

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

CWP No. 26480 of 2014

Date of decision : 12.04.2016

Chander Bhan

...Petitioner

versus

State of Haryana & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Dilbagh Singh, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, A.A.G. Haryana

RITU BAHRI , J. (Oral)

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing impugned orders dated 21.10.2008 and 13.08.2012 and further prayer is for issuance of direction to the respondents to reinstate the petitioner on the post of driver w.e.f 21.10.2008.

The petitioner joined the Transport Department Haryana on 26.12.1989 and served the department up to the date of removal from his service, vide order dated 21.10.2008, which was on account of conviction in F.I.R No. 77 dated 26.02.2004 under Sections 279/337/338

IPC, as the bus which was being driven by the petitioner met with an accident. The petitioner was held guilty by the learned Trial Court vide order dated 15.01.2007 and was sentenced to undergo simple imprisonment substantially for a period of one year. Petitioner preferred an appeal against the above said order and learned Sessions Judge, Jind passed an order dated 24.01.2008 and released the petitioner on probation for a period of one year. However, the petitioner was removed from his services, vide impugned order dated 21.10.2008 on the basis of conviction simpliciter without issuing any show cause notice to the petitioner. The appeal preferred against the dismissal order was also dismissed, vide order dated 31.08.2012.

Learned counsel for the petitioner has informed the Court that no person died in the above accident and this fact is not being disputed by the learned State counsel. Learned counsel for the petitioner further submits that the petitioner was to retire from service on 31.07.2014 on attaining the age of superannuation.

Learned counsel for the petitioner submits that now the petitioner cannot be reinstated in to service, as he was to retire on 31.07.2014, so he may be granted all consequential benefits after setting aside of the termination orders passed against him.

Reference has been made to a judgment passed by this Court in a case of ***Rajpal vs. State of Haryana and others, passed in***

CWP No. 10457 of 2009, decided on 10.02.2009 wherein also driver was convicted under Sections 279/337 IPC and was terminated from service, in view of decision of CWP No. 4093 of 2004 Rishi Dev v. State of Haryana. This Court allowed the writ petition and quash the termination order by directing the respondents to reinstate the petitioner into service with all consequential benefits.

Learned State counsel on the other submits that the service record of the petitioner was not satisfactory and so many complaints were received against him and he was awarded punishment as well (R-1) and thus the termination order passed against him is just and legal. Learned State counsel has not been able to tell the Court that how many drivers have been terminated from service after letter dated 09.01.2006 and 28.08.2008 whereby direction was issued to dispense the service of all such drivers, who had been convicted by the Courts for rash and negligent driving.

Heard learned counsel for the parties.

The point for consideration before this Court that once the petitioner has been released on probation for a period of one year and no person died in the accident, whether the respondents by relying upon CWP No. 4093 of 2004 and 11537 of 2008, can terminate the services of the petitioner, without issuing any show cause notice to him and without giving him personal hearing.

The writ petition deserves to be allowed, as in Rishidev case (supra) it has been decided that no driver who had been convicted under Section 304-A would be reinstated into service. In the present case, the petitioner has been convicted under Sections 279/337/338 IPC and was sentenced to undergo simple imprisonment substantially for a period of one year. Further he was released on probation and no person died in the accident, as compromise was affected between the parties and Pratik-injured has given a statement that he does not want to proceed with the case and want to compound the offence. So, the above said judgment could not be applied in the case of the petitioner.

It seems that the Punishing Authority has passed the order of removal from services of the petitioner without applying its mind and without considering the conduct of the petitioner not involving in moral turpitude. Further no regular departmental inquiry was conducted and now show cause notice was issued to the petitioner. Further the petitioner had served the department for 19 years approximately and his services had been terminated only on account of conviction.

It has been held by this Court in a case of Man **Singh v. State of Haryana and others, 2010(1) SCT 604, Kulwant Singh Ex Driver v. State of Punjab and others, 2012(6) SLR 268** that the dismissal of service simply on conviction held illegal straightway

especially in cases not involving in moral turpitude, cannot be sustained under law. The length of the service rendered in the department is one of the ground which has to be taken in to consideration by the punishing authority while dismissing an employee from service apart from the conduct of an employee.

In the circumstances, orders dated 21.10.2008 and 13.08.2012 are hereby set aside and the respondents are directed to give all the service benefits to the petitioner by treating him into service w.e.f 21.10.2008 till the date of his retirement i.e 31.07.2014. Petitioner is entitled to all consequential benefits. The payment shall be made by the respondents to the petitioner @9% per annum w.e.f 31.07.2014 till the payment is made.

Accordingly, the writ petition is allowed.

(RITU BAHRI)
JUDGE

12.04.2016

G Arora