



RSA No.335 of 2006 (O&M)

-1-

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.335 of 2006 (O&M)

Reserved on:14.10.2024

Pronounced on:18.10.2024

Phool Pati

...Appellant

Vs

State of Haryana and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sudhanshu Makkar, Advocate
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana

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HARPREET SINGH BRAR J.

1. The instant regular second appeal is preferred by the appellant- plaintiff against the judgment and decree dated 08.08.2005 passed by the learned lower Appellate Court thereby allowing the appeal preferred by the respondents-defendants against the judgment and decree dated 10.02.2004 passed by the learned trial Court vide which the suit of the appellant- plaintiff for declaration was decreed to the effect that she is entitled to get her service regularized qua the post of water-carrier in Government Girls Middle School, Jamalpur, Tehsil Bawanikhera, District Bhiwani as per the policy of the State Government and is further entitled to regular pay-scale w.e.f. 26.03.1999 along with consequential benefits as well as mandatory injunction to the effect that respondents-defendants be directed to reinstate the service of the appellant-plaintiff for the aforesaid post which was illegally terminated w.e.f. 01.05.2000 and also treat her on



RSA No.335 of 2006 (O&M)

-2-

lower Appellate Court, the instant regular second appeal has been preferred by the appellant-plaintiff.

FACTUAL BACKGROUND

2. Compendiously, the facts are that the appellant was appointed to the post of Water-Carrier in the year 1979 on part-time basis in Government Girls Middle School, Jamalpur, District Bhiwani. On 17.03.1999, the District Education Officer, Bhiwani passed an order for regularization of part-time employees who had completed 3 years or 6 years of continuous service. In compliance of the aforesaid order, respondent no.4-Headmaster, Girls Middle School directed the appellant-plaintiff vide letter dated 13.01.1999 to appear before Chief Medical Officer, Bhiwani for her medical check-up. After being declared medically fit by the concerned authority, the appellant-plaintiff submitted her documents before respondent no.3- Sub Divisional Education Officer, Bhiwani, however, he denied the application of the appellant-plaintiff vide letter dated 26.03.1999 on account that she did not fall within the prescribed age group of 18-35 years and also did not possess the minimum educational qualification as mentioned in Haryana Secondary Education Department Regional Office Service Rules (Group D). Aggrieved by her disqualification, the appellant-plaintiff made a written representation dated 10.06.1999 to the District Education Officer, Bhiwani and copies were also sent to respondent no.2- Director, Secondary Education Haryana, Chandigarh as well as the erstwhile Education Minister, Haryana but



RSA No.335 of 2006 (O&M)

-3-

availed no result. Subsequently, appellant-plaintiff served a legal notice upon the respondents-defendants on 11.08.1999.

3. Thereupon, the appellant-plaintiff filed a suit for declaration and mandatory injunction praying that her services qua the above-mentioned post be regularized along with all the consequential benefits including regular pay scale w.e.f. 26.03.1999 and that respondents-defendants be directed to reinstate her to the said post of Water-Carrier upon declaring the order terminating her from her service w.e.f. 01.05.2000, as arbitrary and illegal and that she be treated on duty w.e.f. 01.05.2000. Upon notice, the respondents-defendants appeared before the learned trial Court and filed their joint written submission, therein, raising preliminary objections qua maintainability, locus standi and cause of action. On merit, it was contended that service of the appellant-plaintiff was rightly terminated by the competent authority as it was clearly mentioned in para No.5 of the instructions that only permissible appointment was regarding the post of part-time Sweeper, whereas, she was working as a part-time Water Carrier. It was further averred that the case of the appellant-plaintiff was considered as per the policy of the Haryana Government but she fell short of the requisite conditions for regularization.

4. On the basis of pleadings, the learned trial Court framed as many as seven issues including relief. Parties led their respective evidence and on appreciation of the evidence, the learned trial Court decreed the suit filed by the appellant-plaintiff in her favour. Thereupon, the respondents-



RSA No.335 of 2006 (O&M)

-4-

defendants preferred an appeal against the judgement and decree dated 10.02.2004 passed by learned trial Court and the same was allowed on the grounds that stipulated period under Section 80 C.P.C. was not complied with by the appellant-plaintiff and consequently, the findings of the learned trial Court qua issue of maintainability of the suit (issue no.5) were reversed in view of the decision of the Hon'ble Supreme Court in ***Bihari Chowdhary and Another vs. State of Bihar and Other, AIR 1984 SC 1043.***

CONTENTIONS

5. Learned counsel appearing on behalf of the appellant-plaintiff *inter alia* argued that the respondents-defendants nowhere in their joint written statement raised any objection regarding premature filing of the suit qua completion of two months notice period stipulated under Section 80 C.P.C. Similarly, no such objection was taken in the grounds of appeal submitted before the learned lower Appellate Court. Such a conduct on the part of the respondents amounts to deemed waiver off the notice which was ignored by the learned lower Appellate Court. It was also contended that learned Court below failed to appreciate the core issues plaguing the case of the appellant and rather allowed the appeal filed by the respondents on purely peripheral issues, thereby making the same liable for dismissal.

