SUPREME COURT OF INDIA

Punjab State Civil Supplies Corp. Limited

Vs

Sikander Singh

Civil Appeal No. 6269 of 2003 (With C.A.Nos. 6271 and 6273 of 2003)

(S. B. Sinha and P. P. Naolekar, JJ)

24.02.2006

JUDGMENT

S. B. SINHA, J.

These appeals arising out of a common judgment and order dated 6.7.2001 passed by the High Court of Punjab and Haryana at Chandigarh were taken up for hearing together and are being disposed of by this common judgment.

2.The Respondents herein were at all material times working as Inspector and Field Officer/Supervisor. They were posted at Moga. A physical verification of stocks was carried out from 21st June, 1985 to 26th June, 1985; pursuant whereto shortages of 4513 bags of wheat were said to have been found.

3. Allegedly, Tilak Raj, defendant No. 1 deposited in two instalments 2400 bags and 210 bags of wheat. In an audit report shortages of stock of articles were said to have been highlighted.

4. It was alleged that, thus, shortages of wheet took place due to lack of proper supervision on the part of the Respondents. It was furthermore alleged that whereas the defendant No. 1 was the actual holder of the stock, the defendant No. 2 being Senior Superintendent was negligent in making

proper supervision of the godowns.

5. Departmental proceedings were initiated against both of them. They were dismissed from services. In the departmental proceedings, against the defendant No.l, indisputably the appellate authority directed his reinstatement subject to his depositing remaining 400 bags of wheat, found to be short. He complied with the said direction of the appellate authority. As despite the same, he was not reinstated, a writ petition was filed by him before the High Court wherein the High Court directed his reinstatement. The matter came up before this Court in SLP(C) No.5609 of 1989 and by a judgment and order dated 23.8.1989, while upholding the direction of the High Court as regard his reinstatement the relief of backwages was denied.

6. So far as the order of dismissal passed in the departmental enquiry against the defendant No. 2 is concerned, he filed a suit which was the subject matter of R.S.A. No. 2232 of 1998 before the High Court; the suit as also the first appeal having been dismissed by orders dated 19.11.1992 and 23.2.1998 respectively.

7. The Appellant herein filed a civil suit before the Civil Judge, Moga against the Respondents herein for recovery of the price of the quantity of wheat which had been found to be short. In its the Appellant contended:

"....The loss has been suffered by Punsup on account of misappropriation and unauthorized use of stocks by the defendant No. 1 & 2 for their own interest and benefit. Both the defendants are therefore equally responsible to make good the shortages and loss suffered by the plaintiffs on this account."

8. Defendant No. 1 in his written statement denied and disputed the said allegation stating that he had been made a scapegoat. Defendant No. 2 in his written statement averred that defendant No. 1 being Inspector was the custodian of the stock and took over the charge from the previous- Inspector and it was he who handed over the charge to the successor and, thus, responsible for the stocks hold by him and as a supervisor he had nothing to do with holding of actual stock.

9. The said civil suit was dismissed as against the defendant - Respondent No. 2 whereas the same was allowed as against defendant - Respondent No. 1. A Regular First Appeal was filed in the High Court by the Appellant there against which was marked as RFA No. 1780 of 1997. Defendant No. 1 also filed an appeal there against which was marked as 347 of 1997. Defendant No. 2, as noticed before, also filed a second appeal, which was marked as RFANo. 2232 of 1998. By reason of the impugned judgment the High Court as regard the liability of defendant No. 1 held:

".. .It has been admitted that Shri Tilak Raj defendant No. 1 after having conceded the shortage of the bags has been directed by the Appellate Committee to deposit 2/3rd of the said bags and that had been made the condition precedent for reinstatement in service. As a sequel thereto, Tilak Raj has deposited the said bags and has been reinstated accordingly. PUNSUP has not been able to address

meaningful arguments for establishing the fact that the claim is in exclusion of the said bags or is in inclusion of the said bags. It is also the admitted case thatTilak Raj had joined the duty at the place of posting on April 6, 1984 and nothing has been brought on record as to whether the stocks etc. were in order on the date of his posting as the reliance has been placed upon the audit report for fixing the liability. However, there is divergence vis-avis the physical verification which has been carried out and the audit report which has been relied upon. Thus, PUNSUP has not been able to establish the clear cut liability against defendant No. 1. It shall not be fair to rely upon the audit report as the contents thereof have not been proved by way of any supportive evidence brought on record by PUNSUP. It is the settled law that liability cannot be fastened only on the statement of account/ audit reports as it is not discernible as to at what stage such kind of loss had been suffered and at whose hands as nothing has been brought on record that on the date of joining by defendant No. 1 the shortages were in existence or came into existence thereafter."

So far as Defendant No. 2 is concerned, it was opined:

".. ..It is a separate matter that he has been held liable for dereliction of duty vis-a-vis supervisory control but that too has been interpreted differently in view of the judgments rendered by the Courts below. Even otherwise from the facts brought on record, the supervisory control of defendant No. 2 came into force w.e.f . December 21, 1984 and that prior thereto, the articles being in actual factual control of defendant No. 1, the dereliction of supervisory control could not have been attributed to defendant No. 2. It is also the admitted case of the parties that defendant No. 2 submitted a complaint which is dated April 10, 1985 to the immediate superior i.e. the District Manager and that the entire action was started on the basis of the said complaint. In this view of the facts, dereliction of duty vis-a-vis supervisory control is not attributable to defendant No. 2."

10. As regard the suit arising out of departmental proceeding against the defendant no. 2, which was the subject matter of the Second Appeal, the High Court held:

"...However, the appeal filed by Sikander Singh has been dismissed as has been dismissed from service only on account of dereliction of duty of supervisory control. However, the admitted case is that the control of stocks was that of defendant No. 1 and not that of defendant No. 2. Since I have concluded that dereliction of duty vis-a-vis supervisory control is not attributable to defendant No. 2, as such the order of dismissal passed against defendant No. 2 is not sustainable."It was directed:

“In view of the above discussions, RFA No. 1780 of 1997 filed by PUNSUP fails and is hereby dismissed and the RFA No. 347 of 1997 filed by Shri Tilak Raj defendant No. 1 is allowed and the suit filed by PUNSUP is dismissed. RS A No. 2232 of 1998 filed by Sikander Singh is also allowed in view of the fact that it has been held that dereliction of duty vis-a-vis supervisory control is not attributable to defendant No. 2 -appellant in RSA No. 2232 of 1998."

11. The learned counsel appearing on behalf of the Appellant would submit that although the Defendant Nos. 1 and 2 were the employees of the Appellant, a civil suit was maintainable against them for recovery of money as shortage of wheat took place due to their negligence. So far as, defendant No. 2 is concerned, it was submitted that although he had no direct role to play but in view of his acts of non-feasance, he will be liable therefor as he had a duty to supervise the godowns.

12. The Trial Court in its judgment proceeded on the basis that the defendant No. 1 was incharge of the godown and the defendant No. 2 was to act as a supervisor and in view of the fact that admittedly shortages were found during physical verification of the stock in the godown, the defendant No. 1 alone was found guilty of mis-appropriation thereof. In support of the said finding, reliance was placed on the audit report which was proved by P.W.I, Ashok Grover. Apart from an inference drawn on the said audit report, no other evidence was adduced by the appellant to show that the defendant No.l in fact misappropriated the said stocks. On the said finding, the trial court came to the conclusion that the Appellant was entitled to recover a sum of Rs. 10, 80, 140.12 towards the price of the articles. The Appellant was also held to be entitled to Rs. 5, 67, 873.88 by way of interest at the rate of 18% per annum. Further interest of 18% per annum on the principal amount was also directed to be paid.

13. The High Court, on the other hand, as noticed hereinbefore, arrived at a finding of fact that audit report could not be said to be admissible in evidence as the contents thereof were not proved by any supportive evidence therefor. The High Court, further, opined that in any event, no interest was payable on the amount of damages.

14. The contention which has, however, been raised in these appeals, as noticed hereinbefore, is that the Respondents are jointly and severally liable for their acts of negligence.

15. The: Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. The terms and conditions of service by and between the Appellants and the Respondents herein are governed by the service rules and/or terms and conditions of contract. If the Respondents herein had committed misconduct they could have been and in fact were departmentally proceeded with. In the said departmental proceedings appropriate punishments had been imposed upon them. So far as defendant No. 1 is concerned, therein his negligence had been held to have contributed to the loss of 2/3rd of the shortages and by way of penalty, he was asked by the appellate authority to deposit the requisite number of bags of wheat and/ or pay the price thereof. The said order having been complied with attained finality. It is binding on the appellant. The dispute cannot, therefore, be permitted to be reopened.

16. If the Appellant herein intended to proceed further against the defendant No. 1, it could have done so by questioning the correctness or otherwise of the said order of the appellate authority before an appropriate forum. Deposit of the requisite number of bags of wheat and/or price thereof resulted in the defendant nos. 1 reinstatement pursuant to an order passed by the High Court as also this Court. For his act of misconduct, he had also been denied backwages. If in the departmental proceedings, defendant No. 1 had been asked to pay a penalty by way of recovery of loss to the extent of which he was found responsible, we are of the opinion that no civil suit could have been maintained for the self-same cause of action.

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.

18. It is now well-settled that negligence simpliciter may or may not amount to misconduct. In Union of India and others v. J. Ahmed this Court stated the law thus

" The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct..

"In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence...."

19. A suit for damages would be maintainable only on the ground of breach of the terms and conditions of the contract and when there are acts of mal-feasance, mis-feasance and non-feasance.

20. A suit for damages for breach of contract under common law can be decreed only when the damages are found to have occurred by reason of such breaches on the part of the defendant. For the said purpose, the extent of damages suffered must be proved in terms of Section 73 of the Indian

Contract Act.

21. The Appellants have not and in law could not have filed any suit against the Respondents herein alleging any tortious act on their part. A suit for damages by way of tortiuous claim is maintainable only when someone has a duty to perform towards others under a statute or otherwise. In this case, we are not dealing with any case of tortious act on the part of Respondents herein.

22. The learned counsel appearing on behalf of the Appellant, however, has placed strong reliance on Dr. H. Mukherjee v. S.K. Bhargava[.]. The said decision runs counter to the submissions of the learned counsel. In that case a suit was filed as damages for harassment meted out to the plaintiff. It was contended by the Appellant that the Civil Court had no jurisdiction to entertain the suit in view of the Administrative Tribunals Act, 1985. Rejecting the said contention, it was held:

"The Tribunals under the Act are thus conferred with the exclusive jurisdiction, powers and authority exercisable immediately before the appointed day by all courts (except the Supreme Court) in relation to the matters set out in clauses (a), (b) and (c) of sub-section (1) of Section 14. The question is whether the present suit does fall under any of the said clauses. We do not think that it does. The suit appears to be one based on alleged tortious acts of the defendant committed with a view to harass the plaintiff and cause him mental pain and injury. At this stage, it is not our province to say whether the allegations are true or false. We have to take the plaint allegations as they stand. We also assume for the purpose of this appeal that such a suit does lie according to law since no contention to the contrary has been urged before us nor was urged before the civil court or the High Court. This is a pure action for damages for deliberately harassing the plaintiff by passing several vindictive and mala fide orders and proceedings and also by fabricating official records. Such a suit for damages is certainly not within the province of Section 14

.

23. Thus, tortious acts, being not the ones which could be subject matter of departmental proceedings or negligence under a contract of employment, cannot give rise to a civil liability by way of monetary compensation to the employer except in certain circumstances.

24. We may at this juncture notice some other decisions relied upon by the learned counsel for the Appellant.

25. In Depot Manager, A.P.S.R.T. Corpn. v. N. Ramulu and another 8, the pecuniary loss caused to the employer was ordered to be recovered from the delinquent by way of punishment and not in a civil suit.

26. In this case, we have noticed that the losses caused by reason of misconduct on the part of the defendant No. 1 had been directed to be recovered in the departmental proceedings and the same stood recovered.

27. In Union of India and others v. B. Dev4, this Court upheld the plea of Union of India that in terms of the provisions of CCS (Pension) Rules, 1972, in the event a gross misconduct or negligence committed by the employer during the period of his service is proved, entire amount of pension or a part thereof can be directed to be withheld. Therein, however, the question which arose for consideration was as to whether in absence of any pecuniary loss, Rule 9 of the CCS (Pension) Rules could be invoked or not. Such a question does not arise for consideration in the present case.

In Official Liquidator, Supreme Bank Ltd. v. PA. Tendolkar (Dead) By L.Rs.[, the question which arose for having regard to the provisions of Sec. 235 of the Companies Act, committed acts of misfeasance. The said decision ex facie has no application in the present case. Therein, this Court was concerned with a case where the director was held to be not merely cognizant of but guilty of commission of fraud in the conduct of the business of a company even though no specific act of dishonesty was proved against him personally. The duties of a Managing Director are provided for in the Companies Act as also Articles of Association of the Company. He, thus, holds a position of trust vis-a-vis the shareholders of the company. In that case all the directors were found to have committed acts of fraud. The court took recourse to the provisions of Sec. 45H of the Companies Act wherein special provisions for assessing damages against delinquent directors have been laid down.

29. Reliance has also been placed on M.S. Grewal and another v. Deep Chand Sood and others 42 wherein in a case where several school children died of drowning due to negligence on the part of the teachers; this Court, having regard to the provisions of the Fatal Accidents Act, 1855, opined that the school is vicariously liable for the acts of negligence of the teachers.

30. In Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat , this Court again was considering a case under tortious law held that 'tort' dictionarily means "breach of duty leading to damage". Negligence has further been defined to mean 'failure to do statutory duty or otherwise giving rise to damage'.

31. 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.

32. In Jay Laxmi Salt Works (supra), this Court observed:

" In Dunlop v. Woollahra Municipal Council it was held that without malice the claim for misfeasance could not be accepted. Non-feasance on the other hand is omission to discharge duty. But the omission to give rise to action in torts must be impressed with some characteristic, namely, malice or bad faith. The expressions 'malfeasance', 'misfeasance' and 'non-feasance' would, therefore, apply in those limited cases where the State or its officers are liable not only for breach of care and duty but it must be activated (sic actuated) with malice or bad faith. The defective planning in construction of a bundh, therefore, may be negligence, mistake, omission but to say that it can

only be either malfeasance, misfeasance and non- feasance is not correct "

33. In Poonam Verma v. Ashwin Patel and others 9 this Court was concerned with negligence of medical practitioners giving rise to a cause of action under the provisions of Consumer Protection Act.

34. We are, therefore, of the opinion that in view of the findings arrived at by the High Court, the suit filed by the Appellant herein being not maintainable have rightly been dismissed.

35. So far as the second appeal preferred by the Defendant No. 2 being RSA No. 2232 of 1998 is concerned, it appears, that no substantial question of law had been framed by the High Court as was mandatorily required to be done in terms of Section 100 of the Code of Civil Procedure. We have noticed hereinbefore that the Defendant No. 2 filed a suit questioning the order imposing punishment of removal or dismissal from his service. The said suit was dismissed. The appeal preferred by the Defendant No. 2 was also dismissed. In the second appeal, indisputably, the High Court was obligated to formulate a substantial question of law. The High Court proceeded to allow the appeal preferred by the Defendant No. 2 only on the premise that the dereliction of duty vis-a-vis supervisory control is not attributable to him. The effect of the judgment in the civil suits filed by the Corporation would require consideration in the light of the findings arrived at in the disciplinary proceedings.

36. The High Court failed to consider that the question of negligence in a departmental proceedings and a suit for recovery of money must be viewed differently. In a disciplinary proceeding, the provisions of the Evidence Act are not applicable unlike in a civil suit. In the suit filed by the Defendant No.2, the only question which arose for consideration was different from the issues which arose in the civil suit of the Corporation. The scope and ambit of the suit filed by the Respondent No. 2 herein questioning the order of dismissal from services was limited.

37. The civil court could interfere with the said order in the event, inter alia, it was found that the order of dismissal by way of punishment has been imposed in violation of the procedures laid down in the statutory rules or in violation of the principles of natural justice or suffered from illegalities or procedural irregularities were committed by the enquiry officer or the disciplinary authority in holding the departmental proceedings. In view of the fact that the suit of the Defendant No. 2 was dismissed and the appeal preferred there against had also been dismissed, it was obligatory on the part of the High Court to formulate a substantial question of law. Without formulating such substantial question of law in a case of this nature the High Court could not have set aside the concurrent findings of two courts.

38. R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another .] whereupon reliance has been placed by the learned counsel for the Respondent, has no application in the instant case. Therein, this Court although held that a substantial question of law was required to be framed but in view of the fact that on merit it was found that no substantial question of law arose for consideration refused to remit the matter back holding:

"The offshoot of the above discussion is that no question of law much less a substantial question of law arose in the case worth being gone into by the High Court in exercise of its second appellate jurisdiction under Sec. 100 CPC. The High Court was bound by the findings of fact arrived at by the two courts below and should not have entered into the exercise of reappreciating and evaluating the evidence. The findings of facts arrived at by the courts below did not suffer from any perversity. There was no non-reading or misreading of the evidence. A high degree of preponderance of probability proving title to the suit property was raised in favour of the appellant and the courts below rightly concluded the burden of proof raised on the plaintiff having been discharged while the onus shifting on the defendant remaining undischarged..."

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly and the matter is remitted to the High Court for consideration of the matter afresh in accordance with law.

39. For the reasons aforementioned, Civil Appeal Nos. 6271 and 6273 of 2003 are dismissed and Civil Appeal No. 6269 of 2003 is allowed. No costs.