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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6102 of 2014 (O&M)
Date of Decision:30.10.2015

Food Corporation of India and others
......Appellants

vs

Sat Pal
.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Krishan Kumar Gupta, Advocate
for the appellant.

****

1. Whether Reporters of local papers 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?

RAJ MOHAN SINGH, J.

[1]. Defendant-Food Corporation of India has come in Regular Second Appeal against the concurrent judgments and decrees passed by Courts below in a suit for declaration and mandatory injunction.

[2]. Plaintiff filed suit for declaration and mandatory injunction to the effect that he joined the services of Food Corporation of India in the year 1972 as AG-III(D) at Ludhiana. He was promoted as T.A.-1 and retired from service on 30.11.2007 on attaining the age of superannuation.

[3]. Plaintiff claimed that his work and conduct was

satisfactory, but he was served with memo on 06.11.2003 by defendant No.3 through defendant No.4 in respect of the fact that from the year 1996 to 2000, plaintiff was assigned duty of accepting and dispatching rice stocks according to the specifications and on 24/25.06.2000, he dispatched 41 BCN rice ex-Amloh to Panipat. On receipt of stocks at destination on 26.06.2000, the consignee lodged telegraphic complaint for receipt of rice RR Grade 'A' as the stocks were found infested with major and minor Test BRL damaged.

[4]. The stocks under complaint were inspected on 03/04.07.2000 and complaint was allegedly found genuine. On the complaint the consignee preferred LAS amounting to Rs.10,28,603.96 towards pecuniary loss sustained by the Corporation. As per report of District Manager, FCI, Patiala the stocks under complaint were accepted and dispatched by the plaintiff along with other officials.

[5]. Inquiry was held and after conclusion of inquiry plaintiff was found innocent as the charges could not be proved against him, however Disciplinary Authority while not agreeing with the conclusions of the Inquiry Officer passed an order dated 07.06.2006, disagreeing with the report of Investigating Officer and further giving an opportunity to the plaintiff to make representation in writing within seven days of receipt of

memorandum issued by it.

[6]. Memorandum was duly replied by the plaintiff, however the Disciplinary Authority/defendant No.3 proceeded to impose penalty of Rs.50,000/- on 16.09.2006 on the plaintiff along with other T.As, but exonerated the Managers Sh. J.N. Gupta and Sh. Bhagat Singh.

[7]. Plaintiff preferred an appeal against the order of Disciplinary Authority. The Appellate Authority issued show cause notice to the plaintiff on 16.10.2006. On reply the Appellate Authority vide order dated 16.11.2006, enhanced the penalty on the plaintiff from Rs.50,000/- to Rs.1,50,000/- by observing that the plaintiff did not bother to give reply to the show cause notice. The orders passed by the prescribed Authority and the Appellate Authority were assailed in the suit.

[8]. The suit was contested by the defendants on all customary pleas and claimed the stand of the defendants to be correct.

[9]. After filing of the replication, following issues were framed by the trial Court:-

> "Issue No.1 Whether the plaintiff is entitled to declaration as prayed for? OPP
>
> Issue No.2 Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP

Issue No.3	Whether the suit is not maintainable in the present form? OPD
Issue No.4	Whether the plaintiff has no locus standi to file the present suit? OPD
Issue No.5	Whether the plaintiff has no cause of action to file the present suit? OPD
Issue No.6	Relief.”

[10]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[11]. Trial Court discussed the issues No.1 and 2 jointly and held that the defendants examined only one witness namely Sh. Hardev Singh, who appeared as DW-1 and tendered his affidavit as DW-1/A, besides tendering other documentary evidence as Ex.D-1 to Ex.D-37. The documents exhibited on record were related to other disciplinary proceedings initiated against the plaintiff and their results. Therefore, trial Court discarded those documents being not related to the present controversy. Primarily those documents were highlighted by the defendants in order to show over all conduct of the plaintiff in his service tenure.

[12]. The documentary evidence viz. Ex.D-1 to Ex.D-37 did not relate to the controversy involved in the present context. The legality and proprietary of the impugned action could not have

been weighed with the antecedent conduct of the plaintiff which was sought to be highlighted by the defendants by adducing the aforesaid documentary evidence.

[13]. Trial Court as well as lower Appellate Court after lawfully appreciating the evidence on record decreed the suit thereby entitling the plaintiff to the refund of amount so deducted from his dues along with simple interest @ 8% p.a. from the date of deduction till actual realisation. The impugned action against the plaintiff was held to be null and void, *mala fide*, unconstitutional, discriminatory and against the principles of natural justice. That is how the present Regular Second Appeal came to be filed.

[14]. I have considered the submissions made by the learned counsel for the appellants with reference to evidence on record.

[15]. From the reference, this Court found that the documents Ex.D-1 to Ex.D-37 are not relevant to be quoted in the present context and alleged misconduct of the plaintiff in any manner. The present misconduct has to be tested *stricto sensu* in terms of evidence. The prescribed Authority imposed penalty of Rs.50,000/- and the same was *suo motu* enhanced by the Appellate Authority to the tune of Rs.1,50,000/-.

[16]. The plaintiff was posted at Amloh at the relevant time and he accepted and preserved rice stocks under supervision of

A.M. (QC) and those stocks were test checked by the senior officers like A.M. (QC), D.M. (QC) and during this inspection it was never found that the stocks of rice accepted by the plaintiff were BRL (Beyond Rejection Limit) and further the inspection reports of the higher officers at the relevant time showed that the stocks so stored at Amloh for the crop year 1996-97, 1997-98, 1998-99 and 1999-2000 were of 'A' category.

[17]. At the time of loading and dispatch of the rice stocks on 24/25.06.2000 from Amloh to Panipat, plaintiff was not even posted at Amloh as he had already been transferred and relieved from Amloh to Ghagga on 09.05.2000, where he joined on 10.05.2000. The dispatch of disputed rice for Panipat was not made by the plaintiff as he was not posted at Amloh at the relevant time. Opportunity to join inspection was not afforded to the plaintiff under the rules and regulations of the Department in view of Ex.P-16 before initiating any disciplinary proceedings against him.

[18]. There was a big question mark on the legality and proprietary of the disciplinary proceedings being conducted in violation of rules and regulations of the Department. The Inquiry Officer exonerated the plaintiff and the Disciplinary Authority as well as Appellate Authority exonerated senior officers namely Sh. J.N. Gupta AM(QC) and Sh. Bhagat Singh, Manager (D) on

similar grounds that both the aforesaid officers were not posted at Amloh at the relevant time and were not in joint inspection. On both the counts similar grounds were available with the plaintiff as well, however he was subjected to disciplinary action by Disciplinary Authority as well as by the Appellate Authority who of its own enhanced the penal proceedings against the plaintiff.

[19]. Once the substance/rice stocks were accepted by the plaintiff at Amloh and were test checked by the higher officers and nothing like BRL (Beyond Rejection Limit) was found in the stocks, rather inspection reports showed the stocks were of 'A' category, subsequent proceedings that too without associating the plaintiff cannot implicate him in any manner and could not have shattered the inspection reports after it was test checked by the higher officers.

[20]. Question of supervision at the time of dispatch of rice stocks from Amloh to Panipat on 24/25.06.2000 could not have been attributed to the plaintiff as it was admitted position that the plaintiff had already been transferred from Amloh on 09.05.2000 and was relieved on 10.05.2000. He was not posted at Amloh on 24/25.6.2000 when disputed rice stocks were dispatched to Panipat.

[21]. Case of embezzlement or fraud has to be tested on the

para materia of culpable act like in criminal cases. Plaintiff has not been associated in joint inspection at the complaint site i.e. at Panipat when the stocks were inspected by the higher officers on 03/04.07.2000. Once the stand of the defendants was to the effect that the plaintiff was granted an opportunity of joint inspection, but he did not avail it, in these circumstances it was legally incumbent upon the defendants to prove by any such document showing grant of opportunity to the plaintiff in respect of joint inspection and non-availing of the same by the plaintiff. Defendants have not produced on record any such notice showing that the plaintiff was issued notice in the said context requiring him to come present on the complaint site at the time of joint inspection. No such mode of communication has come forth on record, suggesting that at any point of time plaintiff was apprised of joint inspection by asking him to join the same. Defendants have miserably failed to prove that any such opportunity was granted to the plaintiff for joint inspection in compliance to Ex.P-16.

[22]. Stocks were received at Amloh before the transfer of plaintiff to Ghagga. There is no evidence that said stocks were of sub-standard quality. Since the plaintiff was not present at the time of dispatch, tampering of stocks in the absence of the plaintiff cannot be ruled out. Stocks were regularly checked by

Quality Control Department on monthly basis. During such test check, no report has come forth on record suggesting any presence of BRL (Beyond Rejection Limit) stocks. There is no material on record showing that during stay of plaintiff at Amloh the quality control check ever showed any stock to be of sub-standard quality.

[23]. Link evidence is apparently missing in this case to establish any such alleged omission or overt act by the plaintiff during his stay at Amloh at the relevant time. Exoneration of Sh. J.N. Gupta, and Bhagat Singh on same set of charges would make the plaintiff entitled for same treatment and the cases of aforesaid persons could not have been treated differently than the case of the plaintiff who was also not present at Amloh as in the cases of these aforesaid persons. He was also not associated in joint inspection as in the cases of said senior officers. Therefore, in considered opinion of this Court, no exception could have been made in respect of plaintiff thereby involving him in the episode in which two of the senior officers have been given benefit of their absence at Amloh and their non-participation in joint inspection.

[24]. Wholesome of evidence led by the plaintiff and finding the evidence of the defendants to be lacking on pertinent aspect made the action of the Authorities to be wholly illegal, arbitrary,

mala fide, discriminatory and unsustainable in law. Issues No.1 and 2 have been rightly concluded by both the Courts below in favour of the plaintiff.

[25]. The findings under issues No.3 to 5 have been correctly given in the light of evidence of findings recorded under issues No.1 and 2.

[26]. In view of Full Bench judgment of this Court in ***Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,*** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law**,** but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[27]. The appellant has formulated following substantial questions of law in para 11 of the grounds of appeal:-

"(I) Whether the judgment and decree of both the

courts below is against the oral and documentary evidence available on the record of the case?

(II) *Whether the suit was maintainable before the Civil Court at Patiala inspite of having no territorial jurisdiction in the matter?*

(III) *Whether both the courts below have formed a wrong legal opinion in the matter in deciding the same as if both the courts below were hearing the appeal?*

(IV) *Whether both the courts below have the power to examine the matter beyond the scope of interference in such service matters?*

[28]. Question No.(I) is based on evidence on record which according to this Court is not sufficient to attract culpability of the plaintiff in any manner. The judgments and decrees passed by the Courts below are in consonance with the evidence on record which give rise to only conclusion of innocence of the plaintiff and cannot be termed to be against the evidence on record.

[29]. No evidence has been led to show that the Court at Patiala has no jurisdiction in the matter.

[30]. Question No.(III) and (IV) are pure question of fact and no evidence has been led by the defendants to show that wrong and illegal opinion has been formed by the Courts below and

both the Courts below have gone beyond the scope of interference in an issue arising out of service matter. If the Authority goes wrong and commits wrong which amounts to infraction of law, Civil Court has got the jurisdiction to interfere in terms of Section 9 CPC.

[31]. Since both the Courts below have concurrently held that the action of the defendants is wholly unsustainable and the findings recorded thereunder cannot be held illegal on account of misreading of evidence or having suffered with any perversity. Therefore, in considered opinion of this Court, impugned judgments and decrees passed by the Courts below need no interference in Regular Second Appeal, consequently this appeal is dismissed being totally bereft of merits.

October 30, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**