6. Learned State Counsel submitted that expiration of the stipulated period of two months regarding notice under Section 80 C.P.C. is mandatory and cannot be dispensed away in any case. It was also argued



RSA No.335 of 2006 (O&M)

-5-

that since compliance of Section 80 C.P.C. is a legal issue which is always between a party and the Court, it could have been raised even at any stage and therefore, no interference was warranted by this Court in the present case.

OBSERVATIONS & ANALYSIS

7. I have heard learned counsel for the parties and have gone through paper book with their able assistance.

8. Vide order dated 14.11.2006, this Court had framed the following substantial question of law for consideration: -

- I. Whether non-raising of preliminary objection in written statement with regard to the premature character of the suit and non-compliance of Section 80 C.P.C. would amount to waiver of requirements of notice?*
- II. Whether the suit in present facts and circumstances could have been dismissed solely on the ground that it was prematurely filed before expiry of 2-month notice period, while overlooking the main issue?*
- III. Whether the judgement and decree dated 08.08.2005 is perverse and bad, not based on the pleadings of the parties and the evidence on record?*
- IV. Whether principle of natural justice has been followed in deciding the appeal?*
- V. Whether Article 14 of the Constitution has been violated by not allowing the appellant to become a regular employee?*

9. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi***



RSA No.335 of 2006 (O&M)

-6-

Pal Singh and others (2019) 17 SCC 71 and Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, however, since this Court vide order dated 14.11.2006 has already framed the substantial questions of law as reproduced above, the same are being clubbed together and answered at the same instance since they are joined at the hip.

10. Before proceeding further, it is pertinent to discuss here the ambit of Section 80 C.P.C. as discussed in the case of **Bihari Chowdhary (supra)**, which has also formed the basis of the judgement and decree under challenge in the present second appeal. A two-Judge Bench of Hon'ble Supreme Court has made the following observations in the aforementioned case: -

"3. 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 almost 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.(1) 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 section 80 is mere procedure, is fallacious, for section 80 imposes a statutory and unqualified obligation upon the Court."

This decision was subsequently followed by the Judicial Committee in Vellayan v. Madras Province, 74, Indian Appeals 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) S.C.R. 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, cannot 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."

11. It transpires that notice under Section 80 C.P.C. dated 11.08.1999 (Ex.P-19) was posted on 12.08.1999 by an advocate on behalf of the appellant-plaintiff and the same was received by the respondents-defendants around 16.08.1999, whereas, the present suit was filed by her



RSA No.335 of 2006 (O&M)

-10-

on 21.09.1999. Clearly, the suit was filed before the expiration of 2 months from the date of receipt of notice as stipulated under Section 80 C.P.C. However, it was incumbent upon the respondents-defendants to raise an objection qua the same and adduce evidence to support their claim. It has come to the fore that issue pertaining to maintainability of the suit was framed by the learned trial Court as issue No.5, but neither did the respondents-defendants raise any preliminary objections in their joint written statement specifically qua the non-compliance of Section 80 C.P.C., nor did they adduce any evidence to prove the issue framed qua maintainability. The observations of the learned trial Court on the issue of maintainability, i.e., issue no.5 are being reproduced below: -

“9. Onus to prove these issues were upon the defendants, who failed to adduce the evidence of any kind in support of their claim, not these issues were pressed at the time of arguments. Hence, these issues are decided in favour of the plaintiff and against defendants.”

12. Moreover, no such objection finds mention in the grounds taken in the appeal filed before the learned lower Appellate Court. In the considered opinion of this Court, the conduct of the respondents-defendants points towards waiver off the notice under Section 80 C.P.C. as it was incumbent upon them to take such objection before the learned trial Court, at the earliest. As such, the plea of the want of notice should not have been allowed to be raised for the first time at the appellate stage, thereby, reversing the decision of the learned trial Court in a pedantic manner. This opinion finds resonance with the observations made by Bombay High



RSA No.335 of 2006 (O&M)

-11-

Court in the case of **Chandrashekhar Purushottam Rathi vs. State of Maharashtra and Another, 2002(4) RCR(Civil) 227**, which are as follows: -

*“14. The material on record shows that the State Government and the Collector had not waived the notice under section 80(1), Civil Procedure Code in express terms. However, the learned counsel for the plaintiff-appellant submitted that there was a deemed waiver of the notice on the part of the defendants (State of Maharashtra and Collector, Yavatmal). The question is whether such deemed waiver is contemplated in law and if it is so, whether in the instant case, the defendants are deemed to have waived the issuance of notice under section 80, Civil Procedure Code and what is its effect. In this connection, the learned counsel for the plaintiff-appellant cited **Paleti Sivarama Krishnaiah v. Executive Engineer, N.C. Canals Sathenapalli and another, AIR 1978 Andhra Pradesh 389**. In this cited case, the principle that although the notice under section 80, Civil Procedure Code is mandatory, even a mandatory provision can be waived if it is not concerned in public interest, but in the interest of the party that waives it, is followed and it was held that the notice under section 80 is meant for the benefit of the party to whom it is intended and it can be waived by the party for whose benefit it is intended. In this cited case, an objection was raised in respect of non-issuance of notice in the written statement, but no issue was framed on that point and no objection was taken subsequently on that score at any stage of the trial nor any application was made for the amendment issues. It was held that the defendant was deemed to have waived the notice. An elaborate discussion of the facts and law on the above point was made in this case. The observations in the earlier authorities were reproduced.*

