

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.357 of 2018**

Ravindra Chaudhary @ Rawindra Chaudhary, Son of Shri Sita Ram Chaudhary, Resident of Village- Sariya, P.S.- Bakhtiarpur, District- Patna.

... .. Plaintiff/Petitioner

Versus

1. The Bihar School Examination Board (Senior Secondary) through its Chairman, Patna.
2. The Chairman, the Bihar School Examination Board (Senior Secondary), Budha Marg, P.S.- Kotwali, Patna.
3. The Secretary, the Bihar School Examination Board, (Senior Secretary), Budha Marg, P.S.- Kotwali, Patna, District-Patna.
4. The Deputy Secretary, Bihar School Examination Board (Senior Secondary), Budha Marg, P.S.- Kotwali, Patna, District-Patna.
5. Department of Post, Union of India, through the Superintendent of Posts, at Kanpur, Head Post Office, Kanapur (U.P.).

... .. Defendants-Respondents

Appearance :

For the Petitioner :	Mr. Ajit Kumar, Advocate
For the Respondent-BSEB:	Mr. Amrendra Kumar, Advocate
For the Respondent-UI:	Mr. Ram Anurag Singh, CGC

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 06-09-2019

Heard learned counsel for the petitioner, learned counsel for the Bihar School Examination Board and learned counsel for the Union of India.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff of Title Suit No.5752 of 2014 for setting aside the order dated 01.12.2017 whereby the learned Sub Judge-I, Patna has dismissed the suit on the ground that Bihar School Examination Board (for short 'BSEB') and



Postal Department, Government of India are necessary parties, but the suit has been filed without notice to them under Section 80 of the Code of Civil Procedure (for short 'CPC') and no prior permission has been taken by the plaintiff from the court for filing the same.

3. Learned counsel appearing for the petitioner submitted that the suit has not been filed seeking any relief against the Postal Department, Government of India. Hence, notice under Section 80 of the CPC was not required. He contended that the object of Section 80 CPC is manifestly to give the Government or the public officer sufficient notice of the case, but the notice under Section 80 of the CPC would be of no use if no relief is sought against the Government or the public officer. He pleaded that the trial court has failed to appreciate that after filing of the suit, the notice had already been sent to the defendant and, therefore, they were in knowledge of the issue since 2008. He has further argued that an application for amendment in prayer was made. However, he conceded that he is not aware as to whether the prayer for amendment was ever pressed or not or whether any order on the petition filed by the plaintiff was ever passed by the trial court or not.



4. The BSEB and the respondent no.5 (Union of India) have contested the matter. They have filed their respective counter affidavits. In the counter affidavit filed on behalf of the Union of India (respondent no.5), it has been stated that the petitioner was appointed as Postal Assistant, Unnao in the year 1995 in the postal division, Kanpur (M) Division, Kanpur. During the initial verification of his testimonials, the Bihar Intermediate Education Council, Patna informed that the petitioner had obtained 756 marks and had passed in the First Division in his intermediate examination, 1992. Accordingly, the petitioner was selected and appointed as Postal Assistant in the department of Post. But, later on, while verification of marks was made, it was found that he had passed in third division, as it was reported by the Deputy Secretary, Bihar Vidyalaya Pariksha Samiti (Uchcha Madhyamik) that the marks 756 as shown in the initial verification are bogus, He did not pass in first division in the examination. Accordingly, the petitioner was served with a charge-sheet in terms of Rule 14 of CCS (CCA) Rules, 1965 vide Memo dated 28.12.2007. After inquiry, the punishment order of dismissal was served upon him on 16.11.2009 from service with immediate effect. A revision petition was filed by the petitioner against his dismissal from service was



also rejected by the competent authority vide order dated 20.04.2010.

5. In the counter affidavit filed on behalf of respondent nos. 2 to 4, it has been stated that neither notice under Section 80 of the CPC was given to the defendants nor prior permission of the court was obtained by the petitioner before filing the title suit, which was mandatory requirement under the statute and no one can be waived from the mandatory provisions of the law.

6. Learned counsel appearing for the BSEB and the Union of India have submitted that since the Union of India and the BSEB are necessary parties, a notice under Section 80 of the CPC was a must. In absence of a notice under Section 80 of the CPC, the court has rightly dismissed the suit and the order does not suffer from any illegality.

7. The admitted facts of the case are that the petitioner was appointed as Postal Assistant in the year 1995. The Postal Department sent his marks for verification to the BSEB. The verification report dated 31.05.2007 disclosed that the petitioner had secured third division and the marks sheet submitted by the petitioner mentioning that he had passed in the 3rd division was forged. Thereafter, the verification report was challenged by the petitioner vide CWJC No.17318 of 2008, which was dismissed



with observation and direction to the BSEB to pass a reasoned order on the basis of the materials after giving opportunity to the petitioner. Pursuant to the aforesaid direction, the Secretary of the BSEB, after due notice to the petitioner, passed an order dated 18.08.2009 declaring therein that the petitioner had passed the Intermediate Examination, 1992 with 399 marks (third division) and the mark sheet showing 756 marks was found to be forged and fabricated. The aforesaid order datd 18.08.2009 was challenged by the petitioner before this Court vide CWJC No.16328 of 2009 and the same was allowed vide order dated 08.01.2010. Thereafter, the BSEB preferred an appeal against the said order dated 08.01.2010 in LPA No.1081 of 2010, which was allowed vide order dated 08.02.2012 and the order passed by the learned single Judge was set aside with liberty to the petitioner to agitate the matter about the genuineness of the mark sheet in question before the civil court. The petitioner challenged the order passed in the Letters Patent Appeal before the Supreme Court, but the Special Leave Petition was dismissed.

8. The reliefs sought by the petitioner in the suit are as follows:-

(a) On adjudication, it is held and declared that the verification report dated 31.05.2007, declaring the



marks sheet and the original certificate issued by the defendant No.1 is forged is wholly arbitrary, illegal and without any valid basis and fit to be cancelled.

(b) The defendants and the employer, Superintendent of Post office, at Kanpur be restrained by an order of ad-interim injunction from giving effect to the alleged verification report of the defendants.

(c) Cost of the suit be awarded to the plaintiff.

(d) Any other relief or reliefs to which the plaintiff found entitled to be passed in favour of the plaintiff and against the defendant.

9. Apparently, the contention of the petitioner that no relief has been sought for against the respondent no.5 i.e. the Department of Post, Union of India through Superintendent of Post at Kanpur appears to be misconceived. There is specific prayer in the suit for restraining the defendant no. 5 from giving effect to the order passed on the basis of second verification report.

10. Section 80 of the CPC deals with two things. First the service of notice in writing and the second with rule of procedure as to what the plaint should contain. The object of this section is to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him



so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted.

11. The effect of Section 80 of the CPC is clearly to impose a bar against the institution of the suit against the Government or a public officer in respect of any act purported to be done in him in his official capacity until the expiration of two months next after the notice in writing has been delivered. There was nothing on record seeking leave from the court for dispensing with issuance of notice as provided under Section 80(2) of the CPC.

12. The compliance of section 80 CPC is mandatory.

13. It is not in dispute that respondent no.5 is State. It is also not in dispute that the suit was filed without service of any notice either to the BSEB or to the respondent no.5. Under the circumstance, the trial court rightly dismissed the suit vide impugned order dated 01.12.2017.

14. The order impugned neither suffers from any illegality nor from any perversity. The same is also not without jurisdiction.



15. Accordingly, I am not inclined to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India.

16. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2019
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