
(1970) 11 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Mise. No. 6198 of 1970 in Civil Writ No. 2716 of 1970

Gursewak Singh and
Others

APPELLANT

Vs

Vice-Chancellor, Guru
Nanak University and
Others

RESPONDENT

Date of Decision: Nov. 4, 1970

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 19 Rule 2, Order 19 Rule 2(1), 133, 133(1), 133(3)
- Constitution of India, 1950 - Article 133, 163, 226
- Salaries and allowances of Ministers Act, 1952 - Section 2

Citation: (1973) 1 ILR (P&H) 306

Hon'ble Judges: R.S. Narula, J

Bench: Single Bench

Advocate: Kuldip Singh and Jagjit Singh Narang, for the Appellant; Gurbachan Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.S. Narula, J.

The writ petition is based on the alleged civil right of the Petitioner to be admitted to a State-aided institution. During the hearing of the writ petition on October 14, 1970, the learned Counsel for the Petitioners prayed for the attendance of Shri Satnam Singh Bajwa, Minister of State in the Punjab Government (Respondent No. 4) and the Principal of Sikh National College, Qadian (Respondent No. 3) being procured for their being cross-examined under Sub-rule (1) of Rule 2 of Order 19 of the CPC in order to elicit the facts from them in connection with the affidavits which had been filed by them in

opposition to the writ petition. As recorded in my said order I was given to understand at that time that none of the said two persons was exempt from personal appearance in Court. I, therefore, directed Respondents 3 and 4 to appear before me on October 28, 1970, for being cross-examined. Since they were parties to the case it was observed in the order that it was not necessary to issue any process to them for compelling their attendance.

2. Before the date of their appearance in Court, this application was made by Shri Satnam Singh Bajwa u/s 133 read with Section 151 of the CPC for permitting the said Respondent to examine him on Commission as he was exempt from personal appearance in Court under Clause (ix) of Sub-section (1) of Section 133 of the Code of Civil Procedure. In view of the provisions of Sub-section (3) of Section 133, the applicant has offered to pay the costs of the Commission which may be issued for recording his cross-examination. In reply to the application, the writ-Petitioners have stated that Section 133 of the Code has no application to writ proceedings in this Court which have to be governed, so far as the procedure is concerned, by the special rules contained in Chapter 4-F(b) of Volume v. of the Rules and Orders of this Court. He has stated that though mention of Rule 2 of Order 19 of the CPC has been made in my order dated October 14, 1970, in fact, the order should be treated to have been passed under Rule 9 of Part F(b) of Chapter 4 of Volume 5 of the Rules and Orders. Rule 9 runs as under:

If cause be shown or answer made upon affidavit putting in issue any material question of fact, the Court may allow oral testimony of witnesses to be taken and for that purpose may adjourn the hearing of the rule to some other date. In such a case either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in original causes in the High Court.

3. The special rules of procedure to be followed in original civil cases in the High Court are contained in Chapter 4-G of the same Volume. Those rules are not comprehensive and deal with only very limited subjects. Nor do those rules provide specifically that in matters not thereby covered, the CPC or any part thereof shall apply. Mr. Kuldip Singh, submits that on the analogy of the submission made by him regarding the non-applicability of Section 133 of the Code, he must admit that Rule 2 of Order 19 also does not apply to these proceedings but submits, as already stated, that the Respondents in question should be deemed to have been called to appear in Court under Rule 9, quoted above. He has relied on the observations made in [Khurjawala Buckles Manufacturing Co. Vs. Commissioner, Sales Tax and Another](#), , and [Ramsingh Vs. State of Rajasthan and Others](#), , to substantiate his point about the Code being not applicable to writ proceedings. According to Mr. Gurbachan Singh, learned Counsel for Shri Satnam Singh Bajwa, the provisions of the Code of Civil Procedure, to the extent to which they are not inconsistent with the special rules framed by this Court for writ proceedings are applicable to these proceedings by operation of Section 141 of the Code of Civil Procedure. There is some divergence of opinion between the different Courts as to the nature of proceedings under Article 226 of the Constitution. So far as this Court is

