

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 1827 of 1997
Date of decision : May 04, 2018

Punjab State Warehousing Corporation and others

....Appellants

versus

B.K.Chada

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Ashok Jindal, Advocate, for the appellants

Mr. Amninder Preet Singh, Advocate, for the respondent

Fateh Deep Singh, J. (Oral)

The appellants Punjab State Warehousing Corporation and others having been unsuccessful throughout first at the very threshold before the court of learned Additional Senior Sub Judge, Kapurthala whereby through judgment decree dated 16.4.1994, the suit of the plaintiff BK Chada stood decreed with costs and thereafter the appeal preferred by the appellants too met with the same fate whereby the court of learned District Judge, Kapurthala through impugned findings dated 11.1.1997 dismissed the appeal of the appellants and have again preferred to come up

before this Court through this second regular appeal.

Heard Mr. Ashok Jindal, Advocate, for the appellants, Mr. Amninder Preet Singh, Advocate, for the respondent and perused the records.

The brief undisputed facts are that plaintiff BK Chada who at the relevant time was posted as Technical Assistant with the appellant-Punjab State Ware Housing Corporation, Punjab and posted at Sultanpur Lodhi was discharging administrative duties. It was alleged by the defendants that the plaintiff released wheat stocks in May, 1991 and did not give storage gain of 1% and therefore, caused financial loss to the Corporation to the tune of Rs 46026.63. The plaintiff in his reply to this allegation took the plea that 420 bags of Food and Supplies Department were the balance of previous order and therefore, these bags should be excluded. However, the defendants failed to consider the same and ordered recovery of the amount at the rate of Rs 300/- per month and that is how the present suit was filed.

The stand of the defendants was as to the non-maintainability of the suit, civil court's lack of jurisdiction to try the same and claimed that the plaintiff was afforded adequate and full opportunity to defend himself to the show cause notice and that the order of recovery being a minor punishment, there was no need to hold regular departmental inquiry.

The trial court framed the following issues:-

- “1. Whether the suit is not maintainable in the present form? OPD
2. Whether the Civil Court at Kapurthala has no jurisdiction to decide the controversy between the parties? OPD
3. Whether the plaintiff is entitled to declaration prayed for? OPP
4. Whether the plaintiff is entitled to injunction prayed for? OPP
5. Relief.”

The plaintiff examined himself as PW1 and proved documents Exs. P1 to P12. On the other hand the defendants examined DW1 Sukhbir Singh and proved documents Exs. D1 to D5 and it is consequent thereupon the impugned findings were recorded.

Appreciating the submissions of Mr. Ashok Jindal, Advocate, for the appellants and Mr. Amninder Preet Singh, Advocate, for the respondent, it is by no means put to question that at the relevant time the plaintiff employee was governed by Punjab State Ware Housing Corporation Staff Regulations, 1960 (in short the Regulations of 1960). Under Regulation 17(1)(e) of the Regulations of 1960, recovery of such an amount from the pay of an employee to set off the pecuniary loss to the Corporation comes within the definition of penalty and under Sub

Regulation (2)(iii) of the Regulations of 1960 is termed to be a major penalty. The procedure prescribed for imposing major penalty is holding of a regular inquiry and affording reasonable opportunity to the delinquent employee to lead his evidence. However as has been pointed out and could not be refuted by the counsel for the appellants, the so-called show cause notice Ex. P2 was issued to the plaintiff by the Corporation and who filed a reply and thereafter impugned orders were passed. Undisputedly in the present set of allegations wheat was stored in the month of April, 1990 whereas the amendment in the Regulation regarding the recovery of pecuniary loss came about vide notification dated 7.12.1990 which is conceded to at the bar by the counsel for the appellants. Thus, the basic rule of interpretation lays that until and unless provided, such a Regulation cannot have retrospective effect and by all means needs to be prospective in nature. The impugned orders Ex. P5 ordering effecting of recovery does not holds out that any inquiry was held or any opportunity of fair inquiry was afforded to the employee as provided under the Punishment and Appeal Rules, 1970. Even otherwise as has been pointed out during the course of arguments, the notice is based on a letter Ex. P5 which provides that storage gains of 1% per bag in respect of wheat stock and for any less gain was addressed to DM and other higher officials who have not been brought within the ambit of this notice and how the plaintiff has sought to be made a scapegoat is itself suggestive of discriminatory and partisan approach of the

authorities. The same has been well considered by the learned trial court and so the very first appellate court in the impugned judgment. The court below has rightly while answering proposition has held that as per the Regulations applicable to the case of the plaintiff at the time of said recovery of the amount from the salary of the employee was under the head major punishment and therefore, the procedure prescribed for imposing major penalty need to have been followed which has not been done so in the present case and which is the ratio laid down in **Punjab Warehouse Field Employees Union vs State of Punjab, 1994(4) S.C.T. 217**, relied upon by the counsel for the respondent. Thus, the findings drawn by the two courts below on various issues are concurrent and rightly arrived at and therefore, needs to be upheld. The appeal being wholly devoid of any merits stands dismissed.

May 04, 2018
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No