

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.27467 of 2015 (O&M)

Sunder Singh and others ... Petitioners

Versus

State of Haryana and others ... Respondents

2. CWP No.721 of 2016

Main Pal ... Petitioner

Versus

State of Haryana and others ... Respondents

Date of Decision: 28.02.2019

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

Present: Mr. Jasbir Mor, Advocate,
for the petitioners in CWP No.27467 of 2015.

Mr. Akash Kundu, Advocate,
for the petitioner in CWP No.721 of 2016.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. This order will dispose of CWP No.27467 of 2015, *Sunder Singh and others v. State of Haryana and others* & CWP No.721 of 2016, *Main Pal v. State of Haryana and others*.

2. Mr. Rathee was asked to verify whether the case was covered by the decision of this Court in CWP No.1 of 2016, *Satpal and others v. State of Haryana and another* decided on October 26, 2016. The short controversy involved is whether the driving licenses of petitioner No.3 in CWP No.27467 of 2015 (the remaining petitioners have failed to make the

mark on merit and as a result the petition is dismissed qua petitioners other than petitioner No.3) and the D/L of the petitioner in CWP No.721 of 2016 is valid and in tune with the terms and conditions of the advertisement dated August 14, 2015 and clarification dated October 12, 2015 (P-5). The clarification was issued as follows:-

“In reference with memo No.1461/EA/RK dated 21/09/2015 of GM Haryana Roadways, Jhajjar and Memo No.1402/EA/RK dated 05/10/2015 of GM Haryana Roadways Bhiwani seeking clarification whether to take into consideration different types of Driving Licences which the candidates have submitted with application forms to the depots are acceptable or not in case of engagement of 725 bus drivers through Outsourcing Policy?

Directorate of State Transport, Haryana vide memo No.3696/SPO/HQ dated 6.10.2015 addressed to O/o Transport Commissioner Haryana Chandigarh requested to provide the clarification about the submitted driving licences with type/category such as HTV, HTPV, HGV, HPV, TRV Rigid Chassis, TRV PSV Bus, TRV Vestible Bus, HMV, Transport Vehicle.

*Now Transport Commissioner, Haryana Chandigarh office vide memo No. 47441/AT-III/HR-2 dated 08.10.2015 has informed that the Government of India Ministry of Road Transport and Highway vide DO No. RT-11636/19-2000-MVL dated 29.12.2005 has circulated list of 24 Class of Vehicles (COV) with Priority in Sarathi in which at **Serial No. 18** i.e. Transport Vehicle (TRV-Vestible Bus), **Serial No.16A** Transport Vehicle (HMV Double Decker-Passenger) TRV-PSV Dbledkr, **Serial No. 14A** Transport Vehicle (HMV-Rigid Chasis-Public Service Vehicle-Bus), TRV-PSV-Bus, **Serial No.14 B** Transport Vehicle*

*(HMF Rigid-Chassis-Private Service Vehicle) TRV Private Bus are mentioned and **these four categories can be considered at par with Heavy Passenger Transport Vehicle (HPTV)** (Copy enclosed).*

Further the Transport Commissioner, Haryana Chandigarh office vide Memo No.1818/AT-3/AS-II dated 21.01.2013 addressed to this office has stated that the Section 2 of Motor Vehicle Act, 1988 provides a Sub section 17 which says that 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 (copy enclosed).

All GMs Haryana Roadways are requested to get examine the submitted applications of all the candidates w.r.t. Heavy Driving Licences as per the above and take necessary decisions about the eligibility/ineligibility accordingly and inform the candidates about the decision taken.”

3. Petitioner No.3 comes within the zone of selection as per record produced by the respondents as he holds driving license in acronym 'HPV', which at the time of renewal was described as 'TRV Vestibule Bus only' [copy at Annexure A-2 with the miscellaneous application]. There is even a report of the Regional Transport Commissioner on record which is in favour of the said petitioner which has been supplied under RTI Act confirming that earlier the description was HPV (Heavy Passenger Vehicle) and is now changed to TRV-Vestibule Bus.

4. The petitioner in CWP No.721 of 2016 holds the license to drive TRV/PSV Bus only which is also valid to drive a bus as per the clarification. In addition, the controversy has been once again settled by

Brother G.S. Sandhawalia, J. by judgment and order in CWP No.27584 of 2015 in *Darshan Pal v. State of Haryana & others* decided on August 25, 2017 on the same issue and in the same selection process of Heavy Vehicle Drivers conducted by the Directorate of State Transport, Haryana authorized to fill posts on contract basis. Therefore, this is not a regular recruitment process but a stop gap arrangement awaiting regular drivers. In *Darshan Pal*, it has been observed as follows:-

“A perusal of the above would go on to show that at Sr.No.14-A, Transport Vehicle (HMV- Rigid Chasis-Public Service Vehicle Bus), TRV-PSV-Bus, is also one of the 4 categories which can be considered at par with Heavy Passenger Transport Vehicle (HPTV). The said communication dated 12.10.2015, as noticed also, referred to in the written statement is attached as Annexure R-1. Along with it, another communication dated 08.10.2015 is also attached in which the list of class of vehicles and sub-classification has been mentioned.

'Heavy Passenger Motor Vehicle' as per letter dated 21.01.2013 (Annexure R-1 Colly.), would mean any public service motor 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 12000 kilograms and thus, there is reference to the definition under Sub-Section 17 of Section 2 of the Motor Vehicles Act, 1988. Letter dated 29.12.2005 has also been attached of the Government of India, to the Ministry of Communication & Information Technology, National Informatics Centre, to incorporate the proposed classifications in the software. Sr.No.14-A talks of Transport Vehicle M/HMV (Rigid Chassis) Public

Service Vehicle-Bus, which also finds mention in the communication dated 12.10.2015, reproduced above, in which the four categories can be considered at par with HPTV. A conjoint reading of the above would go on to show that once a person is possessing a HPMV license, it would fall within the definition of a Heavy Passenger Motor Vehicle, as per Section 2(17) of the 1988 Act and a Heavy Motor Vehicle with a rigid chassis being a Public Service Vehicle, is to be considered at par with HPTV, which was the requirement, as per the advertisement.

Thus, it is apparent and crystal clear that the petitioner did have the requisite qualifications and has wrongly been denied consideration inspite of having the training certificate issued by the Haryana Roadways and thus, in such circumstances, the denial is held to be unjustified and arbitrary.

Accordingly, the present writ petition is allowed, directing respondent No.3 to consider the case of the petitioner for appointment and take action on the application, within a period of 6 weeks from the receipt of a certified copy of this order.”

5. In view of this, both these petitions have substantial merit and deserve acceptance.

6. Mr. Rathee has not been able to place any material before me to take a decision to the contrary. If the Regional Transport Authority of the State of Haryana has itself accepted the driving licences of petitioner No.3 in one case and the petitioner in the accompanying petition as valid for driving buses in Haryana Roadways, then I see no reason why both the petitions should not be allowed.

7. Accordingly, the petitions succeed for petitioner No.3 in CWP

No.27467 of 2015 and the petitioner in CWP No.721 of 2016 by directing respondents No.2 & 3 to consider their cases for appointment within a period of six weeks from the date of receipt of certified copy of this order provided the petitioner in CWP No.721 of 2016 otherwise falls in the zone of consideration on merit. In the event of appointment, the petitioners' seniority, albeit on contract, will relate back to the batch as per their merit. Pecuniary and non-pecuniary benefits will be notional but actual from appointment.

(RAJIV NARAIN RAINA)
JUDGE

28.02.2019
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Whether speaking/reasoned Yes

Whether reportable Yes/No