

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-5612-2013

Date of Decision: 9.11.2023

Punjab State Civil Supplies Corporation Limited and another

....Petitioners

VERSUS

Sukhdarshan Kumar Sharma and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. H.S.Randhawa, Advocate, for the petitioners.

Mr. Virinder Kumar Shukla, Advocate,
for respondents No.2, 6, 9, 10 and 13.

Mr. Pardeep Balyan, Advocate for Mr. P.K.Garg, Advocate,
for respondent No.11.

KARAMJIT SINGH, J.

The present revision petition has been filed by the petitioners/plaintiffs-(Corporation) against order dated 31.3.2009 passed by the Court of Civil Judge, Senior Division, Moga whereby the application filed by the defendants-respondents under Order 7 Rule 11(d) CPC was allowed and order dated 8.12.2012 (Annexure P-2) whereby the appeal filed by the petitioners/plaintiffs against the aforesaid order dated 31.3.2009, has been dismissed by the Court of Additional District Judge, Moga.

2. Brief facts of the case are that the petitioners filed suit for recovery of ₹ 53,94,100/- on account of shortage of wheat and other articles and negligence on the part of the respondents. On notice, some of the respondents filed an application under Order 7 Rule 11 (d) CPC for rejection of the plaint on the ground that the suit is barred by law laid down

by Hon'ble Supreme Court in **Punjab State Civil Supplies Corporation Limited v. Sikander Singh**, AIR 2006 SC 1438.

3. The application was contested by the petitioners. However, the learned trial Court, while placing reliance upon the ratio laid down in Sikander Singh's case (supra), allowed the said application while holding that the suit of the petitioner is not maintainable and consequently, the plaint was rejected vide order dated 31.3.2009. The appeal filed by the petitioner against the said order was also dismissed by the Court of Additional District Judge on the basis of same ground.

4. The petitioners being aggrieved have filed the present revision petition.

5. I have heard the counsel for the parties.

6. Counsel appearing on behalf of the petitioners, *inter alia* submits that the impugned orders are not sustainable. It is further contended that the petitioners are entitled to recover the suit amount from the respondents as they are responsible for causing financial loss to the petitioners. It is further submitted that the suit for recovery filed by the petitioners is not barred by law. It is further contended that only ground raised by the respondent is that in Sikander Singh's case (supra), Hon'ble Apex Court has held that recovery of loss allegedly caused by an employee can be recovered in the disciplinary proceedings and the same will not give rise to the cause of action for the suit for recovery of money for the loss caused.

7. Counsel for the petitioners further submits that this Court in CR-620-2009 titled **Shakti Kumar v. Punjab State Civil Supplies Corporation Limited** decided on 4.2.2009 while distinguishing the

judgment passed in Sikander Singh's case (supra) held that the suit for recovery filed by the plaintiff-Corporation against its employee on account of loss caused by him due to his negligence in performance of his duties is maintainable and is not to be rejected under Order 7 Rule 11 CPC. It is further contended that similar view was taken by this Court in bunch of cases decided vide CR-6253-2011, **Ram Singh v. Punjab State Civil Supplies Corporation Limited and another** decided on 6.12.2012.

8. Counsel for the petitioners further submits that SLPs filed in the aforesaid cases were dismissed by Hon'ble Supreme Court vide order dated 25.8.2014.

9. Counsel for the petitioners further submits that most of the respondents have already retired from Government service and as per law laid down by Coordinate Bench of this Court in CWP-5254-2005, **Nirmal Singh v. Punjab State Civil Supplies Corporation Limited (PUNSUP)** decided on 30.9.2019, no disciplinary proceedings are permissible after the retirement of the employee as master and servant relationship ceases on retirement. He further submits that in the given circumstances, it is not possible for the petitioners to recover the amount in question from the respondents in the departmental proceedings as the same are impermissible after the retirement of the Government employee. He further submits that the impugned orders are not sustainable.

10. The present petition is resisted by the counsel for the contesting respondents, who *inter alia* submits that as per law laid down by Hon'ble Apex Court in **Sikander Singh's** case (supra), recovery suit as has been filed by the petitioners against the respondents is not maintainable as

the loss, if any, caused to the department by an employee due to his

negligence in performance of duties, the same can be recovered in the disciplinary proceedings. Counsel for the contesting respondents, while supporting the impugned orders, has submitted that there is no illegality or infirmity in the same and that the present petition deserves to be dismissed.

11. I have considered the submissions made by the counsel for the parties.

12. So far as the decision in the case of **Sikander Singh's** case (supra) referred by the respondents is concerned, it is noticed that this Court in **Shakti Kumar's** case (supra) and **Ram Singh's** case (supra) while distinguishing the aforecited judgment in **Sikander Singh's** case (supra), held that on account of loss suffered by the Corporation at the hands of its employee, a civil suit for recovery could be filed and is not barred. Special leave petitions filed by the concerned employee's in the said cases were dismissed by Hon'ble Apex Court vide order dated 25.8.2014.

13. Apart from the above, as per law laid down in **Nirmal Singh's** case (supra), continuation of disciplinary proceedings against the retired employees of the petitioners are not permissible after their retirement. In the case at hand, as most of the respondents have already retired and no further disciplinary action is permissible against them as per law laid down in **Nirmal Singh's** case (supra), so, it is not possible for the petitioners to recover the amount of loss caused by the respondents, by going ahead with the disciplinary proceedings against them.

14. In light of the above, it could be easily held that the suit filed by the petitioners is not barred by any law and is maintainable.

15. Consequently, the revision petition is allowed and the impugned orders are set aside and the application filed under Order 7 Rule

11(d) stands dismissed. The learned trial Court is directed to restore the
 plaint to its original number and then to proceed ahead with the case in
 accordance with law. Parties are directed to appear before the learned trial
 Court for further proceedings on 4.12.2023.

(KARAMJIT SINGH)
 JUDGE

November 9, 2023
 Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No