

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

CWP No. 12655 of 2018

Date of Decision: 07.04.2022

Ramesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Arun Monga

Present : Mr. B. R. Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Arun Monga, J.

Petitioner is before this Court seeking issuance of a writ in the nature of Certiorari quashing the impugned orders dated 13.08.2012 and 24.07.2017, Annexures P-3 and P-5, respectively, both passed by the General Manager of Haryana Roadways, Gurgaon, vide which his services as driver have been terminated. Further prayer has been made to direct the respondents to reinstate the petitioner in service.

2. Succinct facts first. The petitioner was inducted in service as driver in Haryana Roadways on 27.11.1989. On the fateful day i.e. 06.07.1992, the petitioner was on the steering wheel of the bus. A lady passenger was still in the process of boarding the bus, when owing to the sudden movement of the bus, she fell down, came under its wheels and sustained fatal injuries. An FIR was registered leading to a criminal trial resulting in the conviction of the petitioner under Sections 279 and 304-A IPC vide judgment dated 04.09.1995. Vide order dated 05.09.1995,

petitioner was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2,000/- by the learned Chief Judicial Magistrate, Gurgaon. An appeal preferred by the petitioner against his conviction order was also dismissed by the Sessions Court vide judgment dated 29.11.1996. Against the concurrent judgments by both the Courts below, petitioner preferred a criminal revision before this Court which too was dismissed vide judgment dated 17.07.2009, though the sentence of the petitioner was reduced from 12 months rigorous imprisonment to 9 months rigorous imprisonment.

3. After completion of his sentence, the petitioner moved an application before respondent no.3 for joining his duties pleading that conviction of the petitioner under Sections 304-A/ 279 IPC is not for the offence which fall under the category of moral turpitude. The case of the petitioner was sent to the Director General, State Transport, Haryana. Vide order dated 13.08.2012 passed by respondent no.2, the services of the petitioner were terminated. The petitioner filed civil suit challenging his termination order dated 13.08.2012 (Annexure P-3), which was dismissed vide judgment and decree dated 30.01.2014 passed by the learned Civil Judge (Junior Division), Gurgaon. Appeal filed against the judgment and decree dated 30.01.2014 was allowed by the learned District Judge, Gurgaon vide judgment and decree dated 30.01.2017 (Annexure P-4) declaring the order of termination dated 13.08.2012 as null and void. The matter was remitted to respondent no.3 – General Manager, Haryana Roadways, Gurgaon to pass an order of punishment upon the petitioner after considering his conduct. The respondents considered the case of the petitioner in the light of judgment in Gurjant Singh vs Punjab State Power Corporation

Limited and others 2016 (1) PLR 349. Vide order dated 24.07.2017 (Annexure P-5), it was concluded that the petitioner is not entitled to any service benefits and his termination order dated 13.08.2012 is justified. Hence, the writ petition.

4. I have heard learned counsel for the parties and perused the impugned order (Annexure P-5), which is premised *inter alia* on the following grounds:-

“Sh. Ramesh Kumar, Ex. D. No. 294 was terminated vide this office Order No. 21180/EA/ECD dated 13.08.2012 on account of criminal case bearing No. 201 dated 06.07.1992 U/S 279, 304A IPC. This termination order was issued in pursuance of Govt. of Haryana instruction bearing No. 13/02/2006-2 GSI dated 29.03.2006 which was issued by Govt. in compliance of Hon’ble High Court Punjab and Haryana judgment/ direction in case of CWP No. 4093 /2004 Rishi Dev V/ State of Haryana regarding appointment/ reinstatement of a driver convicted for an offence U/S 304-A of Indian Penal Code. Therefore he filed civil suit before learned court Gurugram. Learned trial Court Gurugram vide its decree dated 30.01.2014 dismiss the suit of plaintiff. Subsequently he filed appeal before Hon’ble Civil Court Gurugram. Hon’ble ADJ Gurugram vide its order dated 30.1.2017 passed order which is reproduced as under:-

It is apparent from the above reproduced order that while passing the same conduct of the plaintiff and his length of service was not considered by defendant no.1. In Gurjant Singh’s case (supra) our Hon’ble High Court held as under:-

“In the present case the petitioner is no doubt guilty of negligence in driving an official vehicle, which led to the unfortunate death of three innocent persons. Hence, without doubt, the punishment imposed upon him cannot be a light punishment. However, it also needs to be sent that the act was one of negligence in driving (as found in the criminal case against him) and not of any deliberate intention on the part of the petitioner.

Further, he had also put in 28 years of service without any blemish on his career, at least as per the pleadings before this Court. Hence, in my opinion, the punishing authority and even the

appellate authority did not apply their mind to the actual conduct of the petitioner. Both the impugned orders seem to have been passed completely in a mechanical manner, simply by reference to the aforesaid circular dated 07.08.1995. The import of the judgment of the Supreme Court, to the effect that the punishment mentioned in Article 311 (2) should only be invoked where the conduct of the employee warrants such punishment, is something which the punishing authority and the appellate authority have not applied their minds to, at least as per the wordings of the impugned orders.”

