

(14) In view of discussion above, the impugned orders P. 1 and P. 2 directing payment of gratuity to Bakhshish Singh respondent on his voluntary resignation under section 4(1)(b) of the Act cannot be sustained. The writ petition is allowed and the impugned orders P. 1 and P. 2 quashed. No order as to costs.

Prem Chand Jain, J.—I agree.

S.C.K.

*Before S. S. Sodhi, J.*

GIAN SINGH ATWAL— *Petitioner.*

*versus*

S. N. TIWARI and others,—*Respondents.*

*Civil Revision No. 742 of 1983.*

April 5, 1983.

*Oaths Act (XLIV of 1969)—Sections 4 and 6—Witness reluctant to take oath in a particular form—Rent Controller discharging such a witness—Order discharging witness—Validity of.*

*Held*, that the form of the oath or affirmation that a witness is required to make is not necessarily confined to those given in the Schedule. It can, in terms of the proviso to section 6(1), be in a different form common to the class of persons to which the witness belongs. Further, the omission by a witness to take any oath or make any affirmation or any other irregularity in the form in which the oath or affirmation is administered would not invalidate his evidence. What is more such omission or irregularity shall not effect the obligation of a witness to state the truth. There is, thus, no escape from the conclusion that mere irregularity in the form of the oath or affirmation that a witness may make or indeed his omission or refusal to take any oath or make any affirmation would not justify the court in refusing to record his evidence or discharging him on this account.

(Para 6).

*Petition Under Section 15(5) of Act East Punjab Urban Rent Restriction Act and Section 115 C.P.C. & under Article 227 of the Constitution of India for revision of the Order of the Court of Shri B. S. Teji Additional Sessions Sub-Judge Exercising The Power of Rent Controller Under the East Punjab Urban Restriction Act, 1949, Hoshiarpur, dated 1st March,*

1983 *discharging the witness.*

CIVIL MISC. No. 1229-CII of 1983

*Application Under Section 151 C.P.C. praying that the further proceedings in the Court below may kindly be stayed till the pendency of this revision petition.*

*It is further prayed that this Hon'ble Court may please grant and/or any other relief as deemed fit and proper in the circumstances of the case.*

Suresh Amba, Advocate, for the Petitioner.

(1) S. Saini, Advocate, for respondents 1 & 2, for the Respondents.

#### JUDGMENT

(2) What has been called in question in this petition is the wholly untenable order of the Rent Controller, Hoshiarpur, discharging a witness without recording his evidence, on the ground that he was "reluctant to take oath inspite of repeated demands made to him by the counsel".

(3) According to the case, as set out in the petition, the witness Chanan Singh, Sarpanch, of Gram Panchayat Dhoot Kalan in District Hoshiarpur belonged to the Communist Party. He did not believe in Religion and could not, therefore, swear in, the name of Religion. He was, however, it is stated, prepared to make a statement as witness on solemn affirmation in the form prescribed under the Oaths Act, 1969 (hereinafter referred to as 'the Act'). It was the contention of Mr. Suresh Amba, counsel for the petitioner that the Rent Controller was in error in requiring the witness to take the oath in the form "*Main Jo Kuch Kahunga, Dharam Nal Sach Kahunga*".

(4) A reference to the provisions of the Act would show that all persons appearing as witness are required by Section 4 thereof to make an oath of affirmation. Section 6 of the Act goes on to provide that all oaths and affirmation made under Section 4 shall be administered according to one of the forms given in the Schedule to the Act, as may be appropriate, 'in the circumstances of the case. What is pertinent to note here is the proviso to-sub-section (1) of Section

6 which reads as under: —

6. (1) “Provided that if a witness in any judicial proceeding desires to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the class to which he belongs, and not repugnant to justice or decency and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, allow him to give evidence on such oath or affirmation”.

(4) In other words the form of the Oath or affirmation that a witness is required to make is not necessarily confined to those given in the Schedule. It can, in terms of the proviso, be in a different form common to the class of persons to which the witness belongs.

(5) Further, it is also well settled, as was observed by the Supreme Court in *Rameshwar v. State of Rajasthan*, (1) that an omission to administer the oath, even to an adult, goes only to the credibility of the witness but not his competency. Indeed Section 7 of the Act specifically provides that proceedings and evidence shall not be invalidated by the omission to take any oath or to make any affirmation or by any irregularity in the form in which the oath or affirmation is administered. What is more, it is further provided that such omission or irregularity shall not effect the obligation of the witness to state the truth. The over-riding obligation of stating the truth being specifically enjoined upon by the provisions of Section 8 of the Act.

(6) There is, thus, no escape from the conclusion that mere irregularity in the form of the oath or affirmation that a witness may make or indeed his omission or refusal to take any oath or make any affirmation would not justify the court in refusing to record his evidence or discharging him on this account.

(7) The impugned order being patently erroneous in law is consequently hereby set aside and the Rent Controller is directed to proceed with the matter according to law.

(8) The petitioner shall be entitled to the costs of this petition. *S.C.K.*

(1) A.I.R. 1952 S.C. 54.