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

RSA No. 3256 of 2018 (O&M)
Date of Decision: 15.10.2018

Haryana State Federation of Consumers Cooperative Whole
Sale Stores Ltd. (CONFED)

-Appellant

Vs

Bhoop Singh and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harsh Aggarwal, Advocate,
for the appellant.

RAJ MOHAN SINGH, J. (ORAL)

Defendant is in regular second appeal in a suit for
declaration, mandatory injunction and permanent injunction.

Plaintiff was a store keeper. He retired as Mandi
Incharge on 30.04.2012. He was charged for making
inadequate entries in respect of gunny bags and wheat stocks.

Inquiry was conducted and report was submitted on
31.10.2007 (Ex.P1) in respect of shortage of gunny bags and
wheat stocks and the same could not be substantiated with
reference to any relevant record. Before retirement of
respondent No.1, number of inquiries were pending.

In the earlier litigation, Additional District Judge,
Gurugram at one point of time passed order dated 30.09.2009
directing the appellant to decide the proceedings against

respondent No.1 within a period of six months and take final decision with regard to his increment for April, 1987 as well as with regard to his higher standard pay scale and arrears of remaining amount of subsistence allowance. Appellant did not complete the inquiry within the stipulated period of six months.

One of the issue in earlier litigation was with regard to subsistence allowance for the period of suspension from 07.05.2004 to 08.11.2007. The action of the appellant was sought to be assailed on the ground that the appellant had no authority to pass such an illegal order that too after expiry of more than five years of suspension.

Order dated 30.09.2009 passed by Additional District Judge, Gurugram was in the context of aforesaid facts, directed the appellant to decide all the pending inquiries within six months. Needful was not done and the respondent No.1 was allowed to retire on 30.04.2012. After retirement of respondent No.1, an amount of Rs.72,000/- was sought to be recovered on the ground that nothing beyond subsistence allowance was allowed to respondent No.1 for the period of suspension from 07.05.2004 to 08.11.2007. The successive issuance of notice of personal hearing would not dilute the rigor of inaction on the part of the appellant in not taking action in time.

Both the Courts below have concurrently held that no steps were taken when respondent No.1 was in service despite

the directions issued by Additional District Judge vide order dated 30.09.2009. The recovery of amount after retirement of respondent No.1 is held to be per se illegal. The findings of fact recorded by both the Courts below are based on appreciation of evidence. Issuance of show cause notice for recovery of amount prior to retirement of respondent No.1 and by not culminating the process till retirement of respondent No.1, would not dilute rigor of order dated 30.09.2009 passed by Additional District Judge in the context of pending inquiries in respect of subsistence allowance for the period of suspension from 07.05.2004 to 08.11.2007.

The findings of fact recorded by both the Courts below cannot be held to be on account of mis-reading of evidence or having suffered with any perversity.

No question of law worth cognizance of this Court is involved in the present appeal.

This regular second appeal is accordingly, dismissed in limine.

Since the appeal has been decided on merits, the miscellaneous applications stands disposed of accordingly.

15.10.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |