

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

RSA No. 2061 of 1997 (O&M)

Date of Decision: 16.01.2015.

Buta Singh.		...Appellant
	versus	
Punjab State and others.		...Respondents

RSA No. 2177 of 1997 (O&M)		
The Punjab State Civil Supplies Corporation Limited (PUNSUP), Chandigarh and another.		...Appellants
	versus	
Buta Singh.		...Respondent

CORAM: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. C.S. Jatana, Advocate for the appellant

Mr. P.K. Jain, Addl. A.G. Punjab for respondents No.1 to 3.
(in RSA No.2061 of 1997)

Ms. Deepali Puri, Advocate for the appellants
(in RSA No.2177 of 1997)
(for the respondents in 2061 of 1997).

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

B.S.WALIA, J.

Vide this judgment I intend to dispose of RSA Nos. 2061 and 2177 of 1997 pertaining to the same transaction though arising out of different suits. Facts of each case are as under :-

Brief facts of the case leading to the filing of RSA No. 2061 of 1997 are that plaintiff Buta Singh who was working as Sub Inspector, Food and Supplies Department Government of Punjab was sent on deputation to PUNSUP and was posted as Inspector at Dharamkot Depot. On 11.06.1982, he remained posted as in-charge of the depot during the crop years 1983-84, 1984-85, 1985-86. During the crop year 1983-84 there was a shortage of 1101 quintals of wheat while in respect of crop year 1984-85 and 1985-86, a committee was constituted for ascertaining the shortage. On the basis of the proceedings conducted by the committee so constituted, no shortage was detected for the crop year 1984-85, 1985-86. Thus, the only shortage which was attributed against the plaintiff was 1101 quintals of wheat for the crop year 1983-84. The plaintiff handed over the charge of Dharamkot Depot of PUNSUP on 29.03.1986 and was issued a charge sheet on account of shortage of wheat.

Regular departmental inquiry which was conducted led to order of recovery of Rs. 1,36,366.83 in addition to imposition of stoppage of two annual increments with cumulative effect.

The plaintiff filed an appeal before the Secretary, Food and Supplies Department, Government of Punjab, on the basis of which the punishment of stoppage of two annual increments was set aside

while the recovery of Rs. 1,36,366.83 as ordered against the plaintiff was reduced to Rs. 90,272.07 by giving the plaintiff the benefit of excessive stock of 42 bags of wheat stored at the said depot. The plaintiff filed the civil suit challenging the recovery of Rs. 90272.07.

The civil suit filed by the plaintiff challenging the recovery of Rs.90,272.07 was dismissed by the subordinate Court by holding that the inquiry conducted against the plaintiff-appellant was as per rules. Relevant extract of the same is re-produced below:-

“His allegations that the Punjab Civil Services (Punishment & Appeal) Rules, 1970, were not followed and the plaintiff was not given an opportunity to explain of his case are vague and indefinite because he has failed to point out as to which rule of punishment & appeal rules has been violated. He has also failed to convince this Court as to why the defendant No.3, Director, Food & Supplies, Punjab is not competent to take any disciplinary action against the plaintiff. The plaintiff has also himself admitted in his cross-examination that all the legal and procedural formalities before imposing the said penalty on him were followed by the defendant department. He also conceded that he was allowed to cross examine the departmental witnesses and explain his case at the time when opportunity of personal hearing was given to him. Moreover, under Rule 5 (III) of Punjab Civil Services (Punishment & Appeal) Rules 1970 the employer is competent to recover any loss which is caused by his employee to the Government by his negligence

from the pay of the said employee. The order of recovery from the salary of the plaintiff is a minor punishment. Before awarding this minor punishment the procedure laid down by Rule 10 of the said Rules have been strictly followed by the defendant department. There is no irregularity or procedure lapse which is apparent on the record, which can enable this Court to interfere with the legality and validity of the impugned orders. The allegations that the other case for recovery is pending against the plaintiff in the other Civil Court is also did not appeal to my sense of reasoning. The Director Food & Supplies, Punjab is fully competent to impose the said penalty upon the plaintiff. Therefore, I hold that the impugned orders dated 11.07.1990 and 07.02.1992 were legally and validly passed by the defendants. Consequently, both the issues are decided in favour of the defendants and against the plaintiff.”

Appeal filed by the plaintiff was also dismissed by the lower Appellate Court and the relevant extract of the judgment is as under:-

“Pt. Satish Kumar learned counsel for the appellant has not pointed out any illegality or irregularity in the enquiry proceedings. The Civil Court can interfere in the order, if some illegality or irregularity has been committed failed to point out any illegality or irregularity in the order passed by the Secretary, Food & Supplied Department, when there is no illegality or irregularity in the enquiry proceedings, then the orders passed are legal and valid one. Moreover, the learned

counsel for the respondents have very fairly conceded that the recovery of the loss would be effected for once for the same loss. So, when there is no illegality or irregularity in the enquiry proceedings on the basis of which orders Ex.D1 and Ex.D2 have been passed, no interference is required.”

