

In the High Court of Punjab and Haryana, at Chandigarh**Civil Writ Petition No. 10932 of 2023****Date of Decision: 26.05.2023**

Tara Singh

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gagneshwar Walia, Advocate
for the petitioner(s).

Mr. Vishnav Gandhi, Deputy Advocate General,
Punjab.

Anil Kshetarpal, J.

1. The petitioner has filed the present writ petition, challenging the correctness of his removal from the regular service under Rule 13(1) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

2. In substance, the services of the petitioner have been dispensed with on account of his conviction in a criminal case arising from FIR No. 14 dated 26.02.2002, registered under Section 279 and 304-A IPC. He was convicted and sentenced to undergo rigorous imprisonment for a period of two years by the trial Court. The same was upheld by the First Appellate Court on 15.07.2011. The petitioner, though, was placed under suspension, however, he was allowed to join the work again in the month of December, 2012. Thereafter, in the year 2023, he applied for premature retirement which has resulted in passing the impugned order dismissing the petitioner

3. The petitioner would have retired on attaining the age of superannuation i.e. 58 years on 31.10.2023. The learned State counsel admits that apart from this case, there is no allegation against the petitioner. He joined in the month of April, 1999. He has continued to work as a Driver till the impugned order was passed. Thus, he has rendered more than 25 years of service. While deciding the identical writ petition in ***Darshan Singh v. State of Punjab and Others (Civil Writ Petition No. 627 of 2017, decided on 14.03.2023)***, this Court, after analyzing the case law on the issue, has 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.”*

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to retiral/pensionary benefits because he has served the government for a period of more than 15 years.

5. Keeping in view the aforesaid facts, the order dismissing the petitioner from service is modified and converted into the order of compulsory/premature retirement from service with entitlement to the retiral benefits with effect from the date of his dismissal from service i.e. 27.03.2023.

6. With the observations made above, the present writ petition is disposed of.

(Anil Kshetarpal)
Judge

May 26, 2023
“DK”

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