

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16543 of 2014 (O&M)

Date of decision: 13.03.2023

Gurmukh Singh

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurmeet Singh, Advocate
for the petitioner.

Mr. D.K.Singal, Addl.A.G., Punjab

ANIL KSHETARPAL, J(Oral)

1. On 01.03.2023, the following order was passed:-

“Arguments have been heard at some length.

The learned counsel representing the petitioners relies upon the judgment passed in Jarnail Singh vs. State of Punjab and others(Civil Writ Petition No.2914 of 2009, decided on 29.08.2011) to contend that order of dismissal from service is arbitrary, therefore, the order may kindly be treated as pre-mature retirement from service.

On the other hand, the learned counsel representing the State of Punjab draws the attention of the court to the judgment passed in Rishi Dev vs. State of Haryana and others, 2006(2) SLR 295.

The learned counsel for the State of Punjab is requested to examine the eligibility of the petitioners in both the cases with respect to their prayer for pre-mature retirement.

List for further arguments on 13.03.2023.

To be listed in the urgent list.

A photocopy of this order be placed on the

file of the other connected case.”

2. Sh. D.K. Singal, Additional Advocate General, Punjab, on instructions from Sh. Lakhwinder Singh, Law Officer, states that the petitioner is eligible for pre-mature retirement as he completed 20 years 8 months and 15 days on the day on which his services were terminated.

3. The petitioner calls in question the orders passed on 21.08.2013 and 05.05.2014. He was employed as Driver with the Punjab Roadways. On 22.08.2000, when he was driving the bus, it met with an accident resulting in the death of Sh. Balbir Singh, whereas, two other persons riding on the scooter received injuries. He was held guilty under Section 304-A IPC and sentenced to imprisonment for a period of one year along with fine of Rs.50000/-. In the appeal, the judgment of the trial Court was affirmed. The revision petition filed by the petitioner is stated to be pending. In the meantime, on account of the petitioner's conviction, his services were dispensed with in accordance with Rule 13 (1) of the Punjab Civil Service (Punishment and Appeals) Rules, 1970.

4. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

5. A Division Bench of this Court in **Rishi Dev's case (supra)** has laid down that the driver of a bus after having 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 therefore 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.”

6. Sh. D.K. Singal, Additional Advocate General, Punjab, admits that during his entire career of more than 20 years as driver, the petitioner was not involved in any other accident prior to the incident in question. Thus, the petitioner has unblemished service of a period of more than 20 years to his credit.

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

learned Single Judge in *Jarnail Singh's case (supra)*, held that in such cases, the order of dismissal is required to be modified and converted into an order of compulsory/pre-mature retirement from service with entitlement retri al/pensionary benefits.

9. Keeping in view of the aforesaid judgments, this court while respectfully agreeing with the aforesaid view, orders the modification of dismissal of the petitioner from service and its conversion into an order of compulsory/pre-mature retirement from service with entitlement to retri al benefits with effect from the date the dismissal order i.e. 05.05.2014.

With these modification, the writ petition is disposed of.

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

March 13, 2023
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(ANIL KSHETARPAL)
JUDGE

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