(2003) 09 SIK CK 0004

Sikkim High Court

Case No: Regular First Appeal No. 2 of 1997

M. Chandran		APPELLANT
	Vs	
Tashi Namgyal Academy Board and Another		RESPONDENT

Date of Decision: Sept. 30, 2003

Citation: AIR 2005 Sikk 2

Hon'ble Judges: Radha Krishna Patra, C.J

Bench: Single Bench

Advocate: A. Moulik and N.G. Sherpa for Respondent No. 1, N. Rai and Jyoti Kharka, for the Respondent

Final Decision: Dismissed

Judgement

R.K. Patra, C.J.
The plaintiff being felt aggrieved by the decree dated 23rd July, 1997 passed by the learned District Judge, (S and W), Sikkim at Gangtok in Civil Suit No. 14/1996 (earlier registered as Civil Suit No. 261 of 1987) dismissing his claim of Rs. 10 lakhs as damages against the respondents has filed this appeal.

A prefatory note with a pathetic touch.

A little lis which set its sail in the year 1987 lasted a whole decade in the trial Court. Processual protraction, plethora of technical pleas, entanglement in the fight over irrelevant and impertinent issues, lack of sensitivity in the Presiding Officer by freely permitting parties to lead evidence on points which had no semblance or bearing on the core issue, lack of Court management including the abortive attempt of the appellant in moving the Hon''ble Supreme Court for transfer of the suit to outside the state are some of the disturbing and sorrowful features in the case.

This appeal in this Court had also no smooth sailing. Earlier three of the learned Judges of this Court one after the other reclused themselves to hear the matter because of certain reservations aired by the appellant.

2. The case of the appellant as presented in the plaint is that he is a former member of the Indian Revenue Service having been recruited in 1954 on the basis of a combined competitive examination for IAS and Allied Services conducted by the U.P.S.C. To his credit he held very senior and responsible positions in Civil Services in India as well as abroad. After his stint under the Government of India, he on 28th May, 1982 came to be appointed first as Vice-Principal and later as the Acting Principal in Tashi Namgyal Academy, Gangtok (hereinafter referred to as the T.N.A.) which was being managed by a Board of Governors constituted by the Government of Sikkim. Since November, 1983 the T.N.A. has become an autonomous body by virtue of the Tashi Namgyal Academy Board Act, 1983. On 25th April, 1983, the Government of Sikkim transferred his services to the Education Directorate. In or around this time he came across an advertisement and applied for the post of Vice Principal in DBMS English School, Jamshedpur (Bihar) (hereinafter referred to as DBMS school) and was appointed as such in April, 1984. He was required to join the post of Vice-Principal after re-opening of the school in the middle of June, 1984. In May, 1984 the authorities of the school cancelled his appointment. They took such decision because of a report they got from the respondent No. 2 (defendant No. 2) who was then the Principal of T.N.A. in which, as indicated above, the appellant was earlier serving. The said report furnished by the respondent No. 2 was false, malicious and highly derogatory. In view of the said report, he not only lost his employment as Vice Principal in DBMS school but also it resulted in loss of his name and fame, causing mental and physical agony, financial-economic injury which he monetarily assessed at Rs, 10 lakhs. Before commencing the suit, he wrote a letter to the Chief Secretary of the Government of Sikkim with reference to the information he received from the DBMS school requesting him to have his "say" in the matter. He also sent copies of the said letter to some ex-officio members of the Tashi Namgyal Academy Board. He was told that the matter was being looked into but he never received any formal reply from them. Having found no other alternative he filed the present suit claiming damages.

3. The respondents filed a joint written statement. They denied any knowledge of the appellant''s appointment in DBMS school and subsequent cancellation of the same. They also denied that the appellant''s appointment was cancelled because of any report sent by the respondent No. 2. It was pleaded in the written statement that even assuming that the authorities of DBMS school acted on the report of the respondent No. 2 but there was no mala fide on his part as he had simply acted on the confidential note made by the former Principal (one K.N.P. Nair) during whose period the appellant had worked in the T.N.A. In forwarding the confidential report to DBMS school the respondent No. 2 did nothing but merely performed a routine job and as such his action is protected. It was stated that the suit is a frivolous and vexatious one and as such it deserves dismissal.

4. In the premise''s of the above pleadings, the learned trial Judge framed twelve issues. The appellant was the lone witness examined as PW-1 in support of his case.

Two witnesses were examined on behalf of the respondents. Respondent No. 2 was examined himself as DW-1. The other witness (DW-2) was the Principal of T.N.A. On assessment of evidence the learned trial Judge recorded the following findings:-

(i) It is not the case of the appellant that respondent No. 2 was aware of his appointment as Vice Principal in DBMS school and he wrote "the alleged report being fully aware of it". The appellant''s case, therefore, falls under the category of "injurious falsehood" and not under any specific wrong like slander of title, slander of goods etc. The suit, therefore, as framed is maintainable in law.

(ii) The action brought by the appellant falls under the recognised head of malicious (or injurious) falsehood for which there is no prescribed period of limitation. Therefore, the residuary provision, i.e., Article 113 of the Limitation Act, 1963 would be applicable which prescribes three years for filing of a suit.

(iii) The appellant received cancellation of his appointment order from DBMS school by the end of May, 1984 and, therefore, he ought to have filed the suit by the end of May, 1987. The suit having been instituted on 9th July, 1987, it is out of time.

(iv) There is no sufficient and adequate evidence to hold that it was the respondent No. 2 who submitted the alleged report to DBMS school (paras 56 and 57).

(v) The appellant has not been able to prove malice (para 66).

(vi) The appellant has failed to establish damage which is one of the essential conditions of the tort of injurious falsehood (para 72).

On the basis of the aforesaid findings, the learned trial Judge declined to grant any relief to the appellant.

4(a). Before the hearing of the appeal was taken up, the appellant put in an application (Misc. Appeal No. 106/2003) praying that he should be issued photocopies of fifteen pages of the folder marked ''confidential'' which was said to be part of records. In the said application, the appellant stated "the folder has been marked ''confidential'' by the defendants only, and the original of these photocopies were intended by them to be their exhibits, though later they choose not to exhibit them."

The above prayer was seriously objected by the counsel for the respondents.

Admittedly, those pages whose photocopies the appellant wanted were not produced as evidence. The respondents might have filed the folder marked ''confidential'' in the trial Court but unless they were brought on record by way of evidence, question of granting photocopies thereof to the appellant does not arise. The prayer of the appellant for grant of photocopies of any document not marked or adduced by way evidence is not tenable because the so called confidential file cannot be regarded as a part of Court''s record. I accordingly indicated my views in the Court to the appellant by saying that it would be dealt with while disposing of

the appeal,

5. I have heard the appellant who argued the appeal in person. I gave him a patient audience as he himself had taken up the entire burden of fighting the legal battle without engaging a lawyer. I have also heard Shri Moulik and Shri N. Rai, learned counsel for respondent Nos. 1 and 2 respectively. The appellant submitted written notes titling them as "appellant''s synopsis of arguments", "submissions on case law", "reply arguments", "supplementary reply arguments", "consolidated list of cases", "appellant''s response to some of the points contained in synopsis of argument of the respondent No. 1". He placed them in course of the hearing of the appeal.

6. The first question that falls for consideration is what should be the period of limitation prescribed for filing of the suit of the present type. As a necessary corollary the correctness of the finding recorded by the learned trial Judge that the suit is governed by the residuary Article 113 of the Limitation Act, 1963 (in brief the Act) and it is barred by limitation has to be examined.

Learned counsel for respondents submitted that either Article 75 or 78 would govern the case for which a period of one year has been prescribed and not the residuary Article 113. The appellant submitted that although the learned trial Judge rightly held that the Article 113 is applicable, it. cannot be said the suit is hit by limitation. His submission is that he was in dark as to who was responsible for the communication resulting in cancellation of his appointment in the DBMS school. He could be able to know only on 10th June, 1984 on receipt of confirmation from the said school that it was the respondent No. 2 who was responsible and, therefore, the period of limitation began to run only from that date and the suit have been filed on 9th June, 1987 within a period of three years, the same is within the time.

