

RSA No. 864 of 2014

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 864 of 2014 (O&M)
Date of Decision : 02.06.2016

Rajwant Singh

...Appellant

Versus

Punjab State Civil Supplies Corporation Limited (PUNSUP) and
others

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

- 1) *Whether Reporters of the 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?*

Present: Mr. P.S. Goraya, Advocate for the appellant.

Mr. Sehaj Bir Singh, Advocate for
Ms. Diya Sodhi, Advocate
for respondents No. 1 and 2.

Mr. O.P. Kamboj, Advocate
for respondent No. 4.

P.B. Bajanthri, J.(Oral)

CM No. 7209-C of 2016

Application is allowed, as prayed for.

Enquiry report dated 14.07.2003 is taken on record.

Main Case

In the instant regular second appeal, the appellant has questioned the validity of judgment and decree dated 08.12.2011 passed by learned Civil Judge (Jr. Divn.), Fazilka and judgment and decree dated 17.01.2012 passed by learned Additional District Judge, Fazilka.

Brief facts of the case are that respondent-Corporation initiated disciplinary proceedings against the appellant on 14.07.2003 for the following charges :-

“The following charges were levelled against the charge-sheeted officials (C.O.S.).

1. Charges against Sh. Rajwant Singh, Inspector Grade-I, (C.O.).

1. Total shortage of 4746-96-300 Qtls. of wheat Crop 1997-98 was found in the stocks which were under the charge of Sh. Rajwant Singh, Inspector Grade-1. He along with concerned double locker and Sh. Abhay Kumar Chawla, Field Officer are responsible as per instructions for this shortage, the cost of which comes to ₹24,09,438/- and recovery of the same along with interest is to be made from them.

2. Contrary to the instructions of the Corporation Sh. Rajwant Singh, Inspector Grade-I, gave less excess in wheat Crop 1997-98 to the tune of 93-48-000 Qtls., the cost of which comes to ₹71,754-00. This employee, concerned double locker and Abhay Kumar Chawla, Field Officer are responsible for this less excess and this

amount along with interest is recoverable from all these three employees.

3. *FCI deducted from the bill of PUNSUP ₹22,062/- on account of quality cuts and ₹1,628/- on account of under weight delivery from stocks of wheat 1998(Total ₹23,690/-), for which Sh. Rajwant Singh, Inspector Grade-I(Incharge), Avtar Singh, PDC (Double Locker) and Abhay Kumar Chawla, F.O., are responsible and recovery of this amount along with interest is to be made from these three employees.*
4. *In the P.V., dated 31.03.2000; 1461 bags 'A Class Bardana' which was in the charge of Sh. Rajwant Singh was found in bad condition for which these employees are responsible and the cost of Bardana ₹31,105/- is recoverable from him."*

Simultaneously, civil suit for recovery of ₹26,03,395/- (i.e. ₹17,41,402/-) on account of shortage of wheat stocks for the year 1997-98 and quality cut imposed on wheat stocks for the crop year 1998-99 plus shortage of 'A' class gunny bags along with interest of ₹8,61,993/- on the aforesaid amount w.e.f. 25.09.2000 till the date of filing of suit along with @ 18% per annum *pendente lite* was filed.

Both the disciplinary proceedings as well as suit for recovery proceeded. The trial Court decreed the suit on 08.12.2011 by observing as under :

"In this case it is hereby ordered that the suit of the plaintiff is decreed for recovery of ₹1235824/-

(₹12,04,719/- + ₹31105/-) against defendant No. 1 only along with simple interest @ 9% per annum from the date of report dated 25.09.2000 Ex.P15 till the date of decree and thereafter @ 6% per annum from the date of decree till its realization with proportionate costs, whereas the suit against defendant Nos. 2 and 3 is dismissed."

The appeal was filed against the judgment and decree dated 08.12.2011 by the appellant. The appellate court affirmed the judgment and decree of the trial Court and dismissed the appeal of the appellant. Hence, the present regular second appeal.

Learned counsel for the appellant submitted that preliminary issues were raised before the trial Court regarding maintainability, locus-standi, limitation etc. One of the contentions raised is regarding recovery of amount is not permissible without holding departmental proceedings. The same has not been appreciated with reference to Discipline & Appeal Rules. Without there being determination of any loss caused to the Corporation in a departmental enquiry, the same cannot be recovered by resorting to suit for recovery.

