

Sr.No.205

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

CWP No.2797 of 2015 (O&M)

Date of Decision: 29.11.2022

Chandi Ram, Ex-Driver Through LRs.

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Amrita Garg, Advocate
for the petitioners.

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J.(ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for setting aside order dated 04.11.2008 (Annexure P-1), whereby the services of the petitioner were terminated due to ongoing criminal proceedings against him. Further prayer is for quashing of subsequent order dated 26.07.2012 (Annexure P-9) vide which the petitioner, though reinstated in appeal, was denied promotional and other benefits for the period he was out of service.

2. Succinct facts first. Petitioner was a driver of Haryana Roadways, Haryana. Inspector of Haryana Roadways had reported on 08.06.2001 that Bus No.HR-31PA-0147, enroute from Delhi to Sangrur, driven by the petitioner, met with an accident at 8 P.M. with a car which claimed the lives of two passengers travelling in the car and injuries to one person. Therefore, an FIR was registered against him. On receipt of

accident report, the petitioner was placed under suspension vide order dated 22.06.2001 and on his request he was reinstated vide order dated 28.06.2001. He was charge-sheeted under Rule 7 of the Punishment and Appeal Rule, 1987. Since he had not filed reply to the charge-sheet, the Works Manager was appointed as Inquiry officer to ascertain the real facts of the case vide order dated 27.11.2001. Statement of one Bhag Singh, Inspector was obtained on 26.09.2002 as per which the car driver was drunk. Inquiry Officer concluded the inquiry and presented the same on 01.01.2003 whereby, however, the petitioner was found guilty of negligent driving. Hence, show cause notice for termination from service and restriction of the suspension period upto subsistence allowance already paid was issued to the petitioner vide office letter dated 10.01.2003. He filed a reply to the charge-sheet. After going through the reply and giving personal hearing to the petitioner, the same was not found satisfactory. Three accident cases were found pending against him wherein three persons died. It was found that he was habitual of rash and negligent driving and he was terminated from service vide order dated 04.11.2008. Aggrieved, he filed an appeal before the competent authority, who ordered reinstatement in the service as last chance and also ordered stoppage of five annual increments with cumulative effect and no financial benefit was granted for the period he remained terminated from service. Petitioner then filed a second appeal before the Financial Commissioner Transport, Haryana. However, the same was adjudged as outside its jurisdiction. Hence, the present petition.

3. The over-emphatic argument of the learned counsel for the petitioner is that once the appellate authority had clearly opined in its order dated 26.07.2012 (Annexure P-9) that the punishing authority i.e.,

the General Manager ought to have taken into account the acquittal of the petitioner in criminal proceedings, therefore, findings of the inquiry officer that the petitioner is guilty should not have prevailed while awarding him the punishment of dismissal from service. Consequently, the petitioner ought to have been given the benefit of acquittal in criminal proceedings.

4. I have gone through the inquiry report. Perusal of the same reflects that the inquiry officer was himself conscious of the fact that at the time of accident, on the basis of the report sought by Inspector of the Roadways from one of the villagers, it was found that the car driver was drunk. Notwithstanding, since the bus was passing through an inhabited area, it was the duty of petitioner as the driver to have been more careful while driving the bus. The inquiry officer has observed that he was negligent in doing so as he failed to observe the necessary precaution resulting in contributory negligence from his side which eventually led to the death of all the occupants of the car. Therefore, to contend that merely because the petitioner has been acquitted in the criminal proceedings, the said criteria of benefit of doubt ought to have been adopted in the departmental proceedings, would be fraught with danger. Trite it is to say that the benchmark of the departmental proceedings have no parity with that of criminal proceedings. It is age old fundamental postulate of criminal jurisprudence that ten guilty persons may escape than that one innocent suffers. The same cannot be the parameter in departmental proceedings.

5. The observations of the punishing authority while originally terminating the services of the petitioner also do not inspire any

confidence so as to exercise indulgence under extraordinary writ jurisdiction in judicial review. The said observations are as follows:

“xxxx xxxx

At present, three cases are lying pending against this driver for Departmental inquiry, and three persons have been killed during these accidents. As such, it seems to be proved; that this driver is not doing his work diligently. As it proves from repeated accidents. This driver is habitual of negligent and speedy driving, which is dangerous to the passengers as well as for the public.

Hence, the services of Sh. Chandi Ram driver No.19 are being terminated with immediate effect and he is kept bound to ‘only alimony’ for the suspended period.”

6. On a Court query, it transpires that the petitioner was acquitted in all the three cases, which were at the relevant time pending against him, but the fact remains that at the relevant time punishing authority had exercised its discretion based on the said three cases and therefore no fault can be found *qua* the punishment of termination of services as against the backdrop of facts and circumstances, as existed on the date of passing of the punishment order. It is in this background that a lenient view was taken by the appellate authority, notwithstanding that three persons were killed. The appellate authority, in my view, has already given the benefit of doubt to petitioner and reduced the order of punishment from dismissal to that of stoppage of five increments. There is no further room for this Court to interfere.

7. Petition is dismissed.

8. Pending civil miscellaneous applications, if any, also stand disposed of.

November 29, 2022
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No