

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.8253 of 2006

Date of Decision: July 01, 2015

Gaje Singh

...Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.A.Sheoran, Advocate,
for the petitioner.

Mr.Keshav Gupta, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 16.5.2006 (Annexure P-7), whereby the services of the petitioner have been terminated and even recovery of amount of ₹12,41,807/-, allegedly paid by the Department in two MACT cases, has been ordered to be effected from the petitioner.

Mr.R.A.Sheoran, learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed as a Driver through regular process in the year 1990 and at the time of appointment, he submitted his driving licence. Unfortunately, on 5.9.1999, while driving the

Bus, met with an accident, in which two persons, namely, Satyawar and Mohinder Singh died. An FIR under Sections 279 and 304-A IPC was registered at Police Station Sadar Jind. Accordingly, the petitioner was placed under suspension on 17.9.1999 and was also served with a charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules. The petitioner submitted reply to the charge sheet and considering the contents of his reply, the petitioner was, vide order dated 15.1.2004 (Annexure P-1), ordered to be reinstated pending enquiry against him

The Chief Judicial Magistrate, Jind vide judgment dated 14.11.2005, acquitted the petitioner from the charges under Sections 279 and 304-A IPC. The legal heirs of the deceased, who died in the accident, invoked the jurisdiction of the Motor Accident Claims Tribunal (for short "Tribunal") by filing the claim petition under Section 163 of the Motor Vehicles Act, which was contested by the Management and as well as the petitioner-driver. The Tribunal, vide award dated 9.5.2003, found that the licence held by the petitioner was fake as the report obtained by an Advocate was not conclusive piece of evidence and, thus, held that the Insurance Company did not discharge the onus by examining the official from the concerned licensing authority. The Tribunal ordered, that since the Insurance Company had indemnified the owner, in the first instance, it would make the payment of compensation to the claimants, but, however, recovery rights were given to the Insurance Company. The operative part of the award of the Tribunal dated 9.5.2003, thus, reads:-

"In view of my aforesaid discussion and findings on the various issues, the present claim petition is accepted with costs and an

award of Rs.3,67,000/- (Rupees Three lacs, sixty seven thousands only), is hereby passed in favour of the petitioners against the respondents. The petitioners are also entitled for interest at the rate of 9% per annum from the date of filing this petition till the payment is made. Since, the offending vehicle is duly insured, so the insurance company will make the payment of compensation along-with interest. However, the Insurance Company will be at liberty to recover the amount from the driver and owner of the offending vehicle, if so, desired. Out of the recovered amount, Rs.two lacs will be paid to the petitioner no.1, Rs.one lac, will be paid to the petitioner no.2 and the balance amount of Rs.67,000/- will be paid to the petitioner no.3 and out of this amount 75% be deposited in their names in the fixed deposit for a period of three years in any nationalized bank in an interest bearing scheme. Counsel fees is assessed at Rs.1100/-. Memo of costs be prepared. File be consigned to the record-room after due compliance.”

It is evident that the Insurance Company was given liberty to recover the amount from the driver and the owner of the offending vehicle, if so desired.

The Insurance Company filed an execution application for recovery of the aforementioned amount and the employer paid the aforementioned amount of compensation to the Insurance Company and as a punitive action, a show cause notice dated 21.11.2005 (Annexure P-5) was issued to the petitioner with regard to the proposed action of termination with immediate effect and recovery of amount of ₹12,41,807/- paid by the Government. The petitioner submitted his reply (Annexure P-6) stating therein that he joined the Department in the year 1990 and never been found negligent in driving except involvement in the, aforementioned, criminal

case and rather discharged his duties with due care and caution after following all mandatory traffic rules. It was further stated that he was at the verge of retirement and, therefore, the show cause, under reply, be dropped/withdrawn. The respondents, while considering the reply of the petitioner, vide impugned order terminated his services and also ordered to recover the aforementioned amount. It is under these circumstances, the petitioner has knocked the door of this Court by invoking the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

Learned counsel appearing on behalf of the petitioner contends that the order of termination was passed without holding an enquiry and, therefore, it is vitiated in law, much less, erroneous and, therefore, it is not sustainable in the eyes of law. He further submitted that the liability was vicarious and the employer has already discharged the same by making the payment to the Insurance Company and, therefore, the employer is prevented from recovering the amount, much less, could not have taken punitive action by terminating the services of the petitioner as it amounts to imposition of harsher punishment.

Mr.Keshav Gupta, learned Assistant Advocate General, Haryana appearing on behalf of the State submits that the award of the Motor Accident Claims Tribunal dated 9.5.2003, has attained finality, wherein there is a categorical finding, whereby, the Insurance Company has been given liberty to recover the amount from the owner and the driver of the offending vehicle and, therefore, there was no need of holding a fresh enquiry and, thus, the order under challenge is fair, legal and justified.

I have heard the learned counsel for the parties and appraised

the paper book.

The petitioner was arrayed as a respondent in the proceedings initiated under the Motor Vehicles Act. Nothing prevented the petitioner to lead the evidence in affirmative to prove that the driving licence held by him was genuine or not fake. The petitioner did not avail such opportunity nor discharged the onus, particularly when the report of the Advocate had come as cause of action had accrued to take the effective measure/steps. The award of the Tribunal has attained the finality as, concededly, the petitioner has not challenged the aforementioned finding. Even in the present proceedings, no steps have been taken by the petitioner to place on record the material to support that the driving licence held by him was/is genuine. Accordingly, the order dated 16.5.2006 (Annexure P-7) terminating the services of the petitioner is fair, legal, justified and same is upheld.

As regards the recovery of a sum of ₹12,41,807/- sought to be effected from the petitioner, is concerned, the employer is not entitled to recover the same, for, as it is now a settled law that while employing a driver, the owner/ employer is required to make an enquiry vis-a-vis the driving licence of the driver from the licence authority. In the instant case, the employer has not taken any such steps. Since the petitioner has not challenged the finding rendered by the Tribunal and such finding had attained finality, there was no occasion for the employer to hold an enquiry in accordance with law. Moreover, the Tribunal in its award has given liberty to the Insurance Company to recover the amount either from the owner or the driver and once the owner has discharged the liability, the owner cannot recover the amount of compensation awarded by the Tribunal

for the reason that it has not taken any steps to verify the authenticity of the driving licence. Accordingly, the findings rendered by the Tribunal with regard to effecting recovery of the aforementioned amount is hereby set-aside.

The writ petition is partly allowed. The impugned order vis-a-vis the termination of the petitioner is upheld and qua the recovery of the aforementioned amount is set-aside.

July 01, 2015
ramesh

(AMIT RAWAL)
JUDGE