

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.963 of 2013

Date of Decision: 20.07.2018

Dharambir

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Singh Jattan, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. All other concerns apart, the reasons which impel me to allow this petition on a dispute involving the driving license of the petitioner found to be fake, which was submitted by him to secure a transitory job as a driver picked up during a state wide strike in Haryana Roadways which lasted for eight days in December 1993, and on which ground the petitioner's services were ultimately terminated by the impugned order, was a licence issued by the Licensing Authority, Solan, Himachal in 1981; and one reason is that when he was taken back in service as fresh appointment, he indisputably possessed a pre-existing valid driving licence issued in 1988 by the competent authority in Sri Ganganagar, Rajasthan. Besides that, there is another one issued by the Licensing Authority, Kaithal as per general directives/executive instructions of the State Government meant for all drivers in Haryana Roadways to be armed with valid driving licences to defend motor accident compensation cases so as to make insurer liable.

2. In the compensation case that followed before the learned Motor Accident Claims Tribunal, Fatehabad, in which the petitioner was arrayed as the respondent-Driver of the ill fated Haryana State Transport Bus involved in the accident resulting in death of a passenger; was that in the State appeal against the award of the MACT, Fatehabad an order dated January 20, 2004 was passed in FAO No.2026 of 2004 fastening liability on the owner of bus/State and the driver (petitioner) finding that the driver/petitioner held a fake licence of 1981. The petitioner, as respondent in the State appeal, moved an application i.e. CM No.4375-CII of 2005 for leading additional evidence under Order 41 Rule 27 CPC, placing on record his valid driving license issued in 1988 by the Licensing Authority, Sri Ganganagar, Rajasthan. The appeal is pending with reconstructed file, the original of which burnt in a fire incident in the High Court some years ago. He averred in his application as follows:-

“2. That the applicant was issued a licence in the year 1981 and later on, applicant came to know that this licence is not genuine and was fake and has not been entered into the register of the Licensing Authority, therefore, applicant applied for a new licence in the year 1988 to the Licencing Authority, Ganganagar and applicant was issued a licence No.12638.

3. That inadvertently, applicant has produced the photocopy of licence which was issued to whom in the year 1981, otherwise applicant has a genuine licence issued by the Licensing Authority, Ganganagar and applicant is plying the bus of the Haryana Roadways from since long.

4. That applicant want to produce on record the copy of the driving licence No. 12638 issued by the

Licencing Authority Sri Ganga Nagar and it would be in the interest of justice if the applicant is allowed to produce the same in the interest of justice which the applicant failed to produce despite the due diligence.”

3. The appeal was admitted only qua the Insurance Company and notice regarding stay was issued on May 21, 2004 by the Division Bench to be heard before the Single Judge for July 08, 2004. The learned Single Judge stayed the execution of the impugned award qua the State by order dated October 06, 2005. Claimants, Gian Chand and others preferred an application for vacation of stay. On notice, the General Manager, Haryana Roadways, Fatehabad has filed a reply to the application for vacation of stay order by recalling order dated October 06, 2005 in which it was averred in preliminary submission No.1 as under:-

“The proforma-respondent no.6 i.e. Driver of the bus in question had also filed the C.M. application No.4374-75C-II of 2005 under order 41 Rule 27 C.P.C. for placing on record the copy of the 2nd driving licence because during the trial of Ld. MACT the driving licence of the driver was found fake. This Hon'ble Court while disposing of the said C.M. on 22.02.2005, the 2nd driving licence of the driver was taken place on record. Therefore, this Hon'ble Court has held the licence of the driver as genuine licence. If this Hon'ble Court reached to the conclusion that order dated 06.10.2005 is necessary to be recalled then same be recalled against the respondent No.5 i.e. National Insurance Company as licence of the driver has already been taken place on record.

4. In reply to paras.5 and 6 of the application, the General Manager, Haryana Roadways, Fatehabad stated as follows:-

“The respondent no.6 i.e. driver of the bus in question

filed C.M. application No.4374-75-C-II of 2005 under order 41 Rule 27 C.P.C. for placing on record the copy of driving licence. The same was taken on record and application was disposed of accordingly on 22.02.2005. When the licence of the driver has taken on record then question of holding invalid driving licence by the driver i.e. respondent No.6 does not arise. As per the order dated 22.02.2005 the driving licence of the respondent No.6 has become valid. Hence, the F.A.O. No.2026 of 2004 is most likely to be accepted in favour of State of Haryana and against the Insurance Company.

6. That the contents of para no.6 of the application are wrong and hence denied. The Hon'ble Court has held the valid licence of the driver vide order dated 22.02.2005. If this Hon'ble Court reached to the conclusion that order dated 06.10.2005 is necessary to be recalled then same be recalled against the respondent No.5 i.e. National Insurance Company as licence of the driver has been taken on record.”

[Note: the order dated 22.2.2005 is lost as revealed from the reconstructed burnt file of FAO 2026 of 2004]

5. If the State inversely relies on the driving license issued by the Licensing Authority, Sri Ganganagar, Rajasthan in 1988 as defence evidence in the appeal for disclaiming liability to pay compensation and for fastening it on the insurer company, then it would not lie in its mouth to use the licence in his service matter and to take the extreme step of terminating service by invoking the fake licence from Solan issued in 1981. The State is thus estopped from retracting from its stand in FAO No.2026 of 2004, and in the present case, in defence of the termination order based on a driving license produced at the time of appointment in 1981 which service lasted no more than a few days of strike period. Much thereafter, the valid driving

license was issued in 1988 by the Licensing Authority, Sri Ganganagar years before the petitioner was employed on April 03, 1995.

6. To reach a conclusion in favour of the petitioner, a few necessary facts may be noticed. The petitioner was appointed as a driver on December 13, 1993 on daily wages during strike period by the General Manager, Haryana State Transport, Jind along with many other drivers and staff recruited at short notice to avoid disruption of transport service during strike by employees. He was relieved on termination of service on December 21, 1993 after the strike was called off and the regular employees resumed work. This engagement lasted for all but 8 days. It was in the nature of volunteer service with no hope of permanent employment in the State Roadways.

7. Thereafter, he joined service as a Driver on contract basis on April 03, 1995 by selection and was deputed to the Haryana State Transport Depot at Delhi. He was relieved from Delhi to join at the Fatehabad Depot on June 20, 1996 where he was again engaged on contract basis on July 03, 1996.

8. On discovery, the department wrote letter dated April 25, 1997 to the Licensing Authority, Solan for verification of the petitioner's driving license No.11520/S.L. dated June 20, 1981 submitted at the time of first short appointment in 1993. The authorities in Solan answered the letter on September 19, 1997 informing the department that the said driving licence had not been issued to the petitioner by them. As a result, departmental action was proposed against him. A pre-liminary enquiry was ordered vide Memo dated 21.09.2001. Investigation Officer entrusted with the

preliminary enquiry submitted his report to the General Manager. The enquiry was kept pending on an application by the petitioner pleading that claim case was pending. The claim case was decided on January 20, 2004. On December 22, 2005 the General Manager, HST, Fatehabad passed order accepting the conclusion in the preliminary report of the Investigation Officer exonerating the petitioner. In the reply it is stated in response to para 6 on merits that the “departmental proceedings against the petitioner regarding fake driving licence was filed by the office of the General Manager, Haryana Roadways, Fatehabad by order No 2137/RK dated 26-4-2005 due to the mis-interpretation of the orders dated 26-02-2005 of this Hon'ble Court”.

9. Thereafter, the petitioner was show caused under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 for submitting fake/forged licence with notice served on the petitioner on December 22, 2009. An enquiry officer was appointed on January 22, 2010 to hold the domestic inquiry. The petitioner filed reply taking the plea that he did not submit a forged licence as he already had a driving licence issued in 1988 which was prior to appointment in 1993.

10. The petitioner was found guilty of submitting fake licence. Thereupon, a show cause notice dated August 26, 2010 was issued for terminating his services. The impugned termination order passed by the General Manager, Kaithal at Annex P-5 dated March 29, 2011. The petitioner filed a statutory appeal before the Transport Commissioner, Haryana on April 07, 2011. When the appeal was kept pending without orders the petitioner filed CWP No.22532 of 2012 which was disposed of

on December 14, 2012 with a direction to decide the appeal. The appeal was dismissed on December 17, 2012.

11. It is not disputed that the services of the petitioner were regularized w.e.f. December 02, 2002 by order dated March 17, 2006. This is an important fact.

12. Besides, policy instructions were issued by the Transport Commissioner, Haryana on August 20, 2001 directing that fresh driving license be issued by the competent authorities to all drivers working in the department. Accordingly, another driving license No.HR6420020192574 was issued to the petitioner on September 04, 2002 by Licensing Authority, Kaithal. This valid license has been renewed from time to time. The petitioner has not been given benefit of this policy when it should have been considered as in the administrative precedents in the cases of Rajinder Kumar and Yudhbir Singh vide orders Annex P-9 and P-10.

13. The petitioner being the driver of the offending Bus also had to face a criminal trial in FIR No.179 registered against him under Sections 279, 304-A IPC in Police Station Tohana, District Fatehabad. He was acquitted of the charge of rash and negligent driving by judgment and order dated July 23, 2008 passed by the Court of the learned SDJM, Tohana.

