HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPAW No. 268/2011

Reserved on: 21.05.2026
Pronounced on: 30 .05.2026
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Whether the operative part or full judgment is pronounced:Full

State of Jammu and Kashmir and others

Appellants

Through: - Mr. Mohsin Qadri Sr. AAG.

vs

Ghulam Mohd. Tantray

…Respondent(s)

Through: - Mr. Syed Faisal Qadiri Sr. Advocate with
Mr. Mir Adhan Zahoor, Advocate.
Mr. Salih Pirzada, Advocate.

CORAM: **HON'BLE MR. JUSTICE SANJEEV KUMAR,JUDGE**
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE

JUDGMENT

Sanjeev Kumar, J

1 This intra-Court appeal filed by the then State of Jammu and Kashmir (now UT of Jammu and Kashmir) is directed against an order and judgment dated 29.04.2011 passed by a learned Single Judge of this Court ["writ Court"] in SWP No. 683/2007 titled '*Ghulam Mohd. Tantray vs. State of Jammu and Kashmir and others*, whereby the writ Court has allowed the writ petition filed by the respondent herein under Article 226 of the Constitution of India and set aside the order of dismissal of the respondent issued vide Government Order No. 367-GAD of 2007 dated 2.4.2007.

2 The impugned judgment is assailed by the appellants on multiple grounds. However, before we advert to the grounds of challenge, we deem it appropriate to first narrate few facts which are germane to the disposal of this appeal.

3 The respondent was enrolled in the Department of Police in the year 1991. He was found involved in anti-national activities in the year 2004 and was arrested by the police of Police Station Zadibal, Srinagar, in case FIR No. 06 of 2004 for offences under Section 120-B RPC and Sections 7/24 of the Indian Arms Act. Simultaneously with the registration of the aforesaid FIR, the respondent was placed under suspension and a departmental enquiry was initiated.

4 During suspension, the respondent remained attached with the Police Line and received subsistence allowance without any work. It is in that background that the appellants reinstated him till the final conclusion of the departmental enquiry. While the enquiry was yet to proceed formally, the appellants invoked the provisions of Section 126(2)(c) of the Constitution of Jammu and Kashmir and, having found the activities of the respondent detrimental and prejudicial to the security of the State, dismissed him from service in terms of Government dated 02.04.2004 (supra).The Government Order supra was called in question by the respondent in SWP No. 683/2007, precisely on the ground that the services of the respondent could not have been terminated by the appellants without conducting a departmental enquiry and providing the respondent an adequate opportunity to defend himself, and that the procedure laid down in Section 126 of the Constitution of Jammu and Kashmir, which corresponds to Article 311 of the Constitution of India, had not been followed before imposing the major punishment of dismissal. The manner in which the subjective satisfaction was claimed to have been derived by the Governor was also found fault with on the ground that the subjective

satisfaction of the Governor was without any material and was merely a short-cut to the departmental enquiry.

5 The writ petition was contested by the appellants herein by filing a reply affidavit of the then Director General of Police, Jammu and Kashmir. A separate reply was filed by the Principal Secretary to the Government, General Administration Department. In a nutshell, it was the stand taken by the appellants that the respondent, having been found involved in militant and anti-national activities, was arrested in FIR No. 06/2004 registered at Police Station Zadibal, Srinagar. Simultaneously, a departmental enquiry was also initiated against the respondent. It was submitted that, keeping in view the anti-national activities which the respondent had indulged in, it was not found expedient by the competent authority to hold a full-fledged departmental enquiry. Accordingly, resort was made to Section 126(2)(c) of the Constitution of Jammu and Kashmir and the services of the respondent were dispensed with by the orders of His Excellency the Governor.It was specifically pleaded by the appellants that the departmental enquiry which had been initiated against the respondent was dispensed with, as it would have exposed the security of the State and certain privileged witnesses would have had to be exposed, which was not perceived to be beneficial to the security of the State.

6 The writ Court, having considered the rival contentions and stand of the parties, came to the conclusion that there was nothing indicated by the appellants in their reply affidavits as to why the departmental enquiry, which at one point of time had been initiated, was dispensed with and resort was taken to Section 126(2)(c) of the Constitution of Jammu and Kashmir. The writ Court observed that leaving the departmental enquiry initiated against the respondent midway and taking resort to Section 126(2)(c) of the Constitution of Jammu and Kashmir was without any reasons and, thus, flawed. On this ground alone, the writ

Court found merit in the writ petition and set aside the dismissal of the respondent ordered by the appellants vide Government Order dated 02.04.2004 (supra).

