

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107) CM-2513-C-2023
CM-2518-C-2023
CM-3161-C-2023 in/and RSA-2729-2015
Date of Decision : March 27, 2023

Darshan Singh

.. Appellant

Versus

Food Corporation of India

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Kumar Bansal, Advocate,
for the applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2518-C-2023

Present application has been filed for listing of the present
Regular Second Appeal at an early actual date.

Keeping in view the fact that the applicant-appellant is a senior
citizen being 75 years old, the application is allowed and the Regular
Second Appeal is taken up for hearing today itself.

CM-3161-C-2023

As prayed for, the application is allowed.

List of dates and events along with Rules and list of citations
are taken on record.

RSA-2729-2015

Respondent-plaintiff-Food Corporation of India filed a civil suit for the recovery of the amount for which the appellant-defendant was liable for keeping in the view the punishments which were imposed upon him amounting to Rs.8,26,919/- during his service career. The said recovery suit was contested by the appellant-defendant and keeping in view the evidence, which came on record, the trial Court came to the conclusion that though there are orders of punishment passed by the competent authority imposing the recovery of amount upon the appellant-defendant but as the respondent-plaintiff failed to substantiate before the Civil Court with regard to the validity of the orders of punishment, the said punishment will not give a right to the Food Corporation of India to recover the amount from the appellant-defendant. The Trial Court further held that it was the duty of the respondent-plaintiff to prove the loss before the civil Court again but as only the orders of punishment have been brought before the Court without substantiating the fact as to whether any loss was actually caused by the appellant-defendant, no recovery of amount can be done from the appellant-defendant in pursuance to the order of punishment imposed during the service career of appellant-defendant and the suit was dismissed vide judgment and decree dated 05.07.2014.

Feeling aggrieved against the judgment and decree of the trial Court dated 05.07.2014, the Food Corporation of India filed an appeal before the lower Appellate Court, which came to be decided vide judgment and decree dated 19.03.2015. The appeal filed by the Food Corporation of

India was allowed and judgment and decree of the trial Court dated 05.07.2014 was set aside on the ground that the finding recorded by the trial Court that merely on the basis of the punishment imposed upon the appellant-defendant during his service career, the recovery of the amount under these punishments cannot be done, is incorrect interpolation of the facts and law as the orders of punishment were passed by the Department wherein, recovery was imposed and those orders of punishment have already attained finality, hence, the Court will not sit in an appeal over the decision of the Department to adjudicate whether the said orders of punishment are valid or not. The suit filed by the respondent-plaintiff for the recovery of amount of Rs.7,14,927/- was allowed along with interest. Hence, the present Regular Second Appeal.

Learned counsel for the appellant-defendant argues that in the present case, there was no valid approval at all to file the suit for recovery hence, the suit for recovery filed by the respondent-plaintiff could not have been entertained by the Court.

Though there was an issue framed as to whether the suit filed by the respondent-plaintiff was maintainable in the present form or not and the onus to prove the same was on the defendant i.e. appellant herein.

On being asked as to what evidence has been brought on record to show that there is no approval of the competent authority or the approval if any was defected, learned counsel for the appellant submits that though the issue was framed but the onus was wrongly put upon the defendant to prove the same. Learned counsel for the appellant concedes

the factum that there is no evidence which has come on record so as to prove that there was no valid approval to file the civil suit. In the absence of any evidence to prove the non-maintainability of the suit, onus of which was upon the appellant-defendant to prove the same, the said argument of the learned counsel for the appellant-defendant that the suit was not maintainable, cannot be accepted in the facts and circumstances of the case keeping in view the evidence, which has come on record.

The second argument which has been raised is that the suit for recovery could not have been filed by the respondent and that too without proving the allegation that the loss was caused by the appellant-defendant.

In this regard, it may be noticed that in the facts as well as the evidence, which is come on record and was available before the Court below for consideration, there were 21 punishments imposed upon the appellant-defendant during his service career wherein, the recovery of loss caused was imposed. It is a conceded position that the said orders of punishment have not been challenged by the appellant-defendants and those orders have already attained finality. That being so, the validity of the said order could not have been challenged by the appellant-defendant in the suit so as to object to the recovery which is sought to be done in pursuance to those office orders inflicting punishments. The present is not a case of simpliciter recovery pleading loss to the respondent-plaintiff but the recovery suit was based upon the office orders passed against the appellant-defendant during his service career imposing punishment of recovery of loss caused. The findings which have been recorded by the lower Appellate

Court that once the order imposing the punishment have not been challenged and they have attained finality and the Civil Court cannot go behind the orders so as to test the validity, are inconsonance with law as well as valid in the facts and circumstances of this case.

Once, it is a conceded position that the appellant-defendant accepted the orders of punishment of recovery of loss caused and those orders of punishment were not challenged at any given point of time and the same were not even challenged in the recovery suit by filing a counter claim, the argument that the said punishment cannot be taken into account for effecting the recovery, is liable to be rejected and has rightly been rejected by the lower Appellate Court.

Learned counsel for the appellant-defendant has further argued that the order of punishment was never conveyed to him.

