

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

CWP-28725-2018 (O&M)

Date of decision: December 07, 2022

Bijender Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vikas Kuthiala, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to quash impugned termination order dated 19.10.2018 (Annexure P-14) whereby, services of the petitioner as a Driver were terminated for having procured employment on the basis of an alleged forged matriculation certificate.

2. Plead case is that petitioner was appointed as a Driver on contractual basis by respondent No.3-General Manager, Haryana Roadways, Haryana Roadways, Depot, Jind vide an office order dated 26.06.2008 (Annexure P-1). His services were regularized vide order dated 05.10.2011 (Annexure P-2). Services of the petitioner were governed by the Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995 (for short 'Rules of 1995'). Respondent issued show cause notice dated 11.01.2012 (Annexure P-3), to the petitioner as to why his services as Driver be not terminated as he had not passed Matriculation examination before joining as Driver. Petitioner was having "Compartment till March 1988" and there was

misrepresentation by the petitioner at the time of joining the services. Petitioner submitted detailed reply dated 11.01.2013 (Annexure P-3) to show-cause notice. After considering the said reply, vide order dated 05.07.2012 (Annexure P-4), services of the petitioner were terminated on the ground that he has not cleared Matriculation examination and the certificate attached in support of having qualified the examination from the School Education Board, Allahabad, Uttar Pradesh, was found to be bogus upon verification thereof.

2.1 Petitioner raised a demand notice under Section 2(a) of the Industrial Disputes Act, 1947. Claim of the petitioner was dismissed vide award dated 11.11.2014. Petitioner preferred CWP-10880-2015 against the aforesaid award, which was allowed vide order dated 24.08.2017 (Annexure P-5) with a direction to the respondents to reinstate the petitioner with all consequential benefits within a period of 3 months from the date of order with liberty to the respondents to hold a domestic inquiry under the discipline and appeals rules adopted by the Haryana Roadways. He also filed COCP-90-2018. Thereafter, petitioner was allowed to join back as Driver on 22.05.2018, but he was neither paid his consequential monetary benefits nor was he paid salary for the months of May to August. Petitioner was served another show-cause notice dated 11.06.2018 (Annexure P-6). He submitted reply dated 27.06.2018 (Annexure P-7). He was directed to appear before the enquiry officer at Jind on 14.08.2018 vide memo dated 03.08.2018 (Annexure P-9). Petitioner was neither served with any charge-sheet nor list of witnesses and list of documents to be relied upon by the respondents in the Departmental proceedings. Petitioner also submitted letter dated 14.08.2018 (Annexure P-10) for getting help of an expert person for appearing and assisting the petitioner. However, enquiry proceedings were concluded on 14.08.2018 itself in haste without providing help and affording an

opportunity of due and proper defence to petitioner. Petitioner was served with second show-cause notice dated 17.09.2018 (Annexure P-11) along with enquiry report dated 07.09.2018 (Annexure P-12). He submitted his reply on 01.10.2018 (Annexure P-13). Vide impugned order dated 19.10.2018 (Annexure P-14), services of the petitioner were terminated as a Driver for having procured said employment on the basis of an alleged forged matriculation certificate. Financial benefits and salary of the petitioner were paid to the petitioner on 27.09.2018, i.e., after the completion of enquiry proceedings.

3. I have heard rival contentions of learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner *inter alia* argues taking up following substantive violations:-

- A. Being illiterate, despite petitioner having specifically submitted an application seeking to engage a trained person to appear for and with him before the enquiry officer, he was not provided necessary help;
- B. That even if the matriculation certificate was found to be fake and fabricated, the same has no bearing on the eligibility/ merit of the petitioner since post in question of the Driver of a Heavy Vehicle pre-requisites middle pass and not matriculate;
- C. That the petitioner was not paid salary after his termination from the services vide impugned order dated 19.10.2018 (Annexure P-14), therefore, being indigent, was not in a position to defend himself.

5. The last argument first. Perusal of the record shows that it is hardly of any consequence whether petitioner was paid salary or not which in any case Department was not under any obligation to pay since his services were dispensed with, on the principle of 'No Work No Pay'. No irregularity can be made out as regards the incapability to defend him being indigent. Same is also negated from the record as at every step, starting from the show-cause notice, the nature of reply and defence taken by him, clearly reflect that assistance was

rendered to him. In fact, reply filed to the show-cause notice is quite legally worded, as is borne out from the plain language and has been submitted in English, on which he has simply put his signatures. Same reflects that it was under advice and assistance of a third party.

It is however, open to the petitioner to establish before the Department that in case, he had indeed rendered services for the period he claims which has not been paid, then the Department will pass appropriate orders *qua* the same, of-course after verification from the records, if the petitioner had served for the said period for which he claimed that he had not been paid.

5.1 *Qua* the defence put-forth that even if his matriculation certificate was found fake, the same would have no bearing on the eligibility/merit of the petitioner, that is being noted simply to be repelled. Once there is no mutual trust between the employer and employee, it is but natural that employer would not like to take a person back, who at the very threshold had committed act of losing entire confidence and faith. In the present case, in the enquiry proceedings, it has been clearly established that the petitioner was well aware that he had earlier appeared in the matriculation examination conducted by Board of School, Bhiwani and was declared unsuccessful since he had compartment in the subject of mathematics. It is not known as to how around same time, petitioner once again managed to get matriculation certificate issued by the Secretary Middle Education Council Uttar Pradesh. Office of Secretary Secondary Education Council, Uttar Pradesh Regional Office, Varanasi, who in fact informed vide letter dated 19.06.2012 (Annexure R-17) that said certificate was not issued in the name of the petitioner, but it was another candidate, who had appeared vide roll number mentioned in the certificate. Be that as it may,

Secretary has written even otherwise. In the enquiry proceedings, it has been established that the said certificate was indeed fake.

5.2 As regards the petitioner not being provided with the necessary help being illiterate during the enquiry proceedings, the same is also belied form the fact that the said request seems to have been made at the very threshold when he appeared before the enquiry officer. There is nothing on record to show that petitioner had moved an appropriate application before the Department. It is borne out that petitioner had arranged for such help, which he had earlier been seeking recourse to, as is borne out from the correspondence between the petitioner and the Department, including the defence taken to the show-cause notice as well as representation filed before the Department. Therefore, it does not lie in his mouth to say that while he could seek such help before participating, why would he not do so on the crucial day of joining the enquiry proceedings? It was open for him to have taken his assistance alongwith him and had the Department not allowed the same, it would have been a different situation, which is not the case herein.

- 6. In the premise, I found no grounds to interfere. Dismissed.
- 7. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 07, 2022
mahavir

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