Article 75 prescribes a period of one year in respect of suit for compensation for libel. The starting point of limitation is when the libel is published. Libel is the publication of a false and defamatory statement tending to injure the reputation of another person without lawful justification or excuse. The statement must be expressed in writing, printing, pictures etc. The essence of a libel being publication, limitation would begin to run from the time it is published. The dictionary meaning of "publish" is ''to make public or known, either by words, writing, or printing'', ''to notify publicly'', ''to cause to be printed and offered for sale'', ''to issue from the press to the public'', ''to put into circulation''. In the present case, there is no ''publication'' of false and defamatory statement tending to injure the reputation of the appellant. Therefore, the provision of Article 75 has no application at all.

Let me now examine if Article 78 would be applicable which prescribes ''one year'' to a suit for compensation for inducing a person to break contract with the plaintiff. The period of one year commences from the date of breach. Shri Moulik, learned counsel appearing for respondent No. 1 contended that the appellant''s case is that

the authorities of DBMS school broke the contract of appointment on account of malicious submission of a false report by the respondent No. 2 and, therefore, the suit falls within the four corners of Article 78. According to the learned counsel, breach of contract was made by the authorities of the DBMS school on 9th May, 1984 when the cancellation order was communicated to the appellant and the suit having been filed on 9th June, 1987, it is out of time.

The entire burden of the appellant''s case is that his appointment as Vice Principal of DBMS school was cancelled because respondent No. 2 maliciously sent a false report against him with regard to his past performance as an employee of the T.N.A. In other words, the pith and substance of his case is that such report induced or persuaded the authorities of DBMS school to cancel his appointment. In view of such case put forth by the appellant, I am inclined to hold that Article 78 covers the matter. Admittedly, the appellant''s appointment as Vice-Principal was cancelled on 9th May, 1984 which was said to have been received by him towards end of May, 1984. The suit for damages, therefore, ought to have been filed latest by the end of May, 1985. But it having been filed on 9th June, 1987, it is clearly be barred by limitation.

7. The learned trial Judge has held that the residuary provision (Article 113) governs the case and the appellant should have instituted the suit within three years when the right to sue accrued.

The Legislature has provided an omnibus provision in Article 113 to cover a case where there is no specific Article for it. It applies only to such a case for which no period of limitation is provided elsewhere in the Schedule of the Act. It may be stated that Part VII of the Schedule of the Act deals with suits relating to tort. It has catalogued twenty types of suits concerning to tort. The aforesaid Part VII appears to be exhaustive and it covers actions relating to all types of tort conceivable. Section 2(m) of the Act defines ''tort'' to mean a civil wrong which is not exclusively the breach of contract or breach of a trust. Salmond and Heuston. Law of Torts (1992) 20th Edition pp. 14, 15 defines ''tort'' as:-

"a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation."

This being the legal position there is little scope to take resort to the residuary Article 113.

Assuming for the sake of argument that Article 113 applies, let me examine if the learned trial Judge is justified in holding that the suit is barred by limitation. It is the contention of the appellant that he could not have commenced the suit basing merely on the basis of the communication dated 9th May, 1984 (which was said to have been received by him towards the end of May, 1984) cancelling his appointment. His submission is that he had no inkling as to what prevailed upon the

authorities of DBMS school to cancel his appointment. He also did not know as to who was the person responsible for it. He could know the real reason only when he received a letter of intimation Exhibit P-32 on 10th June, 1984 from which he could ascertain that the respondent No. 2''s intimation was the root cause for cancellation of the appointment. Cause of action constitutes bundle of facts which it would be necessary for him to prove in order to succeed. It arose only when he received the communication (Exhibit P-32) on 10th June, 1984.

