

CWP Nos.20260 & 20261 of 2018 (O&M)

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

Date of decision : 21.08.2019

1. CWP-20260-2018 (O&M)

Jaivir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

2. CWP-20261-2018 (O&M)

Rakesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner(s).

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMIT RAWAL, J.

This order of mine shall dispose of two writ petitions bearing **CWP No.20260 of 2018** titled as **“Jaivir Singh V/s State of Haryana and others”** and **CWP No.20261 of 2018** titled as **“Rakesh Kumar V/s State of Haryana and others”** as relief sought in both writ petitions is identical.

Petitioner, Jaivir Singh, obtained Light Transport Vehicle Driving Licence on 19.06.1998 and Heavy Transport Vehicle License on 07.11.2005 and petitioner-Rakesh Kumar, on 14.03.1997 and 19.09.2003.

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Transport Department, Haryana, caused advertisement for filling up 910 posts of Drivers, by fixing last date for submission of application as 10.08.2007, with the following eligibility criteria:-

"A Candidate must (a) be a citizen of India, (b) be of good moral character, (c) be of sound health, (d) not have more than one spouse living, (e) should have passed Matric School Examination with Hindi as language subject and should have a Transport Vehicle Driving License. The candidate should have at least two years experience of driving a Transport Vehicle including a Passenger Vehicle. Eligibility shall be determined with regard to the last date fixed for receipt of application form".

Petitioners being Matric pass and having more than three years' experience as Driver, applied for the aforesaid post. On 20/23.06.2008, both the petitioners were selected and offered appointment and since then, had continued in service and even had been granted first Assured Career Progression 01.09.2016.

Mr. R.K. Malik, learned Senior Counsel assisted by Mr. Sandeep Dhull, learned counsel appearing on behalf of the petitioners submitted that petitioners, were astonished to receive show cause notice dated 26.06.2018 (Annexure P-7), apprising them that since they had obtained license in 2005 and 2003 and shown experience from 01.02.2004 to 30.06.2007, in case of Jaibir Singh and for Rakesh Kumar as 04.06.1998 to 30.09.2003 qua termination of service. Petitioners duly replied notice, vide Annexure P-8 and brought to notice, that they obtained LTV Driving License in 1998 & 1997 and therefore, had requisite experience. Advertisement was bereft of experience of driving Heavy Transport Vehicle. Without considering the reply, vide impugned order dated

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10.08.2018, the respondents terminated the services of the petitioners, which is not sustainable in view of settled law as well as definition of Transport Vehicle in Section 2(47) of the Motor Vehicles Act, 1988 (in short 'the 1988 Act').

Per contra, Mr. Hitesh Pandit, Addl. A.G., Haryana, supported the impugned order by urging that the eligibility condition specifically provided that the person should be having at least two years' experience of driving of transport vehicle including passenger vehicle and the same was to be determined only on receipt of the application form i.e. 10.08.2007. There was a material discrepancy. Since they were not having requisite experience, rightly so, their services were terminated. Unsuccessful candidates, who were not able to make in merit list, assailed the action of the Department and writ petitions were dismissed. The Committee was constituted by the Government under Director State Transport comprising General Managers of Gurugram, HREC Sonipat and as per report dated 02.05.2017 (Annexure R-3), found anomalies in case of 41 employees including the petitioners. The 1988 Act defines the heavy passenger motor vehicle mean public service vehicle or private service vehicle or educational institutions bus or omnibus and whose gross unladen weight exceeds 12,000 kgs. Transport Vehicle also means a public service vehicle, a good carriage, an educational institution bus or a private service vehicle. Experience certificate reveals that petitioner worked as HTV Driver at various places i.e. Sainik Tourist Bus Service from 14.06.1998 to 30.09.2003 in case of Rakesh Kumar, whereas for Jaivir Singh from 01.02.2004 to 30.06.2007, but HTV Driving License were issued on 19.09.2003 and 10.11.2005, respectively, thus, urges this Court for

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dismissal of writ petitions.

I have heard learned counsel for parties, appraised paper book and of view that there is force and merit in submissions of Mr. Malik.

Eligibility criteria, as extracted above, do not reveal that person should have experience of Heavy Transport Vehicle. It clearly specifies that person should have transport vehicle driving license and two years experience of transport vehicle including passenger vehicles.

Definition of sub-Section 47 of Section 2 of the 1988 Act provides as under:-

“(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle”

There is no definition of any passenger vehicle. However, in sub-Section 17 of Section 2 of the 1988 Act, heavy passenger motor vehicle is defined to include public service vehicle, educational institution bus, private service vehicle etc. For the sake of brevity, provisions of Section 2(17) read as under:-

“(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms”

On conjoint reading of aforementioned definitions, it is axiomatic that both licenses should be valid for driving the educational institution bus, a private service vehicle or a private bus, but expression "heavy transport vehicle" and "heavy passenger motor vehicle" is conspicuously absent, in such circumstances, termination of services of

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petitioners is totally uncalled for, illegal, much less, arbitrary.

It is also a matter of record that action has been taken after almost 11 years of service and during all this period, there was no adverse remark in the service record and as per averments in the writ petition as well as in written statement, the petitioners have been discharging their duties impeccably.

Keeping in view the aforementioned facts, the impugned orders, under challenge, are set aside and writ petitions are allowed.

21.08.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No