

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 3435 of 2000 (O&M)
Date of Decision: 12.9.2019**

Punjab State through Collector and others

---Appellants

versus

Mangat Ram

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.A.Pathak, Addl. Advocate General, Punjab

**Mr. A.K.Walia, Advocate,
for the respondent**

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 31.3.2000 whereby appeal against the judgment and decree dated 21.8.1997 passed by the trial court dismissing suit of the respondent-plaintiff was accepted, impugned judgment and decree was set aside and suit filed by the respondent-plaintiff was decreed to the following effect:-

“that the impugned order dated 12.11.1992 regarding his dismissal from service is illegal, null and void. However, the parties are left to bear their own costs.”

Counsel for the appellants would argue that order of dismissal dated 12.11.1992 was challenged by filing suit on 10.1.1996. The trial court framed issues, reproduced in para 5 of the judgment of First Appellate Court. It is further submitted that the trial court took up issues No. 2 and 5 jointly for the purpose of discussion and decision and the same were

answered against the respondent-plaintiff with the finding that period of notice under Section 80 of the Code of Civil Procedure, 1908 (in short “the Code”) is not liable to be excluded for the reasons recorded in para 13 of the judgment of said court, therefore, the suit is barred by limitation and further held the suit to be bad for want of legal and valid notice. It is further argued that the Appellate court without adverting to observations of the trial court in para 13 of the judgment of said court and by assigning reasons contrary to the facts on record, reversed findings of the trial court on the question of limitation but without reversing finding with regard to notice being not legal and valid, decreed the suit. It is further argued that since the respondent filed suit impugning order dated 12.11.1992 well before expiry of period of two months from the date of notice in compliance with the provisions of Section 80 of the Code, the period of notice cannot be excluded for computing limitation as has been so held by the trial court by relying upon judgment of Hon'ble the Supreme Court **Bihari Chowdhary vs. State of Bihar AIR 1984 SC 1043**.

Counsel would further argue that even findings of the trial court with regard to validity or otherwise of order of dismissal are not based upon correct appreciation of materials on record, thus, cannot be allowed to sustain.

Counsel representing the respondent-plaintiff, on the contrary, has supported findings of the First Appellate Court on the question of limitation. It is further argued that as the State of Punjab neither preferred appeal against the judgment and decree passed by the trial court nor filed cross objections to assail findings of the trial court on issue No. 1 in respect of dismissal order dated 12.11.1992, it is not open for the appellant to make

any submission to assail judgment of the trial court in respect of its findings qua issues No. 1, 3 and 4.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that trial court upheld plea of the respondent with regard to challenge against impugned order dated 12.11.1992 regarding dismissal of the plaintiff from service and issue No. 1 was determined in favour of the respondent-plaintiff and against the defendants-appellants. It is also not denied that State of Punjab and others (defendants therein) did not assail findings of the trial court on issue No. 1 by filing a cross appeal or cross objections before the First Appellate Court. That being so, it is not open for the appellants to make any submissions to assail findings of the trial court on issues No. 1, 3 and 4, answered in favour of the respondent-plaintiff and against the defendants-appellants.

The only controversy that survives for consideration is, whether findings of the First Appellate Court on the question of limitation suffer from legal flaw, thus, cannot stand the test of judicial scrutiny.

Before filing the suit on 10.1.1996, the respondent issued notice under Section 80 of the Code. The date on the notice is 9.11.1995. The trial court has noticed that notice was dispatched on 11.11.1995, as per postal receipts marked as Exs. P3 to P6. Counsel for the respondent has not disputed this fact that receipts Ex. P3 to P6 bear stamp of postal authorities with date 11.11.1995 meaning thereby that notice was dispatched on 11.11.1995. The appellants, in response to para 16 of the plaint pertaining to notice under Section 80 of the Code, admitted receipt of

notice but with averment that the same is not valid and legal. Counsel for the parties have failed to point out any materials on record to prove as to the date on which notice aforesaid was received by its addressees. Notice Ex. P2 makes reference to four departments and public officers. The trial court had rightly held that notice was issued by the respondent-plaintiff on 11.11.1995 but he instituted the suit on 9.1.1996 well before expiry of period of two months from the date of issuance of notice.

Section 80 of the Code deals with notice. A relevant extract therefrom, reads as follows:-

“80. Notice.- (1)Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of -----

- (a)xxxxxx
- (b)xxxxxx
- (bb)xxxxxx
- (c)xxxxxx

and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2)

xxx

xxx

xxx.

(3) xxx xxx xxx .”

Perusal of the aforesaid extract leaves no manner of doubt that suit shall be instituted against the government or a public officer in respect of any act purported to be done by such public officer in his official capacity until expiration of two months next after notice in writing has been delivered or left at the office of such public officer meaning thereby that suit can be instituted only on expiry of two months next from the date of delivery or leaving the notice at the office of public officer concerned.

In the case at hand, the date of notice is 9.11.1995 but the same was dispatched on 11.11.1995. As has been noticed hereinbefore, there is no evidence adduced by the respondent-plaintiff as to the date on which this notice was delivered to its addressees, detailed in notice Ex. P2. The suit for declaration to challenge the impugned order was filed on 9.1.1996 meaning thereby that it was filed before expiry of two months even from the date of sending of notice on 11.11.1995 and certainly before expiry of two months from the date of delivery.

