

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

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Regular Second Appeal No.2496 of 2017
Date of Decision: February 26th, 2019

Punjab State Warehousing Corporation Limited, Chandigarh and another

...Appellants

Versus

Sewa Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Bedi, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 15.01.2014 passed by the Additional Civil Judge (Senior Division), Patiala, whereby the suit for recovery of an amount of ₹24,18,921/- (₹21,59,795.88 as principal + ₹2,59,175/- as interest @ 18% per annum) along with interest at the rate of 18% per annum from the date it became due till the date of actual realization along with costs and charges etc., stood dismissed, appeal against which preferred by the appellants-plaintiff has also been dismissed by the learned Additional District Judge, Patiala, vide judgment dated 18.10.2016.

2. It is the contention of learned counsel for the appellants-plaintiff that the Courts below have failed to appreciate that a regular departmental inquiry was initiated against the respondent-defendant -Sewa Singh, in which it was found by the Inquiry Officer that the respondent-defendant is responsible for the shortage of foodgrain at Nabha. It is the contention of learned counsel for the appellants that the order of termination has not been challenged by the respondent-defendant nor has the order of recovery as ordered in the said punishment order. He contends

that having accepted the said order, the respondent-defendant could not have taken a plea that he was not liable for making payment of the amount of recovery as ordered. He, thus, contends that the judgment and decree as passed by the Courts below cannot be sustained.

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

4. The plea as has been raised by learned counsel for the appellants cannot be accepted on the basic principal that the suit for recovery has been initiated by the appellants-plaintiff and, therefore, the onus was on the said plaintiff to prove the assertions made in the plaint. Unfortunately the appellants-plaintiff have failed to discharge the said responsibility as the report of the Inquiry Officer which is the basis for ordering recovery from the respondent has not been proved as per law.

5. That apart, the factual gamut has been dealt with by the Courts below as regards the liability of the respondent-defendant, especially para 15 of the judgment of Lower Appellate Court. According to the said aspect, respondent-defendant was holding the charge of Godown Assistant at Paharpur Centre, Nabha, from 02.05.2000 to 19.07.2001 when he was transferred out from there and in his place, one Shri Tirlochan Singh was posted. After his transfer, Sewa Singh went to hand over the charge to Tirlochan Singh on 22.01.2002 and he remained at Paharpur upto 08.04.2002 but Tirlochan Singh did not take charge from him. This aspect appears to have been reported to the appellants and on that basis, Tirlochan Singh was charge-sheeted. After holding an inquiry, Tirlochan Singh was found guilty of the charges and punishment of stoppage of one increment

was imposed upon him. These facts are not disputed and rather admitted in the cross-examination of PW-2 S.M. Mahendru. The factum of Sewa Singh-respondent-defendant having been transferred out on 19.07.2001 is not in dispute. Thereafter efforts on the part of Sewa Singh to hand over charge to Tirlochan Singh also stand proved from the fact that Tirlochan Singh was charge-sheeted for having not taken charge from Sewa Singh-respondent-defendant and punished as well.

6. Further, physical verification which has been carried out at Paharpur was from 21.05.2003 to 28.05.2003 as per the report of Roop Lal PW-1. It is on that physical verification that the appellants-Punjab State Warehousing Corporation came to know about the losses. Charge-sheet which has been issued to the respondent-defendant was subsequent thereto. It goes without saying that the physical verification was carried out after two years and he having been transferred out, had left the station. It is not the case of the appellants-plaintiff that Sewa Singh-respondent-defendant was associated with the physical verification of the stocks. The responsibility which is being sought to be foisted upon the respondent-defendant-Sewa Singh is merely because he has not handed over the charge of the stock to his successor but the fact remains that he had gone to hand over the charge to his successor and remained at the station from 21.01.2002 to 08.04.2002 almost 2½ months, but still the charge was not taken by Tirlochan Singh. That apart, the report of the Inquiry Officer has not been duly proved as per law and, therefore, the very basis to effect recovery from the respondent-defendant has not been proved.

7. Findings, therefore, as recorded by the trial Court dismissing the civil suit as preferred by the appellants-plaintiff and thereafter the

dismissal of the appeal cannot be faulted with as these judgments are based upon proper appreciation of the facts and the evidence on record.

8. Concurrent findings have been recorded by the Courts below and there is no question of law which arises requiring consideration by this Court.

9. Finding no merit in the present appeal the same stands dismissed.

February 26th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No