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

CWP-3829-2021 (O&M)

Date of decision: 22.02.2024

Prem Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Fateh Singh Dhillon, Advocate for the petitioner.

Ms. Neha Sonawane, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 19.03.2020 (Annexure P-11) whereby respondent No.2 has passed the order of dismissal of the petitioner from service from a retrospective date i.e. 21.07.2005.

2. Brief facts of the present case are that the petitioner was appointed as a Peon on regular basis on 12.12.1966 and thereafter was promoted to the post of Driver in the year 1982 and on 25.04.1999, the petitioner was posted as a Driver with the SDO (Irrigation) and during that time, FIR No.128 dated 28.04.1999 was registered under Sections

279, 338, 304-A of IPC at Police Station Division No.7, Jalandhar for an accident which had taken place with a Jeep bearing registration No.PJP-338 and the present petitioner was tried in the said case and vide judgment dated 14.11.2002 passed by the Court of Judicial Magistrate Ist Class, Jalandhar, the petitioner was held guilty and was awarded the punishment of rigorous imprisonment for a period of one year and was also awarded fine of Rs.500/-, in default of which the petitioner was to further undergo simple imprisonment for a period of two months. Criminal Appeal No.135 dated 21.11.2002 was filed by the petitioner which was dismissed by the Additional Sessions Judge, Jalandhar vide order dated 12.07.2004 and the sentence awarded to the petitioner was confirmed. Criminal Revision No.1455 of 2004 was filed by the petitioner and vide order dated 10.05.2005, the sentence awarded to the petitioner was suspended during the pendency of the revision petition and thereafter, the revision petition was dismissed vide order dated 16.03.2009. The petitioner filed an appeal bearing No.CRLMP No.15772 of 2009 against the said order before the Hon'ble Supreme Court wherein vide order dated 30.07.2010, the Hon'ble Supreme Court had exempted the petitioner from surrendering in view of the pardon granted by the State of Punjab. In the meantime, the respondent authorities vide order dated 21.07.2005 dismissed the petitioner from service w.e.f. 12.07.2004. The petitioner had then filed a writ petition bearing No.CWP-11681-2005 for quashing of the said dismissal order which was allowed by a Coordinate Bench of this Court vide order dated 05.02.2020 in the

following terms:-

“6. This judgment, on principle, has been followed by the Division Bench of this Court in Hari Ram's case (supra) and Kaur Singh's case (supra). The punishing authority has, while passing the order dated 21.07.2005 (Annexure P-8), failed to take into consideration the law as has been laid down by the Supreme Court as it does not reflect the application of mind with regard to the conduct of the petitioner. It has also been brought to the notice of the Court by the counsel for the State, on a question being put by this Court, as per the instructions received by him from Mr. Parveen Kumar, Sub Divisional Officer, Jal Sub Division, Jalandhar, that except for this one aberration in his career while performing his duties, there has been no other such act on the part of the petitioner.

7. Another aspect which needs to be taken note of which would dent the legality of the order impugned is that the same has been made effective from 12.07.2004, whereas actual order has been passed on 21.07.2005, which cannot be sustained. The order of punishment cannot be given effect retrospectively as the same will have a prospective operation only.

8. In view of the above, the present writ petition is allowed. Impugned order dated 21.07.2005 (Annexure P-8) passed by the Director, Water Cell, Irrigation Department, Punjab, is hereby set aside.

9. Liberty is, however, granted to the respondents to pass a fresh order in accordance with law by giving an opportunity to the petitioner of being heard.

10. The said order be passed within a period of six weeks on receipt of certified copy of this Court.”

A perusal of the said order would show that it was noticed in the same that except for this one incident, there was no other illegal act committed by the petitioner. It was further observed that the dismissal order which was sought to be made applicable from an earlier date, was not sustainable as an order of punishment could not be given effect retrospectively. Thus, the order was set aside and liberty was granted to the respondents to pass a fresh order after giving proper opportunity of hearing to the petitioner. In pursuance of the said liberty, a fresh order dated 19.03.2020 (Annexure P-11) was passed by the Director, Water Cell, Water Resources Department, Punjab, Chandigarh vide which the services of the petitioner were dismissed w.e.f. 21.07.2005.

3. Learned counsel for the petitioner has submitted that the petitioner had been in service since 1966 and other than the present incident, no other complaint of the petitioner having committed an illegal act had been made against the petitioner. It is further submitted that in the earlier round of litigation, the Coordinate Bench of this Court vide order dated 05.02.2020 had observed that an order of dismissal could not be made retrospective as an order of punishment cannot be given effect retrospectively and the same always has a prospective operation only and even the present order dated 19.03.2020 has been passed in violation of the said proposition of law inasmuch as the petitioner has been dismissed from service with effect from a prior date i.e. 21.07.2005.

4. Learned counsel for the petitioner has made a limited prayer to the extent that the order of dismissal of the petitioner from service be

converted into an order of compulsory/premature retirement from service with entitlement to retiral benefits w.e.f. the date of dismissal order and for the said proposition, he has relied upon a **judgment dated 14.03.2023** passed by the Coordinate Bench of this Court in **CWP-627-2017 titled as “Darshan Singh Vs. State of Punjab and others”**. It is further submitted that the case of the present petitioner is squarely covered by the abovesaid judgment.

5. Learned State Counsel, on the other hand, has opposed the present writ petition and has submitted that the petitioner in the criminal case was awarded a sentence of one year of rigorous imprisonment after being held guilty of the offence under Section 304-A of the IPC and also for an offence under Sections 279/338 of the IPC. It is further submitted that the order passed by the Hon’ble Supreme Court dated 30.07.2010 exempting the petitioner from surrendering in view of the pardon granted by the State of Punjab would not wipe off the said conviction against the present petitioner. It is argued that before passing the order dated 19.03.2020, the petitioner was given an opportunity of hearing and all his submissions were taken into consideration and the authorities had come to the conclusion that the act of the petitioner amounts to moral turpitude and had thus, passed the order of dismissal which is legal and in accordance with law and does not deserve to be interfered with.

6. This Court has heard learned counsel for the parties and has perused the paper book.

7. The Coordinate Bench of this Court in the case of **Darshan**

Singh (Supra), had observed that road accidents are, often, the result of an error of judgment/mechanical failures and can also occur where the fault is of the other vehicle and as such it would not be justified or rationale to hold the driver guilty of an offence involving moral turpitude in the absence of mens rea and the Coordinate Bench after taking into consideration the law laid down by a learned Single Judge in **Jarnail Singh Vs. State of Punjab and others (CWP-2914-2009 decided on 29.08.2011)**, had modified the order of dismissal of the petitioner from service and had ordered its conversion into an order of compulsory/premature retirement from service with entitlement to retiral benefits w.e.f. the date of the dismissal order. Relevant portion of the said order is reproduced hereinbelow:-

“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.”

8. In the abovesaid case of ***Darshan Singh*** (Supra), the petitioner therein had also challenged his order of dismissal which was also on account of conviction in an FIR registered under Sections 279, 337, 338, 304-A and 427 of the IPC. The petitioner in the said case had completed more than 15 years of service as was required for the purpose of grant of retiral benefits. In the present case also, the petitioner had completed more than 15 years of service, so as to be entitled to be paid retiral benefits. Nothing has been shown to this Court to rebut the arguments of learned counsel for the petitioner to the effect that no other incident/accident has been committed by the petitioner while being in service as a driver since 1982. A perusal of the judgment dated 05.02.2020 (Annexure P-9) passed in the first round of litigation in the case of the petitioner more so para 6 of the said judgment would clearly show that it was stated on behalf of the State that other than one incident, in which the petitioner had been convicted, there was no other aberration

in the career of the petitioner while performing his duty. The petitioner had already been penalized for his aforementioned aberration and had also suffered incarceration for the same. This Court is of the view that the case of the petitioner is on a similar footing, if not better than that of the case of *Darshan Singh* (Supra) and deserves the same relief as has been granted to *Darshan Singh* (Supra).

9. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed and the order dated 19.03.2020 (Annexure P-11) dismissing the petitioner from service is modified and converted into an order of compulsory/premature retirement from service, with entitlement to retiral benefits w.e.f. the date of dismissal order i.e. 19.03.2020.

10. All the pending miscellaneous applications, if any, shall stand disposed of, in view of the abovesaid order.

22.02.2024
Pawan

(VIKAS BAHL)
JUDGE

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