

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

CWP No. 11040 of 2012

Date of decision : 21.01.2016

Harjinder Kaur & ors.

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Satbir Gill, Advocate
for the petitioners.

Mr. Keshav Gupta, A.A.G. Haryana

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

The present petition is for issuance of writ in the nature of certiorari quashing the impugned order dated 09.01.2007 (P-3) passed by respondent No. 2 whereby husband of petitioner No. 1 was illegally terminated from service without considering his length of service w.e.f 12.07.1992 to 31.07.2005 and with a further prayer to grant the pensionary benefit to the husband of petitioner No. 1 and family pension to petitioner No. 1.

The husband of petitioner No. 1 i.e Harbhajan Singh (since deceased) joined the respondent-department as a driver on 12.07.1992,

in pursuance of appointment order dated 30.06.1992 (P-1). The husband of the petitioner was to retire on 31.07.2005 but was not relieved on that date on attaining the age of 55 years and was allowed to continue to perform his duties without there being any further order for extension in service. Under the right to information Act, the respondent department has clearly stated that neither the petitioner has submitted any application for extension in service nor any such extension was granted (P-2). Thereafter, F.I.R No. 124 dated 09.02.1995 was registered against the petitioner under Sections 279/337/338/304-A IPC in Police Station Sampla District Rohtak and was convicted and sentenced to undergo RI substantially for a period of one year, vide order/judgment dated 09.10.2002/10.10.2002.. The appeal against the said judgment was also dismissed on 12.07.2006. A show cause notice dated 17.11.2006 was issued to the petitioner, who could not defend the case, as he was in judicial custody. Thereafter, impugned order dated 09.01.2007 was passed against the petitioner dismissing him from service with immediate effect.

On notice, a written statement has been filed on behalf of respondent Nos. 1 and 2 stating therein that on 09.02.1995, the husband of petitioner No. 1 was on duty on Bus No. HR24A-8834 and had caused an major accident with matadoor No. DL-1CC-2164 near Rohtak Bye Pass in which ten persons died whereas eight persons had

injured and thus, he was convicted and sentenced to undergo rigorous imprisonment substantially for a period of one year. The appeal against the said judgment was also dismissed. Thereafter, a show cause notice dated 17.11.2006 was issued to husband of petitioner No. 1 that why her services not be terminated w.e.f 12.07.2006. The husband of petitioner No. 1 filed his reply, which was duly considered and found unsatisfactory and thus, the services of husband of petitioner No. 1 was terminated w.e.f 12.07.2006, from the date of his imprisonment. It has further been submitted that the date of birth of husband of petitioner No. 1 was 01.08.1950 and he was to superannuate on completion of 58 years of service on 31.07.2008, as per Haryana Civil Services Rules. The services of husband of petitioner No. 1 was terminated much prior from his date of supperanuation, as per office order dated 09.01.2007 w.e.f 12.07.2006. The case for extension of service of husband of petitioner No. 1 after completion of 55 years was not reviewed as criminal case was pending against him.

Learned counsel for the petitioners submits that once the extension case of the husband of petitioner No. 1 was not taken by the department, he could not be terminated from service and was thus entitled to pension.

On the other hand, learned State counsel has argued that the writ petition deserves to be dismissed as the impugned order does

not suffer from any infirmity, as the petitioner had caused a major accident in which ten persons died and eight were injured.

Reference at this stage can be made to a Division Bench judgment of this Court in ***CWP No. 4093 of 2004 titled as Rishi Dev v. State of Haryana and others, decided on 20.09.2005*** whereby petitioner was employed as driver with respondent-Roadways - An accident took place by petitioner during his duty and he was convicted by trial Court for rash driving. Upon his release, petitioner made an attempt to rejoin his duties. After holding disciplinary proceedings against petitioner, he was terminated from service. Petitioner filed appeal before Transport Commissioner against said termination, which was also dismissed. Subsequently petitioner filed Writ Petition and this Court directed respondent to decide claim of petitioner. Still termination order was upheld by Transport Commissioner. Hence, present writ petition was filed by petitioner and this Court held that petitioner was employed as driver with respondent and it was duty of petitioner to drive bus with care and diligence and he should had knowledge that while driving bus he was not only custodian of bus but was also immediate in charge of passengers traveling in bus. Petitioner should take care pedestrians and other users of road were not caused any danger by his recklessness. Petitioner was found guilty of rash and negligent driving Therefore, in these circumstances, it cannot be

claimed by an errant driver that merely because he had suffered a sentence of few years/months, would wash away his misconduct and, thereafter, he should be treated as entitled to reinstatement with a license once again to drive negligently. The writ petition was dismissed but with the following observation:-

“9. At this stage, we may also notice the second argument raised by the learned Counsel for the petitioner to the effect that in some other cases, the Haryana Roadways itself has ordered the reinstatement of the convicted drivers, after they had completed their sentence. In this regard, two instances have been pointed out by the petitioner wherein such a course had been adopted by the Department. However, we cannot countenance the aforesaid action of the department. In the case of a convicted driver, the relevant fact is not as to whether the conviction of the driver had been for an offence involving moral turpitude or not but the question to be considered is as to whether the driver involved in the accident was in fact guilty of criminal negligence and rashness in the performance of his duty. If an errant driver had been so held by the criminal Court and convicted on that basis, then of course the aforesaid conviction would be a factor which has to be taken into consideration before the said driver is put back into service for driving once

again. From the perusal of the order Annexure P/7, we find that the Transport Commissioner had himself noticed that the Haryana Roadways was a large department it appear that different authorities had taken different kind of action in some cases. Alfaugn, we find that the reinstatement of similarly situated drivers such as the petitioner, would not justify the reinstatement of the petitioner, but all the same we are of the view thereform policy has to be adopted by the State Government dealing with such a situation. In our considered view, the State Government is duty bound in law to consider the safety of the passengers, safety of the other road users and also loss of the public property before any order for reinstatement of such a convicted driver is to be made. The question of a driver having not been convicted for a moral turpitude is wholly irrelevant in such matters. As a matter of fact, the finding of criminal court with regard to the negligence of driver and consequential conviction, would actually amount to a finding with regard to the negligent performance of his duties i.e. driving by a convicted driver.

10. In these circumstances, we do not find any merit in the present petition. The writ petition is, accordingly, dismissed.

11. However, a copy of the present judgment be sent to the

Chief Secretary of Punjab, Chief Secretary of Haryana and Advisor to the Administrator of the Union Territory, Chandigarh for taking necessary action as per our observations made above with a request that necessary guidelines be issued to all concerned that in future no reinstatement of a driver convicted for an offence under Section 304-A of the Indian Penal Code be ordered merely on the ground that the offence for which he had been convicted did not involve moral turpitude. The directions contained in this judgment be complied with forthwith.”

This judgment is directly applicable to the facts of the present case, whereby the petitioner-driver had caused major accident with matadoor No. DL-1CC-2164 near Rohtak Bye Pass in which ten persons died whereas eight persons had injured.

Applying the ratio of the above mentioned judgment, the present writ petition is dismissed.

(RITU BAHRI)
JUDGE

21.01.2016

G Arora