petitioners have been running schools for such a long time and it would not be equitable to close their schools in toto. They can be directed to act in accordance with the terms of allotment.

(19) As a sequel to the above discussion, we are of the considered view that the sites which have been allotted for primary/ high schools cannot be considered to have excluded the use of the land for nursery or pre- nursery classes. Accordingly, the impugned orders in respect of each of the petitioners, dated 5th July, 2007, passed by the Estate Officer, HUDA, Faridabad, are hereby quashed and the petitioners would be within their rights to continue running nursery/pre-nursery classes.

(20) The writ petitions stands disposed of in the above terms.

R.N.R.

Before Ashutosh Mohunta and Rajan Gupta, JJ.

SAMPURAN SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

C.W.P. No. 12289 of 2007

27th February, 2009

Constitution of India, 1950—Art. 226-Motor Vehicles Act, 1988—S. 146—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rl.5 Part (III)—Instructions dated 21st March, 2002 issued by State Govt.—Accident due to rash and negligent driving—MACT awarding compensation—Govt. ordering recovery of 50% of amount of compensation from salary of driver of official jeep—Challenge thereto—MACT holding driver of official jeep squarely responsible for accident—Provisions of Rl. 5 provide that pecuniary loss caused by an employee by negligence can be recovered by him—Petitioner liable to pay atleast half of compensation amount in accordance with instructions dated 21st March, 2002—Action of respondents directing recovery held to be in accordance with rules and instructions.

Held, that no fault can be found with the action of the respondents. They acted in accordance with the rules and instructions and directed recovery of 50% of the amount paid by way of compensation to the claimant, from the salary of the petitioner. The action taken by the respondents is purported to be taken in accordance with the 1970 Rules which have no co-relation with Section 146(2) of the Motor Vehicles Act. The State never disputed its vicarious liability for the accident in question. However in view of the rules authorizing it to recover pecuniary loss caused to the State Government, it decided to act under the same. Even the Tribunal had held the driver and the State jointly and severally responsible to pay the compensation. Specific rules have been framed by the State of Punjab empowering it to recover the pecuniary loss caused to it from the employee. Instructions have also been issued specifically authorizing the State to recover the amount. The said rules or instructions are not under challenge in the present writ petition.

(Paras 12, 13 & 14)

Manu K. Bhandari, Advocate, *for the petitioner.*

B.S. Chahal, DAG, *Punjab for the respondents.*

RAJAN GUPTA, J.

(1) This judgment shall dispose of six writ petitioner, i.e. CWP Nos. 12289, 16593, 13519 of 2007 ; and 12293, 12311 and 12637 of 2008. The common question of law involved in these writ petitions is whether the State is entitled to recover from the driver a part of the amount awarded by the Motor Accident Claims Tribunal on account of compensation as a result of the accident due to his rash and negligent driving. All the petitioners in various writ petitions, who are serving as drivers, have sought quashing of the order where part of the amount granted as compensation on account of the accident caused while driving the vehicle of State, has been directed to be recovered from them.

(2) However, for the sake of brevity, the facts are being taken from CWP No. 12289 of 2007 for the purpose of deciding the issue in hand.

(3) The petitioner who was serving as a driver in the Punjab Police, was deputed on 26th April, 2003 to take CBI staff from Patiala to Nabha. On the way an accident took place between the official jeep bearing registration No. PB-11S-7220 being driven by the petitioner and a scooter bearing registration No. PB-11S-1880 being driven by one Manu Bala with Sangita Rani sitting on the rear seat. Both Manju Bala and Sangita Rani suffered injuries in the accident. A criminal case was registered under Sections 279, 337 & 338 of the Indian Penal Code against the petitioner. The injured preferred claim petition before the Motor Accident Claims Tribunal, Patiala. On 5th April, 2005, the Triubnal allowed the claim petition filed by Manju Bala and awarded a sum of Rs. 2,65,000 as compensation. It was further directed that in case the compensation was not paid within a period of three months, the claimant would be entitled to interest @ 6% per annum from the date of passing of the order till actual realization. Pursuant to the award passed by the Tribunal, the compensation was paid to the claimant. On 11th October, 2006, a show cause notice was issued to the petitioner wherein it was stated that the accident had occurred due to his rash and negligent driving and thus 50% of the compensation amount was sought to be recovered from his salary. The petitioner submitted his reply to the show cause notice annexed as Annexure P-3 to the petition. However, after considering the same, the competent authority i.e. Senior Superintendent of Police, Patiala directed that 50% of the amount of compensation be recovered from the petitioner in instalments. Thus, it was directed that a sum of Rs. 2100 per month be deducted from the salary of the petitioner, Head Constable Sampuran Singh.

