

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

(213)

**CWP-20404-2018 (O&M)
DATE OF DECISION:- 24.01.2023**

RANBIR SINGH

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Rajpal Singh Chauhan, Advocate
for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General,
Haryana for the respondents.

SUVIR SEHGAL, J. (ORAL)

CM-12218-CWP-2018

Application has become infructuous as the main case is
being taken up.

Dismissed as having been rendered infructuous.

Main case

Instant petition has been filed by the petitioner seeking
issuance of a writ in the nature of certiorari to quash order dated
25.07.2018, Annexure P-9, whereby petitioner has been terminated from
service.

Factual matrix leading to the filing of the petition is that
petitioner was appointed on a contract basis on 01.06.2008 by the
General Manager, Haryana Roadways, Fatehabad on a fixed salary of
Rs.3,000/- per month to drive heavy vehicle Class-B. Vide order dated
01.07.2008, Annexure P-1, the appointment of the petitioner was made

on the basis of the driving proficiency test and interview. He was regularized w.e.f. 01.07.2008. A Show Cause Notice dated 30.04.2018, Annexure P-5, was issued to him in proposing imposition of penalty of termination from service on the ground that his driving license had been made prior to his attaining the age of 20 years and he was not entitled to drive a heavy vehicle. Show Cause Notice made a reference to a decision of this Court dated 01.11.2017 in *CWP-746-2009* titled as “*Kishan Sahal etc. Versus State of Haryana etc.*” Petitioner responded to the notice by submitting a reply, Annexure P-8, but without considering the same, by impugned order, Annexure P-9, petitioner has been terminated from service. Upon notice, respondents have contested the petition by filing a written statement. Stand taken by the respondents is that as per the application form, submitted by the petitioner, in pursuance to the advertisement issued for recruitment of driver in the Transport Department, his date of birth is 12.08.1984 and when driving license was issued to him on 24.04.1995, he was below 20 years of age and on 08.10.1988 when a license to drive a heavy vehicle was issued, he was a mere 14 years of age. It is the specific stand of the respondents that in terms of Section 4 of the Motor Vehicle Act, 1988, petitioner was not eligible to drive the transport vehicle when the license was issued to him.

By making a reference to the Birth Certificate, appended with the documents attached as Annexure P-3, counsel for the petitioners submits that the date of birth of the petitioner is 12.08.1974. Counsel has also made a reference to the academic certificates of the petitioner as well as the Aadhar Card and the PAN Card to fortify his stand. He submits that while filling in the application for recruitment as a driver, the book depot holder, who had filled in the online form, had inadvertently

mentioned the wrong year, resulting in an error in the application form. It is his specific stand that the petitioner was eligible and was granted the license after he had attained the age prescribed under the statute. It is his argument, that the impugned order of termination has been passed without holding any enquiry as is contemplated under the Haryana Civil Services (Punishment and Appeal) Rules, 2016 (for short “the 2016 Rules”). Reliance has also been placed by the counsel on judgment dated 14.02.2020 passed by this Court in CWP No.15467-2018 titled as Atma Ram Versus State of Haryana and others, wherein in almost similar circumstances, a Co-ordinate Bench of this Court quashed a Show Cause Notice as well as the termination order of a counter part of the petitioner. On the other hand, State counsel has opposed the petition by reiterating the stand taken in the written statement.

I have heard counsel for the parties and considered their respective submissions.

There is no gainsaying that before imposing a major penalty, disciplinary authority is required to hold an enquiry against a delinquent employee. However, there is no material on the record nor could it be pointed out by the State counsel that the procedure prescribed under the 2016 rules has been followed. After the reply was submitted by the petitioner and he was afforded an opportunity of hearing, respondent No.2 proceeded to issue impugned order of termination. Such a procedure is violative of the principles of natural justice and is against all established canons of law. On this score alone, the impugned order cannot be sustained.

Still further, it may be noticed that the Birth Certificate is issued under the Registration of Births and Deaths Act, 1969, on the

basis of an entry made in the office of Registrar, Births and Deaths and it carries a presumption of correctness as it is maintained by a public office in the discharge of official duties. The Birth Certificate has a primacy over any other document showing the date of birth. In any case, not only the Birth Certificate, but even the other documents, academic certificates as well as the Aadhar and PAN cards also depict that the date of birth of the petitioner as 12.08.1974. However, respondent No.3 has failed to consider any document while passing the impugned order, Annexure P-9. On this score also, the impugned order cannot be sustained.

For the foregoing reasons, impugned termination order, Annexure P-9, is quashed. Respondents are directed to consider the reply, Annexure P-8, submitted by the petitioner, to the Show Cause Notice, Annexure P-5, and proceed in accordance with law.

Petition is disposed of.

24.01.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No