

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

1) Date of Decision: July 24, 2017
CWP No.10728 of 2016

Rajinder Kumar ...Petitioner

Versus

State of Haryana and others ...Respondents

2) CWP No.3228 of 2016

Rajinder Kumar ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sunil Nehra, Advocate, for the petitioner.
Mr. Hitesh Pandit, Addl. Advocate General, Haryana.

Amol Rattan Singh, J. (Oral)

This order shall dispose of the aforesaid two writ petitions, i.e. CWP no.10728 of 2016 and CWP no.3228 of 2016, being filed by the same petitioner.

As regards CWP no.10728 of 2016, though the order by which the petitioner has been dismissed on 11.05.2016 (Annexure P-32), is a very detailed order passed by the Director, State Transport, Haryana, (respondent no.2 herein), however, it is not denied that actually no enquiry was conducted as per due procedure provided in the Haryana Civil Services (Punishment and Appeal) Rules, 1987.

The reasoning given by the Director while passing the aforesaid impugned order, which actually is an order passed pursuant to the

directions given in CWP no.3228 of 2016, by which the petitioner was seeking his salary, is that the foundation of the petitioners' employment itself being based on a fraud, i.e. an allegedly fake matriculation certificate, he would not be entitled to any salary and it having been found that the Matriculation Certificate is actually a fake one, he was being dismissed from service.

Even if it is to be prima facie at least accepted, that possibly an enquiry was held by which it was determined from the Board of School Education, Haryana, that the petitioners' matriculation certificate was a forged one, that still does not obviate the necessity of holding an enquiry in which the petitioner would have to be given an opportunity to present his side of the story and to cross question witnesses if he so wishes, with regard to the authenticity of the certificate allegedly stated to be forged.

Admittedly, no such enquiry having been initiated, even the judgment of the Supreme Court relied upon in the impugned order, i.e. **R. Vishwanatha Pillai v. State of Kerala and others**, 2004 (2) SCC 105, would not apply to the facts and circumstances of the present case, as in that case, very obviously an enquiry was conducted, as can be seen from a perusal of what is stated by their Lordships in paragraph 4 of the said judgment.

Consequently, this petition is allowed and the impugned order dated 11.05.2016 (Annexure P-32) is quashed, the operation of the said order having already been stayed vide an order of this Court dated 27.05.2016. The respondents would be at liberty to initiate an enquiry as per

due process of law.

As regards CWP no.3228 of 2016, though in view of the aforesaid order passed in CWP no.10728 of 2016, the reasoning for non-payment of salary to the petitioner would also be no longer existent, as given in the impugned order that has been quashed by this common order as aforesaid; however, since the petitioners' appointment, ab initio, is contended to be based on a fraud, the issue of payment of salary for the period during which he was not paid his salary, would also be decided by the respondents in the order to be passed pursuant to the enquiry to be conducted, if the respondents decide to conduct such enquiry. If at the end of the enquiry proceedings, it is found that the petitioner is indeed guilty of having submitted a false/forged certificate and therefore cannot be retained in service, the payment of salary during the period that he remained out of service, would also be dealt with in the order to be passed by the competent authority.

If disciplinary proceedings are not initiated against him by any decision taken by the respondents, within a period of three months from today, then the petitioner would be immediately paid the salary for the period that he has not been paid.

July 24, 2017
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(Amol Rattan Singh)
Judge

Whether speaking/reasoned:	Yes
Whether reportable:	Yes