
(2015) 05 GAU CK 0016
In the Gauhati High Court
Case No : Regular First Appeal No. 33 of 2007

Mafiquddin Ahmed Hazarika	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 300

Citation : (2015) 05 GAU CK 0016

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : A.B. Chowdhury, Senior Advocate and A.M. Choudhury, for the Appellant; G. Sarma, Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nishitendu Chaudhury, J.

1. This first appeal has been preferred by the plaintiff against the judgment and decree dated 25.07.2007 passed by the learned Civil Judge (Senior Division), Tinsukia in Money Suit No. 28/1996 challenging only on the ground that the amount of compensation decreed by the learned trial Court is inadequate and unreasonable.
2. The respondents State of Assam has not preferred any cross appeal or cross objection challenging the validity of the decree passed by the learned trial Court for a sum of Rs. 1,85,000/-. The decree, therefore, in so far it relates to realization of Rs. 1,85,000/- remains unchallenged and so the appeal has to be confined to the question as to whether the amount needs to be further enhanced.
3. Plaintiff, Mafiquddin Ahmed Hazarika, while in service as a Forester Grade - I and posted at Ledo Forest Beat Office in the District of Tinsukia, instituted the suit against the State of Assam and its two officers, namely, Principal Chief Conservator of Forest, Assam, Rehabari, Guwahati and the Divisional Forest

Officer, Digboi Division, Digboi. However, no one was impleaded by name. The pleaded case of the plaintiff is that he entered service in the year 1977 and got promoted to the rank of Forester with effect from 01.04.1981. When he was working at Ledo Beat Office in the year, 1991, the defendant Nos. 2 and 3 were his superiors. He alleged that defendant Nos. 2 and 3 started giving him trouble without just cause and reason and he was subjected to transfer as many as six times during the short period of 02.11.1991 to 21.11.1992. Under such circumstances, plaintiff had to approach this High Court invoking writ jurisdiction by filing Civil Rule No. 786/1993. It is alleged that the defendants violated the order of the High Court and so a contempt proceeding being Civil Original Contempt Application No. 98/1993 had to be instituted by the plaintiff against them. Having come to know about filing of the contempt case, the defendants suspended him on 26.03.1994 from service for alleged violation of transfer order.

4. The suspension order was quashed by the High Court in Civil Rule No. 776/1994 as the defendants could not draw up disciplinary proceeding within 10 months of placing the plaintiff under suspension. Even thereafter, the defendants are alleged to have kept him out of service by not giving charge and ultimately on 30.03.1993 only reinstated him on service and transferred him to Lakhpathar Range. The plaintiff then filed Civil Rule No. 1415/1994, and thereafter, the High Court vide order dated 12.04.1994 interfered and directed the defendants to allow him to work at Ledo by not giving effect to the transfer order. The defendant did not comply with the order as alleged and thereupon, plaintiff filed another contempt petition being Civil Original Contempt Application No. 176/1994 but the same was closed as the plaintiff was allowed to join on 14.06.1994. It is the further case of the plaintiff that even thereafter, he was not given charge for which he was compelled him to file another Civil Rule No. 1415/1994 alongwith Misc. Case No. 987/1994. This writ petition and the miscellaneous case were disposed of on 29.11.1994 directing the defendants to ensure that plaintiff is allowed to take charge within 15 days. This order was followed by another contempt application being Civil Original Contempt Application No. 27/1995 alleging that the order dated 29.11.1994 was not complied with. However, immediately after filing of the contempt application, the plaintiff was given charge of the post.

5. With these basic facts, the plaintiff claimed that he had to go to Guwahati for taking steps in the writ petition and the miscellaneous case and thus he had incurred expenditure to the tune of Rs. 85,000/-. Because of this financial hardship, his family suffered and that there was loss of one academic year of education of his children in studies. However, plaintiff is silent in the plaint to mention the names of his children and the classes wherein they were reading and there is no material as to how and in which manner their one academic year was lost. The material fact leading to the financial hardship falling on the family has also not been disclosed in the plaint.

6. The plaintiff claims to have served notice under Section 80 of the Code of Civil

Procedure, and thereafter, filed a suit praying for decree for recovery of an amount of Rs. 48,71,000/- alongwith interest @ 18% per annum thereon for wrongfully withholding the payment. Upon receipt of summons, State of Assam submitted written statement making vague and mechanical statements and prayed for dismissal of the suit for inherent defect of the suit.

7. The written statement submitted by the State, however, claimed that the plaintiff was transferred in public interest and for administrative exigency. In paragraph 15 of the written statement, the defendant State of Assam furnished material facts to show that he plaintiff was given charge of Range Officer and allegations are also leveled showing that while working at Ledo Beat Office, the plaintiff committed major illegalities resulting loss of Government revenue. His continuation in service in Ledo Beat Office might cause further loss of Government revenue so it was felt necessary to transfer him from Ledo and thus he was transferred to Margherita (West) Range Headquarter on 21.11.1992. The plaintiff did not comply with the order and defied the Divisional Forest Officer. He retained with him Government hammer, field book, etc. Thereafter, plaintiff remained unauthorizedly absent from Headquarter since 10.12.1992 and refused to hand over charge of the Beat Office to the Forester Grade - I, who was appointed there. In the written statement, allegation was leveled that the plaintiff was guilty of insubordinate of superior officer, of not handing over charge of Ledo Beat Office and the office was kept under lock and key without authority. The defendants prayed that the suit is devoid of any merit and the same shall be dismissed with cost.

8. Upon perusal of the pleadings of the parties, the learned trial Court framed as many as six issues, including an additional issue, which are as follows:

1. Whether the suit is maintainable in law and facts?
2. Whether the plaintiff has right to sue?
3. Whether the suit is bad for want of Notice U/s. 80 of C.P.C.?
4. Whether the plaintiff is entitled to the decree, as prayed for?
5. To what relief/reliefs, the parties are entitled?
6. Whether the plaintiff is entitled to get compensation as prayed for? If so, what would be the reasonable quantum?
9. In course of trial, plaintiff examined himself as sole witness and exhibited as many as 25 documents. The defendants did not examine any evidence and did not produce any records.
10. After consideration of the materials available on record, the learned trial Court held that the suit is maintainable under the law and the Civil Court has jurisdiction, that suit is not bad for want of Notice under Section 80 of the Code of Civil Procedure and that the plaintiff is entitled to decree for compensation. Since the plaint does not contain material facts as to how compensation of Rs.

48,71,000/- was to be paid, the learned, trial Court "notionally assessed" the compensation of physical and mental pain at Rs. 60,000/- and loss of one academic year of the children at Rs. 40,000/-. He presumed that the plaintiff incurred expenditure of Rs. 85,000/- in defraying expenditure of series writ petitions and miscellaneous cases before the High Court and thus passed a decree for Rs. 1,85,000/- in all.

11. It is necessary to mention here that the plaintiff has not produced even a single ticket and has not produced any cash memo against expenditure he had incurred. The plaintiff has not led any evidence to show as to how one academic year of his children was lost. He did not make mention the names of his children and institutions where they were reading but even thereafter, the learned trial Court leniently presumed the same to be correct and assessed the compensation at Rs. 40,000/- on his own. The physical and mental agony has also been decreed for Rs. 60,000/-, for which, there is no material fact in the plaint and consequently, there is no iota of evidence on record. Be that as it may, the State of Assam in its discretion and wisdom did not challenge the decree which apparently is unsustainable and thus, the decree has attained finality.

12. The plaintiff, on the other hand, has preferred this appeal claiming enhancement of the decretal amount. Since money decree is not under challenge at the instance of the defendants and no cross appeal/cross objection has been preferred by the State, the sole point for determination in this appeal would be as follows:

Whether plaintiff is entitled to enhancement of decree over Rs. 1,85,000/-?

