



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

122

RSA-1706-2024(O&amp;M)

Date of Decision: 23.01.2025

**FOOD CORPORATION OF INDIA THROUGH MANGALAGIRI  
MAHESH BABU** .....Appellant

Versus

**SUSHIL CHAND** .....Respondent

**CORAM: HON'BLE MS. JUSTICE LAPITA BANERJI**

Present:- Mr. Deepak Gupta, Advocate,  
for the appellant.

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**LAPITA BANERJI, J.(Oral)**

1. In the present RSA-1706-2024 there is a chequered history between the parties. The disciplinary proceedings were initiated against the plaintiff-respondent herein. The plaintiff was an employee of the Food Corporation of India (FCI)-appellant. It was alleged that the plaintiff during the year 1998-2007 failed to maintain absolute integrity and lacked devotion to duty and caused huge loss to paddy stock. The charge-sheet was dated March 5, 2007. The Inquiry Officer after conducting the departmental enquiry found that the charges were proved vide enquiry report dated September 1, 2007.

2. The order of compulsory retirement was passed on September 26, 2007 against the delinquent employee-plaintiff along with forfeiture of gratuity under Section 4(6)(A) of the Payment of Gratuity Act, 1972. A departmental appeal was preferred on November 6, 2007. The Appellate Authority under the Food Corporation of India (Staff) Regulations, 1971 modified the order



of penalty and directed the compulsory retirement from services along with forfeiture of 50% of gratuity. The delinquent employee-respondent filed a civil suit being C.S.30300624/2009 on April 8, 2009 prior to the order passed by the Appellate Authority in the departmental proceedings. The said civil suit was dismissed with costs by the Civil Judge (Junior Division), Jalandhar on March 30, 2013. However, the defendants were directed to decide the pending appeal within two months from the date of decree. Against the said decree dated March 30, 2013, the plaintiff preferred an appeal on May 8, 2013, being CA No.55940/2013. In the said appeal, the plaintiff was allowed to amend his plaint, since during the pendency of the appeal before the Civil Court, the order of punishment was modified/reduced by the Appellate Authority vide order dated May 17, 2013.

3. After the amendment of the plaint, the suit was heard afresh and a decree was passed on January 2, 2015 whereby the suit of the plaintiff-employee was dismissed with costs. An appeal was preferred before the Civil Court by the plaintiff-employee on February 13, 2015. The First Appellate Court set aside the decree and judgment under appeal. The case was remanded to the learned trial Court under the provisions of Order 41 Rule 23-A of the Code of Civil Procedure, 1908 for retrial fresh decision upon affording reasonable opportunity to adduce additional evidence on the newly framed issue. The new issue that was framed is reproduced hereinafter:-

*“1-B Whether the enquiry proceedings and punishment order dated 17.5.2013 are illegal, arbitrary and against the principles of natural justice?OPP”*



4. It was specifically directed vide the order dated April 21, 2016 that the parties would appear before the learned trial Court on May 6, 2016.

5. Upon the suit being remanded to the trial Court, the Civil Judge (Junior Division) vide judgment and decree dated September 26, 2016, drew adverse inference against the appellant and held that the plaintiff was entitled to recover the arrears of 50% gratuity. The impugned order dated September 26, 2007 was set aside and declared to be void against the plaintiff.

6. Liberty was given to FCI/employer to conduct fresh enquiry as per the rules of the appellant within 02 months from the receipt of the order, failing which, the plaintiff was directed to be entitled to recover the arrears of gratuity at the rate of 6% per annum from the date of first institution of the suit till the realization of the amount.

7. The said judgment and decree was challenged by FCI before the learned Additional Sessions Judge, Jalandhar.

8. An application for condonation of delay was made on February 28, 2017 which was allowed vide order dated November 30, 2021 upon payment of costs assessed at Rs.5000/- payable to the plaintiff.