The question that falls for consideration is, whether the respondent can seek exclusion of period of notice for computing the period of limitation for filing the suit. The trial court has held that since the suit was filed before expiry of two months even from the date of issuance of notice, the period of notice cannot be excluded for the purpose of computing limitation by relying upon judgment of Hon'ble the Supreme Court in **Bihari Chowdhary's case (supra)**. In **Bihari Chowdhary's case (supra)**, Hon'ble the Supreme Court has held in paras 3 to 7, quoted thus:-

“We are concerned in this case with Section 80 C.P.C. as it

stood prior to its amendment, by Act 104 of 1976 (Even under the amended provision, the position remains unaltered insofar as a suit of this nature is concerned). We shall extract the Section as it stood at the material time:

"80. No suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(c) in the case of a suit against the Government of the State of Jammu and Kashmir, the Secretary to that Government or any other officer authorised by that Government in this behalf;

(d) in the case of a suit against any other Government, a Secretary to that Government or the Collector of the district;

* * * * *

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and relief which he claims; and plaint shall contain a statement that such notice has been so delivered or left."

The effect of the Section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of sub-section (1) of the Section. When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinize the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months time to Government or a public officer before a suit can be instituted against them. The object

of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

4. When the language used in the Statute is clear and unambiguous, it is the plain duty of the Court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the legislature.

5. The Judicial Committee of the Privy Council had occasion to consider the scope and effect of Section 80 C.P.C. in an almost similar situation in [Bhagchand Dagadusa and ors. v. Secretary of State](#), 54 Indian Appeals 338 for India in Council & Ors. In that case, though a notice had been issued by the plaintiffs under Section 80 C.P.C. on 26th June 1922, the suit was instituted before the expiry of the period of two months from the said date. It was contended before the Privy Council, relying on some early decisions of before the Privy Council, relying on some early decisions of High Court of Bombay, that because one of the reliefs claimed in the suit was the grant of a perpetual injunction and the claim for the said relief would have become infructuous if the plaintiffs were to wait for the statutory period of two months prescribed in Section 80 C.P.C. before they filed the suit, the rigour of the Section should be relaxed by implication of a suitable exception or a qualification in respect of a suit for emergent relief, such as one for injunction. That contention did not find favour with the Privy Council and it was held that Section 80 is express, explicit and mandatory and it admits no implications or exceptions. The Judicial Committee observed:

"To argue as appellants did, that the plaintiffs had a right urgently calling for a remedy, while s. 80 is mere procedure, is fallacious, for s. 80 imposes a statutory and unqualified obligation upon the Court."

This decision was subsequently followed by the Judicial Committee in **Vellayan vs. Madras Proince, 74, Indian apeals**

223. The dictum laid down by the Judicial Committee in [Bhagchand Dagadusa v. Secretary of State](#) for India 54 Indian Appeals 338 was cited with approval and followed by a Bench of five Judges of this Court in [Sawai Singhai Nirmal Chand v. Union of India](#). 1966 (1) SCR 986.

6. It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under Section 80 C.P.C. is attracted, can not be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the Section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable.

7. On behalf of the appellants, strong reliance was placed on the decision of a learned Single Judge of the High Court of Kerala in [Nani Amma Nannini Amma v. State of Kerala](#). AIR 1963 Kerala 114. Therein the learned Judge has expressed the view that Sec. 80 is not a provision of public policy and there is nothing in the Section expressly affecting the jurisdiction of the Court to try a suit instituted before the expiry of the period prescribed therein. The reasons stated by the learned Judge in justification of his taking the said view despite the clear pronouncement of the Judicial Committee of the Privy Council in Bhagchand's case do not appeal to us as correct or sound. In the light of the conclusion expressed by us in the foregoing paragraphs about the true scope and effect of Section 80 C.P.C., the aforecited decision of the learned Single Judge of the Kerala High Court cannot be accepted as laying down good law.”

Counsel for the respondent has failed to cite any contrary judgment. Taking into consideration the enunciation laid down in **Bihari Chowdhary's case (supra)**, there is no escape from conclusion as has

been held by the trial court that in the given facts and circumstances, the respondent-plaintiff is not entitled to exclude the notice period for the purpose of computing limitation. That being so, suit filed by the respondent-plaintiff on 9.1.1996 to challenge order dated 12.11.1992 admittedly received on 17.11.1992 is clearly barred by limitation. The Court in Appeal without adverting to findings of the trial court and provisions of Section 80 of the Code has disposed of the question of limitation in a slipshod manner, may be, for some extraneous consideration. In this view of the matter, I find merit in contention of the appellants that suit filed by the respondent-plaintiff is clearly barred by limitation and the same is liable to be dismissed on this score alone. This apart, since the respondent – plaintiff filed the suit for declaration before expiry of stipulated period of two months from the date of delivery of notice, the suit otherwise is not sustainable for want of compliance of mandatory provisions of Section 80 of the Code. Analyzed from any angle, findings recorded by the First Appellate Court on the aforesaid two questions are liable to be set aside and that of the trial court to be restored. As such, judgment and decree passed by the First Appellate Court is liable to be set aside and ordered accordingly.

In view of what has been discussed hereinbefore, the appeal is allowed. The judgment and decree passed by the First Appellate Court is set aside and that of trial court is restored. No order as to costs.

Before parting with this order, it is pertinent to note that counsel for the respondent-plaintiff recorded a concession that in case the respondent is allowed to be reinstated in service by setting aside his dismissal, he will not claim arrears of back wages etc. Though counsel for the respondent-plaintiff made a very fair offer with regard to foregoing

arrears of back wages etc. but in view of the suit being barred by limitation,
the respondent-plaintiff cannot assert his claim for reinstatement in service
even at the cost of foregoing the back wages etc.

(Rekha Mittal)
Judge

12.9.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes