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

**CWP-26383-2017
Decided on : 05.07.2024**

Gurmit Singh

. . . Petitioner

Versus

**Presiding Officer, Industrial Tribunal and Labour Court,
UT Chandigarh and Another**

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

**Present: Mr. Ravi Gakhar, Advocate,
for the petitioner.**

**Mr. Ashish Kaushik, Advocate, and
Mr. Sahil Dahiya, Advocate, for
Mr. A.P.S. Sandhu, Advocate,
for respondent No.2.**

SANJAY VASHISTH, J (ORAL)

1. Petitioner – Gurmit Singh, Driver No.PC-7, aged about 44 years, has filed present writ petition by challenging the award dated 16.12.2016 (Annexure P-1), whereby reference/IDR No.56 of 2012, under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘Act 1947’), has been answered against him.

2. While deciding the reference, learned Labour Court concluded that the case of the petitioner – workman is covered under the provision of Section 2 (oo)(bb) of the Act 1947, and there is no violation of the provisions of Section 25-F of the Act 1947, while terminating the services of the petitioner – workman.



3. Pleaded case of the petitioner – workman is that he was appointed by PEPSU Road Transport Corporation, Patiala, (respondent No.2), as Driver No.PC-7 and, he continuously worked with respondent No.2 (Management), for the period from 01.03.2001 to 05.12.2007. No duty was assigned to the petitioner - workman after 06.12.2007, and some new appointment was made at his place, and juniors to him were retained by the Management.

Further pleaded that since, there was neither any payment of retrenchment compensation nor notice and notice pay, his services were terminated in violation of Section 25-F, 25-G and 25-H of the Act 1947.

Also pleaded that he along with other 52 workers, had filed one writ petition bearing No.8240 of 2008, before this Court (Punjab and Haryana High Court), seeking regularization of their services, which was decided in favour of the workmen. Still, petitioner – workman was discriminated because, instead of regularization, he was terminated from the services.

4. In the written statement filed by respondent No.2 (Management), it took the specific stand that the petitioner – workman was engaged as Driver on contract basis, and was allotted Driver No. PC-7, and petitioner – workman while on duty, with bus No.PB-11-E-9599, caused an accident on 28.07.2003 with a scooter bearing No.CHC-5352, resulting into the death of one Prem Lata.

Further pleaded that in compliance to an order/award passed by Motor Accident Claims Tribunal, Patiala, (MACT, Patiala), Management had to pay the compensation amount to the tune of



Rs.3,11,688/-. Thereafter, petitioner – workman was served with a notice vide office letter No.1392 dated 12.06.2007, and after affording an opportunity of hearing, the Competent Authority, by passing a detailed speaking office order No.1330 dated 06.12.2007, dismissed the petitioner – workman, from the service.

It is also pleaded that decision of the writ petition is of no consequence, because the petitioner – workman violated the terms of contract and thus, on revoking of the contract, no such direction would be applicable against the Management.

5. Broadly speaking, Management relied upon Clauses 4 and 7 of the appointment letter dated 26.03.2001 (Ex.M-1), and submits that on violation of the terms and conditions of the contract, the petitioner was terminated from the services.

Clauses 4 and 7 of the appointment letter dated 26.03.2001 (Ex.M-1), incorporated in paragraph No.9 of the impugned award, is reproduced here under:-

“4. That your engagement shall be revocable in case there is a violation of any terms and conditions of the agreement during the period of contract.

7. During the period of contract, if you commit an misconduct or cause any loss to the property of the Corporation in any manner or the Corporation suffers any loss due to your acts and omissions then Corporation reserves the right to revoke the contract and shall recover the loss caused.”



6. For reference, Section 2 (oo)(bb) of the Act 1947, is also reproduced here under:-

“2(oo) "retrenchment" means the termination by the employer of the services of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a)

(b)

(bb) termination of service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein.”

7. In support of the claim, workman – Gurmit Singh (petitioner herein) himself appeared as AW-1 and tendered his affidavit as Ex.AW1/A in his examination-in-chief. As per said affidavit, he was appointed on 27.03.2001 and was allotted driver No.PC-7 and at the time of passing of the termination Order No.1330, dated 06.12.2007 (Ex.M9), he was drawing the salary of Rs.3,750/- per month. It is also deposed in the affidavit that during the period of his service, he worked continuously. However, his termination from service amounts to unfair labour practice and that he has been victimized for demanding the legal rights from the Management (respondent No.2 herein). The termination of the workman is in violation of Sections 25F, 25G & 25H of the Act 1947.



Further submits that the other workmen, who are petitioners in CWP-8840-2008, have been regularized in service, whereas, services of the petitioner – workman has been terminated.

8. Another fact that emerged during the cross-examination is that the workman stated that he was appointed on regular basis following an advertisement published in the newspaper and he was also given letter of appointment for the post of driver. He further deposed that he never met with any accident during his service period and no termination notice was issued to him while terminating his services.

