

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

CWP-16769-2015 (O&M)

Date of Decision:15.02.2018

Yashdev Sharma

... Petitioner

Vs.

The Presiding Officer and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

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

Mr. G.S. Wasu, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has challenged orders dated 6.10.2014 (Annexure P-1), 4.5.2005 (Annexure P-6) and 24.4.2015 (Annexure P-9).

2. Services of the petitioner have been terminated with reference to the conviction in a criminal proceedings dated 25.04.2000 by the Judicial Magistrate for the offences under Sections 279/337/338/304-A of IPC. Petitioner while working as a driver with the respondent-Transport Department, his vehicle met with an accident whereby number of deaths occurred. Thus, FIR No.331 dated 5.11.1991 was registered at Police Station Hansi City. Petitioner was convicted on 25.04.2000 by the Judicial Magistrate, Hansi. He filed an appeal. Appeal was decided on 5.2.2003 modifying the sentence. Further he filed criminal revision. It was decided on 2.8.2010 while confirming the order of the appellate court. In the criminal revision/appeal, sentence was suspended. Consequently, petitioner was taken back to duty. At that juncture, Transport Commissioner noticed that General Manager, Haryana Roadways had committed error. He had advised him to dismiss petitioner from service with reference to the decision of the

Supreme Court in the case of **State of Haryana v. Balwant Singh**; 2003(2) S.C.T. 324. In this background, General Manager, Haryana Roadways, Rohtak, passed the order of termination on 6.10.2004. Petitioner raised industrial dispute and suffered award. Hence, the present petition.

3. Learned counsel for the petitioner submitted that even though charge-sheet was issued for remaining unauthorized absence but the same was not served upon the petitioner. However, further action has not been taken into consideration for the purpose of holding an inquiry. Whereas disciplinary authority proceeded to terminate the services of the petitioner on the advise of the Transport Commissioner read with the decision of the Supreme Court in the case of Balwant Singh (supra). It was submitted that there is no consideration with reference to length of service rendered by the petitioner so also with reference to the conviction not on account of any embezzlement of money. It was relating to motor vehicle accident. Therefore, disciplinary authority should have considered the length of service as well as conduct of the petitioner for the purpose of imposing the order of termination. He relied on a judgment passed by this Court in the case of **Kaur Singh and another v. Punjab State Electricity Board and others**; 2007 (4) SCT 427(see: Para-9) to the extent that gravity of the misconduct is required to be examined by the disciplinary authority before imposing the major penalty.

4. Per contra, learned counsel for the respondents while resisting the petitioner's claim submitted that order of termination is with reference to conviction in a criminal proceedings. Supreme Court in the case of Balwant Singh (supra) while interpreting Rule 7(2) (b) of the Haryana Civil Services (Punishment and Appeals) Rules 1987 in paras 4 and 5 uphold imposition of

penalty of termination from services. Thus, petitioner has not made out a case so as to interfere with the order of termination dated 6.10.2004. It was also submitted that there is inordinate delay of 9 years in raising industrial dispute. Thus, Labour Court has not considered delay issue.

5. Heard learned counsel for the parties.

6. In the present petition, petitioner had a cause of action to raise industrial dispute or to approach this Court in filing writ petition as and when appellate authority decides the petitioner's appeal against the order of termination in the year 2005. Petitioner raised industrial dispute by issuing demand notice on 17.8.2012. Thus, there is a delay of nearly 7 years. No explanation has been furnished by the petitioner relating to delay from 2005 till issuance of demand notice on 17.08.2012. On the preliminary issue of delay and laches, petition is not maintainable. Therefore, deciding the present petition on merit do not arise.

7. Accordingly, petition stands dismissed.

15.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**