

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-627 of 2017 (O&M)
Date of decision: 14.03.2023

Darshan Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Birinder Singh Khehar, Advocate
for the petitioner.

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

ANIL KSHETARPAL, J(Oral)

1. The petitioner prays for the issuance of a writ in the nature of certiorari to quash the orders passed on 12.04.2016 by the Director, State Transport, Punjab, which was upheld on 15.11.2016 in the appeal by the Secretary, Transport Department.

2. In substance, the services of the petitioner have been dispensed with on account of his conviction in FIR No.66 dated 30.05.2008 registered under Section 279, 337, 338, 304-A and 427 IPC at Police Station Kurali, District Ropar. He was held guilty under Section 304-A IPC and sentenced to undergo rigorous imprisonment for a period of 2 years with a fine of Rs.5000/-. In the appeal, the judgment of the trial Court was affirmed. Though, in the revision petition, the sentence of the petitioner has been reduced to 6 months, however, 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.

3. The petitioner joined as driver with the Punjab Roadways on

23.06.1997 and the accident alleged in the FIR took place on 30.05.2008.

4. The learned State counsel admits that before the occurrence of the accident in question, the petitioner was driving heavy duty vehicles without any such incident having been reported in the past. The Motor Accident Claims Tribunal as well as the Criminal Court has found that the petitioner is guilty of rash and negligent driving.

5. On the direction of this Court, Sh. D.K. Singal Additional Advocate General, Punjab, on instructions from Sh. Lakhwinder Singh, Law Officer, states that the petitioner has 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.

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

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.

12. With these modifications, the writ petition is disposed of.

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

March 14, 2023

nt

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*