concerned, it has already been settled in *The Assessing Authority, Ludhiana v. Mansa Ram* AIR 1965 P&h 459 (F.B.) , that these proceedings are "civil proceedings" within the meaning of Article 133 of the Constitution. It is, however, not necessary that Section 141 of the Code must apply to all the civil proceedings. In the [Ramsingh Vs. State of Rajasthan and Others,](#) , it was held after a detailed discussion on the subject that when a writ application is filed before the High Court invoking its extraordinary jurisdiction under Article 226 of the Constitution for enforcement of the civil rights, it is idle to contend that it is not a civil proceeding. Regarding the applicability of Section 141, the learned Judges held that in view of the special rules framed by the Rajasthan High Court for proceedings under Article 226 of the Constitution, the provisions of CPC cannot apply in terms to writ proceedings, but that does not mean that the principles contained in the CPC would have no application at all to the writ proceedings. The ratio of the judgment of the Division Bench of the Rajasthan, High Court in [Ramsingh Vs. State of Rajasthan and Others,](#) , is that the provisions of the Code which do, not come in conflict with the Rules made by the High Court and which can be suitably made applicable to the writ proceedings, would apply to those proceedings. So far as I am concerned, I am bound by the Division Bench judgment of this Court in [Sona Ram Ranga Ram and Others Vs. Central Government and Others,](#) , where in it has been expressly held by Capoor and Pandit, JJ., that in writ petitions where: civil rights are involved, the proceedings are in the nature of a suit and by virtue of the provisions of Section 141, the procedure provided in the Code in regard to suits shall. apply, as far as it can be made applicable. It was further observed that the fact that certain rules have been framed by the High Court for issue of writs would not change the position because they are in addition to but not in substitution of the provisions of the Code. I, therefore, hold that Section 133 of the Code applies to writ proceedings and every Minister of the State is exempt from being compelled to appear personally in this Court in the course of proceedings of a civil writ.

4. Mr. Kuldip Singh then submits that Clause (ix) of Section 133 of the Code does not cover the case of Respondent No. 4 who is not the Minister of the State of Punjab but who is a Minister of State in the Punjab Cabinet. Counsel for the writ Petitioner has not been able to point out any provision in which a reference is made to "Minister of State" separate from the reference to a "Minister", Under Article 163 of the Constitution, reference is made only to a Council of Ministers with the Chief Minister as the head for aiding and advising the Governor in the exercise of his functions. Clause (ix) of Section 133 of the Code is not confined to Ministers of Cabinet rank but is obviously intended to include all Ministers including those of Cabinet rank and Ministers of State. In Basu's commentary on the Constitution of India, Volume 2 (Fourth Edition) at page 438, it has been noticed that the Constitution does not classify the members of Council of Ministers of the Union into different ranks and the classification into Ministers of State and Deputy Ministers had been adopted informally following the British practice though it has got now legislative sanction so far as the Union Ministers are concerned inasmuch as a "Minister" has been defined in Section 2 of the Salaries and allowances of Ministers Act, 1952, as a "Member of the Council of Ministers, by whatever name called, and includes a Deputy

Minister". Whatever may be the position regarding a Deputy Minister, it is clear that no distinction between a Minister of Cabinet rank and a Minister of State is made in Clause (ix) of Section 133 of the Code of Civil Procedure. I have, therefore, no hesitation in repelling even this objection of Mr. Kuldip Singh.

5. In these circumstances the applicant (Respondent No. 4) is entitled to be cross-examined on Commission in connection with the averments made by him in his affidavit. The counsel for Mr. Bajwa would be entitled to put such questions in re-examination as may arise out of the answers given by the Respondent in his cross-examination for purposes of clarification in accordance with law. I, therefore, allow this application and direct that Shri Bajwa, Minister of State in the Punjab Cabinet, be cross-examined by the counsel for the writ-Petitioners on Commission at his residence No. 61, Sector 26, Chandigarh, at 10.00 a.m. on Sunday, the 15th of November, 1970. I appoint Shri Kartar Singh Kwatra, Advocate, as the Commissioner for recording the evidence of Mr. Bajwa at his residence. His fee is fixed at Rs. 200 in the first instance. The fees shall be paid to the Commissioner by Respondent No. 4 within a week from today. There is no order as to costs in this Court.

6. Mr. Kuldip Singh states that since the cross-examination of Mr. Bajwa might itself take the whole of the day, the Principal (Respondent No. 3) may be called in Court for being cross-examined on the next day, that is, on 16th "November, 1970. I direct accordingly. Mr. Gurbachan Singh undertakes to inform Respondents 3 and 4 of this order.

7. The main case may now be relisted for hearing as part-heard on November 16, 1970.