(4) Learned counsel for the petitioner has assailed the order, Annexure P-5 dated 25th July, 2007 on various grounds. He has contended *inter alia* that it was the mandatory duty of the owner to get the vehicle insured against third party risk in terms of Section 146(1) of the Motor Vehicles Act, 1988. Under Section 146 (2), the State was supposed to maintain a contingency fund to indemnify the third party loss caused in the accident. According to the counsel, had this mandatory provision been followed, there would have been no necessity to recover the amount from the driver i.e. the petitioner. The counsel has further argued that a perusal of show cause notice, Annexure P-3 would show

that respondent No. 2 had already prejudged the issue and had decided to impose recovery of 50% of the amount from the petitioner. Thus, issuance of show cause notice was just a formality. The counsel has placed reliance upon the judgments reported as **State of Maharashtra and others** *versus* **Kanchanmala Vijaysing Shirke and others (1),** and **Jaswant Singh versus State of Rajasthan (2),** in support of his arguments.

(5) On the other hand, learned counsel for the respondents has referred to the reply filed by the State. He has relied upon instructions issued by Punjab Government,—vide letter No. 14/148/2001-1FEI/2601, dated 21st March, 2002, annexed as Annexure R-I to contend that it had been made mandatory by the said instructions that in case a court finds that driver of a Government vehicle was squarely responsible for the accident, the said driver would have to pay at least half of the compensation amount awarded by the court. This apart, the Tribunal had fastened joint and several liability on respondent No. 1, 2 and 4 which includes the driver. The counsel has also referred to Rule 5, Part III of the Punjab Civil Service Rules pertaining to penalties according to which recovery may be made of the whole or part of any pecuniary loss caused by government employee due to negligence or breach of orders.

(6) We have heard learned counsel for the parties and have given careful thought to all the issues involved in the case.

(7) It is evident from the record that the Motor Accident Claims Tribunal came to the conclusion that the accident was caused due to rash and negligent driving of the petitioner. Resultantly, while allowing the claim petition, the Tribunal awarded a sum of Rs. 2,65,000 to the claimant. The said liability was fastened jointly and severally on respondents No. 1, 2 and 4. Thereafter, the Senior Superintendent of Police, Patiala issued a notice dated 11th October, 2006 to the petitioner asking him to show cause why 50% of the amount paid to the claimant be not recovered from his salary. The petitioner submitted his reply dated 26th October, 2006, Annexure P-4 to the show cause notice. After

(1) 1995 (3) P.L.R. 375
(2) 2004 (1) S.C.T. 612

considering the same, the impugned order dated 25th July, 2007, Annexure P-5 was passed wherein it was stated that in order to compensate the financial loss caused to the Government, it had been decided to recover 50% of the amount i.e. Rs. 1,36,638 from the salary of the petitioner, which would be deducted in monthly instalments of Rs. 2100.

(8) The respondent State in its reply has relied upon Rule 5 Part (III) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 to contend that pecuniary loss caused by an employee to the Government by the negligence or breach of the orders, can be recovered from him. The relevant part of said Rule reads thus :

> **"Rule 5.** Panalties :—The Following penalties may for good and sufficient reasons, and as hereinafter, be imposed on a Government employee namely :—
>
> Minor Penalties
>
> (i) Censure ;
>
> (ii) Withholding of his promotions ;
>
> (iii) Recovery form his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders ;
>
> (iv) [withholding increments of pay without cumulative effect."

(9) The State also relied upon instructions, Annexure R-1 in support of its action. The said instructions read as under :—

> "No. 14/148/2001-1FEI/2601
> GOVERNMENT OF PUNJAB
> DEPARTMENT OF FINANCE
> (FINANCE EXPENDITURE-I BRANCH)
>
> Dated, Chandigarh, the 21st March, 2002
>
> All Heads of Departments,
> Commissioners of Divisions,
> Registrar, Punjab and Haryana High Court,

District and Session Judges and
All Deputy Commissioners in the State.

Subject : Payment of half of compensation money by the driver of the Government vehicle responsible for an accident.

Sir,

I am directed to refer to the subject noted above and to say that in order to safeguard public interest it is made mandatory that in case any court comes to the conclusion that the driver of a Government vehicle was squarely responsible for an accident, the concerned driver will have to pay atleast half of the compensation money awarded by the Court.

