

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

(208)

RSA-4927-2002 (O&M)

Date of decision : 29.10.2022

SATISH KUMAR

.....Appellant

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. N.C. Kinra, Advocate
with Mr. Harsh Kinra, Advocate
for the appellant.

Mr. Gaurav Jindal, Additional Advocate General Haryana
for the respondents.

HARKESH MANUJA, J (ORAL).

Challenge in the present appeal has been made to the judgments and decrees dated 16.05.2000 and 09.09.2002 whereby a suit for mandatory injunction filed at the instance of appellant/plaintiff seeking relief of regularization of services w.e.f. from 15.09.1993 along with consequential benefits has been dismissed.

The facts leading to the present appeal are that the appellant/plaintiff got appointed as Sweeper on part-time basis in Government High School Kheri Sadh on 15.09.1990, his name having been sponsored by the Employment Exchange Rohtak. Relying upon the letter dated 05.08.1980 issued by the Office of Director, Education Department Haryana directing regularization of services of part-time employees with 03

years experience and recommended by the Employment Exchange, the appellant/plaintiff issued a legal notice dated 18.01.1996 under Section 80 of the Code of Civil Procedure upon respondents- defendants, seeking his regularization beside claiming consequential service benefits. However, faced with deafening silence, the appellant/plaintiff filed a suit for mandatory injunction seeking his regularization as well as other consequential service benefits.

In response, respondent/defendant filed a joint written statement stating therein that the appellant/plaintiff was not entitled for regularization of his services as per the letter dated 05.08.1980 which stood superseded by a subsequent letter dated 05.05.1995 issued by the office of Financial Commissioner and Secretary to Government of Haryana, Education Department. The suit was also contested on the ground of want of notice under Section 80 of the Code of Civil Procedure, 1908 as its receipt was disputed.

The trial Court vide its judgment and decree dated 16.05.2000 though recorded a finding in favour of the appellant/plaintiff as regards issue Nos. 1, 2, 3 and 8 to hold that he was entitled to get his services regularized with consequential service benefits w.e.f. 15.09.1993, however, dismissed the suit being not maintainable, by holding that the appellant/plaintiff was not able to prove service of notice dated 18.01.1996 issued under Section 80 of the Code of Civil Procedure, upon the respondents/defendants.

Appellant/plaintiff challenged the judgement and decree dated 16.05.2000 passed by the learned trial Court by way of filing Regular Civil Appeal No. 99 of 2000. Simultaneously Cross Objections No. 99/A of 2000 also came to be filed at the instance of respondent/defendants

challenging the findings recorded by the trial Court in favour of appellant/plaintiff holding him entitled for regularization of his services besides his entitlement to all consequential service benefits w.e.f. 15.09.1993. During pendency of the first appeal, the appellant/plaintiff moved an application under Order 41 Rule 27 seeking permission to produce and prove on record two postal receipts dated 20.01.1996 and 23.01.1996. besides two acknowledgments as well. The aforesaid application was allowed by the learned First Appellate Court vide order dated 08.02.2002 permitting the appellant/plaintiff to produce and prove the aforesaid documents subject to payment of cost of Rs.700. From the records it can be seen that the cost of Rs.700/- was accepted by the respondents/defendants as has been noticed in the order dated 26.02.2002 passed by the Additional District Judge(I) Rohtak. A further perusal of order dated 26.02.2002 also shows that the two postal receipts and the two acknowledgments were exhibited on record as Exhibit A1 to A4 respectively, though, the same were objected to. Against this, respondents examined RW1, Manju Kumar, Principal, Government Senior Secondary School, Kheri Sadh as their witness.

The learned First Appellate Court vide its impugned judgment and decree dated 09.09.2002 dismissed the cross objections filed at the instance of respondents/defendants, consequently, up-holding the findings recorded in favour of the appellant/plaintiff as regards the merits of his claim of regularization and the consequential benefits. However, the appellant/plaintiff was non-suited again for want of proof of notice under Section 80 CPC having been served upon the respondents. Referring to the records of the learned first Appellate Court, learned counsel for the appellant

submits that from a bare perusal of Exhibit A1 to A4 which are at page 97 to 101, one can see through that the addresses mention therein are of Director Secondary Education, and Secretary Education, Haryana. Further, while referring to Exhibit A2 at page 97 i.e. the receipt, he points out that even a stamp affixed by the Postal Department also depicts the date of dispatch as 20.01.1996. In addition, he also refers to Exhibit A3 at page 97 to contend that the acknowledgment pertaining to the Office of Secretary Department of Education, Haryana even shows a stamp dated 23.01.1996 affixed by the Dispatch Branch. He also points out that the name of the sender in both the acknowledgments i.e. Exhibit A3 and A4 at page 99 and 101 has been of the same Advocate i.e. Sh.K.N.Khera, Advocate District Court, Rohtak, through whom notice Exhibit P1 dated 18.01.1996 was got issued/dispatched. Based on all this, learned counsel for the appellant/plaintiff submits that the learned First Appellate Court committed an error of law by misreading the documents Exhibit A1 to A4.

On the other hand learned State counsel representing the respondents submits that despite having granted permission by the First Appellate Court for production of documents Exhibit A1 to A4, the same were simply tendered and made part of the record, but, were never proved as per law of evidence. He further submits that mere exhibition of a document does not amount to its proof .

