

(1978) 08 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 126 of 1971

Lekh Ram

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 10-08-1978

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(16), 14(18)
Constitution of India, 1950 — Article 26

Citation : (1978) 7 ILR HP 459

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : O.P. Sharma, for the Appellant; P.N. Nag and D.K. Khanna, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Thakur, J.—Shri Lekh Ram, Petitioner was working as a conductor in the Transport Department of the Himachal Pradesh Government. On 30-4-1968 he was detailed on duty on Bus No. HIM 3538 on the Laungani-Simla route. The bus was checked on the way by Shri Lal Chand, Checker, of the Himachal Pradesh Government Transport near Salgwahan about two k.m. from Jahu. He found six passengers travelling without ticket against ticket No. 734057 amounting to Rs. 70.80 paise which ticket was issued after the check had been done by the Checker.

2. The Petitioner was charge-sheeted and his explanation was called. Subsequent to that an Inquiry Officer, Shri M.L. Sood, was appointed vide Annexure H, dated 17th December, 1968, to probe into the matter. But, subsequently, it appears that vide Annexure I, dated 24th December, 1969, the General Manager remitted the case of disciplinary proceedings against Shri Lekh Ram for holding enquiry into the allegations de novo according to the provisions of Rule 14, and he appointed Shri Jagmohan Lal Superintendent as a Presenting Officer to present

the case on behalf of the department. After the enquiry, etc. was concluded the penalty of removal from service was proposed and a show cause notice was given to the delinquent. He filed his representation but the same was also not found satisfactory and as such a penalty of removal from service was imposed on the delinquent with effect from the date of service of the order, dated 24th June, 1971. He had, therefore, challenged this order of removal from service by this writ petition.

3. The writ petition was filed in August, 1971 and was admitted on 8th November, 1971. Thereafter the case was not put up before the Court for hearing till 13th April, 1978, Shri O.P. Sharma, who had appeared for the Petitioner had filed an application, OMP 583/78, for substitution of the Commissioner Transport, Himachal Pradesh, Simla, by the Himachal Pradesh Road Transport Corporation, Simla, because by that time the Himachal Pradesh Government Transport had ceased to exist and a Corporation had been established. That application was not opposed by Shri D.K. Khanna, who is the standing counsel for the transport Corporation. The Corporation, was, therefore, substituted in place of the Commissioner Transport, Himachal Pradesh, Simla.

4. Shri Khanna raised a preliminary objection that in view of the amendment of Article 226 of the Constitution by Section 58 of the Constitution (Forty-second Amendment) Act, 1976, the petition had abated, inasmuch as there was an alternative remedy provided which the Petitioner had failed to avail. Under Clause (3) of the amended Article 226 no petition for the redress of any injury referred to in Sub-clause (b) or Sub-clause (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. Sub-clauses (b) and (c) of Clause (1) of the aforesaid Article read as under:

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made there under; or (c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) where such, illegality has resulted in substantial failure of justice.

Sub-clauses (b) and (c) if read in conjunction with Clause (3) would go to show that no petition for the redress of any injury of a substantial nature by reason of the contravention of any rule, or for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) which such illegality has resulted in substantial failure of justice shall be entertained if any other remedy for such redress is provided.

5. In the instant case the Petitioner feels aggrieved by the removal order consequent to the disciplinary proceedings initiated against him under the

provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He has made a grievance that he was not afforded any opportunity during the enquiry. Further, there was violation of Sub-rules (16) and (18) of Rule 14, and as such the impugned order was illegal and bad in law. These rules provide a remedy by way of an appeal and which, is not disputed by the learned Counsel for the Petitioner and he did not file any appeal. The submission made by the learned Counsel for the Petitioner is that it was not necessary for him to have filed an appeal as he was challenging the vires of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, but during the course of arguments he had not touched this point about the vires of the aforesaid rules.

6. He has further contended that Section 58 of the Constitution (Forty-second Amendment) Act, 1976 will not be applicable because this was a writ petition which had been filed prior to the amendment of the Constitution. According to him, this provision, would apply only in case any interim order has been passed. But, this submission of the learned Counsel does not appear to be correct. The provision of this Section 58 state that notwithstanding anything contained in the Constitution, every petition made under Article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day and any interim order made on, or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions of Article 226 as substituted by Section 38. Therefore, this Section leaves no manner of doubt to hold that the provisions of Section 58 shall be applicable to all the pending cases. By Section 38 the previous Article 226 has been substituted by the new Article wherein Sub-clauses (b) and (c) under Clause (1) of Article 226 and Clause (3) have been inserted, and Clause (3) expressly bars the remedy under Article 226, if any other remedy for such a redress is provided for by or under any other provision of law for the time being in force. Since the rules provide an alternative remedy for appeal, therefore, in these circumstances this petition is admittedly barred.

7. The learned Counsel for the Petitioner contended that there was no limitation left to seek his remedy by way of appeal and that this Court must make a direction to the authority concerned to consider his appeal when filed. Sub-section (2) of Section 58 provides that without prejudice to the generality of the provisions of Sub-section (1) every pending petition before a High Court which would not have been admitted by the High Court under the provisions of Article 226 as substituted by Section 38 if such petition had been made after the appointed day, shall abate. But, there is a proviso added to that which reads as under:

"Provided that nothing contained in this Sub-section shall affect the right of the Petitioner to seek relief under any other law for the time being in force in respect of the matters to which such petition relates and in computing the period of limitation, if any, for seeking such relief, the period during which the proceedings

relating to such petition were pending in the High Court shall be excluded.

Therefore, in the presence of this proviso it would be a futile exercise to issue any direction to the authority concerned because the authority itself will take notice of the provision as contained in the aforesaid Sub-section (2) of Section 58 of the Constitution (Forty-second Amendment) Act, 1976.

In view of the fact that the preliminary objection succeeds it is not necessary to go into the merits of the case. The petition, therefore, fails and is hereby dismissed with no order as to costs.