9. While closing the evidence of the workman on behalf of the Management, an official witness namely; Harpreet Singh, appeared as MW1 and tendered his affidavit dated 02.12.2015 as Ex.MW1/A. Most of the facts are admitted. The basic ground disclosed for termination of service is that the Bus No.PB-11E-9599, which was being driven by the workman – Gurmit Singh, Driver No.PC-7, met with an accident on 28.07.2003, involving the Scooter bearing registration No.CHC-5352, causing death of one Prem Lata.

Further deposed that on account of the said accident, in the claim petition filed by the claimant(s), learned Motor Accidents Claims Tribunal, Patiala (in short, 'MACT, Patiala') awarded the compensation amount of Rs.2,57,000/- in favour of the claimants with interest @ 6% per annum. Resultantly, the Management – Corporation had to deposit a sum of Rs.3,11,688/- vide receipt dated 29.05.2007 (Ex.M4).

10. Since the PRTC (Management) had to deposit the amount in favour of the claimant on 29.05.2007, it considered that an act of causing



accident has resulted into the financial loss to the Corporation, which they termed it as violation of Clause 7 of the appointment letter. Thus, after issuing of the letter No.1392, dated 12.06.2007 (Ex.M6) and receiving the reply thereto (Ex.M7), and also after giving an opportunity of hearing on 11.09.2007, vide order No.1330, dated 06.12.2007 (Ex.M9), contract/agreement No.5114, dated 30.01.2007, was revoked by General Manager, PRTC, Chandigarh.

Might be that, after the initial appointment in the year 2001, similar contract/agreement as appointment letters were being issued by the Management from time to time for the renewal of the services of the petitioner – workman.

11. However, Management – witness MW1 also disclosed that the appeal filed before the Managing Director (Sole Arbitrator) was dismissed on 11.01.2008 (Ex.M10). The said witness also admitted that in CWP-8240-2008 (Dalbir Singh and others Vs. PRTC and another), workman was also a party. The services of some of the employees, who were petitioners in the said writ petition, were regularized in compliance to the order dated 22.03.2010, passed by the Hon'ble High Court, subject to the pendency of decision of LPA-1305-2010. Copy of the regularization order No.1096, dated 01.03.2011, in respect of the other co-workers of the petitioner – workman has also been placed on record by the Management as Ex.M11.

The Sole basis of termination/removal of the petitioner – workman from the service of driver is the financial loss of sum of



Rs.3,11,688/-, which was deposited by the Management vide receipt dated 29.05.2007, before the learned MACT, Patiala (Ex.M4).

12. Admittedly, it is not the case of the Management that the workman did not continuously worked in its office from 01.03.2001 to 05.12.2007 i.e. for almost seven years.

While referring to Clauses 4 & 7 of the appointment letter (reproduced in paragraph No.5 of the present order), Management also admits that it cannot be considered as a case of revoking of the contract on account of the misconduct or causing loss to the property of the Management (Corporation) in any manner, and also admits that had it been so, a regular inquiry would have been required to be conducted in those circumstances.

From the record of the case and the available evidence, it is clear that neither the services of the petitioner – workman were terminated nor the contract of appointment of service was revoked on account of causing the alleged accident on 28.07.2003, while driving Bus No. PB-11E-9599. Therefore, undoubtedly, he continued serving the Department (Management – Corporation) without there being any reaction to the accident by revoking the contract in terms of Clause 7 of the appointment letter.

13. Now, the question arises whether causing of an accident on 28.07.2003, while the petitioner – workman was driving the alleged bus, resulting into the payment of Rs.3,11,688/- on account of compensation, would really be termed as financial loss to the Management – Corporation or whether such a loss was recoverable from the petitioner –



workman at the instance of giving him reasonable opportunity to repay the same to avoid the termination of contract.

Moreover, it is also not a matter of dispute that the co-workers serving during that period have already been regularized by the Management – Corporation vide order dated 01.03.2011 (Ex.M11) and, had the services of the workman being continued by recovering the amount of Rs.3,11,688/- from him, he could have also availed the same benefit of regularization of services and more for the reason that admittedly, petitioner – workman was one of the party along with other co-drivers in the same writ petition before the High Court.

14. Learned counsel representing the Management – Corporation (respondent No.2 herein) also argues that the award has been perfectly passed by the learned Tribunal, because, it was the sole discretion of the Management – Corporation to recover the amount or to revoke the contract in view of Clause 7 of the appointment letter.

15. After examining the facts deeply, this Court is of the view that the plea of the Corporation is not tenable, because the act of causing accident on 28.07.2003, could have been subjected to the departmental inquiry for fixing the liability. However, said course of action was never opted/exercised by the Corporation.

It is also not the case of the Management that the workman was ever afforded an opportunity to adhere the terms of the contract to continue to serve the Management in view of the terms mentioned in the appointment letter. Therefore, to reach to the situation where the interest of everyone could have been watched, it was obligatory upon the



Management – Corporation to firstly ask the employee to pay/reimburse the amount of Rs.3,11,688/-, which it had to pay in compliance to the award passed by learned MACT, Patiala. Had the amount not been paid, an action of revoking of the appointment terms/agreement/contract could be said to be justified.