14. The accident involving the petitioner also gave rise to MACT case No.103 of 2001 with claimants seeking compensation due to death of one Hans Raj as a result of injuries suffered in the accident. The MACT Fatehabad by award dated January 20, 2004 held that since the driving license of the driver (petitioner) is found fake and he was unable to produce a valid licence, hence, the insurance company was not liable to pay

compensation of Rs.3,84,000/- and only the driver and owner of offending bus (Haryana Roadways) are liable to pay the compensation. The State has appealed to this Court as referred to above. This is how FAO No.2026 of 2004 was instituted in this Court.

15. In these facts and circumstances, the present petition has been filed seeking directions for quashing of the impugned order of termination and the order in appeal.

16. Indisputably, the petitioner held a valid driving license dated December 30, 1988 issued by the Licensing Authority, Sri Ganganagar, Rajasthan even prior to first appointment in 1993. The same was produced by the petitioner before the General Manager, Fatehabad and was taken on record. Additionally, the petitioner also possesses a valid driving license issued by the Regional Transport Authority, Kaithal dated September 04, 2002 Annex P-11 valid up to September 03, 2017 issued as per policy instructions containing directions of the Haryana Government in the Transport Department to issue licenses to all Drivers working in the department.

17. In these circumstances, the objectionable driving license issued in 1981 by the Licensing Authority, Solan may be fake but has paled into insignificance by the acts of the department and the State itself by causing issuance of valid driving license dated September 04, 2002 to the petitioner by the Licensing Authority, Kaithal. This fact of holding valid D/L coupled with the fact that the services of the petitioner were regularized by order dated March 17, 2006 w.e.f. December 02, 2002, a case for extreme penalty of dismissal/termination is not convincingly made out. In the year 2005 the

petitioner was already under enquiry regarding the Solan licence. This would be especially true when the department had knowledge of this important fact.

18. Besides, the valid driving license issued by the Licensing Authority, Kaithal on September 04, 2002 is prior to the date of regularization on December 02, 2002. This is how the petitioner, to my mind, has been dealt with unfairly and harshly on a propped up charge invoking the fake 1981 D/L from Solan, Himachal Pradesh to justify termination of service. The first appointment in 1993 for 8 days was terminated by passing an order dated December 13, 1993 as recorded on the first page of the subsequent termination order dated March 29, 2011. He was appointed afresh on contract basis in 1995. The two periods are not continuous. It cannot be gainsaid, that at the time of fresh appointment as Driver on April 03, 1995 and then again in 1996 the petitioner actually possessed a valid driving licence for transport vehicles issued in 1988 by the competent authority in Rajasthan even before the short duration engagement in December 1993. He may have submitted the Solan licence in the rush and hurry of the strike with sudden opportunity presenting itself with no time left with the department for verification. He caused no accident during the 8 days.

19. Most importantly, upon regularization when the petitioner held valid driving license/s it would not justify termination based on a license issued by the Licensing Authority, Solan in 1981 submitted for very short term service during the strike period when the Transport department had to pick up drivers, conductors and other staff literally from the street to keep

public transport running. The effect of the licences issued in 1988 and 2002 has not been discussed in the impugned orders. No reasons have been assigned why these material and relevant facts have not been touched. In my view, the termination order and the order in appeal are arbitrary and unreasonable.

20. It is now time to consider the department's reliance on the decision of the division bench of this Court, upheld by the Supreme Court, in *Ishwar Chand v. State of Haryana and others* i.e. CWP 9685 of 2006 decided on July 4, 2006 which is said to be on similar facts. From a perusal of the judgment there appears to be no similarity. I find nothing in the narration of facts in the judgment whether Ishwar Chand held a driving licence, other than what he submitted to wrongly secure employment on a fake driving licence, before the date of first appointment. It is also not shown whether Ishwar Chand was appointed short term during the strike period like the present petitioner. Nothing has been shown to me to reach a conclusion that the case is identical on facts to the present case and its ratio binds. It is well settled that each case must turn on its own facts. One fact here or there can make all the difference in the quest for justice in accordance with law.

21. As an upshot of the above discussion, the petition is allowed, the impugned order of termination dated March 29, 2011 (P-5) and the order in appeal dated November 29, 2012 (P-8) are held not legally sustainable and accordingly a writ of certiorari is issued quashing the orders on the ground that they are illegal, arbitrary, harsh and oppressive, especially in the face of the defence of State Government in its appeal in FAO No.2026 of

2004 to avoid liability to pay compensation studiously relying on heavy transport driving license from 1988 onwards. Accordingly, the petitioner will be reinstated to service with consequential benefits notionally and actual from the date of this order.

22. Anything said in this order regarding driving license/s will not have any bearing on pending FAO No.2026 of 2004.

(RAJIV NARAIN RAINA)
JUDGE

20.07.2018
manju

Whether speaking/reasoned	Yes
Whether reportable	No