9. The appeal was deemed to be instituted on December 13, 2021 and vide order dated February 16, 2024, the District Judge, Jalandhar disposed of the same. The learned District Judge, Jalandhar vide impugned judgment dated February 16, 2024, considered the submissions made by the appellant-FCI regarding the appellant not being given opportunity of hearing and not being aware of the proceedings conducted before the learned trial Court and that the appellant had come to know about the



proceedings for the first time on November 23, 2016 regarding the factum of the decision dated September 26, 2016. The contention that the enquiry file could not be produced before the trial Court as the co-employees of the plaintiff were charge-sheeted and the file being required for the cases relating to the said employees who were charge-sheeted was considered by the First Appellate Court.

10. The submission on behalf of the plaintiff was that despite evidence being led on behalf of the FCI-appellant, no document could be produced corroborating the charges against the plaintiff. Despite liberty to conduct the fresh enquiry given to FCI by the impugned judgment and decree dated September 26, 2016 in the second round of litigation and the same being not stayed by any competent Court, still there was no enquiry pending against the plaintiff. Therefore, it was contended that the appeal was liable to be dismissed.

11. The First Appellate Court came to the finding that vide judgment and order dated April 21, 2016 it had remanded the case back to the learned trial Court for fresh decision and the defendants despite having notice did not appear to contest the suit before the learned trial Court. Therefore, the trial was proceeded with *ex parte* vide order dated August 3, 2016. The case record reflected that when the First Appellate Court remanded back the case, the appellant-FCI was duly represented by a counsel even before the learned trial Court. However, later, the counsel for the appellant-FCI stopped appearing and failed to produce original case file on the ground that it was required in enquiry proceedings against other employees.



12. It was held that even after the remand, the complete enquiry file was not produced by the appellant and due to non-production of the file, adverse inference correctly was drawn. It was also recorded that from the cross-examination of the witnesses, it was crystal clear that there was no evidence on record to show that the FCI suffered the alleged loss due to any act of the plaintiff. Had FCI suffered any loss due to the plaintiff's action/conduct they would have produced the documents in departmental enquiry but in the present case, they had failed to do so.

13. In cross-examination, it was admitted by DW1-FCI's witness that the plaintiff was not even charge-sheeted for losses like storage losses etc. for which he was penalized. The witnesses even admitted to show-cause notice not being given to the plaintiff before passing of the Departmental Order dated September 26, 2007 and no proper opportunity of personal hearing being afforded to the plaintiff.

14. For the reasons best known to the appellant, no fresh enquiry was conducted by the Department-FCI despite trial Court permitting the same. Therefore, the First Appellate Court came to the finding that there was no illegality or infirmity in the impugned judgment and decreed passed by the learned trial Court.

15. This Court has heard submissions of the learned counsel appearing on behalf of the appellant regarding no opportunity of hearing being granted by the trial Court to the FCI-appellant. The sole point of law that is sought to be raised is whether without granting opportunity of hearing to the appellant-FCI, the trial Court could have passed *ex parte* decree.



16. Upon perusing the case record, this Court is of the view that the First Appellate Court vide judgment dated 21.04.2016 had directed a fresh hearing of the suit in the presence of the parties. No fresh notice was required to be given. Out of their own volition, the counsel for the FCI-appellant did not appear before the trial Court. For the reasons best known to themselves, they did not conduct the fresh enquiry. From the observation of the first Appellate Court, it appears that even the counsel for the FCI appeared initially in the fresh hearing of the suit but later he stopped appearing.

17. Accordingly, factually it cannot be held that no opportunity of hearing was given to the appellant-FCI. Since an opportunity of hearing was granted to Appellant-FCI and it voluntarily decided not to avail of the same, the point of law sought to be urged is not required to be answered in this regular second appeal. Neither, the learned trial Court nor the First Appellate Court erred in law by drawing adverse inference against the FCI and deciding the issues against the appellant-herein.

18. Accordingly, the **RSA-1706-2024** is **dismissed**.

19. Connected application(s), if any, are accordingly disposed of.

23.01.2025

*Jyoti Thakur*

**(LAPITA BANERJI)**  
**JUDGE**

*Whether speaking/reasoned:*

*Yes/No*

*Whether reportable:*

*Yes/No*