Contrary to the above argument of the appellant, he in the plaint (vide para 21) averred that "the cause of action took place in April-May, 1984 in Gangtok" although in para 13 of the plaint mention has been made that on 10th June, 1984 he received confirmation from the authorities of DBMS school that the respondent No. 2 had written to them the ''information'' referred to in their letter dated 9th May, 1984. The residuary Article 113 prescribes three years as the period for any suit for which no period of limitation is provided elsewhere in the Schedule and the period of three years shall run when the right to sue accrues. Ordinarily the right to sue accrues when the cause of action arises. In view of his specific and categorical case in the plaint that cause of action arose in April-May, 1984 he was required to commence the suit latest by the end of May, 1987 which he did not do. In view of this, the learned trial Judge is right in holding that the suit is barred by limitation. Section 3 of the Act lays down that every suit instituted after the prescribed period shall be dismissed. The provision is peremptory and it is the duty of the Court not to proceed with a suit if it is filed beyond the prescribed period of limitation. The Court has no power to relieve a suitor from the bar of limitation on the ground of hardship, injustice or equity.

8. The learned trial Judge, however, proceeded to consider the case on merit and has ultimately come to hold that the appellant has failed to make out a case for the claim of damages. According to the appellant the defendants in their joint written statement have without specifically denying the allegations in the plaint have merely stated like "plaintiff is put to strict proof'' and "allegations are not admitted". The submission of the appellant is that in view of evasive denial of the respondents in the written statement his allegation that it was the respondent No. 2 who submitted a malicious and false report against him to the DBMS school and on its basis the appointment was cancelled shall be taken to be admitted on the doctrine of non-traverse. In support of his submission he cited the following decisions:-

2. Vinod Kumar Arora Vs. Surjit Kaur,

3. 1956 SCR 789 (sic);

4. AIR 1991 SC 2219;

5. State of Rajasthan and Others Vs. Swaika Properties and Another, .

In this regard, he referred to paras 1 to 5 of the plaint wherein he has averred that he was appointed as Vice Principal of DBMS school in April, 1984 but the authorities of the school wanted him to join only around the middle of June, 1984 after re-opening of the school but in the month of May, 1984 they cancelled his appointment. Such cancellation was made because of a report they got from respondent No. 2. In reply to the above averments, the respondents in their written statement (vide para 7) stated as follows :-

"7. That allegations made in paragraphs 1 to 5 of the plaint are not within the knowledge of the defendants. However, it is denied that because of any alleged report of Mr. Fanthome plaintiffs appointment was cancelled. Even assuming that the appointing authority acted upon such report, the defendant Mr. Fanthome who simply acted upon the confidential report maintained in the school. In fact the plaintiffs performance in the school and his activities were observed and noted by the former Principal Mr. K.N.P. Nair during whose tenure the plaintiff had worked; hence there was no mala fide whatsoever."

9. The moot question is whether the above averment made in the written statement tantamounts to admission of the plaintiffs allegation.

It is relevant to note here that there is a general assertion in para 1 of the written statement to the effect "that the various allegations made in the plaint unless specifically admitted hereof will be deemed to have been all denied by these defendants". Lord Denning speaking for the Queen''s Bench Division in Warner v. Sampson in (1959) 1 QB 297 observed as follows :-

"Since so much effect has been given to this general denial, I would say a word about it. It is used in nearly every defence which goes out from the Temple. It comes at the end. The pleader has earlier gone through many of the allegations in the statement of claim and dealt with them. Some he has admitted. Others he had denied. Whenever he knows there is a serious contest he takes the allegation separately and denies it specifically. But when he has no instructions on a particular allegation, he covers it by a general denial of this kind, so that he can, if need be, put the plaintiff to proof of it at the trial. At one time the use of this general denial was said to be embarrassing,: see British and Colonial Land Association Ltd. v. Foster and Robins 1888 (4) TLR 574, but since 1893 it has been recognised as convenient and permissible: see Adkins v. North Metropolitan Tramway Co. 1893 (63) LJQB 361. Sometimes the pleader "denies", sometimes he docs not "admit" each and every allegation; but whatever phrase is used it all comes back to the same thing. The allegation is to be regarded "as if it were specifically set out and traversed "seriatim". In short; it is a traverse, no more and no less. Now the effect of a traverse has been known to generations of pleaders. It "casts upon the plaintiff the burden of proving the allegations "denied": see Bullen and Leake on Precedents, (3rd ed., p. 436). So this general denial does no more than put the plaintiff to proof. Mr. Scarman did suggest at one stage that it might indirectly involve a positive

averment. For instance, he said that, if pleaded in a libel action, it would involve a denial that the words were false and hence it would carry the implication that they were true and would amount to a plea of justification. But he did not pursue this illustration, and I think it clearly untenable. There are some denials which do involve and affirmative allegation (see MacLulich v. MacLulich 1920 (124) LT 66; but not this general denial. It only puts the plaintiff to proof."

The Supreme Court in Badat and Co. Vs. East India Trading Co., had the occasion to consider Rules 3, 4 and 5 of Order 8, C.P.C. Subba Rao, J. (as he then was) in his separate opinion has observed as follows :-

"Rules 3, 4 and 5 of Order 8 of C.P.C. form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary. But under the proviso to R. 5 the Court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In the matter of mofussil pleadings. Courts presumably relying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice."

To appreciate the contention of the appellant on this score it is essential to look to the law of pleadings and keep in view the Judicial decisions mentioned above, Rule 3 of Order 8, C.P.C. lays down that the denial must specific and it is not sufficient to make general denial. Similarly, Rule 4 of Order 8 prohibits any evasive denial as an effective denial. Rule 5 of Order 8 embodies the principle of non-traverse which reads as follows :-

"5. Specific denial - Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability;

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission."

On perusal of the aforesaid, it appears that although it requires that the denial must be specific, it does not mean that every allegation in the plaint should be reproduced in full in the written statement to deny the same, It may be noticed that the words "denial specifically'' in the Rule are followed by the expression "necessary implication" which means that if from the written statement a denial must be inferred, it must be taken as denial. If in the written statement, it is stated that the allegation is "not admitted", then under Rule 5 it cannot be treated as an implied admission. If in the written statement the allegation in the plaint is answered by saying that "it is not admitted by the defendant" it cannot be held that it has been

admitted impliedly.

Besides the above, one cannot lose sight of the fact that a specific issue, i.e., issue No. 6 was framed relating to forwarding of report by the respondent No. 2 to the DBMS school. The appellant as well as respondents adduced evidence in support of their respective cases. In view of the fact that the evidence was let in by both parties the appellant cannot rely upon the rules of pleadings to infer an admission in substitution of lack of evidence. The Supreme Court in Bhagwati Prasad Vs. Shri Chandramaul, stated as follows :-

".....The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is; did the parties know that the matter in question was involved in the trial, and did they lead evidence about it?....."

In view of the aforementioned reasons, it cannot be held that the respondents specifically or by necessary implication admitted that it was respondent No. 2 who'' forwarded report to the DBMS school which was the cause for cancellation of appellant''s appointment.

10. Let me now examine the evidence adduced in the case. Exhibit P-18 is the offer of appointment which was issued to the appellant on 5th April, 1.984. Its'' relevant portion is extracted hereunder :-

"D.B.M.S. English School Road No. 7 B. H. Area, Jamshedpur-831 005

.....

Ref. 66/EC/409/84 Date April 5, 1984

APPOINTMENT LETTER

To
Mr. M. Chandran,
Mrs. Rechung''s Building,
(4th Floor),
Development Area,
GANGTOK (SIKKIM).

Dear M. Chandran,

On behalf of the Management I have the pleasure of informing you that you have been selected for the post of Vice-Principal from the 12th June, 1984. You will be on probation for one year and should your services prove satisfactory the Management

will consider, confirming you in service on a regular (sic) remuneration will be as following.

