

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

**CWP No.27345 of 2017
Date of Decision : 14.05.2019**

Satpal Singh.

....Petitioner

versus

The State Of Haryana and another.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia.,

Present: Mr. Munish Mittal, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.,

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing order (Annexure P-7) dated 10.05.1993, passed by respondent No.2, terminating the services of the petitioner, as also Order (Annexure P-12) dated 17.07.2017, passed by the Appellate Authority/respondent No.1, dismissing the appeal filed by the petitioner. Prayer is also for the issuance of a writ of Mandamus for directing the respondents to take back the petitioner in service with all consequential benefits etc.

[2] Brief facts of the case as set up by the petitioner are that he was appointed as Driver and joined as such in the Haryana Roadways on 16.09.1986. Unfortunately, on 13.03.1987, on the way from Ellenabad to Yamuna Nagar, the bus being driven by him met with an accident near Village Malekha when the bus plying on a single road was brought down on to the *kacha* portion in order to avoid a truck coming from the opposite direction and when he tried to take the bus back on to the metalled road, the same slipped on the sand and despite brake's being applied the bus did not stop and ultimately hit a *kikar* tree on the side of the road and got damaged. It is the case of the

petitioner that when he got down from the bus he saw that the Tie Rod of the bus was open and it was due to the same that the accident had taken place.

[3] The petitioner was issued charge-sheet under Rule 7 of the Civil Services (Punishment and Appeal) Rules, 1952 on 14.05.1987, leveling charges that due to his negligence, the bus got damaged. The petitioner submitted reply to the charge-sheet (Annexure P-1) by way of Annexure P-2, denying the allegations and contending therein that the accident had not taken place due to his fault but on account of breaking of Tie Rod. Not being satisfied with the reply submitted by the petitioner, respondent No.2 appointed an Enquiry Officer, whereupon a regular enquiry was conducted and ultimately the Enquiry Officer found the petitioner guilty of rash and negligent driving. On the basis of the enquiry report, a show cause notice was issued to the petitioner while forwarding a copy of the enquiry report. The petitioner submitted reply to the show cause notice (Annexure P-3) dated 08.01.1992, contending therein that it had been wrongly concluded by the Enquiry Officer that negligent driving was the cause of damage to the bus and further that the Enquiry Officer failed to appreciate the material fact that Mechanic Shri Naresh Kumar, had stated that due to the opening of the nut of the Tie Rod, steering could stop functioning and the bus could go out of control of the driver. However, despite aforementioned reply to the show cause notice, respondent No.2 passed order (Annexure P-7) dated 10.05.1993, terminating the services of the petitioner. Aggrieved, the petitioner filed CWP No.6740 of 1993, which was dismissed by the High Court vide order dated 03.06.1993, by relegating the petitioner to avail alternative remedy by filing a statutory appeal. Pursuant to the aforementioned order, the petitioner filed an appeal under Rule 9 of the Haryana Punishment and Appeal Rules. However, the same was also

[4] Thereafter, the petitioner challenged orders (Annexures P-7 & P-9) by way of CWP No.10678 of 1995. The aforementioned writ petition was admitted and in the final hearing on 27.01.2017, the order of the Appellate Authority was set aside on account of the same not being in terms of Rule 11. The matter was remanded to the appellate authority to re-examine the petitioner's appeal within four months and to pass appropriate orders.

[5] That in compliance of order (Annexure P-10), the respondents passed order (Annexure P-12) dated 17.07.2017, dismissing the appeal. Although number of grounds have been taken up in the writ petition to challenge the impugned orders, yet at the time of hearing, learned counsel for the petitioner contended that the only submission was that in paragraph No. 24 of the written statement i.e. Annexure P-13, filed by the respondents before the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal'), it had been stated that the petitioner was on his way to Yamuna Nagar with the bus being driven on the left side cautiously at slow speed when the tie rod of the bus became free and the bus got out of control.

[6] Learned counsel contends that the aforementioned defense was not objected to by the learned 'Tribunal' by passing any order in respect thereto, therefore, it was not open to the respondents to take up a wholly contradictory stand that it was not the tie rod of the bus that had become free and due to the same the accident took place but that the accident had taken place on account of the bus going out of control due to the petitioner's fault.

[7] Learned counsel also referred to the statement of Shri Naresh Kumar, Mechanic dated 15.03.1987, while appearing as PW-5 in the Court of the JMIC, Sirsa. Relevant extract of his cross-examination is reproduced as under:-

“ Statement was made that on 15.03.1987 I was posted at Yamuna Nagar. On that date my report is Ex.PW5A which is on oath and signed by me.

