

A

## STATE OF PUNJAB &amp; ANR.

v.

V. P. DUGGAL &amp; OTHERS

July 30, 1976

B

[H. R. KHANNA, R. S. SARKARIA AND N. L. UNTWALIA, JJ.]

*Practice and procedure—Whether High Court can direct a Minister to be impleaded as a party and file his personal affidavit.*

C

The respondent challenged the validity of a Government Notification, and also the Minister's order upholding the same. At the hearing, the High Court directed that the concerned Minister be impleaded as a party, and file his personal affidavit. Challenging the directions, the appellant contended before this Court, that the allegations against the Minister did not disclose any personal animus on his part, and he was not liable to be added as a party or to file his affidavit.

Partly allowing the appeal, the Court,

D

HELD : The direction for the impleading of the Minister as a party was given by the High Court with a view to appraise the Minister of the allegations made in the petition and thus to afford him an opportunity of controverting those allegations, if he so deemed proper. We decline to interfere. It is essentially for the Minister concerned to decide in the light of the allegations made in the petition as to whether he should or should not file an affidavit.

[97 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1207 of 1975.

E

(Appeal by special leave from the judgment and order dated 5-8-1975 of the Punjab & Haryana High Court in Letters Patent Appeal No. 459/75).

*J. S. Wasu, Adv. General, Punjab* and *O. P. Sharma*, for the appellants.

*V. C. Mahajan* and *S. S. Khanduja*, for respondent No. 1.

F

*P. K. Pillai*, for respondent No. 13.

The Judgment of the Court was delivered by

G

KHANNA, J.—This is an appeal by special leave by the State of Punjab against the order of the Punjab & Haryana High Court, whereby it was directed that the Minister in-charge of Irrigation Department be impleaded as a party in the writ petition filed by V. P. Duggal respondent. The Minister was also directed to file his affidavit.

H

In the writ petition filed by him, Duggal respondent challenged notification dated January 29, 1974 fixing the seniority of the engineers in the Irrigation Department of the Punjab Government. During the course of the hearing of the writ petition, an order was made by the High Court on November 18, 1974 that the Minister concerned might give a personal hearing to the parties and thereafter pass the necessary order in the matter. The Minister concerned thereafter heard the parties and made a speaking order on February 18, 1975 affirming the earlier seniority list. The writ petition was thereafter amended, and

in the amended petition, Duggal respondent also challenged the validity of the later order of February 18, 1975.

At the resumed hearing of the writ petition, the learned Judge hearing the petition directed that the Minister concerned be impleaded as a party in the petition, as in the view of the learned Judge, allegation had been made against the Minister that he had deviated from the normal procedure while passing the impugned order dated February 18, 1975 inasmuch as he had dealt with the matter directly and bypassed the Secretary of the Department. Direction was also issued that the Minister should file an affidavit in regard to the allegations made in the petition.

At the hearing of the appeal before us, the learned Advocate-General for the State of Punjab has contended that the allegations made in the amended petition do not disclose any personal animus on the part of the Minister concerned and as such the High Court was in error in directing that the Minister be impleaded as a party. The learned Advocate-General has also assailed the direction of the High Court insofar as the Minister has been called upon to file his personal affidavit. As against that, Mr. Mahajan on behalf of Duggal respondent has urged that looking to the facts of the case if the High Court came to the conclusion that the Minister was a necessary or proper party, this Court should not interfere in the matter.

We have given the matter our consideration, and it seems to us that the direction for the impleading of the Minister as a party was given by the High Court with a view to apprise the Minister of the allegations made in the petition and thus to afford him an opportunity of controverting those allegations, if he so deemed proper. Taking the totality of the facts and circumstances of the case, we do not feel persuaded to interfere with the order of the High Court adding the Minister as a party to the writ petition. The High Court was, however, in our opinion in error in directing that the Minister concerned should file his affidavit. It is essentially for the Minister concerned to decide in the light of the allegations made in the petition as to whether he should or should not file an affidavit. We, therefore, decline to interfere with the order made by the High Court insofar as it has directed that the Minister be impleaded as a party. The other part of the order whereby the Minister concerned was directed to file his personal affidavit is set aside. The appeal shall stand disposed of accordingly. The parties in the circumstances shall bear their own costs.

M.R.

*Appeal partly allowed.*