In this regard, it may be noticed that the learned counsel submits that though the order have been passed against him but never conveyed to him. Even if the said assertion is to be accepted for the sake of argument, then also, when the civil suit was filed, the punishments were mentioned which was the basis of the recovery suit. The appellant-defendant could have challenged the same at that point of time even if it is assumed that they were never conveyed to him prior to the filing of the civil suit by availing appropriate remedy. Nothing has come on record that even after the said punishment was brought to the notice of the appellant-defendant, any action was taken by him to challenge the same or to controvert the same in any manner even during the pendency of the suit by

filing any counter claim. That being so, the said argument cannot be accepted that the orders of punishment sought to be implemented for recovery, were never conveyed. Rather, no evidence supporting the contention that orders of punishment were never conveyed, has been brought to the notice of this Court. In the absence of any evidence shown in support of the argument in question, same cannot be accepted so as to treat the judgment and decree of the lower Appellate Court to be perverse.

Learned counsel for the appellant argues that the suit for recovery cannot be based upon the order of punishment passed during the service career.

In this regard, it may be noticed that the appellant accepted the order of punishment of recovery and never challenged the same, hence, the right accrued with the Department to recover the loss either from the benefit accruing from the service career or otherwise. In the present case, though the recovery suit has been filed but the same was filed before the appellant-defendant retired from service. The recovery of loss in pursuance to the orders of punishment could have been done by the Department from the benefit accruing to the appellant in the service career also.

As per the settled principle of law, settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.9693 of 2013 titled as Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. vs. Sri Rabindranath Choubey***, any order passed during the service career imposing any punishment of recovery can be given effect at the time of retirement so as to recover the loss even from the pensionary benefits.

Similar question of law has also been decided by the Hon'ble Supreme Court of India in *M/s Steel Authority of India Ltd vs. Raghendra Singh and others, decided on 15.12.2020* in which, it was held that the recovery of the amount admissible under the order passed during the service career can be adjusted against the dues payable including gratuity. That being so, it cannot be said that the punishment of recovery of loss imposed upon the appellant-defendant which have attained finality and have never been objected to by the appellant, cannot be recovered by way of recovery suit. Hence, the said argument is rejected.

Learned counsel for the appellant further submits that the orders of punishment could not be proved and he has raised formal objection to the photocopy being brought on record so as to support the claim.

In this regard, it may be noticed that the learned Lower Appellate Court in paragraph 23 of the judgment has noticed the said objection and dealt with it. A finding of fact has been recorded that in the statement, the appellant-defendant conceded the factum of punishment. Once the said factum of imposition of punishments has been concerned, the raising of the argument that the original orders of punishment were not brought on record, cannot come to the rescue of the plaintiff so as to deny the claim of the Department for recovery of the said amount.

Learned counsel for the appellant submits that the suit was not within limitation keeping in view the date of imposition of punishment as the suit for recovery was filed after three years of the passing of the said

order of punishment. The said point has been dealt with by the lower Appellate Court.

It may be noticed that the appellant was dismissed from service in the year 2005. Keeping in view the dismissal order, the suit for recovery was filed but it is a conceded fact during the pendency of the said civil suit, in an appeal preferred, the appellant was reinstated in service. Once, the appellant was reinstated in service, the Department was within its right to recover the amount in respect of the punishment imposed upon the appellant during his service career. Further, upon reinstatement in service, the appellant-defendant served the Department and retired from service. Keeping in view the settled principle of law cited herein before in *Sri Rabindranath Choubey' cas (supra) and Raghendra Singh' case (supra)*, any order of punishment imposed during the service career, the recovery can be made from the pensionary benefits, hence, as the appellant concededly retired much after the filing of the civil suit, the objection being taken qua the maintainability of the suit for recovery on the ground of limitation, cannot be accepted.

Learned counsel for the appellant submits that though, in the suit, the details of 36 orders have been brought on record to seek recovery of Rs.8,26,919/- only, 21 recovery orders have been placed on record. Learned counsel for the appellant further submits that in the absence of all the orders of punishment imposing recovery of loss caused, the total amount as ordered to be recovered, could not have been passed.

In this regard, it may be noticed that the recovery is being done

from the appellant-defendant on the basis of punishment already imposed. The punishment is a matter of record and a conceded fact. Once, the details of the punishment orders have been given in the suit along with date and number of the orders amounting to Rs.8,26,919/-, even if it is assumed for the sake of argument that all the order of punishment directing recovery of losses have not been brought on record, does not mean that the recovery of loss, which have already attained finality against the appellant-defendant, could not have been done. Once, the appellant-defendant conceded the factum of orders of recovery being passed against him, he cannot escape the liability that the recovery should only be restricted to the orders, which were brought on record.

Further, it may be mentioned that the recovery suit was filed at the time when the appellant was dismissed from service but later on, he was reinstated in service. Hence, the recovery of the loss was being done from the appellant-defendant while he was in service, hence, the same can be done by the Department on the basis of valid order of punishment which has been passed against him qua the imposition of recovery of loss, therefore, the said argument that the recovery should only be restricted to the orders, which were brought on record, has rightly not been accepted by the lower Appellate Court.

Learned counsel for the appellant further submits that keeping in view Section 34 of the CPC, the interest could not be more than 6% or the bank rate.

The said argument is a valid argument, which needs

consideration in the present Regular Second Appeal.

Nothing has been mentioned as to why, the interest on the amount to be recovered has been given at the rate of 12%. In the absence of any valid justification, the grant of interest @ 12% per annum cannot be accepted and is to be treated as excessive. Hence, the amount found liable to be recovered by the respondent-Corporation, will be recovered with interest @ 6% per annum instead of 12% per annum.

The present Regular Second Appeal is partly allowed in above terms.

CM-2513-C-2023

As the main appeal has been partly allowed, present application stands disposed of.

March 27, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No