

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4687-2015 (O&M)

Reserved on 22.10.2024

Pronounced on : 16.01.2025

Punjab State Warehousing Corporation

... Appellant

VS.

Madan Mohan Thatai

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anil Kumar Sharma, Advocate for the appellant

Mr. Vivek Seth, Advocate for the respondent

Sandeep Moudgil, J.

(1). The present regular second appeal has been preferred assailing the judgment and decree dated 20.02.2015 passed by Addl. District Judge, Ferozepur and judgment and decree dated 15.01.2014 passed by Addl. Civil Judge (Sr.Divn.), Ferozepur.

(2). The petitioner-Corporation is a statutory corporate body having its office at Ferozepur. The respondent-defendant was serving as Warehouse Manager at State Warehouse Jalalabad on 1.3.1996. He along with Khushwant Singh Gill, Technical Assistant was having charge of stocks lying in the godowns/open plinths at State Warehouse Jalalabad (W), District Ferozepur. It came out in the physical verification report of Roop Lal Technical Officer for the period w.e.f. 21.1.1999 to 24.1.1999 and then 27.1.1999 to 28.1.1999 that the respondent and Khushwant Singh Gill Technical Assistant, in connivance with each other, did not take proper care of rice stocks of the crop year 1991-92 and 1992-93 which resulted in the rice becoming BRL for which both of them were held responsible. Resultantly, a

charge sheet dated 30.04.1999 was issued to which the respondent submitted his reply. Thereafter, Sh.D.K.Jain, IAS (Retd.) was appointed as Enquiry Officer, who submitted his enquiry report by holding that the charge No.1 was proved against the respondent, whereas the charge No.2 regarding causing damage to rice stocks was not proved. However, the Managing Director dissented in respect of charge No.2 stating that the enquiry officer had not considered the fact that the entire rice stock of the crop year 1991-92 and 1992-93 except 700 bags had been released from State Warehouse Jalalabad and during the said release of stocks, the shortage from 7% to 10% has been noticed in the stocks. The FCI deducted an amount of Rs.2,07,03,088/- from the bills of petitioner-Corporation.

(3). On the basis of enquiry report as well as dissenting note of the Managing Director of the Corporation, a show cause notice was served upon the respondent vide which, the penalty of Rs.69,72,489.48 paise including 50% incidental charges on account of shortage of 6214.34 Qtls. in wheat crop for the year 1998-99 and Rs.2,07,03,088/- deducted by FCI due to damaged (BRL) of rice crop year 1991-92 and 1992-93, alongwith a major penalty was proposed to be imposed upon the respondent and ultimately, the respondent and Khushwant Singh Gill were held guilty. The respondent had already been dismissed from service as such, the competent authority was ordered to recover Rs.24,66,177.63 from him, thereafter the petitioner-corporation filed a civil suit seeking a decree for recovery of the above-said amount.

(4). The trial court framed the following issues:-

“1. Whether the plaintiff is entitled to recover the suit amount from the defendant as alleged? OPP

2. *Whether the plaintiff is entitled to recover interest, if so as what amount? OPP*
3. *Whether the suit of the plaintiff is false and frivolous and vexatious to the knowledge of the plaintiff? OPD*
4. *Whether the plaintiff has not come to the court with clean hands? OPD*
5. *Whether the plaintiff is estopped to file the present suit by their own act and conduct? OPD*
6. *Relief.”*

(5). Taking into consideration the evidences led by both the parties, the trial court vide its judgment and decree dated 15.01.2014 dismissed the suit of the petitioner-plaintiff and decided the issue No.1, mentioned above, in favour of the defendant observing that it is proved that the open stock cannot be preserved for more than three to four months and despite respondent-defendant's time and again request to the petitioner to make some arrangement for its preservation, no action was taken by the petitioner-plaintiff, the respondent cannot be held liable for any negligence on his part and therefore, the respondent-defendant is not liable to pay the suit amount nor its interest.

(6). Aggrieved at the said judgment, the petitioner-plaintiff preferred appeal which too has been dismissed by the appellate Court vide its judgment dated 20.02.2015 affirming the judgment of the trial court, inter alia, with the following observations:-

“13. For disposal of this appeal, the cross examination of PW3 Roop Lal, Chief Manager, Quality Control is very material, who has categorically stated that he has not brought any record regarding imposing the 50% charges to the warehouse Manager due to fault of their Subordinate Staff. He admitted that in the

statement given by him during inquiry, he stated that in rice incrustation start during prolong storage since he joined at District Ferozepur. The store of rice under reference were BRL. The charge sheet for negligence was served upon the officials after physical verification but there was no charge for recovery of the amount in question. He categorically admitted that duty of the Warehouse Manager is of supervisory in nature. He admitted that the charges levelled in the charge sheet are only to be inquired in the inquiry proceedings but not to other charges. PW2 N.C.Rana admitted that in the charge sheet Ex.P2 there is no where mentioned about the present shortage or recovery in question. He further admitted that if any charge has not been framed against any person then no proceedings could be initiated qua the other charges against the concerned employee. Even otherwise, the inquiry report Ex.P3 has not been duly proved by brought into the witness box the Inquiry Officer D.K. Jain, who submitted the same.

14. So it has been proved on record that the duties of the respondent/defendant is of supervisory in nature. It has also been proved on record that the charge sheet was served to him for negligence and not for recovery in question. The lower court has rightly hold that an employee may result in disciplinary proceedings but not for recovery of damages. Moreover as per document Ex.DB respondent/defendant Madan Mohan Thathai, Ware House Manager(Retired) was not holding the charge of food grains during the period from 1.3.1996 to 14.6.2000 and the physical verification of the stock at State Ware Housing, Jallalabad(W) was conducted w.e.f.21.1.1999 to 24.1.1999 and then 27.1.1999 to 28.1.1999 and submitted the report by Roop Lal, Technical Assistant on 1.2.1999. When during this period he was not holding the charge of food grains during this period as per Ex. DB.