7 The impugned judgment passed by the writ Court is assailed by the appellants on the ground that the writ Court has not appreciated the legal position governing the dispensation of a regular departmental enquiry in terms of Section 126(2)(c) of the Constitution of Jammu and Kashmir, which empowers the Governor of the State to dispense with such enquiry where he is satisfied that, in the interest of the security of the State, it is not expedient to hold the same before imposing a major penalty. It is contended on behalf of the appellants that the writ Court also did not go through the record, a perusal whereof would clearly indicate that there was due application of mind and that the decision was taken by the competent authority on the basis of recommendations made by a Committee constituted for the purpose and the deliberations of the Cabinet.The reasons for dispensation of regular departmental enquiry were not only indicated in the reply affidavit filed by the GAD, but were also clearly indicated in the memo prepared for the Cabinet for approval. The writ Court also did not take note of the fact that it is on the basis of recommendations made by the Cabinet that the then Governor of the State invoked the powers conferred by Section 126(2)(c) of the Constitution of Jammu and Kashmir and dismissed the respondent from service after recording satisfaction that it was not expedient to hold a regular departmental enquiry in the interest of the security of the State.

8 *Per contra*, learned counsel appearing for the respondent would argue that the writ Court correctly arrived at its conclusion that there was no material on record to indicate as to why the regular departmental enquiry was dispensed with and resort was made to the provisions of Section 126(2)(c) of the Constitution of Jammu and Kashmir. He would argue that in the absence of the Governor recording his satisfaction that, in the interest of the security of the State, it was not

expedient to hold a regular departmental enquiry, resort could not have been made to the provisions of Section 126(2)(c) of the Constitution of Jammu and Kashmir to dismiss the respondent from service without holding the said enquiry.It is argued by learned counsel for the respondent, that though the satisfaction to be drawn by the Governor under Section 126(2)(c) is subjective, yet the same must be based on material and, in the absence thereof, the subjective satisfaction shall stand vitiated. He would wrap up his arguments by submitting that, in the instant case, there is no material placed before the Court to demonstrate that the requisite subjective satisfaction was drawn by His Excellency the Governor on the basis of relevant material.

9 Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the writ Court is sketchy and seriously flawed.

10 Before we advert to the factual situation obtaining in the case at hand, we deem it appropriate to briefly examine the legal position.

11 Section 124 of the Constitution of Jammu and Kashmir, which corresponds to Article 310 of the Constitution of India, embodies the *'doctrine of pleasure*', which means that a public servant holds office during the pleasure of the President or the Governor, as the case may be, and has two important consequences. Firstly, the Government has the right to regulate or determine the tenure of its employees at pleasure, notwithstanding anything in their contract to the contrary, provided that the mandatory provisions laid down in Article 311 have been observed. Secondly, the Government has no power to restrict or give up its prerogative of terminating the services of its employees at pleasure under any contract made with the employee, except to the extent recognised by clause (2) of Article 310 of the Constitution of India.

12 As held by the Hon'ble Supreme Court in **State of Uttar Pradesh v. Babu Ram Upadhya, AIR 1961 SC 751** the power of the Governor to dismiss at pleasure, subject to the provisions of Article 311 of the Constitution of India, is not an executive power under Article 154 of the Constitution, but a constitutional power and is incapable of being delegated to officers subordinate to him. Later, in **Sardari Lal v. Union of India, (1971) 1 SCC411** it was held that executive functions of the nature entrusted by certain Articles of the Constitution, in which the President has to be satisfied personally about the existence of certain facts or state of affairs, cannot be delegated by him to anyone else. In support of this view, the Supreme Court relied on the observations made in **Jayantilal Amrit Lal Shodhan v. F.N. Rana AIR 1964 Supreme Court 648** that the powers of the President or the Governor, as the case may be, under Article 311 of the Constitution also cannot be delegated. However, these propositions were later described as incorrect and held no longer a good law after the decision of the Supreme Court in **Shamsher Singh v. State of Punjab (1974) 2 SCC 831.** In that decision, the propositions were reformulated as follows:

> "(i) the distinction made in the **Jayantilal Amrit Lal's** case (supra) between the personal and executive functions of the President does not lead to the conclusion that the President is not the constitutional head of the Government;
>
> (ii) the President, as also the Governor, is the constitutional or formal head and exercises his powers and functions under the Constitution on the aid and advice of the Council of Ministers; and
>
> (iii) the President as well as the Governor, in the exercise of powers under Article 310(1), acts on the aid and advice of the Council of Ministers and is not required to act personally".

13 It is, thus, now a settled constitutional position that the pleasure of the Government or the Governor under Article 310(1) of the Constitution is exercised not in any personal capacity but as the Head of the Government acting on the aid

and advice of the Council of Ministers. Similarly, the power which is exercised by the President or the Governor under Section 126(2)(c) of the Constitution of Jammu and Kashmir, which corresponds to Article 311(2)(c) of the Constitution of India, is exercised by the President or the Governor, as the case may be, not in any personal capacity but as the Head of the Government acting on the aid and advice of the Council of Ministers.

14 It is, thus, no longer *res integra* that Section 125 of the Constitution of Jammu and Kashmir, which corresponds to Article 310 of the Constitution of India, enacts the general principle that a Government servant holds office during the pleasure of the Government, but there are restrictions placed on this prerogative of dismissal at pleasure in Section 126 of the Constitution of Jammu and Kashmir, which corresponds to Article 311 of the Constitution of India, and these restrictions are: *(i) that persons employed in civil capacities under the Union or the State shall not be dismissed or removed by an authority subordinate to that by which they were appointed; and (ii) that no person shall be dismissed, removed, or reduced in rank except after an enquiry as provided in clause (2) of Section 126 of the Constitution of Jammu and Kashmir / Article 311(2) of the Constitution of India.*

15 In the instant case, we are directly concerned with the provisions of Section 126(2)(c) of the Constitution of Jammu and Kashmir corresponding to Article 311(2)(c) of the Constitution of India.

16 For the application of clause (c), the satisfaction of the President or the Governor, as stated above, is not personal satisfaction but the satisfaction of the Head of the State or Government acting on the aid and advice of the Council of Ministers. His satisfaction regarding the expediency of enquiry is final, and he is not supposed to disclose the facts on which it is based either to the civil servant concerned or to any authority. The security of the State in clause (c) is not confined

to the security of the whole State, nor is it confined to armed rebellion or revolt; it may be open or clandestine. Disaffection in armed, paramilitary, or police forces is an act that affects the security of the State. The involvement of the Government machinery, particularly of those serving in security forces like the J&K Police, in subversive activities aimed at disintegrating the country undoubtedly affects the security of the State.

17 The Supreme Court, in the case of **A.K. Kaul vs Union of India, (1995)4 SCC 73** very aptly drew a distinction between clause (b) and clause (c) of Article 311(2) of the Constitution of India. The Court held that while the former requires the recording of reasons, the latter does not do so. The Court, however, went on to hold that absence of the requirement of recording reasons would not mean that the decision under clause (c) could be arbitrary, unreasonable, and unconnected with the security of the State. While elaborating on the scope of judicial review of the satisfaction required to be derived or drawn by the President or the Governor, as the case may be, under clause (c), it was held that the subjective satisfaction would be vitiated if it is based on no material or is based on circumstances having no bearing on the security of the State.

18 At this point, it would be appropriate to refer to and set out below paragraphs 141, 142 and 143 of the judgment of the Supreme Court in the case of **Union of India and another vs Tulsiram Patel and others.** The said paragraphs read thus:

> "141.The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations these which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot

be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

> "33. Power to Parliament to modify the rights conferred by this Part in their application to Forces.
>
> Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the member of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."
>
> By the Constitution (Fiftieth Amendment) Act, 1984, this Article was substituted. By the substituted Article the scope of the Parliament's power to so restrict or abrogate the application of any of the Fundamental Rights is made wider. The substituted Article 33 reads as follows :
>
> "33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,
>
> (a) the members of the Armed Forces ; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred upon Parliament to restrict or abrogate to them.

142.The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore be with respect to the expediency or inexpediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable impolitic." The same dictionary defines "expedient" as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case." Webster's Third New International Dictionary also defines the term "expedient" as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end : fit, proper, or advantageous under the circumstances." It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the Constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to

dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making, known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public.

143.In the case of clause (b) of the second proviso, clause (3) of Article 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause (c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the Court's power of judicial review is concerned, the Court cannot sit in judgment over State policy or the wisdom or otherwise of such policy. The court equally cannot be the judge of expediency or inexpediency. Given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or Governor under clause (c) is subjective satisfaction and, therefore, would not be a fit matter for judicial review. Relying upon the observations of Bhagwati, J., in State of Rajasthan and others etc. etc. v. Union of India etc.etc., [1978] 1 S.C.R. 1, 82, it was submitted that the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is unnecessary to decide this question because in the matters under clause (c) before us, all the materials including the advice tendered by the Council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground".

19 Regarding the scope of judicial review in respect of an order passed under Article 311(2)(c) of the Constitution of India, which is *pari materia* to Section 126(2)(c) of the Constitution of Jammu and Kashmir, suffice it to say that the same was examined by the Supreme Court in **A.K. Kaul vs Union of India** (supra) and it was reiterated what was said by the Supreme Court in the Constitution Bench judgment of **Union of India vs Tulsiram Patel** (supra).In *A.K. Kaul's* case (supra), the Supreme Court, placing reliance on an earlier Constitution Bench decision in **S.R. Bommai vs Union of India (1994) 3 SCC 1** as regards the justiciability of the satisfaction of the President in the matter of exercise of power under Article 356 of the Constitution of India, took the view that an order passed by the President or the Governor, as the case may be, under Article 311(2)(c) of the Constitution of India would be subject to judicial review and its validity can be examined by the Court on the ground that the satisfaction of the President/Governor is vitiated by **mala fide** or is based on wholly extraneous or irrelevant grounds.Paragraph 31 of the judgment is relevant and is set out below:

> " 31.We are, therefore, of the opinion that an order passed under clause (c) of the second proviso to Article 311 (2) is subject to judicial review and its validity can be examined by the court on the ground that the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrelevant grounds within the limits laid down in S.R Bommai (supra)".

20 From the above discussion, it is beyond the pale of any discussion and should be taken as well settled that under Section 126(2) of the Constitution of Jammu and Kashmir/Article 311(2) of the Constitution of India, ordinarily no civil servant can be dismissed, removed, or reduced in rank without informing him of the charges, holding a departmental enquiry, and granting him a reasonable opportunity of hearing. However, the second proviso carves out three exceptions: *(i) conviction on a criminal charge, referable to Article 311(2)(a)/Section 126(2)(a) of the Constitution of J&K; (ii) where it is not reasonably practicable to*

hold an enquiry, referable to Article 311(2)(b)/Section 126(2)(a); and (iii) where it is not expedient to hold an enquiry in the interest of the security of the State, referable to Article 311(2)(c) Section 126(2)(c).

21 Clause (c), as we have seen, is the most stringent exception because it is founded on considerations of national/state security. The expression "security of the State" has a very high threshold. It generally concerns terrorism, espionage, militant links, activities threatening the sovereignty and integrity of the country, and grave anti-national conduct, etc. The action to be taken by the President/Government in the interest of the security of the State must be based upon the subjective satisfaction drawn on the aid and advice of the Council of Ministers. Though the judicial review of such satisfaction drawn by the President/Government on the aid and advice of the Council of Ministers is very limited and constricted, yet the constitutional Courts are not debarred from judicially reviewing such satisfaction if it is vitiated by *mala fides*, absence of relevant material, arbitrariness, and above all, if it does not generally concern the security of the State. We are aware that the Courts do not sit in appeal over the sufficiency of material upon which the competenet authority draws its satisfaction.It is in the light of this context, we need to examine the case of the respondent.

22 We have gone through the record produced by learned counsel appearing for the appellants relating to the proceedings taken against the respondent under Section 126(2)(c) of the Constitution of Jammu and Kashmir. It is true that the order merely states that the Government is satisfied that, in the interest of the security of the State, it is not expedient to hold an enquiry in the matter without disclosing anything more. The order of dismissal which was impugned in the writ petition was not required to contain the material on the basis of which the Government had drawn its satisfaction. The position of law is well

settled and has been explained hereinabove.However, from the contemporaneous record, particularly the detailed memorandum prepared by the Department of Home for submission to the Cabinet, it clearly emerges that the respondent, a Driver Constable in the Police Department, was involved in subversive activities aimed at disintegration of the country. As per the interrogation report in respect of FIR No. 6/2004 registered at Police Station Zadibal, Srinagar, the respondent was in contact with a Pakistani mercenary and had managed for him a permanent hideout in the house of one Haji Mushtaq Gaji. On a tip-off, the house of Haji Mushtaq was raided, from where a large quantity of arms and ammunition was recovered. Haji Mushtaq was arrested and his investigation led to the role of the respondent. The rented accommodation of the respondent was also searched by the police party, wherein two hand grenades were recovered.Keeping in view these activities in which the respondent was found indulging, he was considered to be a grave threat to the security of the State. Accordingly, the relevant material like the FIR and the interrogation report were placed before the Cabinet. It is this material on the basis of which the Cabinet drew its satisfaction that it was not expedient to hold a departmental enquiry against the respondent and that it was necessary to get rid of him by dismissing him from service by invoking the provisions of Section 126(2)(c) of the Constitution of Jammu and Kashmir.