13. I have heard Mr. A.B. Choudhury, learned Senior Counsel assisted by Mr. A.M. Choudhury, Advocate for the appellant and Mr. G. Sarma, learned Government Advocate on behalf of the Respondents. I have perused the pleading of the parties, the deposition of sole witness of the plaintiff and the 25 documents adduced by the plaintiff before the trial Court.

14. It is the case of the plaintiff that he suffered from mental agony and for that decree of Rs. 60,000/- is not sufficient. Appellant's further case is that his children lost one academic year and so decree should have been more than Rs. 40,000/- and that decree for Rs. 85,000/- towards defraying expenditure in litigating against the State is also not sufficient. To find out the basis of the claims, the plaint has been perused. The plaint does not disclose material facts. In paragraph 4 thereof or anywhere else it is not shown as to how the plaintiff claimed a decree of Rs. 48,71,000/-. In 3rd sub-para of paragraph 4 in the plaint, plaintiff merely stated that he is entitled to claim of compensation at a moderate estimation of Rs. 48,71,000/- only but how this amount has been worked out has not been disclosed in the plaint. The law of pleadings requires that plaintiff has to make concise statement of material facts. Since it is a money suit, responsibility was on the plaintiff to show as to how he was entitled to the amount claimed. Because only if such specific disclosure is made in the plaint,

the defendants shall get an opportunity to rebut the same in their pleadings. In case, the pleadings are there, then and then only parties will be at liberty to lead evidence to establish the same. If there is no material fact in the pleadings, the lacuna cannot be filled up in course of trial, because no amount of evidence can be taken into consideration, which is beyond pleading. The learned trial Court has noticed that there was no foundation in the plaint regarding claim of the plaintiff for Rs. 48,71,000/-.

15. When the plaintiff raised a claim that his children has lost one academic year because of the frequent transfers, it was necessary for him to furnish material facts as to how many children did he had, in which school did they read and how did they lose one academic year. What was the distance of the school from the place of his residence and whether he had to shift from one place to another because of frequent transfer had also to be pleaded and proved. The plaintiff disclosed in his own pleading that despite several transfer orders passed by the defendants, he ultimately succeeded to stay at Ledo because of interference of this High Court under writ jurisdiction and so how the question of displacement and discontinuation of study of the children had occurred ought to have been specifically pleaded and established. Unfortunately, no such pleading is available in the record and plaintiff did not lead any evidence to prove his vague allegations.

16. Coming to the question of physical and mental agony, the plaintiff has not furnished any fact as to whether he had fallen sick. Merely by showing that his family had suffered physical and mental agony cannot entitle him to get a decree for compensation for the same unless the details thereof is specifically pleaded and established. From the tenor of allegations leveled in the plaint, it appears that plaintiff sought to establish mala fide against the defendants but no one has been impleaded in person and no specific allegation have been leveled against any of the officer who might have acted mala fide against the plaintiff. The orders passed by the High Court under writ jurisdiction also do not reflect that the High Court was prima-facie satisfied as to mala fide action of the State in transferring him one place to another during the relevant period. His suspension order was quashed because no disciplinary proceeding was drawn up by the defendants within 10 months of passing of the suspension order. The same order is silent about mala fide action on the State. The plaintiff pleaded that the State was liable for that account and so compensation to the tune of Rs. 48,71,000/- should be decreed.

17. Though, State did not raise any objection under Article 300 of the Constitution of India in regard to immunity against tortious action of its employee, yet it was the bounden duty of the Court to look into the matter and thereupon to decide the issue of maintainability of the suit. Neither the State counsel appears to have raised any objection with regard thereto nor did the learned trial Court consider this aspect of the matter. The question also did not receive any consideration as to whether an in service Government employee can

claim compensation against the State without prior sanction and that too, in respect of the transfer order passed against him which have not been pleaded and established to be mala fide.

18. Considering the entirety of circumstances, this Court does not feel that the plaintiff has laid any foundation for enhancement of decree and in that view of the matter, sole point for determination is decided in favour of the defendants and against the plaintiff. Accordingly, the appeal stands dismissed.

19. No order as to cost. Send back the records.