15. Therefore, I am of the considered view that the learned lower court has rightly dismissed the suit of the plaintiff and there is found nothing erroneous in the impugned judgment and decree dated 15.1.2014 passed by the lower court. Hence, the present appeal is found without merit and the same is dismissed with costs. The decree in appeal be drawn accordingly. The record of the lower court be returned along with copy of this judgment and that of the appeal be consigned to the Record Room.”

(7). Learned counsel for the appellant submits that the courts below have gravely erred both on facts and law in rejecting the claim of the appellant-Corporation for recovery against the respondent. He placed reliance on a decision of the Coordinate Bench in **CR-6253-2011 (Ram Singh vs. Punjab State Civil Supplies Corporation Ltd. & Anr.)** and connected petitions decided on 06.12.2012, wherein it has been held that the Corporation cannot be debarred from filing the suit for recovery when it has cause of action against the defendant-employee for loss suffered by it.

(8). He vehemently argued that the courts below have not appreciated the fact that in the physical verification report of the stocks at State Warehouse, Jalalabad during the relevant periods, it has come that the respondent along with Khushwant Singh Gill did not take care during rainy season resulting into damaging of the whole wheat stocks and therefore, for the negligence which has proved otherwise, the appellant is entitled for recovery of the damage caused by the respondent.

(9). On the other hand, learned counsel for the respondent averred that the respondent has already been dismissed from service of the Corporation and the punishment imposed is not based on any charges leveled

against the respondent in the charge-sheet and he was not afforded any opportunity by the appellant-Corporation. He further submits that the charge-sheet referred to in para 6 of the plaint related to the condition of stocks whereas the punishment has been awarded on the basis of the amount alleged to have been deducted by the FCI from the bills of the appellant-Corporation and it is the fault of the official of the appellant-Corporation who failed to convince the FCI that there is no fault on the part of the employees of the appellant-Corporation.

(10). Heard learned counsel for the parties and gone through the record.

(11). The defendant was charged on April 30, 1999, and an inquiry was conducted. According to the report (Ex.P3), charge No.1 was proven against the defendant, while charge No.2 regarding damage to rice stocks was not. However, merely conducting an inquiry and submitting a report does not entitle the appellant-plaintiff to file a recovery suit, especially when it has come on record as per the order dated 02.03.2009 (Ex.D3) passed by the Chief Manager addressed to the respondent informing him that the appeal preferred against the order of punishing authority has been kept pending till the permission of the Government is sought which shows that the appellant-plaintiff filed the civil suit prematurely and *ipso facto* the appellant-plaintiff was rightly held not entitled to recovery pending the decision in the appeal.

(12). Furthermore, the courts below have returned a concurrent finding that the appellant-plaintiff has failed to prove negligence on the defendant's part during their tenure as Warehouse Manager at State Ware House Jalalabad (West), which allegedly caused damage to wheat and rice

stocks as can be seen from the documents tendered as Ex.D5 to D8 by the plaintiff showing that there was no shortage in the stock and the respondent was not holding the charge of foodgrains during the period from 01.03.1996 to 14.06.2000 creating a dent in the case set up by the appellant-plaintiff.

(13). The respondent successfully countered the testimony of the appellant's witnesses, including PW1 Ranbir Singh, who admitted during cross-examination that he had no personal knowledge of the case facts. Additionally, none of the documents produced by PW1 were found to be original.

(14). Evidently, the documentary evidence exhibited before the trial court fully proved that there was no shortage in the stock in the relevant period when the respondent was posted at Jalalabad (West). The PW2 NC Rana, in his cross-examination, has admitted that in a charge-sheet filed against the respondent (Ex.P2), there is no mention about the shortage and recovery in question and therefore, it has been rightly held by the trial court that no penalty can be imposed on the delinquent on the basis of findings which were not part of the charge-sheet besides the fact that the respondent was not posted at the relevant period of time and the charge of stock was delivered to other person by the Charge Committee. PW2, N.C. Rana also admitted that an appeal against the Managing Director's order is pending before the Committee. Regarding the 50% ratio mentioned by PW2, it is the case of the appellant before the courts below that it lacks relevance without supporting evidence inasmuch as the witness was unaware of the background behind fixing the 50% ratio and could not confirm if any notification existed regarding this percentage. In the absence of evidence, the courts below rightly

observed that no incidental charges for stock shortages can be imposed on the respondent.

(15). Furthermore, as per the deposition of PW3 Roop Lal, Chief Manager, Quality Control (Retd.), PSWC, Chandigarh coupled with the physical verification report (Ex.P1), it appears that he did not support the appellant’s case as he demonstrated ignorance about key facts, including respondent’s joining date at Jalalabad Warehouse Centre, release date of stocks from the godown, respondent’s notices to the supervisor or the superior departmental official regarding deteriorating stock etc. though he admitted that the Warehouse Manager has to supervise the stocks which were stored on open plinths and that there was no specific instructions existing for preserving the stocks in open storage. Given these circumstances, there is no error or infirmity apparent in the judgments passed by the Courts below and as such, the respondent cannot be held liable for negligence.

(16). In view of the above discussion, this Court does not find any illegality in the judgments passed by the courts below.

(17). Dismissed.

16.01.2025
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No