Aggrieved against the dismissal of the suit as well as the appeal, the instant Regular Second Appeal has been filed by the plaintiff.

Learned counsel for the appellant states that the department has acted in an arbitrarily manner, inasmuch as there were some other persons equally responsible for the loss caused yet only he has been singled out and proceeded against and recovery ordered against him and further that the charge sheet was issued to him only in 1998 after a lapse of number of years inasmuch as while the incident pertains to the crop years 1983-84, 1984-85, 1985-86.

Learned counsel for the respondent-PUNSUP as well as State of Punjab have vehemently controverted the plea of discrimination as well as delay in issuance of charge sheet and state that the aforementioned pleas are mis-conceived and liable to be rejected out rightly on account of the fact that the plea of discrimination was never raised by the appellant-plaintiff in the civil suit filed by him besides perusal of paragraph No. 2 of the judgment of the learned trial Court revealed that the charge sheet same was issued on 01.06.1987.

Learned counsel for the appellant contends that the loss for which recovery was ordered was on factors other than his negligence /

other than factors attributable to him i.e. storage and climatic condition. Learned counsel for the respondents jointly state that it was for the appellant-plaintiff to have substantiated the aforementioned points before the Inquiry Officer and that the findings recorded by the Inquiry Officer on the basis of evidence produced before the Inquiry Officer cannot be challenged before the Civil Court except to the limited extent that the enquiry was not conducted in accordance with the procedure prescribed under the law or that there was violations of the principles of natural justice.

Learned counsel for the respondent further state that both the Courts below have categorically recorded that nothing has come on record to show that the enquiry conducted by the Inquiry Officer was not in accordance with the procedure prescribed or that the principles of natural justice were not adhered to. Therefore, in the circumstances, it was not open to the plaintiff to contend that the findings recorded by the Inquiry Officer were incorrect or that the Courts below had wrongly dismissed his suit. Learned counsel for the respondent also refers to paragraph No.9 of the judgment of the subordinate Court wherein it is recorded that the plaintiff had himself admitted in his cross-examination that all the legal and procedural formalities before imposing the said penalty on him were followed by the defendant department and further that he had also conceded that he was allowed to cross-examine the departmental witnesses and explain his case at the time when opportunity of personal hearing was given to him.

Learned counsel for the respondents also submitted that in the absence

of challenge by the appellant to the judgment and decree of the lower appellate court in the suit filed by PUNSUP holding the delinquent employee responsible for having caused loss to the extent of Rs.90,272.07 it would be open to the delinquent employee to deny liability.

Learned counsel for the plaintiff Buta Singh has not framed any question of law except stating that there had been procedural violations as well as discrimination. However, what procedural violation or how discrimination had been committed was not pointed out from the record. Thus at best the substantial question of law arising for consideration in this case would be :

- i) Whether there has been non compliance with the procedural requirements / principles of Natural Justice in the conduct of enquiry culminating in passing of order of punishment?
- ii) Whether there was discrimination in imposition of punishment?

Plea of discrimination was required to be raised and proved before the courts below. The same has not been done. Likewise the plea of procedure applicable for imposing punishment not having been followed/there being violation of natural justice has also not been proved before the courts below. In fact the plaintiff Buta Singh in his cross examination admitted that all legal and procedural formalities required to be followed before imposing punishment were followed by the department and he was also allowed to cross examine the departmental witnesses as also to explain his case at the time when

opportunity of personal hearing was given to him. Thus both the substantial questions of law are answered against the appellant.

In my considered opinion, it would not be open for this Court while hearing a Regular Second Appeal to sift evidence led before the enquiry officer to ascertain as to whether the decision of the Courts below is legally sustainable or not. Besides in the absence of challenge by the appellant to the judgment and decree of the lower appellate court in the suit filed by PUNSUP holding the delinquent employee responsible for having caused loss to the extent of Rs.90,272.07 it would not be open to the delinquent employee to deny his liability to the said extent.

I find merit in the submissions made by learned counsel for the Punsup and am of the opinion there is no merit in RSA No. 2061 of 1997 therefore, uphold the judgment of the Courts below and dismiss the regular second appeal filed by the plaintiff Buta Singh.

