

Before A. L. Bahri, J.

STATE OF PUNJAB, CHANDIGARH,—*Petitioner.*

versus

MADAN LAL GUPTA AND OTHERS,—*Respondents.*

Civil Revision No. 3778 of 1987.

25th July, 1990.

Evidence Act (I of 1872)—S. 123—Office notings and opinions on documents sought to be produced in evidence—Government claiming privilege—Extent of validity of such claim stated.

Held, that in the matter of departmental enquiries conducted against Government employees no privilege could be claimed by the State in respect of notings or opinions expressed on the file during such proceedings. Thus, it is to be seen in each case about the nature of documents asked for by the employee to determine whether the State could claim privilege under section 123 of the Evidence Act. In case the documents regarding which privilege is claimed related to departmental proceedings i.e., proceedings contemplated under the service rules, obviously the privilege could not be claimed. However, with respect to other matters for which service rules do not contemplate the State would be within its rights to claim privilege in respect of office notings or opinions expressed by officers or the officials on such matters. (Para 7)

Petition under section 115 of C.P.C. against the order of the court of Shri O. P. Goyal, Sr. Sub Judge, Ludhiana, dated 4th September, 1987 disallow the claim of privilege made by Shri R. P. Ojha and directing that the relevant records be produced in the court on the next day of hearing fixed for recording evidence of the plaintiff.

CLAIM :

Suit for declaration that the dismissal of the plaintiff from the Punjab Civil Services (Judicial Branch) by the defendant state of Punjab,—vide its orders dated 30th June, 1977 is illegal, void, arbitrary, malafide, against the rules of natural Justice and based on no evidence and consequently the plaintiff continues to be in service and is entitled to all the benefits of pay and allowances etc.

Claim in Revision:—For reversal of the order of the Lower Court.

PRESENT

Anil Malhotra, Advocate, for the Petitioners.

M. L. Merchea, Advocate with M. P. Gupta, Advocate, for 25th July, 1990, for the Respondents.

The State of Punjab, Chandigarh v. Madan Lal Gupta and others
(A. L. Bahri, J.)

JUDGMENT

(1) State of Punjab has filed this revision petition challenging order dated September 4, 1987, passed by Senior Sub Judge, Ludhiana, disallowing the claim of privilege made by Secretary to Government, Punjab, with respect to production of documents at the stage of plaintiff's evidence. In the suit brought by Madan Lal Gupta challenge was to the order of his dismissal from Punjab Civil Service (Judicial Branch) dated June 30, 1977. The suit was contested and during the trial M. L. Gupta, the plaintiff, summoned Amar Nath Gandhi, an Assistant of the Office of Home Secretary to Government, Punjab, Chandigarh, with the office file showing the action taken on his representations dated January 12, 1977, January 27, 1977 and June 21/24, 1977 addressed to the Chief Minister of Punjab. The State of Punjab claimed privilege by means of an affidavit sworn by Sh. R. P. Ojha, IAS, then Finance Commissioner and Secretary to Government, Punjab, Department of Home Affairs and Justice. In the said affidavit he stated that he had carefully considered the aforesaid documents and came to the conclusion that it comprises of documents and notings which have been made by various officers and officials in the discharge of official duties and the same were not public official records relating to the affairs of the State and that the disclosures of the contents of such documents and files would expose the said officers/officials and as such would hamper the proper functioning of the public services as the officers/officials would in future feel hesitant in expressing their opinions fearlessly in such administrative matters. That being the position he did not give permission to anybody to give evidence derived therefrom as required under section 123 of the Indian Evidence Act. Disagreeing with the opinion expressed by the Secretary, Punjab Government, Senior Sub Judge, directing the relevant records to be produced in the Court on the next date to be fixed for recording evidence of the plaintiff.

(2) Section 123 of the Indian Evidence Act reads as under :—

“123. *Evidence as to affairs of State* :—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”

The aforesaid provision has been subject-matter of discussion in several judicial pronouncements. It will be useful to refer to them.

(3) In *The State of Punjab v. Sodhi Sukhdev Singh* (1), in the majority judgment it was observed as under :—

“Reading Sections 123 and 162 together the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in respect of which privilege is claimed under Section 123. That is a matter for the authority concerned to decide; but the Court is competent, and indeed is bound, to hold a preliminary enquiry and determine the validity of the objections to its production, and that necessarily involves an enquiry into the question as to whether the evidence relates to an affair of State under Section 123 or not.

