

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.27 of 2007

Ramawatar Goyel S/o Shri Buddhulal Goyel, aged about 65 years (wrongfully terminated) Teacher, Resident of Bharatmata Chowk, Ward No.28, P.S. & P.O. Rajnandgaon (CG)

(Plaintiff)

---- Appellant

Versus

1. The State of C.G. through the Collector, P.S. & P.O. Rajnandgaon
2. The Divisional Superintendent of Education, P.S. & P.O. Durg
3. The District Education Officer, P.S. & P.O. Rajnandgaon

(Defendants)

---- Respondents

For Appellant/Plaintiff	: Mr.U.N.Awasthy, Senior Advocate with Ms Raksha Awasthy and Mr.Ajay Kumar Agrawal, Advocates
For Respondent/Defendants	: Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/11/2019

1. The second appeal preferred by plaintiff/appellant herein was admitted for hearing on 19.11.2007 by formulating the following substantial question of law:-

"1. Whether both the Courts below were justified in holding that the suit was barred by limitation ?

Thereafter, on 4.10.2019 after hearing learned counsel appearing for the parties, following two substantial questions of law have been formulated:-

"1. Whether first appellate Court was justified in rejecting the plaintiff's application under Order 41 Rule 27 of the CPC by recording a finding, which is perverse to the record ?

2. Whether first appellate Court was justified in firstly rejecting application under Order 41 Rule 27 of the CPC and thereafter dismissing the appeal on merits, by recording a finding which is perverse to the record ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. The appellant herein/plaintiff was confirmed Assistant Teacher, he was terminated by defendant No.2 on 2.9.1975, which he challenged by filing civil suit on 15.7.1980, which was dismissed by the trial Court as barred by limitation, against which, he preferred first appeal under Section 96 of the CPC before the first appellate Court and also filed an application under Order 41 Rule 27 read with Section 151 of the CPC, which was rejected by the first appellate Court holding that such an application is filed belatedly and thereafter dismissed the appeal on merits, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

3. Mr.U.N.Awasthy, learned Senior Counsel along with Ms Raksha Awasthy and Mr.Ajay Kumar Agrawal, learned counsel for the appellant/plaintiff, would submit that

the first appellate Court is absolutely unjustified in rejecting the application holding that it was filed belatedly, ignoring the fact that the plaintiff's original counsel Mr.M.K.Shrivastava, who was having possession of the documents, died during pendency of the suit, therefore, those documents could not be brought on record and those documents are necessary for just and proper disposal of the suit as the aforesaid documents clearly show that immediately after the order of termination was passed the appellant/plaintiff made representation against the order dated 2.9.1975 on 31.5.77, which was entertained by defendant No.2 on 16.7.77 and directed defendant No.3 to consider the case of the plaintiff in accordance with instructions dated 21.5.77. Therefore, those documents are necessary for just and proper disposal of the suit, but the first appellate Court did not consider those documents in its proper perspective on its merit and rejected the same merely on the ground that it has been filed belatedly, ignoring the valid reasons assigned by the appellant/plaintiff and thereby dismissed the appeal. Therefore, the judgment and decree of the first appellate Court deserves to be set aside.

4. On the other hand, Mr.Matin Siddiqui, learned counsel for the respondents/defendants, would support the impugned judgment and decree and submit that the first

appellate Court is absolutely justified in rejecting the application holding that it was filed after 25 years of order of termination, as such, the appeal deserves to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. Admittedly, the appellant herein/plaintiff was confirmed Assistant Teacher, he was terminated by order of defendant No.2 dated 2.9.1975, which was challenged by filing civil suit, which was dismissed by the trial Court on the ground of limitation as well as for non-compliance of Section 80 of the CPC. The first appellate Court held that the suit was rightly filed in view of the provisions contained in Section 80(2) of the CPC, but the plaintiff's application under Order 41 Rule 27 of the CPC was rejected and consequently, appeal was also dismissed.
7. The plaintiff in application filed under Order 41 Rule 27 of the CPC has clearly stated that additional documents viz., order of defendant No.2 etc. directing consideration of the plaintiff's representation which was handed over to Mr.M.K.Shrivastava, Advocate of the plaintiff, who died during pendency of the suit were sought to be filed and thereafter it was again handed over to Mr.R.B.Sharma, Advocate, but that could not be

produced, but during the course of preparation of appeal, it was traced out and it is being filed. Copies of the additional documents are kept on record, in which it has been stated by the plaintiff that he has been removed without any departmental enquiry and the State Government has taken a decision to reinstate those teachers who are removed illegally and on 16.7.77 defendant No.2 directed defendant No.3 to consider the case of the appellant/plaintiff as per instructions dated 21.5.77. Postal receipts and acknowledgement have also been filed in original.

8. From perusal of the aforesaid documents, it appears that those documents are absolutely necessary for just and proper disposal of the suit as the appellant's representation was entertained by defendant No.2 and directed defendant No.3 to consider his case in accordance with instructions dated 21.5.77 issued by the Directorate, therefore, the first appellate Court ought to have considered the same and could have allowed the said application as those documents are absolutely necessary for just and proper disposal of the suit, it could not have been rejected on the ground of delay in filing the application as valid cause has been shown for filing the application particularly his counsel Mr.M.K. Shrivastava died during pendency of the suit.

9. In my considered opinion, rejection of the plaintiff's

application under Order 41 Rule 27 of the CPC refusing to admit additional documents is absolutely unsustainable and bad in law. Accordingly, it is set aside and consequent thereto, the impugned judgment and decree passed by the first appellate Court is also set aside. The matter is remitted to the first appellate Court. The first appellate Court would permit the plaintiff to lead evidence on the basis of said additional documents and the defendants will also be entitled to file rebuttal documents and also entitled to lead evidence and thereafter after hearing the parties would consider and decide the first appeal within three months from the date of receipt of copy of this order. Parties are directed to appear before the concerned first appellate Court on 2nd December, 2019. This Court has only answered substantial questions of law No.1 and 2 framed on 4.10.2019. However, plea of limitation and all other grounds would be considered afresh by the first appellate Court.

10. The second appeal is allowed to the extent indicated hereinabove. Records be sent back forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-