

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-19932-2022 (O&M)

Date of decision: 01.10.2024

Ajay Kumar

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Manjeet Saini, Advocate for the petitioner

Ms. Tanisha Peshawaria, DAG Haryana

AMAN CHAUDHARY, J.

1. The services of the petitioner having been terminated vide order dated 23.08.2022, has been made a subject matter of the present case, which was stayed by this Court vide order dated 05.09.2022.

2. The petitioner was appointed as a Driver in the Transport Department, Haryana on 25.06.2008, pursuant to an advertisement whereby 910 posts were taken out and the premise of passing the impugned order is his license for HTV, HPV, issued on 21.10.2005, was not 2 years old on the day of his joining.

3. In **Ram Sarup vs. State of Haryana**¹, Hon'ble the Supreme Court while observing that the appointment made in breach of a statutory Rule, requiring minimum experience would not have the effect of rendering it wholly void so as to be completely ineffective, held that it was merely an irregularity since the appellant did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been

¹ (1979) 1 SCC 168

regularised. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for the same and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant, was, being illegal, set aside. The said dictum was followed in **Buddhi Nath Chaudhary vs. Abahi Kumar**², wherein the appointments of those candidates, who were working as Motor Vehicle Inspectors for over a decade, meaning thereby that they, necessarily, would have acquired the requisite experience, was not disturbed. Any lack thereof, at the time of recruitment is made good now. Hon'ble the Supreme Court, while disposing of the matters on equitable consideration, held that it would not be feasible for practical reasons to go through with the exercise of removing them.

4. It is any way, too late in the day to have terminated the services of the petitioner, after he had worked for 14 years on the said post, as was taken into consideration in **Sivanandan C.T. vs. High Court of Kerala**³, wherein the Constitution Bench held that unseating the appointed candidates would be contrary to public interest, they having worked for a considerable length of time and gained experience on the post, wherein the petitioners were sought to be inducted after 6 years of the final list. In **Md. Zamil Ahmed vs. State of Bihar**⁴, also the action of terminating the services of the appellant was quashed, by observing that the State could not take advantage of their mistake, as it was by their own conduct, that they had condoned the long lapse of 15 years, as is the case in hand, wherein at the time of granting appointment to the petitioner way back in the year 2008 itself, the HTV, HPV license of the petitioner was accepted

² (2001) 3 SCC 328

³ (2024) 3 SCC 799

⁴ 2016 (12) SCC 342

and no action was taken thereon until 2022, the respondents, had, in essence, acquiesced. In **M.S. Mudhol (Dr.) vs. S.D. Halegkar**⁵, the petition filed challenging the appointment of the respondent-Principal on the ground of not possessing the requisite qualifications after 9 years, was dismissed by Hon'ble the Supreme Court.

5. Since one of the conditions prescribed therein was of possessing at least two years experience of driving a transport vehicle, including a Passenger vehicle and not specifically 'Heavy Transport Vehicle', it would be apposite to refer to Sections 2(47) and 2(17) of Motor Vehicles Act, 1988 (for short 'the 1988 Act'), which read thus:

“(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle”

“(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms”

6. Though the factum of petitioner fulfilling the other conditions of the advertisement is not in dispute, however the experience possessed for driving heavy transport vehicle was after 14 years was termed to be short by 3 months, which he, even otherwise, gained while performing his duties that were without any blemish, as no averment was made in the order of termination or the written statement, contrary to the above.

7. There being a conspicuous absence of the expression 'heavy transport vehicle' and both his licenses, for LMV and HTV HPV, were valid for driving an educational institution bus or a private service vehicle or a private bus, to make the petitioner go home at this juncture, would be detrimental to his economic security

⁵ (1993) 3 SCC 591

and that of his family, thus iniquitous and inequitable.

8. Having implored itself with the abounding pronouncements, the present petition is allowed and the impugned order dated 23.08.2022 is hereby set aside.

(AMAN CHAUDHARY)
JUDGE

01.10.2024
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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No