On the other hand, learned counsel for the respondent-Corporation submitted that preliminary issues raised by the appellant have been taken into consideration by the trial Court by observing as under :-

"18. On the other hand, defendant No. 2 has been

proceeded against ex-parte, whereas defendant No. 1 has failed to lead any evidence in support of his contention. However, defendant No. 3 has examined as many as three witnesses i.e. Amaninder Singh, Sr. Asstt. Accounts as DW-1, Rashpal Singh, Sr. Asstt. (Accounts) as DW-2, defendant No. 3 himself stepped into the witness box as DW-3. Learned counsel for defendants has argued that the recovery suit in the present set of circumstances is not maintainable as the plaintiff can only recover the amount in departmental proceedings. He has also relied upon the authority cited as AIR 2006(SC) page 1438. It is pertinent to mention here that an application under Order 7 Rules 11 CPC earlier at the time of defendant evidence was filed and the said authority was also relied upon by the defendants. However, the said application was dismissed on merits. The judgment was distinguished from the facts of the present case and this contention of the defendants was repelled. No revision has been filed by the defendants to that order and therefore, the defendants are estopped from raising the plea again at the time of final arguments. Even otherwise, on merits, the said authority is not applicable to the facts of the present case as in the said case, one of the employees had deposited the amount of loss caused to plaintiff Corporation during course of departmental proceedings and in appeal even other co-employee also deposited the balance amount and it was due to non-reinstatement of the employee despite deposit of the amount on account of loss that they

approached the Court invoking the writ jurisdiction while on the other hand department also filed civil suit for recovery against the employees concerned and it was under these circumstances that the civil suit for recovery was held to be not maintainable."

In view of the findings recorded by trial Court, suit for recovery is maintainable. There is no error in respect of decreeing the suit and further appellate court has affirmed the said order.

The appellant is an employee of the Corporation and for the purpose of taking disciplinary action and also any loss caused to the Corporation for alleged to have committed misconduct, he is bound by disciplinary Rules and Regulations of the Corporation. Employees/Officers are governed by regulation called "The Punjab State Civil Supplies Corporation Revised Service Regulations, 1985". Regulation No. 16 deals with Discipline, Penalties & Appeals. Extract of Regulation No. 16 is reproduced here under:-

"16. Till such time PUNSUP frames its own rules in matter relating to discipline, punishment shall be governed by the rules applicable to Punjab Government employees from time to time provided that the nature of penalties which may be imposed the authority empowered to impose such penalties and the appellate authority, shall be as specified in Appendix III to these regulations."

Some of the provisions of The Punjab Civil Services

(Punishment and Appeal) Rules, 1970 are relevant viz.

3. Application-(1) *These rules shall apply to every Government employee, but shall not apply to: -*

(a) any member of the All – India Services :

(b) any person in casual employment:

(c) any person subject to discharge from service on less than one month's notice :

(d) any person for whom special provision is made in respect of matters covered by these rules by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Government before or after the commencement of these rules, in regard to matters covered by such special provisions;

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx

5.Penalties: *-Following penalties may for good and as hereinafter, be imposed on a Government employee namely: -*

Minor Penalties

(i) xxx

(ii) xxx

(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;

7. Authority to institute proceeding – *(1) The Governor or any other authority empowered by him by general or special order may-*

(a) institute disciplinary proceedings against any Government employee;

(b) direct a punishing authority to institute disciplinary proceeding against any Government employee on whom that punishing authority is competent to impose under these rules any of the penalties specified in Rule 5.

(2) A punishment authority competent under these rules to impose any the penalties specified in clauses (i) to (iv) of rules 5 may institute disciplinary proceeding against any Government employee for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 5 notwithstanding that such punishing authority is not competent under these rules to impose any of the latter penalties.

8. Procedure for imposing major penalties– *(1) -No order imposing any of the penalties specified in clauses (v) to (ix) of rule 5 shall be made except after an inquire held, as far as may be in the manner provided in this rule and Rule 9 or the manner provided by the Public Servants (Inquiries) Act 1850 (37 of 1850), where such inquiry is help under that Act.*

(2) Whenever the punishing authority is of the opinion that there are ground for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government employee, it may itself inquire into, or appoint under the provision of the Public (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth there of.

9. Action on the inquiry report - *(1) The punishment authority, if it is not itself the inquiring authority may, for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiring according to the provision of rule 8 as far as may be.*

(2) The punishing authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) *If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (I) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in rule 10, make an order imposing such penalty;*

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) *If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in clauses (v) to (ix) of Rule 5 should be imposed on the Government employee ,it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on the penalty proposed to be imposed ;*

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.*

11. Communication of orders - *Order made by the punishment authority shall be communicate to the Government employee who shall also be supplied with a copy of the report of the inquiry, if any, help by the punishment authority and a copy of its findings on each article of charge, or where the punishment authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the punishing authority together with brief reasons of any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any given by the Commissioner and where the punishing authority has not accepted the advice of the Commissioner, a brief statement of the reason for such non acceptance.*

12. Common Proceeding- (1)-Where two or more Government employees are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government employees may make an order directing that disciplinary action against all on be taken in a common proceeding and if the authority competent to impose the penalty of dismissal on such Government employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authority with the consent of the other*.

