

CWP No. 66 of 2017

2023:PHHC:121468

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210)

CWP No. 66 of 2017

Date of Decision : 14.09.2023

Jagminder

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jangjit Singh Dahiya, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

The present petition has been filed challenging the order dated 06.01.2016 (Annexure P-7) by which, the petitioner was compulsory retired from the post of Heavy Vehicle Driver while working in the Haryana Roadways.

It may be noticed that while the petitioner was working as a Driver, on 09.11.2005, a female passenger traveling in the bus fell down and she died due to the injuries suffered for which an FIR was registered against the petitioner under Sections 279, 304-A IPC at Police Station Civil Line, Rohtak. Though, the said incident was enquired by the department also by holding a departmental enquiry, the petitioner was exonerated from the said charge on the ground that the passenger had jumped from the moving bus. But the said enquiry report was not

accepted by the punishing authority and the petitioner was warned to remain careful in future vide order dated 04.11.2008.

As the petitioner was also facing a criminal proceeding in respect of the same incident, the petitioner was convicted by the competent court of law, which conviction has already been upheld by this Court. After undergoing the sentence, the petitioner approached the respondents for taking him back in service at which point of time, keeping in view the conviction of the petitioner and undergoing the sentence, the respondents gave the petitioner a show cause notice as to why he should not be dismissed from service.

After the reply was filed, keeping in view the facts and circumstances of the case that the petitioner was convicted, which conviction had already been upheld upto this Court, the respondents dismissed the petitioner from service. Against the said order, the petitioner filed an appeal, which appeal was accepted and the punishment of dismissal from service was modified to that of a compulsory retirement, which order is under challenge in the present writ petition.

Learned counsel for the petitioner argues that once the petitioner was only given a minor punishment qua the same incident in the departmental proceedings, no action could have been taken by the respondents upon being convicted by the competent court of law even if, his conviction has been upheld upto the High Court as the same will amount to double jeopardy.

Learned counsel for the respondents submits that once, the petitioner was convicted in a criminal proceeding and the said conviction has already been upheld upto this Court, hence, keeping in view the Article 311 of the Constitution of India, a convicted employee cannot be allowed to continue in service, appropriate order compulsory retiring the petitioner was passed, hence, in the present case, the argument that the petitioner is being punished twice for the same offence is not made out hence, the present petition may kindly be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

No doubt, for a particular incident where a passenger has lost her life, the petitioner was warned to remain careful in future during the disciplinary proceeding but it is also a matter of fact that in the criminal proceeding, the guilt of the petitioner was established beyond doubt and which conviction has already been upheld upto this Court and the petitioner has also undergone the sentence. Keeping in view the Article 311 of the Constitution of India, an employee, who has been found guilty and has been convicted in a criminal proceeding, action can be taken against him by the department and in the present case, the action has been taken against him by the department upon being convicted by duly serving a show cause notice. It cannot be said that after serving sentence upon conviction, petitioner should be treated in service so as to treat him an employee even for the period when he was in jail serving sentence.

The argument that there is no application of mind on behalf of the respondents is incorrect as, initially on the basis of the conviction, the petitioner was dismissed from service, which decision on appeal has been modified to compulsory retirement, hence, it cannot be said that the claim of the petitioner was not considered with open mind by the respondents.

Keeping in view the above, no ground is made out for any interference by this Court in the present petition.

Dismissed.

September 14, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No