

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

Civil Writ Petition No.22794 of 2018
Date of Decision: October 24, 2019

Gurmeet Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. R.S.Mamli, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana,
for the State.

AMIT RAWAL, J.

Prayer in the present writ petition is for quashing of the impugned order dated 30.08.2018 (Annexure P-4), whereby the services of the petitioner have been dispensed with/dismissed by invoking the provisions of Article 311 of the Constitution of India.

Before referring to the controversy involved, it would be apt to give preface of the facts. The petitioner about ten years back had joined the respondent-department as a Driver and his Annual Confidential Reports remained good and very good. However, he was allegedly involved in the accident resulting into registration of an FIR No.328 dated 27.06.2013 under Sections 279 and 304-A IPC, Police Station City Yamuna Nagar, District Yamuna Nagar and after having faced the trial, the trial Court, vide judgment and order dated 06.06.2017 and 12.06.2017 (Annexures P-1 and P-2), convicted the petitioner and sentenced him to undergo a sentence of 6

months under Section 279 and 2 years under Section 304-A IPC with fine and both the sentences to run concurrently.

Mr. R.S.Mamli, learned counsel representing the petitioner submitted that after three (3) months of the registration of the FIR, petitioner was served with a charge sheet on 04.09.2013. He did not file reply despite having reminder dated 31.10.2013 and accordingly the Enquiry Officer was appointed to hold enquiry. The Enquiry Officer, vide order dated 17.12.2013, submitted his report. He duly participated in the enquiry. On receipt of the enquiry report dated 06.02.2015, a show cause notice dated 13.02.2015 was served upon the petitioner qua termination of his services. Petitioner did not file any reply and thereafter reminder dated 16.04.2015 was issued. Since the appeal is pending and the sentence has been stayed, respondents cannot dispense with the services of the petitioner and it is not a case of moral turpitude resulting into imposition of major penalty of dismissal from service. There is no compliance of the provisions of Article 311(2) of the Constitution of India as no independent circumstance or the reason has been assigned. It is not the only case where the intervention of this Court has been sought for exercising the power of judicial review, for, the impugned order is not in consonance with the provisions of Article 311 of the Constitution as no satisfaction was recorded by the competent authority, i.e., the General Manager, Haryana Roadways, Kurukshetra regarding the non-retention of the petitioner on account of having been convicted.

Per contra, Mr. Harish Nain, learned Assistant Advocate General representing the State submitted that on receipt of the enquiry report dated 06.02.2015, petitioner was served with a show cause notice

dated 13.02.2015. He did not file any reply and was reminded on 29.04.2015 and other opportunities of personal hearing vide office memos dated 11.06.2015, 18.12.2015, 17.02.2016, 24.05.2016, 12.08.2016, 23.12.2016, 18.09.2017 and 07.05.2018 were granted, but he did not appear before the competent authority. On realising that the petitioner had already been convicted for commission of offence, vide memo dated 17.07.2018, petitioner was directed to intimate whether there was any stay of his conviction under Sections 279 and 304-A IPC. In response thereto, vide reply dated 28.07.2018 informed regarding the pendency of the appeal and suspension of the sentence. This Court vide judgment dated 20.09.2005 passed in CWP No.4093 of 2004 titled as “Rishi Devi, Ex.Driver, Haryana Roadways, Bhiwani Versus State of Haryana & others” gave a direction to the State of Haryana not to retain the convicted Drivers in service. The Transport Commissioner, vide communication dated 09.01.2006 (Annexure R-2), intimated all the General Managers of Haryana Roadways for taking action in the light of the judgment *ibid*. The offences under Sections 279 and 304-A IPC may not be an offence involving moral turpitude for an employee, but the job of a Driver certainly close to said offence as safety and lives of the passengers are always at stake. The departmental appeal of the petitioner is still pending for adjudication before the Director General, State Transport, Haryana and, thus, urged this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

It is a settled law that the suspension of sentence does not amount to automatically stay of the conviction unless and until there is a

conviction that would prevail as the petitioner has been held to be not only the accused but a convict too. Retention of the petitioner in the service and not allowing him to drive a public transport would not only put the lives of the passengers at risk, but also all the passers-by and the vehicles crossing and coming in front. On perusal of the impugned order (Annexure P-4), there is a complete satisfaction and the reasons assigned. Pendency otherwise of departmental appeal has not been controverted.

In my view, the department has rightly exercised the power under Article 311 of the Constitution. Accordingly, the writ petition is dismissed.

October 24, 2019
ramesh

(AMIT RAWAL)
JUDGE

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