason in support of the same. I am, thus, inclined to take a view that dismissal of earlier writ petition without disclosing reasons in that regard, specially so when the court had interfered in the order of sentence would not act as res judicata.

(23) Even in the impugned order now, it has not been considered as to why HC Raja Ram was required to be dismissed, whereas the co-accused similarly situated could be left with a punishment of stoppage of increments only. The reasons for dispensing with the departmental enquiry as now disclosed, are found to be farcical. As already noticed, there is no valid justification for dispensing with the requirement of holding an enquiry.

(24) Relevant consideration for imposing the sentence of dismissal has not been kept in view. The provisions of Rule 16.2 of the Rules which have been held to be mandatory, have been completely ignored. The long service of 27 years rendered by the late husband of petitioner No. 1 has not been viewed in any manner by the DGP while passing the order of dismissal. The right of late HC Raja Ram to earn pension was to be considered and kept in view in the light of the contents of Rule 16.2 of the Rules. The respondents were under legal obligation to consider this aspect and also if any lesser punishment, like compulsory retirement etc. would have met the ends of justice in this case. Number of precedents can be noticed, though orders were passed while dealing with the cases of dismissal under Clause (a) of the second proviso to Article 311(2) of the Constitution of India, where it has been observed that order of dismissal passed in a

(11) (1989-92) S.C.C. 356
(12) 1986 Supp. S.C.C. 700
(13) 1989 (4) S.C.C. 187

huff without applying its mind to the penalty which could appropriately be imposed may not be allowed to stand. Full Bench of this Court in **Om Parkash** *versus* **The Director Postal Services (Posts and Telegraphs Deptt.), Punjab Circle, Ambala and others, (14)** has held that departmental punishment of a Government servant is not a necessary and automatic consequence of conviction on a criminal charge and that the competent authority has to consider all the circumstances of the case and then make such an order in relation to question of imposing of penalty on the Government servant for his original conduct, which may have led to his conviction. Similar ratio would emerge from the decision in the cases of **The Divisional Personnel Officer, Southern Railway** *versus* **T.R. Chellappan (15) Union of India** *versus* **V.K. Bhaskar, (16) Rajinder Singh** *versus* **Board of School Education Haryana and another, (17) and Kulwant Singh** *versus* **The Deputy District Primary Education Officer, Gurdaspur, (18).**

(25) Thus, it can be said that even when the authority has to decide about the punishment, various considerations including that of misconduct and the service, which is in this case is pensionable one, was required to be considered before deciding to determine the quantum of punishment. This legal exercise is clearly absent in this case and thus, there are not one but number of reasons which would call for interference in the impugned order of imposing punishment of dismissal to late HC Raja Ram.

(26) Ordinary, the case could have been remitted back to the respondent-authorities to consider the quantum of punishment afresh in the light of observations as noted above. Since the authorities have consistently failed to adhere to the legal position despite the case having been remitted, I am of the view that no useful purpose would be served in remitting the case back to the respondents to pass a fresh order. It appears that respondents are not prepared to see reasons and even consider the case of the petitioners with sympathy as late husband of petitioner No. 1 is no more. The petitioner No. 1, is now looking for means of livelihood to sustain herself in life. The

(14) AIR 1973 Pb. & Hy. 1
(15) (1976) 3 S.C.C. 190
(16) (1997) 11 S.C.C. 383
(17) (1996) 4 R.S.J. 417
(18) 1997 (1) S.C.T. 282

infirmities as pointed out in the impugned order would directly stare at the respondents and would render the impugned order of punishment of dismissal to be bad on that count.

(27) Needless to mention that enquiry in this case had been dispensed with without any justifiable cause. This in itself was enough to render the impugned order of dismissal to be bad on that count. I have already noticed that the earlier order upholding the dismissal was passed in limine without disclosing reasons and that order as such would not act as *res judicata* to see the validity of the impugned order now put to challenge. I am persuaded to take this view in the background that even on the earlier occasion also, the court had set-aside the punishment of dismissal with a direction to the respondents to re-consider the same in the light of punishment imposed on another employee, who was identically placed and accused of similar allegations, but had been awarded the punishment of only stoppage of increments. Despite opportunities, the respondents had not made any mends and, thus, no useful purpose would now be served for remitting the case back to the respondents for considering the quantum of punishment afresh.

(28) Appropriate course would have been to send the case back to the respondents to hold a fresh enquiry as the enquiry was dispensed with without any legal or valid grounds. That course is not possible in view of the unfortunate death of late husband of petitioner No. 1 HC Raja Ram. Considering the nature of allegations and treatment meted to the co-accused, similarly situated, the order of compulsory retirement of late HC Raja Ram, in my view, would meet the ends of justice and it would be legally appropriate to order so. Such a course is being adopted having regard to the peculiar facts and circumstances of the case and to avoid further harassment to the hapless petitioner, so that she can now survive upon grant of the consequential benefits flowing to her for grant of family pension and other pensionary benefits once her late husband is treated as having compulsorily retired. The alternative course of remanding the case back to the respondents would only add to the agony of this widow and the children, who have suffered enough and apparently have been denied fair treatment at the hands of the respondents.

(29) The present writ petition, therefore, is allowed and the order of dismissal of late HC Raja Ram is set-aside, late HC Raja Ram shall be deemed to have compulsorily retired from the date of the order of his dismissal. The petitioner-wife of HC Raja Ram is held entitled to the grant of family pension and other pensionary benefits accruing to her on account of this order. It is further directed that the consequential relief and benefits be released to the petitioner-wife within a period of four months from the date of receipt of the copy of this order. The petitioners are also held entitled to an exemplary costs of Rs. 25.000.

R.N.R.