(Sd.)
Under Secretary Finance (c)".

(10) The stand of the State before this court is that the petitioner was held squarely responsible for the accident which took place on 26th April, 2003, due to which compensation had to be paid to the claimant by the State. Thus, acting in accordance with the Rule 5 and the instructions aforesaid, 50% of the amount was ordered to be recovered from the petitioner.

(11) Admittedly, in the writ petition, there is no challenge to the aforesaid rules or instructions.

(12) We are thus of the considered view that no fault can be found with the action of the respondents. They acted in accordance with the rules and instructions and directed recovery of 50% of the amount paid by way of compensation to the claimant, from the salary of the petitioner. Counsel for the petitioner has not been able to show how the action of the respondents can be termed illegal in view of the power contained in the aforesaid rules and instructions.

(13) As regards submission of the counsel as to mandatory duty of the State to maintain a contingency funds in terms of Section 146(2) of the Motor Vehicles Act, the said question is not directly in issue in the present case. Even if a contingency fund is maintained by the State

Government in terms of Section 146 (2) of the Motor Vehicles Act, the rules governing the service conditions of the employees would naturally have independent existence, in view of the master servant relationship between the Government and the employee. The said rules would thus be on independent footing. The action taken by the respondents in the present case of purported to be taken in accordance with the said Rules which have no co-relation with Section 146 (2) of the Motor Vehicles Act. The judgment in **Kanchanmala Vijaysingh Shirke's case** *(supra)*, relied upon by the petitioner, in our view, does not help the case of the petitioner. In the said case, the State had taken the stand that the driver had not been authorised to use the vehicle. However, a conclusion was ultimately reached that the driver was fully authorised to drive the vehicle in connection with affairs of the State. The apex court thus held that State could not escape its vicarious liability to pay compensation to heirs of the victim, due to negligent act of the driver in the course of employment. There can be no dispute with the proposition laid down in the said judgment. In the present case, the State never disputed its vicarious liability for the accident in question. However, in view of the rules authorizing it to recover pecuniary loss caused to the State Government, it decided to act under the same. Even the Tribunal had held the driver and the State jointly and severally responsible to pay the compensation.

(14) In the circumstances, we are of the view that the judgment relied upon by the petitioner is not directly applicable to the facts of the present case. Another judgment of Rajasthan High Court in **Jaswant Singh's case** *(supra)*, relied upon by the petitioner, also does not help his case in view of the fact that specific rules have been framed by the State of Punjab empowering it to recover the pecuniary loss caused to it from the employee. Instructions have also been issued specifically authorizing the State to recover the amount. The said rules or instructions are not under challenge in the present writ petition. Since **Jaswant Singh's case** *(supra)* pertained to State of Rajasthan and no rules/ instructions pari-materia to that relied upon by the State in this case were under challenge, in our considered view, the said judgment is not applicable to the facts of the present case.

(15) In a Judgment reported as **Depot Manager, A.P.S.R.T. Corpn.** *versus* **N. Ramulu and another, (3)** the apex court while interpreting Regulation 8(v) Andhra Pradesh State Road Transport Corporation Employees (CCA) Regulations, 1967 and clause (5) thereof, upheld the right of the employer to recover the pecuniary loss caused to him by an employee due to negligence or breach of orders in addition to any other penalty in respect of the same act of negligence or breach of orders. In the said case, the loss caused by the driver due to his rash and negligent driving resulting in the accident was ordered to be recovered from the driver.

(16) In view of the above discussion, we find no ground to quash the order under challenge. The action of the State in recovering a part of the amount awarded from the driver, on account of compensation granted by Motor Accident Claims Tribunal, is thus upheld.

(17) The writ petition is dismissed.

R.N.R.

Before Uma Nath Singh and A.N. Jindal, JJ.

CONST. SURINDER KUMAR,—*Appellant*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

LPA No. 37 of 2007 in

C.W.P. No. 5576 of 1992

4th March, 2009

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 12.8—Absence from duty—Discharge from service of a constable by invoking Rl. 12.21—Charge of habitual absence—Order of discharge stigmatic in nature—Neither any departmental enquiry conducted nor an opportunity of hearing granted to petitioner—Appeal allowed, order of Single Judge set aside while directing authorities to reinstate appellant with full back wages and consequential benefits.

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(3) (1997) 11 S.C.C 319