23 The memorandum which was approved by the Cabinet takes note of the findings of fact returned by a Committee headed by the Chief Secretary constituted vide Government Order dated 17.12.2004. The report of the Enquiry Committee as also the memorandum prepared by the Department of Home for submission to the Cabinet clearly indicated the reasons as to why the holding of a regular enquiry in the case of the respondent and a few others was required to be dispensed with and resort made to Section 126(2)(c) of Constitution of Jammu and Kashmir. The relevant extract of the memorandum is set out below:

> "The following are the reasons which make it impracticable to hold an enquiry: (i) the subject has militancy-related connections; (ii) the witnesses may not come forward to give statements against the subject in view of his contacts with militants, under fear of reprisal; and (iii) the Enquiry Officer shall not be in a position to conduct the enquiry in a fair manner keeping in view the possible threat perception to his life, his family members, and property from the subject and/or from militants/organisation for whom the respondent has been working or with whom he has developed close contacts."

24 It is this memorandum which was later approved by the Cabinet and forwarded to His Excellency the Governor with the recommendation that the respondent was required to be terminated from service in the interest of the security of the State by invoking the exception carved out in Section 126(2)(c) of the Constitution of Jammu and Kashmir, for the reason that a regular departmental enquiry against the respondent was inexpedient.The writ Court seems to have ignored all this material available on record and has also failed to take note of the specific pleadings of the appellants. The reply to grounds (a) to (p) of the writ petition in the reply affidavit needs to be reproduced hereinunder:

> "In reply to grounds (a to p), it is submitted that the impugned order has been issued in the public interest in terms of proviso © to Sub Section 2 © of Section of the 126 of the Constitution of J&K. The order was purely passed in the interest of security of State as the activities of the petitioner were detrimental and prejudicial to the Security of the State, which is evident because the petitioner was booked in case FIR No 06/2004 U/s 120-B RPC and 7/25 IA Act Police Station Zadibal, as such, no enquiry could be conducted as it would have exposed the security of the State and certain privileged witnesses would have to be exposed which otherwise were beneficial to the security of the State"

25 In view of this admitted position, there was no warrant or justification to interfere with the order of dismissal of the respondent passed by the appellants vide Government Order dated 02.04.2007 (supra). We cannot remain oblivious to the ground situation which was then prevailing in the State of Jammu and Kashmir. The integrity and sovereignty of the country has always been put on peril by the proxies of our neighbouring country. In a bid to disintegrate our nation by creating

terror and promoting dissatisfaction amongst the people of the Valley against the Government of India, the enemy has been using multiple tools and strategies. One such strategy in those days was to infiltrate in the Government through Government employees and members of the security forces. The enemy succeeded to some extent and made considerable inroads into the Government machinery at one point of time. Several Government employees at different levels, including those working in security and intelligence agencies, were roped in by the enemy country to achieve its nefarious design of disintegrating this country.The respondent was one such pawn in the hands of the enemy who had been persuaded to act not only against his employer but also against his country for extraneous reasons and considerations. Not only had he established contacts with a Pakistani militant, but he had also arranged a hideout for him. During interrogation, which was followed by searches, two hand grenades were also recovered from the possession of the respondent.

27 It is true that with regard to the incident an FIR was registered and investigation taken up by the concerned Police Station. Even a departmental enquiry was also initiated, but later on it was realised that holding of a departmental enquiry would be inexpedient and an exercise in futility. The appellants realised that in the atmosphere then prevailing, nobody would come forward to depose against the respondent without exposing himself or herself to threat to life and property. Accordingly, the matter was placed before a Committee constituted by the Government for examination. The Committee found it a fit case for dispensation of a regular departmental enquiry and accordingly submitted its report to the Department of Home.It is in these circumstances that a detailed memorandum was prepared by the Home Department for submission to the Cabinet containing reasons for dispensing with the departmental enquiry and taking action under Section 126(2)(c) of Consitution of Jammu and Kashmir. The

Cabinet approved the note and recommended to His Excellency the Governor for proceeding further in the matter in light of the provisions of Section 126(2)(c) of the Constitution of Jammu and Kashmir.

28 Viewed thus, it was totally erroneous on the part of the writ Court to deal with the matter in a slipshod manner and set aside the dismissal of the respondent on the ground that it could not find any material justifying dispensing with of the departmental enquiry and resort to Section 126(2)(c) of the Constitution of Jammu and Kashmir when such material was available in abundance.

29 For the aforesaid reasons, we find merit in this appeal and the same is, accordingly, allowed. The impugned order passed by the writ Court is set aside. The writ petition is, accordingly, dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Whether the order is speaking: ***Yes***
*Whether the order is reportable:****Yes***

Jammu
Sanjeev
30 .05.2026