

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

(109) CM-12556-C-2019 in/and
RSA-4452-2019 (O&M)
Date of Decision : January 18, 2024

Albel Singh .. Appellant

Versus

Punjab State Civil Supplies Corporation Ltd and others .. Respondents

**(109-A) CM-14865-C-2019 in
CM-14866-C-2019 and
CM-14867-C-2019 in/and
RSA-5247-2019**

Baldev Singh .. Appellant

Versus

Punjab State Civil Supplies Corporation Ltd and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Padam Kant Dwivedi, Advocate, for the appellant(s)
in both appeals.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-14865-C-2019 in RSA-5247-2019

As prayed for, the application is allowed.

Delay of 30 days in filing the application seeking permission to file accompanying appeal is condoned.

CM-14866-C-2019 in RSA-5247-2019

As prayed for, the application is allowed.

RSA-4452-2019 and RSA-5247-2019

1. By this common order, two regular second appeals, the details of which have been given in the heading, are being disposed of as both the appeals involve the same question of law on similar facts.

2. In the present regular second appeals, the challenge is to the judgment and decree of the Courts below by which, the suit for recovery filed by the respondent-Corporation has been allowed.

3. Learned counsel for the appellant(s) has raised only one argument that keeping in view the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.6269 of 2003 titled as Punjab State Civil Supplies Corporation Ltd. vs. Sikander Singh, decided on 24.02.2006,*** unless and until, disciplinary proceedings are started against an employee, no recovery suit can be filed whereas, in the present case, there were no disciplinary proceedings, which were initiated against the appellant(s) hence, the recovery suit filed by the respondents to recover the loss was not at all maintainable.

4. The said argument cannot be accepted for more than one reason.

5. In the present case, the claim of the respondent-Corporation has been allowed on the basis of the evidence which has come on record, which proved that the appellant was instrumental in causing loss to the Corporation. The evidence which came on record has been discussed to the entirety, not only by the trial Court but even by the lower Appellate Court. Once, an evidence proving the fact that the appellant was instrumental in causing loss to the Corporation is on record, it cannot be said that the claim of the Corporation should only be rejected on the ground that first the said charge of misconduct so as to cause loss should be proved in the

departmental proceedings and then only, the claim for recovery should be made. In the present case, it has also come on record that the appellant was also charge-sheeted which was pending at the time when the suit was filed.

6. Learned counsel for the appellant(s) has not been able to show as to how, the findings recorded by the Courts below are perverse to any evidence on record.

7. In the absence of any perversity being shown to this Court qua the evidence which has come on record, which evidence has been taken into account for the grant of relief to the respondent-Corporation, merely that the enquiry proceedings could not be concluded before the filing of the suit, will not come in the way of the respondent-Corporation so as to claim the recovery, once on the basis of evidence on record, the claim has been discussed and proved before the competent Court of law.

8. Qua the judgment of the Hon'ble Supreme Court of India in ***Sikander Singh's case (supra)***, the same is not being interpreted by the appellant in a correct manner. The Hon'ble Supreme Court of India has only held that negligence simplicitor may not be a misconduct and the suit for damages for the breach of a contract under the common law can be decreed only when the damages are found to have occurred by the reason of such breaches on the part of the defendant. In the present case, the respondents have brought on record the evidence to prove that the inaction on the part of the appellant, has caused financial loss to the Corporation, which evidence has not been rebutted by the learned counsel for the appellant(s). The findings recorded by the Hon'ble Supreme Court of India in ***Sikander Singh's case (supra)*** in paragraph 17 and 28 are as under:-

“17. So far as the defendant No.2 is concerned, no finding of fact has been arrived at that he for any intent and purport appropriated any article to his advantage. In absence of such a

finding, we fail to understand as to how under the common law, he could be proceeded against by way of a civil suit for recovery of money. A civil suit for recovery might have been maintainable only if he was found to have misappropriated the goods. Admittedly he has not. He was said to be negligent in performing his duties.

28. Negligence has further been defined to mean 'failure to do statutory duty or otherwise giving rise to damage'. Negligence in the performance of a duty under a contract of employment may give rise to a disciplinary proceeding but as at present advised, in a case of this nature, we are of the opinion that the same would not give rise to a cause of action for recovery of money for the goods lost as in the disciplinary proceeding itself recovery of money from the delinquent can be directed by way of punishment."

9. In the present case, it has already come on record that the stock in the custody of the appellant was found missing. This is not a case of negligence but of misappropriation/embezzlement, which has been proved before the Courts below on the basis of the evidence which has come on record hence, the reliance being placed by the learned counsel for the appellant(s) in ***Sikander Singh's case (supra)***, is totally misplaced so as to claim that the respondents should have proved the negligence/misconduct in the disciplinary proceedings and then only a case for recovery should have been filed. Once, it has already come on record that the stock went missing from the custody of the appellant, which finding of the Courts below has not been shown to be perverse in any manner, no benefit of the judgment in ***Sikander Singh's case (supra)***, can be claimed by the appellant(s) in the present appeals.

10. No other argument was raised.

11. Both the appeals are dismissed accordingly.

CM-12556-C-2019 in RSA-4452-2019 and
CM-14867-C-2019 in RSA-5247-2019

As the main appeals have been dismissed, present applications also stand dismissed.

12. A photocopy of this order be placed on the file of other connected case.

January 18, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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