that the petitioner must be arrested in all events, suffer some imprisonment and then to plead before the Special Court for bail, this Court wringing its hands in not coming to his rescue? I should think in the negative. Therefore, to pave the way, the petitioner has surrendered to this Court and I order his immediate arrest for the offence allegedly committed by him. And being in custody present before me, in exercise of my powers under section 439, Code of Criminal Procedure, I order his bail despite opposition by the State, for I am satisfied that there are reasonable grounds for believing that the petitioner so far is not guilty of such offence and if released on bail is not likely to commit such an offence while on bail. I am further satisfied that the afore-circumstances are by themselves sufficient and exceptional within the meaning of section 439-A, Code of Criminal Procedure, to grant the petitioner bail. Let him execute bail bonds to the satisfaction of the Additional Registrar for appearance before the Special Court, in case prosecution is launched against him. This petition is allowed in these terms.

N. K. S.

Before D. S. Tewatia and Pritpal Singh, JJ.)

BALDEV SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2092 *of* 1985.

April 24, 1985.

Punjab Police Rules, 1934—*Rules* 16.2 *and* 16.24(1)—*Police official dismissed from service—Appeal and revision to the higher authorities also rejected—Impugned orders not specifically stating that length of service and claim to pension taken into account before passing of the order of the Punishing Authority—Impugned order—Whether liable to be set aside—Show-cause notice served on official but said official not orally examined—Such non-examination—Whether requirement of Rule* 16.24(1)(*ix*)—*Non-compliance with the Rule—Whether vitiates the dismissal.*

Held, that Rule 16.2(i) of the Punjab Police Rules, 1934 is in the nature of guidance to the punishing authority, i.e., punishing authority has to be alive to the aspect that while making an order of dismissal

regard shall be had to the length of service of the official and the claim to pension. However, merely from the fact that none of the concerned authorities has expressly made a mention of the requirement of the said rule, it would not show that the concerned authority was not alive either to the length of the service of the offender or the claim to pension. It is to be assumed that the concerned authority while passing the order must have applied its mind to the requirement of Rule 16.2 and it is not necessary for the authority to make an express reference to the requirement of the said rule in its order and such non-reference does not vitiate the dismissal.

(Para 3).

Held, that a perusal of Rule 16.24(1) (a) of the Rules would show that before an order of dismissal or reduction in rank is passed, the offender shall be produced before the officer empowered to punish him who shall then inform the offender of the charges really proved and call upon the offender to show cause why an order of dismissal or reduction in rank should not be passed. The proviso makes an exception in a case where the matter is of complicated nature. In that eventuality the show-cause notice has to be given in writing and any representation that may be received is to be considered by the punishing authority. The procedure envisaged by the proviso is in fact more satisfactory. Further the perusal of the sub-clause (ix) would show that it does not envisage any personal hearing at all. What it emphasises is that the punishing authority would summon the delinquent official, convey the charge that has been proved and ask the officer verbally to show cause and whatever the said officer states verbally is to be reduced in to writing which would form part of the record and shall be taken into account. As such where the show-cause notice has been issued to the offender, the omission to give an oral hearing before passing the order of dismissal would not vitiate the dismissal.

(Paras 4, 6 and 7).

Gurdev Singh *vs.* State of Haryana, 1976(2) S.L.R. 442.

OVERRULED.

Civil Writ Petition under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court be pleased to issue as under* :—

(*i*) *a writ* of certiorari *for quashing the impugned orders* (*Annexures* P. 3, *P.* 4 *and P.* 5);

(*ii*) *a writ* of mandamus *directing the respondents to take the petitioner on duty during the pendency of this writ petition;*

(*iii*) *any other writ, order or direction as this Hon'ble Court may deem fit under the circumstances of the case, be issued;*

(*iv*) *service of advance notice upon the respondents be dispensed with as no time is left for the same;*

(*v*) *filing of certified copies of Annexures P. 1 to P. 5, may be dispensed with;*

(*vi*) *records of the case be called for;*

(*vii*) *costs of the petition be awarded to the petitioner.*

Gurnam Singh, Advocate for the Petitioner.

Nemo for the Respondent.

JUDGMENT

(1) The petitioner Baldev Singh, who was a Constable in Punjab Police, stands dismissed,—*vide* order, dated 11th August, 1983, Annexure P. 3. His appeal to D.I.G. and further revision to I.G., Punjab were also dismissed,—*vide* orders, dated 27th December, 1983 and 9th March, 1984 respectively.

(2) Counsel for the petitioner has canvassed that there had been non-compliance with rules 16.2 and 16.24 of the Punjab Police Rules of 1934 (hereinafter referred to as the Rules). Relevant portion of rule 16.2 of the Rules is in the following terms :—

> "16.2 (1) Dismissal shall be awarded only for the gravest act 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."

(3) It has been urged that neither the order of the punishing authority nor the orders of the appellate and revisional authorities indicated that the factum of length of service and his right to pension had been kept in view while imposing the punishment. That means that the authorities concerned were oblivious of the provisions of rule 16.2 and so the order of dismissal stands vitiated. Support was sought for the aforesaid submission from a single Bench judgment of this Court reported as *Gurdev Singh* vs. *State of Haryana* (1). Pointed attention was drawn to the following observations of Koshal J., as he then was:—

> "The impugned order is vitiated by another illegality. According to the sub-rule, the punishing authority is duty bound

(1) 1976(2) S.L.R. 442.

> to take into consideration the length of service of the offender and his claim to pension before it can award the penalty of dismissal. The relevant part of the sub-rule is mandatory in character and an order passed in disregard of it cannot be upheld."

With respect, we find ourselves unable to concur in the view of the learned Judge. So we do hereby overrule the decision rendered in *Gurdev Singh's case* (supra). Relevant portion of rule 16.2 (i) is in the nature of guidance to the punishing authority, i.e., punishing authority has to be alive to the aforesaid aspect. However, merely from the fact that neither of the concerned authority has expressly made a mention of the requirement of the said sub-rule would not show that the concerned authority was not alive either to the length of the service of the offender or his claim to pension. It is to be assumed that the concerned authority while passing the order must have applied its mind to the requirement of Rule 16.2 and it is not necessary for the authority to make an express reference to the requirement of the said rule in its order.

(4) Regarding non-compliance with rule 16.24, it was canvassed that the punishing authority had not given oral hearing before passing the order of dismissal. He sought support for the above view from a Division Bench judgment of this Court in *Siri Ram* v. *The State of Punjab* (2). While dealing with the submission that there has been non-compliance with rule 16.24, the learned counsel pin pointed clause (ix) of sub-rule (1) of rule 16.24 which is in the following terms:—

> "16.24 (1) The following procedure shall be followed in departmental enquiries :—
>
> ** ** **
>
> (ix) No order of dismissal or reduction in rank shall be passed by an officer empowered to dismiss a police officer or reduce him in rank until that officer has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, provided that this shall not apply: —
>
> (a) Where a police officer is dismissed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge; or

(2) 1967 S.L.R. 578.

(b) Where the officer empowered to dismiss him or reduce in rank is satisfied that for some reason to be recorded by that officer in writing, it is not reasonably practicable to give to that police officer an opportunity of showing cause. Before an order of dismissal or reduction in rank is passed the officer to be punished shall be produced before the officer empowered to punish him, and shall be informed of the charges proved against him, and called upon to show cause why an order of dismissal or reduction in rank should not be passed. Any representation that he may make shall be recorded, shall form part of the record of the case and shall be taken into consideration by the Officer empowered to punish him before the final order is passed;

Provided that if, owing to the complicated nature of the case or other sufficient reason to be recorded, the officer empowered to impose the punishment considers this procedure is appropriate, he may inform the officer to be punished in writing of the charges proved against him and call upon him to show cause in writing why an order of dismissal or reduction in rank should not be passed. Any written representation received shall be placed on the record of the case and taken into consideration before the final order is passed."

(5) The ratio of the aforesaid D. B. decision is not attracted to the present case. The Division Bench proceeded on the assumption that the personal hearing was a must because the stand of the State was also this that personal hearing had been given to the petitioner. The Bench found as a fact that personal hearing in the case was a mere farce as the order of dismissal had already been passed.

(6) Perusal of the aforesaid rule would show that before an order of dismissal of reduction in rank is passed, the offender shall be produced before the officer empowered to punish him who shall inform him of the charges proved against him and call upon to show cause why an order of dismissal or reduction in rank should not be passed. The proviso makes an exception in a case where the matter is of complicated nature. In that eventuality the show-cause notice has to be given in writing and any representation that may be received is to be considered by the punishing authority.

(7) The grievance appears to be that instead of serving a show-cause notice in writing, the petitioner should have been told of the same verbally and should have been verbally asked as to what he had to say. Surely, the procedure envisaged by the proviso is more satisfactory. Further, the perusal of the clause (ix) would show that it has not envisaged any personal hearing at all. What it envisages is that the punishing authority would summon the delinquent officer, tell him the charge that has been proved against him and ask him verbally to show cause and whatever he states verbally that is to be reduced in writing which would form part of the record and shall be taken into consideration.

(8) For the reasons aforementioned, there is no merit in this petition and the same is dismissed *in limine*.

H.S.B.

Before J. V. Gupta, J.

HARBANS ATMA SINGH,—*Appellant*

versus

SHRI RAMESH KUMAR,—*Respondent.*

Regular First Appeal No. 1169 *of* 1984.

April 30, 1985.

Specific Relief Act (XLVII of 1963)—Section 20—Plot of land allotted to the defendant—Defendant, however, prohibited under the allotment order from selling the plot without the permission of the Estate Officer—Agreement to sell executed by the defendant in favour of the plaintiff—Permission to sell applied for and refused—Suit by the plaintiff for specific performance—Specific performance—Whether should be granted in such circumstances—Agreement to sell providing for liquidated damages—Plaintiff—Whether entitled to such specified amount of damages.

Held, that where there is a contract of sale of immovable property between the parties, but the sale requires permission of someone who is not a party before the Court and is not amenable to its jurisdiction and that permission is refused, specific performance of the contract cannot be granted. The only remedy for the aggrieved party is to claim damages for breach of contract. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the Court is not bound to