

(1982) 01 AHC CK 0040

Allahabad High Court

Case No: Second Appeal No. 2064 of 1974

Qamaruddin

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Jan. 4, 1982

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80

Citation: AIR 1982 All 169

Hon'ble Judges: T.S. Misra, J

Bench: Single Bench

Advocate: S.A. Kazmi, for the Appellant; Man Mohan Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

T.S. Misra, J.

This appeal by the plaintiff arises in the following circumstances. The plaintiff was appointed in the Railway Security Force, which was later on converted into Railway Protection Force. He claimed to be holding the post of "bhisti" in the Railway Security Force at the material time. Disciplinary proceedings were taken against him and he was served with a charge-sheet, which ultimately resulted into his dismissal from his service. He preferred an appeal against that order which was also rejected. Then he gave a notice dated 4th Dec., 1968, through Sri Gopal Krishna Srivastava, Advocate, to the General Manager, N. E. Rail-way, Gorakhpur. Thereafter he filed the suit which has given rise to this appeal.

2. In the suit he claimed a decree for declaration that the order of "removal" from service dated 28/30th August, 1968, which was served on him on 3rd Sept., 1968, was illegal, void and ultra vires and against Article 311 of the Constitution of India and that he should be deemed to be continuing in service with all wages and emoluments. He also claimed a decree for a sum of Rupees 2,723.57 p. towards his salary, the details of which were given in the plaint.

3. The suit was resisted by the Union of India on a variety of grounds. In para 19 of the written statement, it was pleaded by the Union of India that the notice u/s 80 of the CPC was defective and illegal. On merits as well the suit was contested. The trial Court on consideration of the evidence adduced held that the order dated 28th Aug., 1968, terminating the plaintiff's services was valid. It was also held that the notice u/s 80, C. P. C. was invalid. On these findings the trial Court dismissed the suit. The matter was carried in appeal. The learned Additional District Judge concurred with the trial Court that the notice given by the plaintiff u/s 80, C. P. C. was illegal and invalid. However, on merits of the case, the appellate Court below recorded a contrary finding. The appeal was, however, dismissed because the notice u/s 80, C. P. C. was held to be defective and invalid. The plaintiff has come up to this Court on second appeal.

4. The sole point urged on behalf of the appellant was that the findings recorded by both the Courts below in respect of the notice u/s 80 C. P. C. was erroneous. The submission was that the notice dated 4th Dec., 1968, Ext. A-1, should have been construed liberally and not in a pedantic manner. The notice in question Ext. A-1, did comply, if not essentially with the principles of construction of notice u/s 80, C. P. C. with the requirements of Section 80, C. P. C. and was, therefore, a valid notice. The learned counsel for the Union of India disputed this assertion and submitted that the notice was bad inasmuch as it did not furnish the requisite basis on which the claim was founded and, hence, it lacked the cause of action and, therefore, the suit founded on that notice was not sustainable.

5. I have carefully gone through the notice, Ext. A-1 and have also perused the plaint. Section 80, C. P. C. requires the giving of a notice to the Union of India before filing a suit against it. It mandates the plaintiff to state in the notice, besides other facts, the cause of action and the relief sought for. The plea questioning the validity of notice u/s 80, C. P. C. is often raised by the Government of India while contesting the suit filed against it. Hence the provisions of Section 80, C. P. C. have come up for construction in a number of cases from time to time. In AIR 1927 176 (Privy Council), it was pointed out that the terms of Section 80, C. P. C. should be strictly complied with. This ruling, however, was noticed by the Supreme Court in [Dhian Singh Sobha Singh and Another Vs. The Union of India \(UOI\)](#), wherein it was observed (at p. 261) :--

"The privy council no doubt laid down in *Bhagchand Dagadusa v. Secretary of State*, that 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."

In [The State of Madras Vs. C.P. Agencies and Another](#), :--

"The object of the Section 80 is manifestly to give the Government of 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."

In [Dominion of India Vs. L. Badu Lal](#), the expression "cause of action" as used in Section 80, C. P. C. fell in construction. Mukherji, J. after referring to AIR 1927 176 (Privy Council), [Lady Dinbai Dinshaw Petit and Others Vs. The Dominion of India and Another](#), and [Dhian Singh Sobha Singh and Another Vs. The Union of India \(UOI\)](#), held that the expression "cause of action" has to be given a meaning which is not technical. He further observed that, the phrase "cause of action" has not been defined and the words "cause of action" mean nothing more than the reasons which impel a plaintiff to seek his remedy against the defendant to a suit or, in other words, that which, according to the plaintiff, gives him right to sue the defendant. He also referred to the observations in Halsbury's Laws of England, Vol. I, Second Edition, para 9, page 8, dealing with the meaning of the expression "cause of action", which was stated as under :

"The popular meaning of the expression "cause of action" is that particular act on the part of the defendant which gives the plaintiff his cause of complaint."

Learned counsel for the appellant has laid much stress on the construction of the term "cause of action" as given in Halsbury's Laws of England. Again, in [Raghunath Das Vs. Union of India \(UOI\) and Another](#), it was held that (at p. 677) :

"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 amend or settle the claim, if so advised without litigation. The legislative intention behind that section is that public money and time should not be waited 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 booby traps against ignorant and illiterate persons."

From these decisions it can be ruled out that a notice u/s 80, C. P. C. is not to be construed in a pedantic manner and the Court should not be hyper-technical in interpreting it. The provisions of Section 80, C. P. C. are not meant to scuttle justice and an illiterate litigant is not to be non-suited by taking too technical a view of the notice given by him u/s 80, C. P. C. The notice u/s 80, C. P. C. is required to be given with a view to enable the Government or the public officer concerned, to consider the position and decide as to whether the claim of the plaintiff should be accepted or contested. This can be done if the notice furnishes sufficient information as to the nature of the suit proposed to be filed and the facts on which the claim is founded

and the precise relief asked for. Does the impugned notice with which we are concerned in this case furnish sufficient information as to the nature of the suit, the reliefs asked for the facts on which the claim is founded ? The notice Ext. A-1, merely stated that the plaintiff was employed as a "Rakshak" in the North Eastern Railway and was serving the department with utmost honesty and devotion. Paragraph 2 of the notice is material for the purpose of the case and is, therefore, extracted below :

"That the plaintiff was removed from service by the order dated 30-8-68 illegally and without giving reasonable opportunity of showing cause against the principles of Article 311 of the Constitution of India." There is a heading in the notice as "cause of action". Below it, it is merely stated that the cause of action for suit arose firstly on 30-8-1968; again on 3-9-68, when the order of removal from service was served upon the plaintiff, and again, on 25-11-68 when his appeal was dismissed. Then the reliefs sought for were stated. The plaintiff stated that he would claim decree for the declaration that the order of removal of him from service by the Assistant Security Officer removing him from service was illegal, void and is against the Article 311 of the Constitution and that he should be deemed to be continuing in the service. Could it be said that by the said notice the Government of India was furnished with sufficient facts on the basis of which the reliefs mentioned in the notice were proposed to be asked for ? Admittedly the plaintiff had been dismissed from service on 30th Aug., 1968. The order of dismissal was served on him on 3rd Sept., 1968. He stated in his notice that the order dated 30th August, 1968, was illegal and that he was removed from service without giving reasonable (opportunity ?) or showing cause against the principle of the Article 311 of the Constitution.

Article 311 of the Constitution provides that no person who is a servant of Union of India or State Govt. shall be dismissed or removed by any authority subordinate to that by which he was appointed. Nor can he be dismissed or reduced in rank without holding any enquiry into the charges against him and without offering him an opportunity of making representation against the action proposed to be taken in regard to him. Article 311, thus, enjoins that the order of dismissal cannot be passed by an authority subordinate to that by which the employee was appointed. It also requires that the employee shall not be dismissed except after an enquiry. A charge-sheet is to be served on him and he has to be given a reasonable opportunity of being heard in respect of those charges. The notice in question merely shows that the order of dismissal dated 30th August, 1968 was illegal and that he was not given "reasonable opportunity of showing cause against the principles of Article 311 of the Constitution".

It was not clear as to whether the plaintiff wanted to say that he was dismissed by an authority who was subordinate to that by which he was appointed. It is also not clear as to whether he was challenging the order of dismissal on the ground that no charge-sheet was served on him or that no enquiry was made against him or that he was not given an opportunity of adducing his evidence, or cross-examining the

witnesses produced against him. or making his submission or that he was not at all heard in person or that no copies of the relevant documents were furnished to him, or that the evidence was taken behind his back. The plaint, no doubt, gives the details of those facts on which the order of dismissal was impugned. The notice was, however, silent on the point. As pointed out earlier, the object of Section 80, C. P. C. notice is to enable the Government of India to consider his position and decide for itself as to whether the claim of the plaintiff should be accepted or resisted and this the Government could do only when it was informed of the nature of the rate proposed to be filed and the facts on which the claim of the plaintiff was founded.

The facts on which the claim of the plaintiff was founded in the suit were not at all mentioned in the notice. The only other thing that was mentioned was that the cause of action arose to the plaintiff on the date when the order of the dismissal was passed, as also on the date when the order of dismissal was served on him and on the date on which the appeal filed by him was rejected. It was submitted on his behalf that the particular act which gave the plaintiff his cause of complaint was the order of dismissal itself and this was pointed in the notice compliance that Section 80 has been made (sic) In [Dominion of India Vs. L. Badu Lal](#), it was stated that the expression "cause of action" u/s 80, C. P. C. means "the reason which impels a plaintiff to seek his remedy against the defendant to a suit, or, in other words, that which, according to the plaintiff, gives him a right to sue a defendant". Here in the case in hand the reason which give the plaintiff the right to sue was no doubt the order of dismissal. But that by itself was not sufficient to be stated.

The facts on the basis of which it was stated that the order was illegal and invalid should have been stated in the notice. The plaintiff has in a notice u/s 80, C. P. C. to state the facts on which the claim is founded. No doubt, it is not the requirement of law that the plaintiff should also state the evidence to prove those facts. However unless the grounds on which the order was challenged were mentioned it would not be possible for the Government of India to reconsider the matter and to decide as to whether the claim set up by the plaintiff should be accepted or resisted. The notice in the instant case did not comply with the requirements of Section 80, C. P. C. In my view the Courts below were correct in holding that the suit was bad for want of a proper and valid notice.

6. In the result, the appeal fails and is dismissed. However, I make no order as to costs.