*In para 14, the observations in **Vellayan v. Madras Province, AIR 1947 Privy Council 197** were quoted as below :*



"The notice required to be given under section 80 is for the protection of the authority concerned. If in a particular case he does not require that protection and says so, he can lawfully waive his right to the notice."

*Then the aforesaid observations, which are already reproduced above from **Dhirendra Nath Gorai plus Subal Chandra Nath and others v. Sudhir Chandra Ghosh and others, AIR 1964 Supreme Court 1300**, as regards the distinction between irregularity and nullity are also relied upon in this cited case in para 16. The aforesaid principles are concluded in para 18 of the cited case. While considering the facts of that particular case, which were indicating that the party was deemed to have waived the notice, it was pointed out that though the plea raising an objection to the non-issuance of notice was taken in the written statement, no issue in that respect was framed, no objection in that respect was taken in suit at any stage and even in the grounds of appeal, the plea of want of notice was not taken but the said plea was taken for the first time in the arguments in appeal. In such circumstances, it was held that the defendant concerned was deemed to have waived the notice.....*

*Again the following observations in **Purna Chandra Sarkar v. Radharani Dassya, AIR 1931 Calcutta 175**, which are reproduced in para 21 of the above said authority, are relevant. They are as under :*

"The plea of want of notice under section 80, Civil Procedure Code, which is a clear bar to the institution of proceedings against public officer must be taken at the earliest possible opportunity and must be specifically pleaded. Where such a plea is taken by the defendant at a very late stage of the Suit and at a time when the plaintiff would be precluded by the law of limitation from bringing a further suit against the defendant, the defendant must be deemed to have waived the privilege of notice."

*In para 23 of the case cited above the observations in **State v. Bamadeb, AIR 1971 Orissa 227** are quoted as below :*



"When an objection that a suit is not maintainable in the absence of a notice under section 80 is not raised in the trial Court and no issue is joined on this point and the suit is decreed, the plea as to want of notice must be deemed to have been waived and when the plea is taken for the first time in appeal, the Appellate Court is not entitled to dismiss the suit on the ground of absence of notice under section 80."

In para 14 of the authority, the observations in **Dhian Singh v. Union of India, AIR 1958 Supreme Court 274** are reproduced as below :

"It is relevant to note that neither was this point taken by the respondent in the written statement which it filed in answer to the appellant's claim nor was any issue framed in that behalf by the trial Court and this may justify the inference that the objection under section 80 had been waived."

13. Similar view has been taken by the High Court of Madhya Pradesh in the case of **Managing Director Corporation v. Bhejanlal (Dead), Koutika Bai & Others, 2023(3) MPLJ 193**, which is as follows: -

*" 14. The Supreme Court in the case of **Bishandayal and Sons v. State of Orissa and others reported in (2001) 1 SCC 555** has held as under:*

16. Thus, it is clear that the basic purpose of the notice under section 80 of CPC is to give an opportunity to the State and its functionaries to resolve the dispute thereby saving the valuable time and money of the State. However, it is a procedural law. Although, provision of section 80 of CPC is mandatory but it can be waived by the defendants.

17. If the written statement filed by the defendants is considered, then it is clear that no objection was raised before the Trial Court. Even, the said objection has been raised for the first time during the course of arguments only.

18. Be that as it may.

19. Since the requirement of section 80 of CPC can be waived by the defendants and by not having raised the same in the written statement, this Court is of the considered opinion that once the defendants have



RSA No.335 of 2006 (O&M)

-14-

waived the requirement of section 80 of CPC, the respondents cannot be non-suited on the ground of premature nature of suit.”

14. After taking into account the facts and circumstances of the present case, especially the conduct of the respondents-defendants throughout the trial as discussed above, it can be reasonably deduced that they have waived off the privilege of notice under Section 80 C.P.C.

15. Ex-consequenti, the judgement and decree dated 08.08.2005 passed by District Judge, Bhiwani in Civil Appeal No.66 of 2004 is set aside and the matter is remanded back to the lower Appellate Court with a direction to decide the aforesaid Civil Appeal on merits, excluding the ground of non-maintainability of the suit for want of notice under Section 80, Civil Procedure Code. There shall, however, be no order as to costs.

16. Considering the fact that the present Regular Second Appeal was instituted in the year 2006, the learned lower Appellate Court is also directed to hear the Civil Appeal expeditiously.

17. Disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

October 18, 2024

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No