

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

**Regular Second Appeal No.3826 of 2010 (O&M)
Date of decision : 13.05.2015**

The Commissioner Food & Supplies Department, Haryana & others

....Appellants

versus

Amrit Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Siddharth Sanwaria, DAG, Haryana,
for the appellants.

Mr. R.K. Malik, Advocate,
for the respondent.

RITU BAHRI, J.

Defendant-appellants have come up in regular second appeal against the judgment of reversal dated 03.06.2010 passed by the Additional District Judge, Kaithal, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 22.08.2008 passed by the Civil Judge (Junior Division) Kaithal, has been accepted and the defendant-appellants have been directed to issue 'no due certificate' along with amount of gratuity and leave encashment in favour of the plaintiff.

Amrit Singh-plaintiff (respondent herein) filed a suit for mandatory injunction directing the defendants-appellants to issue 'no dues

certificate' and release the amount of gratuity and leave encashment. The plaintiff had joined with the appellant-department as Sub Inspector on 15.04.1969 and thereafter, remained posted as Inspector, Food and Supplies, Department at Pehowa, District Kurukshetra. He had retired from service on 31.08.2004. While posted as IInd set of key at Pehowa Centre in April, 2001, the plaintiff-respondent remained bed ridden most of the times on account of illness. Charge of the said post was given to one Rajinder Singh Pannu, who was reluctant to take the same. However, later on, he had taken over the charge due to intervention of superiors. Grievance of the plaintiff was that after his retirement, the amount of gratuity and leave encashment was withheld by the defendants-appellants.

Upon notice, defendant-appellants appeared and filed separate written statements while controverting the allegations levelled by the plaintiff in his suit. It was submitted that the plaintiff-respondent had failed to exercise proper care and caution in maintaining food grains, thereby he had failed to perform his duty. Due to the negligence of the plaintiff-appellant, the department had suffered huge loss as the food grains were damaged. Since departmental enquiry was pending against the plaintiff, therefore, the amount of leave encashment and gratuity was rightly withheld.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for a decree for mandatory injunction sought? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Whether the plaintiff has no locus standi to file the present suit?

OPD

4. Whether this court has got no jurisdiction to try and entertain the present suit? OPD

5. Whether the plaintiff is estopped by his own act and conduct?

OPD

6. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD

7. Whether the plaintiff has not come to the court with clean hands? OPD

8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit of the plaintiff-respondent. However, defendants-appellants were directed to conclude the departmental inquiry initiated against the plaintiff within a period of three months from the date of receipt of copy of the judgment. Against the said judgment, plaintiff-respondent went in appeal, which was allowed by the lower appellate Court vide judgment dated 03.06.2010. During the pendency of appeal, an application under Order 41 Rule 27 CPC was filed by the plaintiff stating therein that the order imposing penalty had been set aside by the Financial Commissioner-cum-Principal Secretary, Food and Supplies Department, Haryana vide his order dated 01.04.2010. Vide aforesaid order, recovery of Rs.12,93,152/- imposed upon the plaintiff had been set aside. Consequently, the appeal was allowed and a direction was given to the defendants (appellant herein) to issue 'no dues certificate' and release the amount of gratuity and leave encashment within three months.

During the pendency of this appeal, vide CM No.13372-C of 2010, the appellants have placed on record recovery order No.2E (III)-2009/234 RA dated 20.08.2009 (Annexure A/1), which has been passed pursuant to the charge sheet dated 24.07.2008 and 26.08.2008 (Annexures A/2 and A/3 respectively). Thereafter, CM No.5550-C of 2013 was filed to place on record the orders dated 21.02.2011 and 11.03.2013 (Annexures A/4 and A/5 respectively) along with Annexures A/4 to A/6. As per the appellants, the plaintiff-respondent was charge sheeted in the following cases:-

(i) For shortage of wheat during the dispatch of the stocks for recovery of Rs.12,39,152/-. The Director and Special Secretary to Government of Haryana, Food and Supplies, Haryana imposed punishment for recovery of Rs.12,95,152/- from the respondent-plaintiff vide order dated 10.04.2009. Against the said order, he filed an appeal before the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department, who set aside the order dated 10.04.2009 and exonerated the plaintiff from the charges vide order dated 01.04.2010.

(ii) Plaintiff-respondent was also charge sheeted on 06.09.2006 for excess replacement of gunny bags. Director Food & Supplies, Haryana had imposed penalty for recovery of Rs.2,70,538/- from the plaintiff vide order dated 20.08.2009 (Annexure A/1). Appeal against the said order was dismissed by the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department vide order dated 21.02.2011 (Annexure A/4).

As such, the said recovery had attained finality after dismissal of his appeal.

(iii) Plaintiff-respondent was again charge sheeted vide memo dated 24.07.2008 for damage of wheat at Pehowa (Kurukshetra) to the tune of Rs.5,40,822/-. Out of this loss/damage, the plaintiff-respondent was responsible for los of Rs.1,46,022/- i.e. 27% of the total loss. After considering the enquiry report, he was found innocent and the aforesaid charges were dropped against the plaintiff-respondent vide order dated 11.03.2013 (Annexure A/5).

After conducting three departmental enquiries, penalty for recovery of Rs.2,70,538/- was imposed upon the plaintiff-respondent vide order dated 20.08.2009 (Annexure A/1), which was finalized vide order dated 21.02.2011 (Annexure A/4) when his appeal was dismissed by the Financial Commissioner and Principal Secretary to Government of Haryana, Food and Supplies Department. Consequently, the appellant-department had withheld an amount of Rs.2,57,170/- (DCRG Rs.1,68,848/- and Leave Encashment of Rs.88,322/-) from the retiral benefit of Amrit Singh-plaintiff. The said amount was to be adjusted against the recovery of Rs.2,70,538/- from him. Detail of the retiral dues payable to the plaintiff-respondent along with the paid and withheld dues, is as under:-

Pension	Rs.4558	Rs.1823 (Commute)	Rs.2735	Being paid from 01.09.2004
Commutation of pension	Rs.228823			Paid on 17.08.2004
DCRG	Rs.168848			Pending/withheld due to above recovery
Leave Encashment	Rs.88322			-do-

The lower appellate Court, while allowing the appeal, had

taken into consideration the order dated 01.04.2010. However, the orders with regard to other two enquiries was not placed on record before that Court, as the appeals were still pending. Since now decision on those appeals have been finalized vide orders dated 21.02.2011 (Annexure A/4) and 11.03.2013 (Annexure A/5), the department has rightly adjusted the amount of Rs.2,57,170/- from the retiral benefits of the plaintiff-respondent and finalise the commutation and payment as detailed in Annexure A/6.

After going through the details mentioned in CM No.5550-C of 2013 and orders dated 21.02.2011 and 11.03.2013 (Annexures A/4 and A/5), the judgment passed by the lower appellate Court is being modified to the above extent and the present appeal is disposed of accordingly.

(RITU BAHRI)
JUDGE

13.05.2015
ajp