In RSA No.2177 of 1997

RSA No. 2177 of 1997 arises out of the civil suit filed by PUNSUP, Chandigarh for recovery of a sum of Rs. 4,15,827.32 on account of shortage in wheat stock for the crop year 1983-84. Out of the aforementioned sum of Rs. 4,15,827.32, a sum of Rs. 2,72,673.66 was the principal amount on account of shortage and the balance sum of Rs. 1,43,155.66 was on account of interest @ 18% per annum from April 1986 to February 1989. The plaintiff in the instant RSA had

filed the suit for recovery of the entire amount on account of loss caused on account of shortage despite the fact that in the departmental proceedings conducted against the respondent-defendant for causing loss of a sum of Rs. 2,72,673 and as against the amount claimed as due on account of the said loss attributable to the respondent-defendant, the inquiry proceedings had culminated in passing of the order of punishment by the disciplinary authority holding the respondent-defendant liable to make payment of sum of Rs. 1,36,336.83, in addition to imposition of punishment of stoppage of two annual increments with cumulative effect. However, the order of the disciplinary authority was challenged by the respondent-defendant by way of appeal before the Secretary Food and Supply Department, Government of Punjab who apart from setting aside the order imposing the punishment of stoppage of two increments with cumulative effect reduced the recovery of amount of Rs. 1,36,336.83 to Rs. 90272.07 by giving benefit to the respondent-defendant of excessive stock of 428 bags of wheat under his custody. PUNSUP did not challenge the order passed by the Secretary, Department of Food and Supplies doing away with the punishment of stoppage of two annual increments with cumulative effect and reduction of the amount to be recovered from Rs. 1,36,336.83 to Rs. 90272.07.

Learned counsel for the respondent-defendant in the circumstances, contends that although the respondent defendant was not liable for any loss yet in the absence of a challenge having been made by PUNSUP to the order of the Appellate Authority, the suit

filed by PUNSUP was mis-conceived, therefore, the subordinate Court as well as the learned lower Appellate Court could not have decreed the suit for recovery of the entire amount claimed.

Learned counsel for the appellant very fairly conceded that the appellant did not challenge the findings of the Appellate Authority i.e. the Secretary Food and Supplies Department doing away with the penalty and reducing the recovery ordered against the respondent-defendant.

I have heard learned counsel for the parties and with their able assistance have gone through the records very carefully. Although substantial question of law was framed vide order dated 11.12.2012, yet learned counsel for the parties are ad idem that the following substantial question of law arises for consideration in the instant Regular Second Appeal i.e. RSA No. 2177 of 1997 :-

“Whether in the absence of challenge by PUNSUP to the order passed by the Secretary, Department of Food and Supplies doing away with the punishment of stoppage of two annual increments with cumulative effect and reduction of the amount to be recovered from Rs.1,36,336.83 to Rs.90,272.07, the claim in the suit filed by PUNSUP for recovery of entire amount of loss alleged to have been caused was maintainable?”

It would be relevant to mention here that in the Civil Suit filed by Punsup for recovery of the entire loss of Rs. 2.71 lacs, the

Subordinate Court decreed the suit to the extent of Rs. 90,272.07 plus interest @ 6% totaling Rs. 1,05,622.07 and the appeal filed by Punsup against the said partial decree in its favour was dismissed by the learned Lower Appellate Court.

Learned counsel for the appellant states that the respondent filed an appeal against the decision of the Subordinate Court in the suit filed by PUNSUP but the same was dismissed, thereafter, the respondent did not file an RSA against the decision of the learned Lower Appellate Court, therefore, it was not open to the respondent-defendant to contest that the amount of Rs. 90,272.07 had been wrongly decreed.

Learned counsel for the respondent-defendant contends that once the matter was sub-judice before the Appellate Authority, it was not open to the appellant to have instituted the civil suit and that in any case, once the Appellate Authority had passed orders reducing the penalty, then it was incumbent upon the appellant to have amended the suit to have raised a challenge to the orders passed by the Appellate Authority and to show that the findings recorded by the Disciplinary as well as Appellate Authority were legally unsustainable and that it was entitled to recover the entire amount from the respondent-defendant. Learned counsel for the respondent-defendant contends that having failed to do so, the Civil Suit could not have been decreed beyond Rs.90,272.07 as per the findings of the Appellate Authority.

I find that the arguments raised by the learned counsel for the respondent-defendant have merit. Once findings were recorded by the Appellate Authority in favour of the respondent-defendant reducing the amount of recovery and also setting-aside the imposition of punishment of stoppage of two annual increments with cumulative effect, the appellant ought to have amended the Civil Suit filed by it. In the absence of having done so, the suit was rightly partly decreed to the extent as has been noticed above. The substantial question of law is accordingly answered against the appellant. No case is made out for interference in RSA No. 2177 of 1997. The same is accordingly dismissed.

At this stage, learned counsel for the appellant in RSA No. 2061 of 1997 states that a sum of Rs.37,000/- only had been deducted out of his pay against the recovery ordered by the Appellate Authority and that this Court had granted stay against further recovery on the clear understanding that in the eventuality of RSA No. 2061 of 1997 being dismissed, the balance amount on account of recovery would be recoverable by Punsup from the retiral benefits, namely, gratuity, leave encashment etc. In view of there being no merit in RSA No.2061 of 1997 and the same having been dismissed, recovery of balance amount is ordered to be made in terms of the interim orders of this Court.

No other point has been argued by either of the parties in either of the appeals. Accordingly, finding no merit in both the appeals, the

same are dismissed and the judgment and decree of both the Courts below are upheld.

January 16, 2015.

(B.S. WALIA)

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JUDGE