

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**CM-6045-C-2014
CM-6046-C-2014 &
RSA-2560-2014**

Date of decision: 02.05.2019

***HARYANA STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LTD & ANR***

...APPELLANTS

VS.

OM PARKASH

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Arvind Seth, Advocate,
for Mr. Girish Agnihotri, Sr. Advocate,
for the appellants.

Mr. Vishal Yadav, Advocate,
for Mr. Ajay Ghanghas, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-6045-C-2014

Prayer in this application is for condonation of delay of 237 days in filing the appeal.

Having considered the submissions made by the counsel for the parties and keeping in view the explanation, which has been given, which is duly supported by the affidavit of the Secretary, The Haryana State Cooperative Supply and Marketing Federation Limited (Hafed), the present application is allowed. Delay of 237 days in filing the appeal stands condoned.

RSA-2560-2014

Challenge in this appeal is to the judgment and decree passed

by the Civil Judge (Junior Division), Panipat dated 06.04.2012, whereby suit for declaration preferred by the respondent-plaintiff along with mandatory injunction has been decreed by setting aside the order of recovery of ₹3,93,333/- plus interest @12% per annum due to less storage gain in the stocks for the crop Rabi 2002 and Rabi 2003 on the basis of the charge-sheet dated 04.01.2006 being illegal, null and void and unsustainable in the light of the fact the letter dated 29.04.1999 Ex. D1 fixing the norm with regard to the storage stood quashed by this Court vide judgment dated 14.09.2000, which has been upheld by the Supreme Court on 11.12.2008, appeal preferred against the said judgment and decree stands dismissed by the learned District Judge, Panipat vide judgment dated 03.04.2013.

It is the contention of the learned counsel for the appellants that no illegality or irregularity has been found by the Civil Court in the departmental proceedings which were initiated against the respondent-plaintiff. He further states that the judgment, which has been passed by this Court dated 14.09.2000, on which reliance has been placed by the Courts below, would not be applicable to the case in hand as the present case is a dispute between the concerned department and the employee. Assertion has also been made that the Courts below have proceeded to exceed its jurisdiction in granting the relief to the respondent-plaintiff. Prayer has, thus, been made for allowing the appeal by setting aside the judgments and decree passed by the Courts below with a further prayer for dismissing the civil suit preferred by the respondent-plaintiff.

On the other hand, counsel for the respondent-plaintiff submits that the very basis, which led to the issuance of the charge-sheet to the

respondent-plaintiff, has been found to be unsustainable by this Court and has quashed the said norms as has been fixed. When the said Letter dated 29.04.1999 (Ex. D1), written by the Director, Food and Supplies, Haryana, to all the District food and Supplies Controllers in the State indicating the fixation of uniform norms of storage gains in the food-grain stored, having been quashed, the same could not have been made applicable. The charge-sheet, thus, could not sustain and if the charge-sheet is unsustainable, the consequential proceedings cannot survive. He, thus, contends that the judgments and decree, as passed by the Courts below, are in accordance with law which do not call for any interference.

I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the impugned judgments.

Although an effort has been made by the counsel for the appellants to assert that the judgment passed by this Court dated 14.09.2000, whereby Letter dated 29.04.1999 (Ex. D1), which is the basis for issuing the charge-sheet against the respondent-plaintiff by asserting that there was shortage of gain in the wheat stocks at Panipat Depot where he was working as a Storekeeper/Custodian, has been quashed, would not be applicable cannot be accepted as the very basis for issuing the charge-sheet against the respondent-plaintiff has ceased to operate in the light of the said judgment. He, however, could not distinguish the judgment dated 14.09.2000 passed by this Court which has been upheld by the Supreme Court.

If that be so, the charge-sheet itself cannot sustain as it is based upon a letter dated 29.04.1999 (Ex. D1) issued by the Director, Food and

Supplies, Haryana, which has been quashed by this Court. Therefore, the contention of the counsel for the respondent-plaintiff that as the foundation for issuance of the charge-sheet has ceased to exist, the departmental proceedings held against the respondent-plaintiff cannot sustain, is, hereby, accepted. That being so, the judgments, as passed by the Courts below, cannot be faulted with.

It would further not be out of way to mention here that the allegation against the respondent-plaintiff was only limited to the extent of there being non-fulfilment of the norms, as have been laid down in the Letter dated 29.04.1999 (Ex. D1) and there was no allegation of theft, amalgamation or mischief etc. against the respondent-plaintiff, as has been admitted by Sh. R.P.Jain, DW1, who had appeared for the appellants-defendants. This witness has also admitted the factum of wheat stocks showing/depicting less gain and excess gain is dependent on natural conditions. In case of heavy rains, the moisture increases which would lead to excess gain but when there is dry and hot season, the gain in the stock can be less. Apart from this and keeping in view the fact that the only basis for issuing the charge-sheet against the respondent-plaintiff was the Letter dated 29.04.1999 (Ex. D1), the said basis having lost its existence after the same having been quashed by this Court, the judgments, as passed by the Courts below, cannot be faulted with.

In view of the above, the present appeal being devoid of merit stands dismissed.

Counsel for the respondent-plaintiff states that the retiral benefits have not been released to the respondent-plaintiff because of the fact that there was an order of recovery which was passed against him. He

further states that respondent-Om Parkash has died during the pendency of the appeal.

If that be so, the retiral benefits withheld, if any, be released to the legal heirs of the respondent-plaintiff, who have been impleaded as a party after the death of the respondent-plaintiff, within a period of two months from the date of receipt of certified copy of the order.

CM-6046-C-2014

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

May 02, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No