

(1987) 02 MP CK 0032

In the Madhya Pradesh High Court

Case No : Second Appeal No. 289 of 1978

State of Madhya Pradesh

APPELLANT

Vs

Sardarmal

RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2, Order 41 Rule 27, Order 8 Rule 5, 9
Evidence Act, 1872 — Section 114, 124

Citation : AIR 1987 MP 156

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : S.R. Joshi, for the Appellant; S.C. Bagadia, for the Respondent

Final Decision : Dismissed

Judgement

1. This second appeal, by the State Government, arises out of the appellate judgment and decree dt. 14-3-1978, passed by the Addl. District Judge, Ratlam, in Civil Regular Appeal No. 534 of 1976.

2. Respondent is a teacher. He instituted a suit for declaration that he was entitled to the salary of a trained graduate teacher from June, 1963, as he had acquired the requisite qualification at that time. The suit was filed in the year, 1971.

3. Defendant-appellant-State resisted the suit and prayed for its dismissal. Trial Court dismissed the same, while the lower appellate Court decreed the suit declaring the plaintiff-respondent to be entitled to the salary, as claimed by him.

4. This appeal was admitted on the following substantial question of law :

"Whether, considering the facts and circumstances of the case, the learned lower appellate Court has correctly decided the case in accordance with law?"

5. Two points have been raised by Shri Jain, learned Dy. Government Advocate,

appearing for the appellant State, firstly, that the lower appellate Court erred in permitting additional evidence at the appellate stage, and secondly, the lower appellate Court misconstrued the pleadings of the defendant-appellant and came to an erroneous conclusion that for want of specific denial, the case as pleaded by the plaintiff was admitted by the defendant-State. It was also urged that as a result of non-production of certain documents, an adverse inference was drawn against the appellant-State, which in the circumstances of the case, could not have been legally drawn.

6. So far as the question of admission of additional evidence at the appellate stage is concerned, it may be noted that the plaintiff- respondent, who was appellant before the lower appellate Court, had moved an application under Order 41, Rule 27, C.P.C., on 18-2-1978. The documents filed along with this application were nothing but certified copy of a judgment of this Court in Civil Second Appeal No. 84 of 1973, photostat copies of Diplomas, certificates and the Degree of Bachelor of Arts, obtained by the plaintiff-respondent and a copy of the plaintiff's appointment order dt. 31-10-1966, duly attested by the Assistant District Inspector of Schools, Jaora. The veracity of these documents has not been disputed by the appellant State before the lower Court. The lower appellate Court having considered these documents, in para 14 of the impugned judgment, came to the conclusion that the documents were necessary for a just decision of the case. There is no ground for interfering with the discretion exercised by the lower appellate Court, considering the nature of the documents and the reasons assigned by the Court below.

7. The other point, which the learned Dy. Government Advocate for the appellant State has raised is about pleadings. It is a settled law that denial of any fact averred by the plaintiff must be specific. In absence of any specific denial, the inference as has been drawn by the lower appellate Court, cannot be assailed on any legitimate grounds. It is not disputed that the rule of "traverse" permits such an inference. In these circumstances this ground, which is raised by the learned counsel is of no avail to the appellant State.

8. The other ground, which remains to be considered is regarding non-production of documents by the appellant State and an adverse inference drawn by the lower appellate court for such non-production. So far as the State is concerned, now that it has been held to be a virtuous litigant See *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s*, it does not behave the State Govt. to keep back even any such document, the production of which may possibly not be in its own interest, yet necessary for a just decision of the case. Withholding of documentary evidence for a litigant, professed and held to be a virtuous, can hardly be said to be desirable. In this connection the observations made by their Lordships, of the Supreme Court in *Dilbagh Rai Jarry Vs. Union of India (UOI) and Others*, are as under :

"Per Krishna Iyer, J.-- I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being

symptomatic of a serious deficiency. In this country the State is the largest litigant today and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court here and has been negatived in the judgment just pronounced. Instances of this type are legion.

It must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity.

The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in Court."

It is really painful to note that the Corporation should have taken the plea of limitation to defeat the just claim of an employee, quite unmindful of the pronouncement of the Supreme Court in *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s*, , to the following effect :

The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

Plaintiff-respondent, in para 4 of the plaint has referred to a memo dt. 2-11-1963, issued by the State Government and addressed to the Accountant General, informing him that Graduates, who have passed C.T. examination, would be treated as trained Graduate Teachers entitled to the scale of pay of Rs. 150-290. The defendant-State has not specifically denied this fact and it was in this context that the lower appellate Court has come to the conclusion that a fact not denied should be deemed to have been admitted and has proceeded on the basis of such admission. No illegality can be attributed to this approach of the learned Judge of the lower appellate Court. Naturally, the plaintiff-respondent could not produce this memo and suprisingly enough the appellant State came out with a plea of privileged 1 document. One fails to see the logic behind such a plea of "privileged" documents "being raised a myth long exploded, but unfortunately very conveniently adhered to by the State, The Supreme Court in

S.P. Gupta Vs. President of India and Others, has in no uncertain terms denounced such a plea being raised. If there was such a communication, as claimed by the plaintiff and not denied by the appellant State, the document must be in possession of the State. There is no reason or rhyme in claiming any privilege as regards such a document, which merely informs the Accountant General about the scale of pay, which was made payable to a trained Graduate teacher. Such a plea of "privileged document" being raised in a thoughtless and reckless manner-deserves to be deprecated.