(2) Any order under sub-rule (1) shall specify -

- (i) the authority which may function as the punishing authority for the purpose of such common proceedings;
- (ii) the penalties specified in Rule 5 which such punishing authority shall be competent to impose;
- (iii) whether the procedure laid down in Rule 8 and 9 or Rule 10 shall be followed in the proceeding.

15. Order against which appeal lies- Subject to the provision of Rule 14 a Government employee may prefer an appeal against all or any of the following orders, namely-

- (i) an order imposing any of the penalties specified in Rule 5 whether made by the punishing authority or deemed to have been made under Rule 4;
- (ii) an order imposing any of the penalties specified in Rule 5 whether made by the punishing authority or by any appellate or reviewing authority;
- (iii) an order enhancing any penalty imposed under Rule 5;
- (iv) an order which;
 - (a) denies or varies to his disadvantage his pay, allowances, pension or other condition of service as regulating by rules or by agreement;
 - (b) an order to his disadvantage the provision of any such rule or agreement;

(v) *an order-*

(a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post otherwise than as a penalty;

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for any the rules;

(e) determined his pay and allowances-

(i) for the period of suspension; or

(ii) for the period form the date of his dismissal, removal, or compulsory retirement form service, or form the date of his reduction to a lower service, grade, post, time scale or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post; or

(f) determining whether or not the period form the date of his suspension or form the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on a duty for any purpose.

Explanation: In the rule-

(i) the expression 'Government employee' includes a person who has ceased to be in Government service;

(ii) the expression 'Pension' include additional pension, gratuity and any other retirement benefit.

21.Review -(1) *Notwithstanding anything contained in these Rule-*

(i) the Governor; or

- (ii) the appellate authority, within six months of the orders proposed to be reviewed; or*
- (iii) any other authority, specified in this behalf by the Governor by a general or special orders, and within such time as may be prescribed in such general or special orders;*

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any orders made under these rules or under the rule repealed by Rule 25 form which an appeal is allowed, but form which no appeal has been preferred or form which no appeal is allowed, after consultation with the commissioner where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or*
- (b) confirm, reduce, enhance or set aside the penalty imposed by the other authority directing such authority to make such further inquiry as it may consider proper in the circumstance of the case; or*
- (c) remit the case to authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*
- (d) pass such other orders as it may deem fit:*

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any to enhance the penalty specified in those clauses , no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and except after consultation with the Commission , where such consultation is necessary .”

Misconduct has not been defined in above

regulations/rule. The word 'misconduct' is antithesis of the word 'conduct'. Ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. In the present matter appellant and others have alleged to have committed misconduct while discharging duties of the respective post.

The respondent-Corporation appropriately resorted for initiation of enquiry by framing charges on 14.07.2003 i.e. before filing of suit for recovery on 07.08.2003. Once the disciplinary proceedings have been initiated for the purpose of recovery with reference to the alleged loss caused by the employees of Corporation, suit for recovery is not maintainable. The employees of Corporation are bound by Regulation and Discipline & Appeal Rules in so far as any misconduct committed by an employee or officer. Before Corporation filed suit for recovery, initiation of enquiry was already ordered, therefore, in the absence of withdrawal of initiation of enquiry and filing suit for recovery and decree passed in suit are without jurisdiction. Consequently, the appellate Court decision is also without jurisdiction. Even to this day, disciplinary proceedings have not been withdrawn or finalized. Disciplinary proceedings reached the stage of submission of Enquiry Officer's report to disciplinary authority. Thereafter no action has been taken apparently for the reason that favourable order

has been passed in the suit, therefore, respondent-Corporation did not proceed in the disciplinary proceedings. The appellant is an employee of the Corporation, if any mis-conduct has been committed by him, while in service, the respondent-Corporation have to invoke Regulation No. 16 of The Punjab State Civil Supplies Corporation Revised Service Regulation, 1985 read with the Punjab Civil Services (Punishment and Appeal) Rules, 1970 only. In the absence of any provision for filing suit for recovery by the Corporation and consequently trial Court decree and judgment dated 08.12.2011 and appellate Court judgment dated 17.01.2012 are set-aside for want of jurisdiction.

Reserving liberty to the respondent to proceed with the departmental enquiry with reference to Inquiry Officer's report dated 14.07.2003 and complete disciplinary proceedings in accordance with law within a period of three months from today. If the disciplinary proceedings are not completed as on 01.09.2016, the respondents are directed to release all retiral benefits along with interest @ 9% per annum before 30.10.2016 having regard to the fact that appellant has attained age of superannuation and retired from service.

Appeal stands disposed of in the above terms.

June 02, 2016.
kanchan

(P.B. BAJANTHRI)
JUDGE