

2023:PHHC:062701

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

CWP-8880-2023 (O&M)

Date of decision: 02.05.2023

Harbhajan Singh

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Veneet Sharma, Advocate for the petitioner
Mr.Vishnav Gandhi, DAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein was working as a Driver since 03.06.1997 in the bus service run by the Punjab Roadways, which is under the management of the Principal Secretary, Department of Transport. In an automobile accident involving the bus driven by the petitioner, a death incident took place, resulting in the registration of FIR, which led to the conviction of the petitioner under Section 304 A IPC. An appeal filed by the petitioner was dismissed, however, in the revision petition, the conviction was stayed. The petitioner was initially taken back in service, however, subsequently, he has been dismissed from service vide order dated 27.03.2023, which is impugned in the present writ petition. The services of the petitioner have been dispensed with in accordance with Rule 13(1) of the Punjab Civil Service (Punishment and Appeals) Rules, 1970.

2. Learned State counsel admits that the petitioner has already completed more than 15 years of service as required for the application of the Punjab Civil Services (Premature) Retirement Rules, 1975, which

were amended in the year 2014.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. In fact, in CWP-627-2017 (**Darshan Singh vs. State of Punjab and others**) decided on 14.03.2023, this Court has considered the various aspects of the case involving an identical issue and it was held as under:-

“7. A Division Bench of this Court in Rishi Dev vs. State of Haryana and others, 2006(2) SLR, 295 has held that the driver of a bus who has been held guilty of rash and negligent driving by the court, is not entitled to reinstatement. It has been held as under:-

“9. At this stage, we may also notice the second argument raised by the learned Counsel for the petitioner to the effect that in some other cases, the Haryana Roadways itself has ordered the reinstatement of the convicted drivers, after they had completed their sentence. In this regard, two instances have been pointed out by the petitioner wherein such a course had been adopted by the Department. However, we cannot countenance the aforesaid action of the department. In the case of a convicted driver, the relevant fact is not as to whether the conviction of the driver had been for an offence involving moral turpitude or not but the question to be considered is as to whether the driver involved in the accident was in fact guilty of criminal negligence and rashness in the performance of his duty. If an errant driver had been so held by the criminal Court and

convicted on that basis, then of course the aforesaid conviction would be a factor which has to be taken into consideration before the said driver is put back into service for driving once again. From the perusal of the order Annexure P/7, we find that the Transport Commissioner had himself noticed that the Haryana Roadways was a large department. It appears that different authorities had taken different kind of action in some cases. Although, we find that the reinstatement of similarly situated drivers such as the petitioner, would not justify the reinstatement of the petitioner, but all the same we are of the view thereform policy has to be adopted by the State Government dealing with such a situation. In our considered view, the State Government is duty bound in law to consider the safety of the passengers, safety of the other road users and also loss of the public property before any order for reinstatement of such a convicted driver is to be made. The question of a driver having not been convicted for a moral turpitude is wholly irrelevant in such matters. As a matter of fact, the finding of criminal court with regard to the negligence of driver and consequential conviction, would actually amount to a finding with regard to the negligent performance of his duties i.e. driving by a convicted driver. In these circumstances, we do not find any merit in the present petition. The writ petition is, accordingly, dismissed. 10. However, a copy of

the present judgment be sent to the Chief Secretary of Punjab, Chief Secretary of Haryana and Advisor to the Administrator of the Union Territory, Chandigarh for taking necessary action as per our observations made above with a request that necessary guidelines be issued to all concerned that in future no reinstatement of a driver convicted for an offence under Section 304-A of the Indian Penal Code be ordered merely on the ground that the offence for which he had been convicted did not involve moral turpitude. The directions contained in this judgment be complied with forthwith.”

8. Sh. D.K. Singal Additional Advocate General, Punjab, admits that during the entire career of the petitioner as driver, which is stated to be more than 15 years i.e. w.e.f. 23.06.1997 to 30.05.2008, the petitioner was not involved in any other accident prior to the incident in question. Thus, the petitioner has unblemished service record for a period of more than 15 years prior to 30.05.2008 i.e. the date of alleged incident.

9. Road accidents are, often, the result of an error of judgment or mechanical failures. They can also occur on account of the fault of the other vehicle. In such cases, it would not be justified or rational to hold that the driver is guilty of an offence involving moral turpitude in the absence of mens-rea, however, at the same time, the court is required to take into consideration the fact that the driver, if reinstated in service, will again drive heavy duty vehicles which can endanger public safety.

10. After examining and harmonizing these conflicting

*interests, a learned Single Judge in **Jarnail Singh vs. State of Punjab and others** (Civil Writ Petition No.2914 of 2009, decided on 29.08.2011), has held that in such cases, the order of dismissal is required to be modified and converted into the order of compulsory/pre-mature retirement from service with entitlement to the retrial/pensionary benefits.*

11. This court while respectfully agreeing with the aforesaid view, modifies the order of dismissal of the petitioner from service and orders its conversion into an order of compulsory/pre-mature retirement from service with entitlement to retrial benefits with effect from the date of the dismissal order i.e. 12.04.2016.”

4. Learned counsel representing the respondents has failed to draw the attention of the Court to any distinguishing feature.

5. For the aforementioned reasons, which need not be reiterated, the writ petition is allowed and the order dated 27.03.2023, dispensing with the services of the petitioner is modified and converted into an order of compulsory/pre-mature retirement with entitlement to the retrial benefits w.e.f 27.03.2023.

6. All the pending miscellaneous applications, if any, are also disposed of.

02.05.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE