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

RSA No.2852 of 2015

Date of decision: February 04, 2016

Punjab State Warehousing Corporation
and another

.....Appellants

Versus

Kaura Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. K.B. Raheja, Advocate
for the appellants.

SABINA, J

Respondent had filed suit for declaration challenging the action of the appellants, whereby, amount to the tune of ₹2,17,359.66 paisa was ordered to be deducted from his retiral dues.

The case of the respondent, in brief, was that he was working with the Punjab State Warehousing Corporation, Chandigarh as Godown attendant and had retired on 31.05.2009 while posted at Makhu, District Ferozepur. An order dated 08.12.2010 was passed, whereby, leave encashment and gratuity was released to the respondent after deducting a sum of ₹2,17,359.66 paisa. It was averred that Godown attendant was not responsible for any loss on account of less storage grain. The recovery had been effected from the retiral dues of the respondent

without issuing him any show-cause notice or charge-sheet.

Appellants in their written statement averred that the respondent was responsible for less storage of wheat grain stock delivered during his tenure at Makhu. Consequently, vide the impugned order, the amount in question was withheld being 20% cost of the less storage grain. The responsibility was rightly fixed as the respondent had misappropriated the food-grain.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to declaration as prayed for?OPP
2. Whether the order dated 8.12.2010 passed by the MD as well as order dated 13.12.2010 whereby amount of Rs.2,17,359.66 P ordered to be deducted from the retiral benefits of the plaintiff, is illegal, wrong, null and void?OPP
3. Whether the plaintiff is entitled to recover aforesaid amount alongwith? If so, at what rate?OPP
4. Whether the suit of the plaintiff is not maintainable?OPD
5. Whether the plaintiff has concealed material facts? If so, its effect?OPD
6. Whether plaintiff has no cause of action against the defendant for filing instant suit?OPD
7. Whether this court has no territorial jurisdiction to entertain the present suit?OPD
8. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and

jurisdiction?OPD

9. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 05.02.2013 decreed the suit of the plaintiff for recovery of ₹2,17,359.66 paisa along with interest @ 8% per annum from the date the amount fell due till realisation. Aggrieved against the said judgment/decreed, appellants as well as respondent preferred appeals. The First Appellate Court vide judgment/decreed dated 17.01.2014 dismissed the appeal filed by the appellants and allowed the appeal filed by the respondent and held that the respondent was entitled to interest at the rate of 12% per annum. Hence, the present appeal by the appellants.

I have heard learned counsel for the appellants and have gone through the record available on the file carefully.

In the present case, admittedly, at the time of payment of gratuity, leave encashment to the respondent, an amount of ₹2,17,359.66 paisa was withheld on the ground that there had been food-grain shortage in the Godown. However, before effecting the recovery, no show-cause notice or charge-sheet was issued to the respondent. Appellants were legally bound to issue charge-sheet or show-cause notice to the respondent before withholding the

amount in question as it amounted to punishment. In these circumstances, the Courts below rightly held that the order dated 13.12.2010, whereby, the amount in question had been ordered to be withheld was illegal. So far as the observations made by the First Appellate Court in Paras 14 and 15 of its judgment relating to letter dated 17.04.2006 (Exhibit P2) issued by Managing Director, Punjab State Warehousing Corporation, Chandigarh are concerned, it is clarified that the said observations would not be treated as a precedent as less storage grain would amount to misappropriation.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

February 04, 2016
mahavir