



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

533-A

CWP-4862-2003 (O&M)

Date of decision: 25.03.2025

Tarlok Singh

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : None for the petitioner

Mr. Swapan Shorey, DAG Punjab

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for directing the respondents to reinstate the petitioner in service as Oil Distributor or any other equivalent post with full back wages.
2. Learned State counsel refers to para 1 and 2 of the preliminary objections of the written statement filed on behalf of respondent Nos.1 to 3, to which there was no rebuttal by way of filing replication and reads thus:

“1. That the present Writ Petition is not maintainable as the petitioner was employed in the Department of the Respondents and he had been continuing to discharge the duty as driver in the department. During the course of service he, while driving the bus caused an accident wherein he sustained injuries and consequently was not able to drive the bus. The petitioner being the Govt. employee the case was referred to the Civil Surgeon Gurdaspur vide letter dated 5.11.92 for conducting his medical examination and to certify as to whether the petitioner was fit for the post of Driver or not. The Civil Surgeon, Gurdaspur having conducted medical examination of the petitioner made a report that the petitioner is not fit for the post of driver. The copy of this letter from the Civil Surgeon, Gurdaspur annexed herewith as Annexure R-1 and true translation of which is annexed as Annexure R-1/T. On the basis of the medical report given by the Civil Surgeon Gurdaspur declaring the petitioner to be unfit for the post of Driver, a show cause notice was issued vide memo dated 9.2.93 by the respondent No. 3 proposing therein as to why he should not be retired from service on invalid pension as per the provisions of



rules 5.11. 5.12 and 5.18 Part-11, Punjab Civil Services rules. The petitioner had submitted his reply thereto and having considered the matter in its entirety, the answering respondents passed an order dated 21.7.93, retiring the petitioner from service under rule 5.11 of Part-11 of Punjab Civil Services Rules. It is worth-while to submit here that the petitioner had been specifically directed by the said order that he will be entitled for grant of in-valid pension, copy of which is annexed herewith as Annexure R-2, true translation of which is annexed as Annexure R-2/T.

The petitioner feeling aggrieved against the aforesaid order dated 21.7.93 filed reference before the learned Labour Court Gurdaspur for the adjudication of the dispute of termination of his services as alleged by the petitioner. The Ld. Labour Court concluded the matter and rendered an award dated 1.2.2001 (Annexure P-2) and awarded to reinstate the petitioner-workman with continuity of service as Oil Distributor with full back wages. The respondent filed C.W.P. No. 16329 of 2001 against the award dated 1.2.2001 of the Hon'ble Labour Court Gurdaspur. The Hon'ble High Court was pleased to dismiss the said C.W.P. holding that there is nothing to distinguish the case of the workman, also from the legal proposition as laid down by the Hon'ble Supreme Court of India in "Anand Behari and others Vs. Rajasthan Road Transport Corporation, Jaipur and others" (AIR 1991 Supreme Court 1003). In compliance with the order of the Hon'ble High Court dated 15.10.2001 (Annexure P-4) the petitioner was offered alternative job of Helper which was in the competency of the answering respondent i.e. General Manager (Respondent No. 3) as the appointing authority with respect to the drivers, conductors, helpers and other ivth class employees is the General Manager. It is pertinent to mention here that there is no post of Oil Distributor with the Department and, therefore, the petitioner was offered alternative job of Helper as he was not fit for the post of Driver. The petitioner, however, joined on the post of helper and worked as such from 9.5.2002 to 13.5.2002. Thereafter the petitioner sent an application for leave w.e.f. 14.5.2002 to 13.6.2002 along with a medical certificate of Registered Medical Practitioner which was rejected by the Answering Respondent and the petitioner was directed vide Letter No. 1910/ECW dated 6.6.2002 with a copy endorsed to Civil Surgeon Gurdaspur directing the petitioner to produce the Medical Certificate of Civil Surgeon, Gurdaspur. It is pertinent to mention here that instead of appearing before the Civil Surgeon Gurdaspur the petitioner sent another application for leave w.e.f. 14.6.2002 to 13.7.2002 along with a medical certificate of the same Regd. Medical Practitioner. The petitioner was again directed vide letter No. 3187/ECW dated 21.6.2002 to produce the Medical Certificate of Civil Surgeon, Gurdaspur within 3 days as his leave applications have already been rejected. The petitioner has neither joined duty nor produced the Medical Certificate and since 14.5.2002 he is will



fully absent from duty till date. The petitioner has been served with charge sheet on the charges of willful absence from duty. The petitioner has also submitted reply to the charge sheet. The copy of the charge sheet is annexed herewith as Annexure R-3 and its true translation as Annexure R-3/T. It is made clear that the petitioner has also received Rs. 4,27,788/- as arrears on account of back wages.

It is, further, respectfully submitted that there is no post of Oil Distributor in the Department. However, there is post of Diesel Pump Attendant whose appointing Authority is Director, State Transport, Punjab Chandigarh and not the answering respondent i.e. General Manager. It is also made clear that the petitioner does not possess the requisite qualification of Diesel Pump Attendant. The requisite qualification of the post of Diesel Pump Attendant as per service rules, is Matriculation in 2nd division or Sr. Secondary Part-11 Examination from a recognised University or Institution, whereas the qualification of the petitioner is Higher Secondary Part-1 in 3rd Division. therefore, the petitioner does not possess the qualification of Diesel Pump Attendant. The copy of the relevant portion of the rules with regard to the qualification of Diesel Pump Attendant and copy of the certificate of Higher Secondary (Part-1) of the petitioner are annexed herewith as Annexure R-4 and R-5. It is against respectfully submitted that the petitioner filed C.O.C.P. No. 704 of 2002 in C.W.P. No. 16329 of 2001 and the Hon'ble High Court was pleased to dismiss the same on 17.2.2003. In view of the position explained above the present writ petition is liable to be dismissed.

2. That the petitioner has no cause of action to file the present writ petition as the petitioner was offered an alternative job of Helper in view of law as laid down by Hon'ble Supreme Court in "Anand Behari and others Vs. Rajasthan Road Transport Corporation, Jaipur and others" (AIR 1991 Supreme Court-1003) and the petitioner also accepted the same and joined duty and worked as such from 9.5.2002 to 13.5.2002. Thereafter he absented himself and departmental action has been initiated against him. Therefore, the writ petition is liable to be dismissed."

3. In view of the above, the petition is disposed of, reserving the petitioner with a liberty to get it revived, in case need arises.

(AMAN CHAUDHARY)
JUDGE

25.03.2025

M.Kamra

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