I have heard learned counsel for the parties and also gone through the record, I find merits in the contentions raised on behalf of counsel for the appellant. On a conjoint reading of Exhibit P1 i.e., the legal notice dated 18.01.1996 along with Exhibits A1 to A4 which are the postal receipts and acknowledgments, it has been clearly established on record that

the legal notice got issued by the appellant/plaintiff through his counsel Sh.K.N. Khera was duly dispatched to the addresses i.e. respondent No.2 besides the Secretary, Department of Education, Haryana, and the same were even served upon them as well. In fact, there has been a total misreading of the documentary evidence on the part of the learned First Appellate Court while holding that the appellant/plaintiff was not able to prove issuance of legal notice under Section 80 CPC to the Secretary Department of Education Haryana or even to the Director Secondary Education Haryana. The First Appellate Court also went wrong while holding that the postal receipts Exhibits A1 and A2 did not bear the date of sending the registered posts besides the particulars of the addresses i.e., name and designation. The findings recorded by the First Appellate Court while having discarded Exhibits A3 and A4 is also against record. It has been rightly pointed out by learned counsel appearing on behalf of the appellant/plaintiff that the date of stamp of Postal Department on Exhibit A2 can easily be seen and read as 20.01.1996 even from a naked eye, besides even the designation of the addresses on both the receipts Exhibit A1 and A2 including the stamp of the receipt branch on Exhibit A3 as well.

In this regard, statement of RW1 Smt.Manju Kumar, Principal Government Senior Secondary School, Kheri Sadh, which was recorded before learned first Appellate Court, may also be of some significance. Relevant extract from her cross-examination is reproduced hereunder for reference:-

“....I have no knowledge that Staish had sent any notice to the Director Secondary Education and to the Secretary Department of Education or not. I have no knowledge that the

appellant Satish before the institution of the suit had sent a notice Ex.P1 vide receipt Ex.A1 and Ex.A2 to the Director Senior Secondary Education Haryana Chandigarh and Secretary Department of Education, Haryana Chandigarh, which were received vide Ads Ex.A3 and Ex.A4. Volunteered, I have received no information regarding the notice from the higher officers to our school....”

From the statement of RW1, it is apparent that the documents Ex.A1 to A4 were never disputed by respondents. The statement of RW1 was merely based on her own knowledge without having derived any information from the office of Director, Secondary Education, Haryana or the Secretary, Department of Education, Haryana, about the receipt of notice Ex.P1 dated 18.01.1996.

In this view of the matter, relying upon Exs. A-1 to A-4, it can be safely arrived at that the notice Ex.P-1 dated 18.01.1996 was duly served upon the office of Director, Secondary Education, Haryana, besides, the Secretary, Department of Education, Haryana, as well.

As regards the arguments raised at the instance of respondents that the documents Exhibit A1 to A4 were though permitted to be produced on record but the same were never proved in accordance with law. Learned counsel for the State refers to an order dated 26.02.2002 passed by the First Appellate Court so as to contend that when the documents Exhibit A1 to A4 were tendered in evidence, the same were objected to. I have seen the order dated 26.02.2002, a perusal thereof shows that an objection was raised by the respondents at the time when the documents Exhibit A1 to A4 tendered

in evidence and exhibited, however, neither the said objection was ever dealt with there and then; nor even the same was ever pressed upon by the respondents at the time of final hearing before the First Appellate Court.

Even the learned First Appellate Court never observed or recorded any finding on the said objection in exercise of its powers under Order 13 Rule 3 CPC, while deciding the main appeal, meaning thereby that the same was over-ruled and the documents were accepted being duly proved in the evidence. Order 13 Rule 3 CPC is reproduced hereunder:-

“Order XIII Rule 3 CPC: Rejection of irrelevant or inadmissible documents”:- *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”*

More than that, the learned First Appellate Court nowhere discarded the documents Exhibit A1 to A4 for want of mode of proof or their admissibility, but were not considered for want of their evidentiary value. It may be pointed out here that Exs.A-1 to A-4 are the original postal receipts and the acknowledgment; thus possibly there could not have been any objection as regards admissibility, however, though, the objection regarding mode of proof was required to be dealt with by the first Appellate Court at the time when it was raised, so as to enable the appellant to avail an opportunity to prove these documents, in accordance with law by removing the objections raised by the respondents. Having failed to adopt the aforesaid fair procedure, besides having not even dealt with the objection in the impugned judgment, the appellant could not be put to a disadvantageous position at this stage as the same even enables this Court to draw an inference of the rejection to the objection raised by respondents by the

learned first Appellate Court.

In this regard, reference can be made to para 19 of the judgment of Supreme Court in **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & anr.**, reported as 2003 (4) RCR (Civil) 704, and relevant extract of the same reads as under:-

“The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage

subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

Resultantly, the appeal stands allowed, finding on issue No.6, recorded by the Courts below as regards issuance and receipt of notice dated 18.01.1996, (Ex.P1) under Section 80 of the Code of Civil Procedure, 1908 at the instance of appellant/plaintiff is hereby set aside thereby

decreeing his suit in toto, granting him the benefit of regularization of services as Class IV employee w.e.f. 15.09.1993 along with all other consequential benefits.

Pending application (s), if any, shall also stand disposed of

**(HARKESH MANUJA)
JUDGE**

29.10.2022

tarun

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No