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### Respondents.

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wrongly being treated as spared. The suit was contested on behalf of the defendants and in the written statement filed on their behalf by the DRM, NE. Railway, Varanasi, it was stated that the plaintiff already stood transferred from Ballia to Sardar Nagar vide order dated 7.11.1978 of the competent authority on administrative grounds and when the Station Master, Ballia sought to serve the transfer order on the plaintiff, he refused to accept the same and proceeded on medical leave and thereafter in the absence of the Station Master, he wrongly reported on duty on 13.11.78 and with a view not to proceed on transfer, he deliberately <sup>advanced &</sup> ~~adopted~~ the plea of <sup>his</sup> ~~his~~ ignorance about his transfer order and wrongly filed this suit without giving a notice. The plaintiff could join his duty at the place of his new station and the suit filed by him is not maintainable under the law.

3. The plaintiff filed a brief replication in reply to the amendments sought by the defendants in their written statement and stated therein that no transfer order was ever communicated to him and he had served a proper notice on the defendants and his suit is maintainable. He did not show his readiness to proceed to his new place of posting.

4. The learned Trial Court had framed necessary issues and had held that notice given by the plaintiff was not addressed to the proper authority and as such is not a valid notice and the suit was barred by sections 41 and 42 of the Specific Reliefs Act. On merits, it



was held that the plaintiff has been transferred from Ballia and there is no allegations that the defendants are not prepared to give him duty even at the new place of posting and actually it appeared that the plaintiff did not want to proceed on transfer and his suit was, therefore, not maintainable and it was accordingly dismissed with costs.

5. At the time of hearing of this appeal, the learned counsel for the applicant-plaintiff stated before us that the plaintiff has already taken over the charge at the new place of posting and he will take afresh appropriate proceedings for the payment of salary for the period, he remained out of charge. Correcting himself, the learned counsel for the applicant further stated that the claim of the plaintiff for wages for the period, he remained out of duty may be barred by time, hence appropriate relief be given by this Tribunal in this respect in this case. The appeal has been contested on behalf of the respondents and it was contended that the plaintiff had committed fraud upon the respondents as he did not give any notice under section 80 C.P.C. and had sent a blank paper in registered envelope and he himself remained absconding to avoid his duty at the place of transfer and he is not entitled to any relief in this appeal.

6. We have very carefully considered the contentions



raised on behalf of the parties before us and are of the view that in view of the peculiar nature and circumstances of this litigation, we are not called upon to enter into the merits of this case. The only relief claimed by the plaintiff in his suit is that by way of an injunction the respondents be directed to give him duty, so that he may discharge his responsibilities. He did not claim any wages or other benefits for the period, he was refused duty or he remained out of duty. It is, therefore, <sup>not</sup> necessary for us to examine whether the plaintiff is entitled to get any salary or other benefits for the period, he remained out of duty. Further, there is no material before us on the basis of which, it can be ascertained as to how the defendants are treating the period of the plaintiff during which he remained absent from duty. Unless, we know the case of the parties on this point, it will not be fair on our part to issue any direction to the defendants or otherwise make any observation <sup>or</sup> ~~for~~ and against any parties.

7. The learned Trial Court in its judgment has held that notice under section 80 C.P.C. shown to have been served by the plaintiff was addressed to D.S. (Divisional Superintendent) and no notice to the General Manager was given and as such, suit was barred by section 80 C.P.C. We have examined the necessary evidence on this point and see no reason to differ with

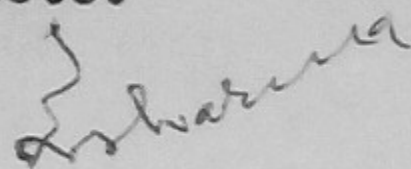


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the view taken by the learned Munsif. The suit of the plaintiff thus being barred by section 80 C.P.C. no relief can be granted to the plaintiff in this appeal. On this ground as well, the appeal is bound to fail.

8. The appeal is accordingly dismissed as having become infructuous. The parties shall bear their own costs.



Member (J)



Member (A)

Dt/ 17th October, 1988/  
Shahid.