

(2015) 07 SHI CK 0106

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 429 of 2012

Hari Singh

APPELLANT

Vs

Himachal Road Transport Corporation and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 2 ShimLC 1017

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : M.L. Sharma, Advocate, for the Appellant; Adarsh Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The appellant is the writ petitioner, who in his petition has claimed the following reliefs:--

"1. To quash the impugned order dated 21-06-2011 ANNEXURE-P/10 being contrary to the facts on record and therefore arbitrary and illegal.

2. To direct the respondent to regularize the services of the petitioner w.e.f. 29.06.2000 like other similarly situated persons with all consequential benefits with 12% interest."

The brief facts of the case are that the appellant was engaged as driver on contract basis for a period of one year w.e.f. 29.6.1999, however, before the contract period could come to an end, the bus being driven by the petitioner on 21.6.2000 met with a fatal accident, resulting in death of five passengers and injuries to fifteen others. FIR in relation to the said accident was registered by the police, as a result whereof criminal proceedings came to be initiated against him. Simultaneously, the respondent Corporation initially issued a show cause notice dated 4.7.2000 upon the appellant, however, the same was withdrawn vide office order dated 15.7.2000. The appellant challenged this action by filing Original Application before the State Administrative Tribunal. In the criminal

proceedings the appellant stood acquitted by the Court of learned Additional Chief Judicial Magistrate, Sarkaghat and immediately thereafter he made a representation for regularization of his services on the basis that his counter parts have already been regularized.

2. However, before the representation could be decided, the Original Application preferred by the appellant on abolition of the Tribunal stood transferred to this Court and came up for consideration and vide order dated 1.12.2010, the same was disposed of by directing the first respondent to decide the representation of the appellant in light of the judgment passed by learned Additional Chief Judicial Magistrate on 17.11.2008. This representation was however rejected by the competent authority, constraining the appellant to file the aforesaid writ petition.

3. In reply to the writ petition, the respondents in their reply had contended that since the agreement between the parties had come to an end on 28.6.2000, therefore, the services of the appellant stood automatically terminated. It was further averred that the mere acquittal of the appellant in the criminal case would not result in automatically renewed his contract.

4. The learned writ Court agreed with the contentions of the respondents and held that the consequences and affect of accident resulting in fatal injuries and deaths was a matter to be considered solely by the competent authority and the Court could not sit in judgment over such decision, unless the same was arbitrary, illegal, whimsical or capricious.

5. The writ petitioner has questioned the judgment on the ground that the writ Court had failed to appreciate that there were twelve other persons who were similarly situate like the appellant, who too had been appointed on the contract basis w.e.f. 29.6.1999, yet on expiry of contract period, the services of these persons was not only continued but had also been regularized, therefore, he has been discriminated against. It is further contended that the learned writ Court did not properly gauge the cumulative effect of a combination of factors such as withdrawal of show cause notice by the respondents, acquittal of the appellant in criminal trial with a categoric finding of the Court that the accident occurred due to the sinking of road and there was no finding that the accident had occurred due to rash and negligent driving of the appellant.

We have given a deep and thoughtful consideration to the submissions made by the appellant and are of the considered opinion that the order passed by the learned writ Court calls for no interference.

6. It is not in dispute that the appointment of the appellant was on contract basis for one year w.e.f. 29.6.1999 and before the expiry of this period the bus being driven by the appellant on 21.6.2000 met with fatal accident, resulting in five casualties and injuries to fifteen other passengers, which in itself was a valid consideration for not renewing the contract.

7. The appellant would however argue that once the twelve other persons who

were similarly situated and had been appointed for one year on contract basis w.e.f. 29.6.1999 along with the appellant were not only continued, but thereafter even their services regularized, the appellant cannot, therefore, be discriminated against.

8. It is more than settled that discrimination is a concept which only applies to equals. The concept of equality before law means that among equals the law should be equal and should be equally administered and that alike must be treated as alike. There must not be discrimination among equals unless there is a reasonable classification. In case the order passed is discriminatory, the same must reflect rule of reason and justice and therefore, should not be arbitrary, capricious, whimsical, discriminatory etc.

9. Tested on the above principles, it would be seen that there is nothing on record to suggest even remotely that the twelve other persons whose services had been ordered to be regularized were similarly situated like the appellant. Although like the appellant they were also appointed on one year contract basis, but that in itself cannot be considered to be a factor to establish equality, because admittedly the appellant before completion of his service of contract had caused a fatal accident as a result of which his services were dispensed with, while this is not the case with the other aforesaid twelve persons. The consequences and affect of the accident, that too before the expiry of contract, was a matter which was required to be considered by the competent authority, that too after taking into consideration several factors and if it then choose to dispense with the services of the appellant, then the said decision cannot in any manner be termed to be discriminatory or arbitrary.

10. Coming to the second contention of the appellant, it would be seen that though the show cause notice was served upon the appellant on 4.7.2000, but the same stood withdrawn on 15.7.2000 and the reason for the same was obvious as the contract of the appellant had come to an end on 28.6.2000 and because of this there was no legal or fiduciary relationship whatsoever between the appellant and the respondents. Therefore, in such circumstances the show cause notice had lost its efficacy. It is more than settled that mere acquittal does not automatically give right to be reinstated in service (refer Union of India and others Vs. Shri Bihari Lal Sidhana, , The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, , The Deputy Inspector General of Police and Another Vs. S. Samuthiram, , Commissioner of Police, New Delhi and Another Vs. Mehar Singh, and State of West Bengal and Others Vs. Sankar Ghosh,). That apart, there is no other material placed by the petitioner on record, whereby it could be gathered that his service has been dispensed with and would be abide by the outcome of the criminal case. Rather, the record reveals that his services had been dispensed with strictly in accordance with the contract and therefore, in such circumstances even his acquittal in the criminal case is of no avail.

In view of aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their costs.