In this enquiry the Court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to affairs of State it should leave it to the head of the department to decide whether he should permit its production or not.

Documents which embody the minutes of the meetings of the Council of Ministers and indicate the advice which the Council ultimately gave to the Rajpramukh, and the document embodying the advice tendered by the Public Service Commission to the Council of Ministers, are protected under Section 123, and if the head of the department does not give permission for their production, the Court cannot compel the State to produce them.”

(4) In *Niranjan Dass Sehgal v. State of Punjab through secy. to Government of Punjab, Department of Forests and others* (2), a privilege claimed by the State with respect to notings on the

(1) A.I.R. 1961 S.C. 493.

(2) A.I.R. 1968 Punjab and Haryana 255.

The State of Punjab, Chandigarh v. Madan Lal Gupta and others
(A. L. Bahri, J.)

departmental enquiry which were held to be unpublished documents was declined.

(5) Relying upon the aforesaid decision of the Supreme Court in *Sukhdev Singh's* case, this Court in *Union of India v. Parkash Lal* (3), in the case of notings on the file relating to termination of the Government servant the privilege claimed by the State was declined.

(6) In *Ram Dev v. The State of Haryana* (4), this Court held in the case of order of dismissal of an employee based on the report of the Enquiry Officer and evidence recorded during enquiry held that the evidence and notings by officials during proceedings of the enquiry could not be held to impair interest of administration or injure public interest. In such circumstances it was held that no privilege could be claimed in respect of such documents. The Supreme Court in the case of Judges' transfer, *S. P. Gupta and others v. President of India and others* (5), the observations made in *Sukhdev Singh's* (supra) were reiterated. In para 513 of the judgment at page 363 again the view taken in *Sodhi Sukhdev Singh's* case was approved being based on English law and that provision of sections 123 and 124 of the Act was not ultra vires.

(7) A perusal of the judgments referred to above clearly indicates that in the matter of departmental enquiries conducted against Government employees no privilege could be claimed by the State in respect of notings or opinions expressed on the file during such proceedings. Thus, it is to be seen in each case about the nature of documents asked for by the employee to determine whether the State could claim privilege under section 123 of the Evidence Act. In case the documents regarding which privilege is claimed related to departmental proceedings i.e. proceedings contemplated under the service rules, obviously the privilege could not be claimed. However, with respect to other matters for which service rules do not contemplate the State would be within its rights to claim privilege in respect of office notings or opinions expressed by

(3) 1977 (1) S.L.R. 565.

(4) 1978 R.L.R. 483.

(5) A.I.R. 1982 S.C. 149.

officers or the officials on such matters. In the present case the plaintiff wanted production of his representations made to the Chief Minister and the privilege is being claimed in respect of those representations on which some office notings or opinions were expressed by the Government servants. It has not been shown as to under what provision of the service rules or the statutes such representations were maintainable or that these representations could in any manner be called proceedings under the rules such as departmental proceedings. That being the position, the State could legitimately claim privilege with respect to office notings or opinions expressed on such representations. However, the evidence regarding the representations, their contents or the final order passed by the appropriate authority allowing or rejecting the same can well be brought on the record in evidence.

(8) With the above observations present revision petition is allowed. The order of the trial court summoning the documents asked for is modified to the extent that the officer brining the same will not be called upon to give evidence with respect to office notings or opinions expressed on such representations made to the Chief Minister. However, he would be at liberty to give evidence regarding the representations as such and the final order passed thereon. Revision Petition disposed of as above. No order as to costs. The parties through their counsel are directed to appear in the trial court on August 6, 1990.

S.C.K.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

BHATINDA IMPROVEMENT TRUST, BHATINDA,—*Appellant.*

versus

BALWANT SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 127 of 1983.

5th September, 1990.

Punjab Town Improvement Act, 1922—Ss. 36 & 42—Issuance of three consecutive notifications for acquiring land—Objections invited within 30 days from first publication—Period of three years to be counted from the date of first publication—Delay in publication of notification under S. 42—Validity of such notification.