XXXXXXX

It is right that in my report at serial No.9 it is written that the Tie Rod Nut bolt was not there. Churian were there. This is right that if the tie rod nut is open and churian are there, then the steering stop working and the Bus became out of control and became out of control of the driver.

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[8] Likewise, the contents of paragraph No.24 of the written statement dated 20.10.1987 filed by the respondents before the learned ‘Tribunal’ and as has been reproduced at Page No.78 & 79 of the paper book is reproduced as under:-

“ 24. That para No.24 of the claim petition is wrong and hence denied. The true facts of the case are that on 13.3.87 bus No.HYE 2135 was on its way from Ellenabad to Yamuna Nagar being driven by respondent No.3. On the left side cautiously and in a slow speed when the bus reached near village Mullekhan suddenly the tie rod of the bus became free and due to this defect the bus became out of control of respondent No.3 and the left side of the bus struck in to a tree of Kikar. At that time the bus was being driven by respondent No.3 continuously and in a slow speed. The accident did not occur due to the rash and negligent driving of respondent No.3. Rather it took place due to the mechanical defect which developed without any fault of respondent No.3 while the bus was on its way. Hence neither respondent No.3 nor the answering respondent are liable to pay any amount of compensation to the claimant. ”

[9] Learned counsel contended that in the circumstances, the respondents compromised the matter with the claimants before the learned ‘Tribunal’, in which they had filed reply that there was no fault of the petitioner and that the accident had taken place due to mechanical defect.

[10] Learned Senior Deputy Advocate General, Haryana, has not been able to controvert the factual position of the respondents having taken up the stand as is mentioned in paragraph No.24 of the reply and as has been reproduced at page Nos.78 & 79 of the paper book, of the accident having occurred due to the breaking of the tie rod i.e. due to mechanical defect and not due to the negligence of the petitioner.

[11] Mr. Rathee, learned Senior Deputy Advocate General, Haryana, has also not controverted that the claim filed in respect of the accident was compromised by the respondents with the claimants before the learned 'Tribunal' in claim petition titled as 'Paramjit Singh versus State of Haryana and others'.

[12] I have heard learned counsel for the parties.

[13] Admittedly, it was the categorical stand of the respondents before the learned 'Tribunal' in paragraph No.28 of the written statement that the bus was being driven by respondent No.3. i.e. the petitioner herein, cautiously, on the left side and at a slow speed and when the bus reached near village Malekha, suddenly the tie rod of the bus became free and due to the aforementioned defect, the bus went out of control of the petitioner and the left side of the bus struck against a *kikar* tree, that at that point of time, the bus was being driven by the petitioner at a slow speed and the accident did not occur due to the rash and negligent driving of the petitioner but due to the mechanical defect which the bus developed without any fault of the petitioner, while the bus was being driven, that in the circumstances, neither the petitioner, nor the other respondents were liable to pay any amount of compensation to the claimants.

[14] In the light of the position as noted above, it is not open to the respondents to take up a stand different than the stand taken up by them before

the learned 'Tribunal', that too by ignoring the report of the Mechanical Expert, as also the stand of the Mechanical Expert before the JMIC, Sirsa, besides their stand in paragraph No.24 of the written statement before the learned 'Tribunal' as referred to above. In the circumstances, the impugned orders are legally unsustainably and are accordingly set aside. However, since the accident took place in the year 1987 i.e. after a period of nearly six months of the petitioner having joined service and his services were terminated on 10.05.1993 i.e. six years after the date of accident and 6 ½ years after the date of joining service and the petitioner would in all probability now have attained the age of superannuation, or would be on the verge of retirement, therefore, instead of ordering reinstatement, it is deemed appropriate to award lump sum compensation. Accordingly, taking all aspects of the matter into account, I am of the considered view that lump sum compensation of Rs.1,00,000/- in full and final settlement of petitioners claim for reinstatement, back wages etc. would meet the ends of justice. Accordingly, the impugned orders are set aside but instead of ordering reinstatement, the petitioner is held entitled to payment of lump sum compensation of Rs.1,00,000/- in full and final settlement of his claim qua reinstatement, back wages etc. with the payment to be made within three months from the date of presentation of certified copy of the order, failing which the same would carry interest @ 6% per annum.

[15] Writ petition ***allowed*** in the aforementioned terms.

(B.S. Walia)
Judge

May 14, 2019
'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No