

110-A

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

**Regular Second Appeal No. 1279 of 2017 (O&M)
Date of Decision: 10.09.2018**

Punjab State Warehousing Corporation
through its District Manager, P.S.W.C., Moga

..... Appellant

Versus

Bhupinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Nitin Kaushal, Advocate and
Ms. Nikita Bansal, Advocate
for the appellant-plaintiff.

JASWANT SINGH, J. (ORAL)

Appellant-plaintiff (Punjab State Warehousing Corporation) is in Second Appeal against the concurrent findings recorded by both the Courts below, whereby its suit for recovery of ₹ 59,38,979/- from the defendant-employee/respondent (Bhupinder Singh) has been dismissed vide judgment and decree dated 25.02.2015 passed by the Additional Civil Judge (Senior Division), Moga, and the findings affirmed vide judgment and decree dated 08.09.2016 passed by the District Judge, Moga.

Counsel for the appellant-plaintiff heard at length.

The conceded facts are that Bhupinder Singh-defendant, while working as 'Godown Assistant' at *Kot Ise Khan*, Tehsil & District Moga, was issued a charge-sheet dated 21.02.2005 for his negligence to maintain wheat stock of the crop year(s) 1999-2000 & 2000-2001, whereby a loss had been caused to the Corporation (appellant) on account of damage of the wheat stock. The Enquiry Officer returned the findings against the

delinquent employee, resulting into imposition of a major penalty of “Dismissal from Service” vide order dated 16.05.2007 alongwith a recovery of the aforesaid amount. The defendant-employee accepted the punishment order and stood dismissed from service. The appellant-plaintiff based on the findings in the enquiry, instituted a suit on 05.11.2008 seeking to recover the aforesaid amount.

It is not in dispute that due to non-availability of sufficient number of covered godown, the wheat stock was stored at a site/plinth levels with open sky. The damage, thus, due to natural calamity like rain etc., was inevitable. The defendant-employee was charged of being negligent in moving the stock lying in the open to special sites, which the delinquent employee took the stand that it was not under his watch that the stock had to be placed or the movement was ordered. There is no clear-cut procedure available for guidance in such like situation. Both the Courts have held that the appellant-plaintiff has not led any evidence of negligence, so as to foist upon such a huge recovery upon a dismissed employee. Even if it was to be accepted, then, by exhibiting the enquiry report, the onus to prove the negligence stood discharged.

Keeping in view the totality of circumstances, this Court finds that no substantial question of law is involved arising out of the concurrent findings of fact of the Courts below in the present appeal, and the same is liable to be dismissed. This Court, is, however, persuaded to accept that the limitation for institution of the suit would be from the date of the punishment order.

Present appeal is '**dismissed**'.

Since the main appeal has been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

September 10, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>