

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
135**

**RSA-178-2019 &
CM-418-C-2019 &
CM-420-C-2019 &
CM-421-C-2019 &
CM-422-C-2019 &
CM-15161-C-2019**

Date of decision: 21.11.2019

JOGINDER SINGH

...APPELLANT

VS.

**HARYANA STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LTD**

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Shiv Kumar Bishnoi, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-15161-C-2019

C.M. is allowed subject to just exceptions. The photocopy of the penalty order dated 03.03.2010 is taken on record.

CM-418-C-2019

Prayer in this application is for condonation of delay of 128 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the clerk of the counsel for the applicant-appellant, the same is allowed. Delay of 128 days in re-filing the appeal stands condoned.

CM-420-C-2019

C.M. is allowed subject to just exceptions. Typed copies of judgment and decree dated 18.11.2014 passed by the Civil Judge (Jr. Division), Hisar, grounds of appeal and judgment and decree dated 01.05.2018 passed by the Additional District Judge, Hisar and certified and typed copies of Annexures are dispensed with.

CM-422-C-2019

Prayer in this application under Order 41 Rule 27 CPC is for leading additional evidence i.e. Enquiry Report dated 22.07.2002 as Annexure A-1 for the reason that the said enquiry report is essential for the proper adjudication of the case and it goes to the root of the assertion which is being sought to be made by the appellant in the present appeal.

I have considered the submissions made by the learned counsel for the applicant-appellant and on going through the application, which has been filed, this Court does not find any justification for allowing the present application as nothing has come on record which could indicate that the enquiry report was not either to the knowledge of the applicant or the same was not in his possession especially when the said enquiry report was duly supplied to him along with the show cause notice which was served on him as admitted by the applicant in his cross-examination. No reason whatsoever has been assigned for earlier not bringing the said enquiry report on record in evidence before the trial Court or the appellate Court. The appellant has been negligent and careless in pursuing his matter for the reason that if he intended to rely upon the said enquiry report, he could have produced it himself when it was in his possession or when the records were called from the respondents.

In view of the above, the mandate of the law and the requirement of the Statute having not been fulfilled, as required under the provisions of the Statute, the present application stands dismissed.

RSA-178-2019

Challenge in this appeal is to the judgment and decree dated 18.11.2014 passed by the Civil Judge (Junior Division), Hisar, whereby the suit for declaration preferred by the appellant-plaintiff to the effect that the order dated 03.03.2010 passed by the Managing Director of the respondent Haryana State Cooperative Supply and Marketing Federation Limited (HAFED) by which recovery of ₹9,36,029/- has been imposed being violative of the principles of natural justice, against the service rules and illegal, arbitrary and mala-fide and thus, not binding upon the rights of the appellant-plaintiff with a prayer for permanent injunction restraining the respondents-defendants from implementing the order and effecting any recovery, stands dismissed, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Hisar vide judgment dated 01.05.2018.

2. It is the contention of the learned counsel for the appellant that the Enquiry Officer has erred in holding the appellant-plaintiff guilty of the charges which have been served upon him. He contends that the punishing authority as well as the standing committee as also the appellate authority have failed to take into consideration the pleas and the grounds which have been taken by the appellant in his reply/grounds of appeal and have come to a wrong conclusion while imposing the punishment of recovery of ₹9,36,029/-. His contention is that as per the enquiry report, total loss has been assessed at ₹63,51,691.07 Paise. The appellant-plaintiff has been held

liable for 15% of the total loss and it is this amount which is being sought to be recovered from the appellant-plaintiff whereas the other officials have not been ordered to make good the loss. He asserts that the appellant-plaintiff has been discriminated against and he has been singled out for effecting recovery. That apart, he made an effort to project as if the Statutory Rules have been violated by the respondents and the principles of natural justice have also been not fully complied with but has not been able to refer to any specific Statutory Rule which stands violated. He, therefore, prays that the impugned judgments deserves to be set aside and the suit of the appellant-plaintiff be decreed along with costs.

3. I have considered the submissions made by the learned counsel for the appellant-plaintiff and with his assistance, have gone through the impugned judgments.

4. The first assertion of the counsel for the appellant that the Enquiry Officer, the Standing Committee, the District Manager HAFED, Kaithal as also the punishing authority, have held the appellant-plaintiff liable for the charges by coming to a wrong conclusion with regard to the evidence which has been led by the parties before the Enquiry Officer. This submission of the counsel for the appellant cannot be accepted as he has not been able to point out any patent error in coming to such conclusion with regard to the guilt of the appellant-plaintiff of the charges which have been proved against him.

5. It may be added here that the jurisdiction of the Civil Court is limited to the extent of interference in the finding of the enquiry report where there is no evidence on record which is not the position in the present case. The Civil Court has, therefore, within its jurisdiction appreciated the

evidence which has been brought on record and rightly not accepted the said contention.

6. As regards the contention of the learned counsel for the appellant that there has been violation of the principles of natural justice, the same cannot be accepted as in the cross-examination, the appellant has admitted the fact that he has received the charge-sheet, to which he had filed a reply after which a preliminary enquiry was held, on consideration whereof, the regular enquiry was ordered. It is admitted by him that he was served with the statement of the allegations, list of witnesses, list of documents in the departmental enquiry and he participated in the regular departmental enquiry where not only was he given an opportunity to cross-examine the witnesses who appeared before the Enquiry Officer but he also led his evidence in support of his contentions. He also admitted that the show cause notice dated 06.01.2009 prior to the passing of the impugned order dated 03.03.2010 was duly served upon him, to which he had filed reply earlier on 03.02.2009. He has also been given an opportunity of personal hearing by the Managing Director prior to passing of the above-referred order, which has been impugned. The appeal, which has been preferred before the Board of Directors, HAFED, stands decided on 24.09.2012. All this clearly establishes that the principles of natural justice have been duly complied with.

7. Learned counsel for the appellant has also failed to point out any Statutory Rules which have been violated by the respondents either during the enquiry proceedings or at any stage of the enquiry till the passing of the order of punishment by the competent authority as well as the appellate authority.

8. As regards the contention of the learned counsel for the appellant that it is the appellant-plaintiff alone who has been targetted for recovery to be effected of the loss and no action has been taken against the other officials, the said contention also cannot be accepted as it has come in evidence that out of the total loss assessed at ₹63,51,691.07 Paise, an amount of ₹2,11,500/- i.e. charges of excess replacement of 9400 bags was deducted because for that loss, the appellant-plaintiff has been separately charge-sheeted on 18.02.2000 and in any case, the principle of equality can be invoked only as a positive right and not as a negative right in the absence of any evidence on record. Nothing has been placed on record which would indicate that the other officials of the respondents-HAFED were involved in the loss which has been caused to the respondents. The evidence, which has been led and the order, by which recovery of ₹9,36,029/- has been imposed upon the appellant-plaintiff, is the subject matter of the present suit which has been duly proved to have been passed by the respondents in accordance with the Statutory Rules and with regard to the other claims/losses of the respondents-HAFED, the same are not the subject matter of the present suit, thus, would not confer any right upon the appellant-plaintiff.

9. There are concurrent findings recorded by the Courts below which are based upon proper appreciation of the pleadings and evidence on record as also the Statutory Rules governing the service which do not call for interference. No question of law is involved in the present case which would call for adjudication by this Court in the present appeal.

10. Finding no merit in the present appeal, the same stands dismissed.

CM-421-C-2019

In view of the dismissal of the main appeal, the present application has been rendered infructuous and the same is disposed of as such.

November 21, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No