

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CM No.17794 of 2023 in/
and
CWP No.4217 of 2018 (O&M)
Date of Decision : 19.10.2023

Ravinder Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurmandeep S. Sullar, Advocate and
Ms. Devki Anand Sullar and Ms. Ridhima Malik, Advocate
for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No.17794 of 2023

The present application has been filed for recalling the order dated
05.10.2023 by which, the present petition was dismissed for non-prosecution.

Mr. Pankaj Middha, Additional Advocate General, Haryana, who
is present in the Court, accepts notice on behalf of the respondents and raises
no objection for the grant of the prayer as made in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed. The order dated 05.10.2023 is recalled and the petition is restored to its original number and status.

On oral request of learned counsel for the parties, case is taken up for hearing today.

CWP No.4217 of 2018

1. In the present petition, the challenge is to the order dated 13.02.2018 (Annexure P-9) by which the services of the petitioner while working on the post of heavy vehicle Driver have been terminated.
2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.
3. The respondent-State issued an advertisement on 08.07.2007 (Annexure P-1) advertising 910 posts of the Drivers. The qualification mentioned for being eligible to compete for the said post was that the candidate should be matriculate with Hindi subject from an approved Board/University and should be holding a valid driving license for transport along with two years experience in driving the passenger vehicle as well as the transport vehicle. The petitioner, who claimed himself to be a eligible candidate applied and competed for the post in question and at the end of the selection process, the petitioner was duly found eligible to be selected.
4. The petitioner was selected and appointed on 21.06.2008. Since then, the petitioner is continuing in service.
5. In the year 2017 i.e. after a period of nine years of service, a show cause notice was given to the petitioner that the petitioner was wrongly

selected as, the experience certificate which was submitted by the petitioner during the selection was not valid as the petitioner did not possess two years experience as required under the eligibility clause mentioned in the advertisement and hence, the petitioner was ineligible to be selected as a Driver.

6. The petitioner filed a reply that while giving the experience certificate, it was wrongly mentioned that the petitioner has worked upto '27.06.2006' instead of '27.06.2007' hence, the said certificate has already been rectified by the employer, therefore, the typographical error in the experience certificate should not be taken as a ground to terminate the services of the petitioner.

7. Thereafter, the respondents issued another show cause notice to the petitioner on 17.01.2018 stating that the petitioner was of less than 20 years of age at the time when driving license was issued to him and his experience was also less than two years hence, why these grounds should not be taken into account to terminate the services of the petitioner.

8. The petitioner again replied to the said show cause notice that he was holding a valid driving license, which was issued by the competent authority on the date of selection and once the petitioner fulfilled the requisite of a valid driving license at the time of selection, the respondents cannot claim that the license could not have been issued to the petitioner hence, the ground being taken in the show cause notice to terminate the services of the petitioner are incorrect and the show cause notice may be withdrawn.

9. Ultimately, on 13.02.2018, the respondents passed an order terminating the services of the petitioner on the ground that the petitioner was

less than 20 years of age when he was granted the license for a transport vehicle and as per the experience certificate submitted at the time of selection, he has less than two years of experience, due to which the petitioner does not fulfill the requisites of the advertisement in pursuance to which the petitioner was selected as a Driver and the petitioner's services were terminated. The said order of termination is under challenge in the present petition.

10. Learned counsel for the petitioner argues that the grounds which have been taken by the respondents to terminate the services are totally arbitrary and illegal and that too after nine years of regular service especially without there being any blemish in the service career, the respondents terminated the services of the petitioner on the ground, which was not justifiable especially in view of the facts and circumstances of the present case.

11. Learned counsel for the petitioner further submits that once a new experience certificate, rectifying the clerical mistake, was already submitted by the petitioner, the same should have been taken into account by the respondents especially when the petitioner had already rendered more than ten years of service upto the issuance of the show cause notice.

12. Learned counsel for the petitioner further argues that once a valid driving license was issued to the petitioner, which is not disputed and remains a valid license even upto the date of passing of the impugned order, the ground being taken by the respondent-department that the said license could not have been issued to the petitioner before attaining the age of 20 years, cannot be made a ground as, the competent authority to issue license has already found the petitioner eligible for the grant of the said license, which valid license still continues to be held by the petitioner and the same has not been

withdrawn/cancelled by any authority hence, the ground which has been taken by the respondents to terminate the services of the petitioner are incorrect and liable to be set aside.

13. The learned State counsel on the other hand submits that once the petitioner submitted a particular experience certificate even if, the same was having a typographical error, the department was only liable to take the said certificate into consideration and not the rectified experience certificate, hence once the unamended experience certificate submitted by the petitioner confirms that the petitioner has less than two years of experience, which was contrary to the requisites of the advertisement, the department was well within its right to terminate the services of the petitioner.

14. Learned counsel for the respondents further submits that even if, the competent authority has granted the petitioner driving license, which is valid, but once under the Rules the same could not have been issued to the petitioner, the ground taken by the department to terminate the services of the petitioner is valid and liable to be upheld.

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

16. It may be noticed at this stage itself that while issuing notice of motion, the operation of the impugned order was stayed and the petitioner continues to be in service as of now. As of now, the petitioner had already rendered 15 years of service.

17. The only question which arise for consideration in the present petition is whether, the typographical error in the experience certificate can gives the right to the respondent-department to terminate the services of the

petitioner when, the petitioner was selected and appointed by the respondents on the basis of the said experience certificate and the typographical mistake already stands rectified by the employer of the petitioner. The employer of the petitioner has clearly stated that while issuing correct certificate, the date was mentioned as 26.06.2006 instead of 26.06.2007 which may be treated as rectified, the respondents were under an obligation to treat the said document as a valid document. Nothing has come on record, as to on what basis the said document has been treated as bogus. In the absence of any material brought before this Court, once the experience certificate was rectified by removing a typographical error, the respondents were under obligation to consider the rectified experience certificate keeping in view the fact that on the day when the discrepancy was pointed out, the petitioner was already selected and appointed and had approximately nine years of service to his credit. Under these circumstances, ignoring the rectified experience certificate by the respondent-department is totally arbitrary and illegal and said action cannot be sustained in the eyes of law.

18. With regard to the factum that the petitioner obtained driving license before the age of 20 years, the said factum is to be decided by the authority issuing the driving license. Once, the petitioner had a valid driving license and continues to hold said valid driving license even upto now, which driving license was never withdrawn/cancelled, the withdrawal of the appointment on the ground that the valid license was wrongly issued by the authorities concerned, is totally arbitrary and illegal. The employer of the petitioner does not have any right to treat a valid driving license as invalid in the absence of the said valid license being cancelled/withdrawn by the

department which had issued the said driving license. Once, it is a conceded position that the driving license held by the petitioner is still valid, the treating of the said driving license as invalid the respondent authorities so as to terminate the services of the petitioner is arbitrary and illegal and cannot be sustained in the eyes of law.

19. Keeping in view the above, the writ petition deserves to succeed. The impugned order dated 13.02.2018 is set aside and the petitioner shall allow to continue in service uninterrupted.

October 19, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No