. . . . . .

. . . . . .

Kindly let us have your acceptance to this offer by the 1st May ''84.

Sincerely yours,
Sd/-
(Mrs.) B. Neelakantan
Secretary
Managing Committee"
Sikkim/1(2) (8 pp.) II G-49

The above offer of appointment was cancelled by the following letter marked Exhibit P-19. For the sake of convenience, the entire letter is quoted in extenso:-

"D. B. M. S. English School Road No. 7 B. H. Area, Jamshedpur-831005

(AFFILIATED WITH THE COUNCIL FOR THE INDIAN SCHOOL CERTIFICATE EXAMINATIONS, NEW DELHI)

Ref. 66/EC/533/84 Date 9-5-84

TO
MR. M. CHANDRAN,
MRS. RECHUNG''S BUILDING,
(4TH FLOOR),
DEVELOPMENT AREA,
GANGTOK (SIKKIM).

Dear Sir,

We confirm having sent you a telegram on 4th instant, confirmatory copy of which is attached herewith.

The assessment by the Committee for your employment in our Institution was based primarily on the information given by you in your letter dated 24th February, 1984 and subsequently thereafter at the brief interview you had with us. Accordingly a letter bearing No. 66/EC/409/84 dated 5-41984 was issued. The appointment of a candidate is dependent on all qualifications as stated In the advertisement which are reproduced below for your information-

(i) Post-Graduate or Graduate with Degree in Education;

(ii) Ten years of teaching and five years of Administrative experience in an I.C.S.E. School;

(iii) Certified records of good conduct and service in previous places of work;

(iv) Sound Health.

We regret, however, to state that we have received information that in your previous assignment with Tashi Namgyal Academy, Gangtok your performance was found grossly inadequate and that your continued employment with them was not considered to be in the interest of the Institution, In this connection we would refer para 2(iii) above wherein it Is stated that "Certified records of good conduct and service in previous place of work" is necessary. Under the circumstances we regret it will not be in the interest of our Educational Institution to consider you for employment with us and accordingly we hereby cancel the letter No. 66/EC/409/84 dated 5-4-84.

Yours faithfully,
For DBMS English School.
Sd/-
Mrs. B. Neelakantan
PRESIDENT"

Perusal of the aforesaid Exhibit P-19 would clearly show that there is nothing specifically or by implication to hold that respondent No. 2 or any specific person from T.N.A. Informed the DBMS school that the appellant''s performance in his previous assignment with T.N.A. "was found grossly inadequate and that his continued employment was not considered, in the interest of the institution". The appellant in his evidence as PW-1 deposed that after receipt of Exhibit P-19 he went to Jamsnedpur and met the authorities of DBMS school on 10th June, 1984. Mrs. Neelakantan, the then President of the school and Mr. Padmanabphan, the President of the school whom he met told him that the adverse report was sent to them by the respondent No. 2. He further deposed that on, his return to Gangtok he addressed a letter to Chief Secretary-cum-Vice Chairman of T.N.A. Board regarding the matter arid the letter was served on 14th June, 1984 (Exhibit P-20). He also met the Chief Secretary (one Mr. Chabra) who; told him that he had seen the letter and referred the same to the concerned authorities. He further stated in his evidence that he sent copy of the said letter to some members of the T.N.A. Board but there was no response from any of them including the Chief Secretary. The appellant deposed that the DBMS school had no reason whatsoever to write any falsehood. He asserted in his evidence that the school cancelled his appointment only because of what the respondent No. 2 wrote to them which was confirmed when he met them. To corroborate the above statement, the appellant heavily relied upon Exhibit P-32, another letter dated 10th June, 1984 from the DBMS school which reads as follows :-

"D. B. M. S. English School
(Affiliated with the I.S.C.E. Council, New Delhi)

Road No. 7B. H. Area,
Kadma, Jamshedpur-831005
P & T : 24839

Ref..... Date 10-6-1984

Dear Sir,

With reference to your letter and the discussion you had with us on 10-6-84, we have nothing further to add except to state that we had written our letter dated 9-5-84 on the basis of the information given to us by Tashi Namgyal Academy with whom we have corresponded in the matter. .

Yours faithfully,
for DBMS English School
Sd/-
President

To Mr. M. Chandran".

It may be seen that even from Exhibit P-32 one cannot positively and conclusively hold that the information with regard to the alleged past performance of the appellant was furnished by the respondent No, 2. In his cross-examination, he stated that he impleaded respondent No. 2 in his personal capacity. He admitted that he had not filed the report which the respondent No. 2 forwarded to DBMS school. He also admitted that he had not filed any application in the Court to call for the original/duplicate of the said report of respondent No. 2 sent to the said school. He tried to explain this lapse by saying that the original copy of the letter should have been with the DBMS school but it was stated by that school that the same was destroyed after three years. He stated in his cross-examination that he could not say in whose possession was the letter written by the respondent No, 2 to DBMS school. He admitted that it was not in his knowledge whether there was any letter of request from DBMS school to the Principal T.N.A. calling for a report on him as the correspondence had not been produced. He candidly stated that Exhibit P-19 does not mention that adverse report was written by the Principal T.N.A. He stated that in Exhibit P-19 DBMS school has not specifically named the person from whom it received a report against him. He also stated that he had no knowledge if the Government had sent any report to DBMS school. He also admitted that he could not say if the T.N.A. Board did send any letter. He candidly stated that it is true that he had no knowledge of the contents of respondent No. 2''s letter to DBMS school except through the letter addressed to him (Exhibit P-19) and also what they told him when he met them on 10th June, 1984. He frankly stated that it is true that the letter Exhibit P-19 does not (sic) cate that the report received by the (sic) school was false or malicious or due to previous enmity. To a specific question if he had any knowledge to the effect even if there was any letter to DBMS school by respondent

No. 2, the T.N.A. Board had no knowledge about It, the appellant answered that by saying that T.N.A. Board had knowledge of it at least, through him but whether T.N.A. Board had knowledge when respondent No. 2 wrote to the DBMS school was not within his personal knowledge and he could not say one way or other.

Respondent No. 2 was examined as DW-1 who stated that when he Joined T.N.A. the appellant was functioning as Vice-Principal (Administration) and was incharge of the institution, there being no Principal at that time as the said post was lying vacant, He deposed that sometime in April 1984 he received a confidential letter from the Principal DBMS school seeking a confidential reference from him about the appellant. He responded to that letter stating that the appellant was no longer an employee of the T.N.A. and was in litigation with the Government of Sikkim for termination of his services. He accordingly advised them to write to the Government if they needed further information about the appellant. He asserted in his evidence that at the time of replying to the letter of DBMS school he was not aware If the appellant was Intimated of his selection of Vice-Principal of that school, He also stated that the remark of DBMS school was not correct as the records of the T.N.A. did not bear out any stigma on the appellant. He stated that the action of the DBMS school cancelling his appointment was their own and he had nothing to do with that. By referring to Exhibit P-19 respondent No. 2 in his evidence stated that it does not indicate that the DBMS school acted on the basis of any reference made by him in the capacity of Principal T.N.A. It also does not indicate that the authorities of the school did so on the basis of anything written by him in his personal capacity. In his cross- examination, he staled that during his tenure as Principal T.N.A. he bore no malice towards the appellant. Instead he had respect for him us Vice-Principal (Administration). Respondent No, 2 was subjected to searching cross-examination but nothing could be brought out to discredit his testimony. He stated In his cross examination that all that he had written to DBMS school was what he had stated in his examination- in-chief, i.e., the appellant was no longer an employee of T.N.A- and was in litigation with the Government of Sikkim for termination of services. He denied the suggestion that he knew about the appellant''s application to the DBMS school and he asked the DBMS English School on his own to make a reference to him regarding the appellant. In his cross-examination, he stated that when he responded to the letter of DBMS school he had no knowledge if the appellant had alrendy been appointed. He (sic) the suggestion that he had written falsehood regarding the appellant thinking that he wad not at all appointed and they were contemplating to appoint him. He also denied the suggestion that while writing to DBMS school he did not exercise due care and wrote recklessly. He denied that he abused the opportunely given by DBMS school to hurt the, appellant because of pre-existing enmity and malice. He candidly stated that he did not mention anything regarding the observation made by the then Chairman of the Board of Governors'' meeting held on 30th April, 1983 in his reply to DBMS school. It in pertinent to observe that the appellant had riot Impleaded any authority of DBMS school as a

party in the case. The appellant in order to establish that respondent No. 2 was the author who communicated adverse report against him could have examined those persons of the DBMS school from whom it could have been ascertained/elicited as to who furnished them the relevant information. It might be working in the mind of the appellant that it was the respondent No. 2 who furnished the relevant Information to DBMS school. But any such mental thought would not establish his case. ''The entire edifice of appellant''s case stands on the allegation that because of a false and malicious report submitted by respondent No. 2 his appointment in the DBMS school was cancelled. On careful consideration of the evidence adduced in the case, I do not find any positive and acceptable evidence in support of his allegation. Therefore, the edlflee sought to be built on such allegation has to fall like a house of

Besides the above, law requires that the defendant knew of the existence of the contract and he Intended to procure its breach (see D. C. Thomson and Co, Ltd. v. Deakln, (1952) 2 All ER 361 at 379). There is no positive evidence that respondent No. 2 knew about the appellant''s appointment as Vice- Principal in DBMS school and he intended to procure its breach. The respondent No. 2 in his cross-examination stated that he had no knowledge if the appellant had been appointed in the DBMS school.

For all the reasons aforestated. I have no hesitation to hold that the appellant has failed to establish his case. The appeal, therefore, merits dismissal.

The counsel for the respondent No. 1 submitted that in view of the admission of the appellant in his cross-examination that respondent No. 2 was arrayed as a defendant in his personal capacity, there was no occasion/scope to make T.N.A. as one of the defendants in the suit. As I have already discussed the matter on merit and recorded findings against the appellant, I need not dilate on this point.

11. A lot of argument was also made as to whether the appellant was appointed as Vice-Principal (Administration) or as Vice- Principal in the T.N.A. This has absolutely no relevancy for the disposal of the suit or this appeal. Similarly, counsel for the respondents in course of the trial tried to establish that the appellant while working as Vice-Principal illegally allotted two new flats to unmarried lady teachers. This evidence has also no link with the main issue involved in the case. The learned trial Judge should not have permitted parties to bring out evidence beyond the scope of the suit.

The appellant''s contention is that explanatory note (Exhibit D-l) made with regard to him on 4th December, 1982 by K. N. , P. Nair was expunged by the Chairman in the Board''s proceeding dated 26th November, 1982, Exhibit P/27. Counsel for the respondents by referring to the above noted Exhibit submitted that it was a subsequent interpolation made by the appellant on 29th November, 1982. The noting dated 29th November. 1982 reads as follows :-

"29-11-1982.

Explanatory Note by the Member/Secretary (Mr. K. N. P. Nair) dated 4-12-1982 and added on by him at the end of the draft minutes :

This was expunged by the Hon''ble Chairman.

Sd/-
(M. CHANDRAN)
Member/Secretary, BOG"

Their contention is that if the expunction was part of the proceedings of the meeting dated 26th November, 1982 it could have mentioned in the minutes of proceedings and could not have been noted as an addendum with a subsequent date. I nerd not discuss this aspect also firstly because in the explanatory note (Exhibit D-l) mention was made with regard to the marital status of the appellant and his past services under the Income Tax Department and their effect on the institution and there is no mention with regard to the appellant''s performance as an employee in the T.N.A. Secondly this matter has lost its significance in view of the discussions made by me on the merit of appellant''s claim.

12. In the result the appeal is dismissed There shall be no order as to costs.