9. There is no substance in the contention that the lower appellate Court erroneously invoked the doctrine of adverse inference. In the circumstances indicated above, there was no way out but to apply the doctrine and draw an adverse inference for non-production of a document.

10. It was lastly urged that a simple suit for a mere declaration was not maintainable. Considering the nature of the suit and the relief claimed, even this contention is of no help to the appellant State.

11. Shri Jain, learned Dy. Govt. Advocate, raised the question of limitation as well and contended that in view of the substantial question of law, on which this appeal has been admitted, particularly the frame of the question permits such a point being raised. The point was allowed to be raised in the light of the substantial question of law, on the basis of which this appeal was admitted. Going through the record it was pointed out by Shri Bagadia, learned counsel for the respondent that this plea was not raised before the trial Court, so much so, no issue was framed on this point and permitting any such question to be raised at this late stage in second appeal, would certainly go to prejudice the plaintiff-respondent, who in case the suit being found to be barred by limitation, could have explained the delay by such a plea being raised before the trial Court. Going through the written-statement, the plea raised by the defendant-appellant-State was that the suit was premature. The plaintiff, in para 9 of his plaint, has made the necessary averment regarding limitation, which has also not been traversed by the appellant State. All that is said by the defendant State is "Sweekar Nahi" Without specifying as to why the facts stated in para 9. were being denied. A very incongruent plea is to be found in para 5 of the appellant-State's special pleadings. Before this Court it is being contended that the suit was barred by time, while before the trial Court the plea was (as contained in para 5 of the special pleadings), that the suit being premature was liable to be dismissed. It is unfortunate that such pleas are being raised. Even assuming that the suit was barred by time for some reason or other, yet this plea of limitation is not meant for the State, who is expected to meet all just and honest claims of a citizen, even if they are barred by time. In the instant case, all that the plaintiff-respondent has claimed is his entitlement to a scale of pay on the basis of his possessing the requisite qualification of a trained teacher and even that claim is being sought to be defeated by raising the plea of limitation, wholly untenable on facts as well as in law.

12. Shri Bagadia, learned counsel for the respondent, supporting the judgment and decrees, pointed out that the approach of the appellant State in this case has all along been callous and in utter disregard of law itself, not to speak of virtuosity attributed to it. When a notice u/s 80, C.P.C. was served on the appellant-State, it was at that stage itself that it could and ought to have been pointed out to the plaintiff-respondent that the claim that he was advancing was barred by time and as such could not be acceded to. Instead of doing so, the reply with which the appellant State has come forth that makes a shocking reading. The relevant plea of notice u/s 80, C.P.C. is to be found in para 6 of the plaint and the reply thereto in para 6 of the written-statement, filed by the appellant State, which reads as follows :

"Vadika Soochna Patra Aana Sweekar. Shashkeeya Samay Vyarthi Ki Baton Ka Uttar Dene Me Vyaya Nahi Kiya Ja Sakat. Is Karan Uttar Nahi Diya Jata Hai."

Such a reply being filed, hardly commends the Officer-in-Charge or the Government Pleader, who either filed or approved of the filing of such a written-statement. Such an attitude deserves to be condemned. It is defeating the very object and purpose of Section 80, C.P.C. The Supreme Court in *Raghunath Das Vs. Union of India (UOI) and Another*, has observed :

"The object of the notice contemplated by Section 80, Civil P.C. is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them, lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in Section 80 are not intended to be used as boobytraps against ignorant and illiterate persons."

In *The State of Madras Vs. C.P. Agencies and Another*, and another decision in *Amar Nath Dogra Vs. Union of India (UOI)*, , observed :

"The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case, which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for.

The terms of this section should be strictly complied with. That does not however, mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common sense."

Thus, the very purpose of introducing Section 80 C.P.C. has been defeated by

such stands being taken when a claim is made against the State Govt. It is the duty of the Officer or the public servant concerned, either to make amends to claims or to inform the claimant as to why his claim cannot be acceded to. The plea, which is raised is unfortunate and to be regretted.

12A. For the foregoing reasons this appeal is liable to be dismissed and is accordingly dismissed with costs. Although the learned Dy. Government Advocate has been very fair in his submissions, but considering the stand of the appellant State, showing scant regard to the law itself, it is a case where costs should be imposed. Counsel's fee shall be Rs. 500A, if certified.