16. To examine the situation whether any chance was given to the driver or not for the purpose of effecting of recovery of the amount, the relevant part of the order No.1330, dated 06.12.2007 from the impugned order (Ex.M9) is reproduced here-under:-

“PEPSU ROAD TRANSPORT CORPORATION CHANDIGARH

No. 1330

Dated 6-12-07

ORDER

On receipt of award of MACT Patiala in an accident case of Bus No.PB-11-E-9599 dated 28.7.03 Shri Gurmeet Singh Driver No. PC-7 was issued notice for revocation of contract/agreement vide this office memo No.1392 dated 12.6.07 for causing financial loss to the PRTC, by way of compensation amount to Rs.306065/- due to rash and negligent driving while on duty with Bus No. PB-11-E-9599 on 28.7.03. The workman submitted his reply to the notice and denied the allegations and further stated that a criminal case pending in the Civil Court in this case his reply was considered and found unsatisfactory but in order to meet with the ends of justice he was called for personal hearing on 18.7.07, 16.8.07 and finally heard on 11.9.07. During the course of personal hearing the accused failed to submit any cogent reasons to defend himself, except that he is not at fault in this case and criminal case against him is yet to be decided. Opinion of LA (P) PRTC, was also opined that action against official can be taken by the competent authority against any delinquent.

I have gone through the document on record, award of the MACT and position explained during the course of personal



hearing. As per clause 4 of the agreement with the accused the contract/agreement is revokable in case there is a violation of any terms and condition of the agreement during the period of contract. Further clause 7 provides that during the period of contract if the workman commits any miss conduct or cause any loss to the property of the Corporation in any manner or the corporation suffers any loss due to acts and omissions then corporation reserves the right to revoke the conduct and should recover the loss so caused.

By causing accidents due to rash and negligent driving causing death in this case resulting in to award of claim to the tune of Rs.306055/- by the MACT, you have violated clause 4 and 7 of the contract/agreement entered in to with you and PRTC. In the light of the position explained above the contract/agreement No. 5114 dated 30.1.07 is hereby revoked with immediate effect.

*Sd/-
General Manager
PRTC/Chd.*

Endst. No. 4783

Dated 6-12-07

Copy to:-

- 1. Sh. Gurmeet Singh Driver No. PC_7*
- 2. GM (A)/GM(E)/LA(P)*
- 3. SO/Asstt Bills/DI*
- 4. All the General Manger to send the NDC's of the Driver.*

*Sd/-
General Manager
PRTC/Chd"*

17. From the impugned order, it is clear that respondents never resorted to the method of recovery of the amount from the petitioner. Rather, it appears that action of respondents is too harsh because, it prevented the workman from drawing other benefits from the total service rendered by him. As per Ex.M-11, other colleagues were regularized by Corporation in compliance of the High Court order. In the



writ petition i.e. CWP-8240-2008, workman in present case was also one of the petitioner.

Therefore, the impugned order is more of a termination of service on account of merely causing the financial loss of Rs. 3,11,688/-, than the violation of the terms & conditions of the agreement.

18. This Court has deeply examined the pleadings and the documents appended thereto along with the copy of lower Court record, which is already available.

19. After thoroughly hearing counsel for the parties, this Court concludes that the impugned order No.1330 dated 06.12.2007, is liable to be quashed, as same is in violation of the principles of natural justice.

Resultantly, impugned order No.1330 dated 06.12.2007 is hereby quashed/set-aside. Reference No.IDR 56/2012 arising from the demand notice dated 08.11.2011, is hereby answered in favour of the petitioner – workman.

The Punjab Road Transport Corporation (Management – respondent No.2 herein) is hereby directed to reinstate the petitioner – workman (Gurmit Singh) immediately with continuity in service.

Since the petitioner – workman is a skilled worker (driver), knowing the skill of driving the heavy duty vehicle, like; the buses of the Management – Corporation, this Court is of the view that during his termination period, he might be earning something because of his skill, which is always at demand. **Therefore, workman is held entitled for 50% back-wages from the date of his termination from service i.e. passing of impugned order No.1330 dated 06.12.2007.**



However, it is also clarified that it would be open for respondent No.2 – Management (Corporation) to initiate the proceedings for recovering of the compensation amount of Rs.3,11,688/-, which it had paid to the claimants, in compliance to the award passed by learned MACT, Patiala, and in case said amount is not deposited by the petitioner – workman, the Management would be free to take appropriate action, as per law.

Needless to say that since the co-employees, who were the petitioners in CWP-8240-2008, have already been regularized by virtue of the High Court’s order dated 22.03.2010 and also to avoid multiplicity of litigations, the Management – Corporation would consider the plea of regularization also, of the petitioner – workman, so as to to avoid any kind of discrimination/disparity or indifferent treatment to the similarly situated workers.

Accordingly, writ petition is allowed/disposed of.

(SANJAY VASHISTH)
JUDGE

05.07.2024
Lavisha/J.Ram

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>