
(1978) 01 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 139 of 1978 in Civil Writ Petition No. 7524 of 1975

Waryam Singh and another

APPELLANT

Vs

The Financial Commissioner and others

RESPONDENT

Date of Decision : 23-01-1978

Acts Referred:

Constitution (Forty-Second Amendment) Act, 1976 — Section 58
Constitution of India, 1950 — Article 136

Citation : (1978) 01 P&H CK 0032

Hon'ble Judges : S.S. Sandhawalia, J; R.N. Mittal, J; Harbans Lal, J

Bench : Full Bench

Advocate : K.P. Bhandari, for the Appellant; L.S. Wasu Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Mittal, J.—This application has been filed on behalf of Suraj Bhan Singh, respondent No. 3, u/s 58 of the Constitution Forty Second) Amendment Act, 1976 (hereinafter referred to as the Amendment Act) It is stated in it that article 2.6 of the Constitution was amended by section 38 of the Amendment Act wherein was provided that no writ petition shall be entertained if any other remedy was available to the petitioner. It is alleged that the writ petitioners had an alternative remedy for preferring an appeal by way of SLP under article 136 of the Constitution of India which they did not avail. In the circumstances, it is stated that the writ petition is liable to be dismissed as abated in view of the provisions of section 58 of the Amendment Act. Notice of the petition has been given to Mr. Wasu who contests the petition.

2. It is urged by Mr. Bhandari, learned counsel for the applicant that the remedy available to the petitioners after the decision by the Financial Commissioner acting u/s 33 of the Displaced Persons (Compensation & Rehabilitation) Act was to file SLP to the Supreme Court under article 136 of the Constitution of India as

he was Tribunal within the meaning of the aforesaid article. He, in support of his contention, that the Financial Commissioner constituted a Tribunal within the meaning of article 136 of the Constitution of India referred to Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others, 0 and Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, . He further urges that if alternative remedy was available to the petitioners the writ petition stands abated within the meaning of section So of the Amendment Act.

3. I have heard the learned counsel for the parties. It is no doubt true that article 226 of the Constitution has been amended by Section 38 of Amendment Act wherein it is provided that no petition for redress of any injury referred in sub clause (b) or sub-clause (c) of clause (1) shall be entertained if any other remedy for such redrew is provided for by or under any other law for the time being in force. It is admitted by Mr. Wasu that the relief claimed by the writ petitioner falls under Article 226(1) (b & c).

Section 58 of the Amendment Act reads as follows :--

(1) 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 (such petition being referred to in this section as a pending petition) and any interim order (whether by way of injunction or stay or in any other manner) 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.

(2) In particular, and 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 and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to such petition shall, stand vacated :

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 makers to which such petition relates and in computing the period of limitation, if any, for seeking such relief, the period during which the proceeding relating to such petition were pending in the High Court shall be excluded.

4. From the reading of Section 58 in conjunction with amended article 226 it is evident that if an alternative remedy is available to the petitioner the Writ Petition stands abated. The question involved in the present case is of such nature, which will affect a large number of Writ Petitions. There is no authority either of this Court, or of the Supreme Court of India, wherein the matter has been settled. In the circumstances it will be appropriate if the matter is decided by a Division Bench.

5. For the aforesaid reasons, I direct that the application may be laid before my Lord the Chief Justice for passing an appropriate order. Writ petition may be listed after the decision of Civil Misc. No. 139 of 1978.

ORDER OF THE DIVISIONAL BENCH

S.S. Sandhawalia, C.J.—Whether the existence of a remedy by way of special leave to appeal to the Supreme Court under Article 136 of the Constitution is an alternative remedy which would bar the Maintainability of a Writ Petition under Article 226(3), is the meaningful question which has necessitated this reference to the Division Bench.

2. It is wholly unnecessary to advert to the facts of the case. Mr. K.P. Bhandari, learned counsel for the respondents with his illimitable fairness has conceded that the solitary precedent on the point is now categorically against the stand he takes. Learned counsel has also not addressed any meaningful contention on principle in support of his stand.

3. An identical issue arose before a Division Bench of the Calcutta High Court in *Dabur (Dr. S.K. Burmen) Pvt. Ltd. etc., v. State of West Bengal, etc* 1978 Lah. IC 1575. After an elaborate discussion it was held inter alia that the alternative remedy referred to in Article 226(3) necessarily means a specific remedy provided as such by law and would not bring within its ambit a general remedy by way of a suit, or by moving the Supreme Court to invoke jurisdiction under Article 136 of the Constitution of India, for such relief. In so holding the learned Judges placed reliance on the Full Bench decision in *Abad Cotton Manufacturing Company v. Union of India* AIR 1977 Guj. 113 and an earlier Division Bench Judgment of the Calcutta High Court in *Mohindra Mohan Sarkar v. I.T.C. Siliguri* 1977 T.L.R. 1537.

4. It appears to us rather wasteful to tread the same ground all over again and it would amply suffice to say that we entirely agree with the view expressed in *Dabur (Dr. S.K. Burman) Pvt. Ltd.'s case* (supra). Following the same we would return the answer in the negative to the question formulated at the very beginning of this judgment.

5. The reference on the legal point having been answered, the case would now come back to the learned Single Judge for decision on merits.