In the said judgment the Hon’ble High Court after noticing the above, proceeded to quash the order of termination and remitted the matter to the competent authority to pass an order of punishment upon the petitioner after considering his conduct that led to his conviction in the criminal case and further considering his length of service in the job prior to such conduct.

Therefore, in view of the aforesaid judgment in Gurjant Singh’s case (supra) even impugned order of termination dated 13.08.2012 cannot be sustained. The same is declared to be null and void. The matter is remitted to the respondent (defendant no.2) to pass an order of punishment upon the petitioner after considering his conduct that led to his conviction upon in the criminal case and further considering his length of service in the department prior to such conduct. What such punishment should be, is left to the discretion of the punishing authority who would consider both, the negligent conduct of the appellant plaintiff leading to loss of life and also his service record and length of service. The order be passed within a period of three months from the date of receipt of certified copy of the order. However, in the meanwhile, pending fresh orders be respondent no.2 the plaintiff shall not be considered to have reinstated in the service.

Considering above judgment, learned LR Haryana vide memo No. 12154/Co.9 (75) 2015 dated 13.06.2017 opined that it is not a fit case for filing R.S.A.

Aforesaid judgment/ order and opinion of L.R. has been considered in depth. As such previous record of the plaintiff has been gone through. This past service record/ history sheet is mentioned here under:-

History Sheet of Ramesh Kumar

Date of birth :- 07.07.1964

Date of Appointment :- 01.01.1990 as Drive.

*Punishment awarded during service period :-**W.P.L. 21.10.92 to 29.10.92 vide order No.2969/ECD dated 25.02.93**U/S – 17.03.93 to 07.04.93**W.P.L. 09.07.95 to 20.07.95 vide order No.6500/ECD dated 25.04.96**W.P.L. 28.07.95 to 25.09.95 vide order No- 10466/ECD dated 11.06.94**W.P.L. 03.01.2k to 20.01.2k vide order No- 11500/ECD dated 10.08.2k**W.P.L. 18.07.99 to 11.09.99 vide order No- 13159/ECD dated 11.09.2k**W.P.L. 05.09.2k to 06.09.2k vide order No-927 dated 17.11.01**W.P.L.12.11.2k to 14.11.2k vide order No-3206/ECD dated 05.03.01**Ab.-01.03.2k to 31.05.01**W.P.L. 01.06.05 to 12.06.05 vide order No-344/ECD dated 02.12.05**W.P.L. 11.11.05 to 25.11.05 vide order No-9235/ECD dated 22.01.07**U/S 27.02.09 to 03.03.09**Warning issue order 725/ECD dated 12.03.03**Two increment stopped w/c effect vide O/N-6518 dated 15.05.2000**Two increment stopped w/c effect vide O/N-902 dated 17.01.2001**Four increment stopped w/c effect vide O/N-12876 dated 24.07.2002**One increment stopped w/c effect vide O/N-6825 dated 18.04.2010**It is pertinent to mention here that Hon'ble ADJ Gurugram in its judgment dated 30.01.2017 has relied upon judgment of Hon'ble High Court of Punjab and Haryana titled Gurjant Singh V/s Punjab State Power Corporation Ltd. And others in 2016 (1) PLR 349, while deciding this case. Sh. Gurjant Singh has put in 28 years of service without any blemish on his carrier as mentioned at page No-7 in judgment of ADJ Gurugram. Whereas service record of Sh. Ramesh Kumar driver is completely blemish in comparison of Sh. Gurjant Singh as per detail mentioned above. Hence, it is evident that Sh. Ramesh Kumar driver is not entitled to claim any relief*

equal to Sh. Gurjant Singh. It is also affirmed that Hon'ble Supreme Court of India in case titled Chaman Lal V/s State of Punjab in civil appeal No. 2273 of 2011 has directed that if any Court/ Tribunal gives adverse benefit in comparison to Govt. rules, the same benefit cannot be claimed by other petitioner / appellant on the basis of that judgment/ direction. ADA of this office has also supported opinion that "The service record/ length of service may also be considered while passing fresh order. At the same time negligent conduct of the employee may be taken in the account pl."

In view of facts and submission made above, Sh. Ramesh Kumar, Driver is not entitle for any service benefit. Hence his termination order bearing No-21180/EA/ECD dated 13.08.2012 is justified and sustainable in the eyes of law."

5. Having perused the above impugned order, I find no illegality either in facts or in law. Being so, no interference is warranted.

6. I am not inclined to agree with the arguments of learned senior counsel merely because there is no finding qua the moral turpitude involved in the offence committed by the petitioner which is likely to impinge on the nature of duties performed by him, he should be reinstated. It is the prerogative of the employer to reinstate an employee, who has undergone conviction. It is not statutory or constitutional right of an employee for reinstatement. In the premise, on that ground also, no interference is called for. The writ petition is dismissed.

07.04. 2021

VS

(Arun Monga)
Judge

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No