1938.

October 10, 11.

PASHUPATI BHARTI

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER.

[SIR MAURICE GWYER, C. J., SIR SHAH SULAIMAN AND M. R. JAYAKAR, JJ.]

Section 205 of Government of India Act, 1935—Refusal of Certificate by High Court—Application for Revision—Jurisdiction of Federal Court.

The Federal Court does not possess, either by Statute or by virtue of any inherent powers, a revisional jurisdiction over the High Courts of British India.

APPLICATION for revision.

D. P. Sinha for the applicant.

The facts and arguments in the case sufficiently appear from the judgment.

The Judgment of the Court was delivered by

GWYER C. J.—This is an *ex parte* application for revision of an order passed by the Patna High Court rejecting a petition for the grant of a certificate under s. 205 (1) of the Government of India Act, 1935. There was also an application for revision of an order of the High Court dismissing an appeal by the applicant from a judgment of the Subordinate Judge, on the ground that the applicant had failed to pay the court fees which he had been ordered to pay after the rejection of an application to be allowed to prosecute his appeal *in forma pauperis*. Counsel for the applicant informed us however that he did not propose to proceed with the application for revision of the last mentioned order.

It appears that the applicant was formerly a guard on the East Indian Railway and that he was dismissed from his employment at some time early in 1933. In August, 1935, he instituted a suit in the

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Court of the Subordinate Judge (3rd Court), Patna, for a declaration that his dismissal was wrongful and illegal, and for damages and compensation, and was allowed to prosecute this suit *in forma pauperis*. In July, 1937, judgment was given against him on the ground that his suit was not maintainable, and the applicant thereupon appealed to the High Court at Patna, asking at the same time that he might be allowed to prosecute his appeal *in forma pauperis*. The latter application was rejected and he was ordered to pay the full court fees. He did not comply with the order and his appeal was accordingly dismissed on November 22nd, 1937. On January 20, 1938, he filed an application before the High Court for a certificate under s. 205 (1) of the Government of India Act, 1935. On January 27, the application was summarily rejected by the High Court; and it is against that rejection that the applicant now seeks the assistance of this Court.

A formidable difficulty confronts the applicant *in limine;* for he has to satisfy us that this Court has jurisdiction to entertain an application for revision of the order of a High Court refusing to grant a certificate under s. 205 (1) of the Constitution Act. In our opinion this Court has no such jurisdiction.

Section 205 (1) provides that an appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Act or of any Order in Council made thereunder; and, by s.s. (2), where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground. Thus the certificate of the High Court that the case involves a substantial question of law as to the interpretation of the Act or any Order in Council made thereunder is a condition precedent to the exercise of jurisdiction by the Federal Court, although, if the certificate has once been

given, the case is at large and the appellant is not necessarily restricted in arguing his appeal to what may be called the constitutional issue. But until the certificate has been granted the Federal Court cannot entertain the case at all.

Counsel for the applicant admitted that no right of *appeal* against the refusal to grant a certificate is given by s. 205; and he could not well do otherwise. But he contended that a right to ask for *revision* of such a refusal could and ought to be collected from the provisions of the section; further and in the alternative he submitted that the Court has an inherent power to exercise a revisional jurisdiction for the purpose of preventing injustice.

On the first point counsel for the applicant argued that, inasmuch as an appeal to the Privy Council is now barred under s. 205 (2), the Federal Court must necessarily possess the power to interfere, if a High Court refuses to grant a certificate under s. 205 (1); since otherwise a litigant would find himself debarred from access both to the Privy Council and to this Court and would therefore be left with no remedy at all. In support of this argument counsel relied upon the concluding words of s. 205 (2). So far as access to the Privy Council is concerned, this argument is obviously based upon a misapprehension. A litigant who, apart from s. 205, would have a right of appeal to the Privy Council, is not deprived of that right by the refusal of the High Court to grant a certificate. Section 205 (2) only applies where a certificate is given and has no application to a case where it has been refused.

To the second point, *viz.*, that the inherent powers of the Court must be held to give it a revisional jurisdiction for the purpose of preventing injustice, there appear to us to be several answers. In the first place, though every Court of superior jurisdiction no doubt possesses inherent powers for certain purposes (of which it is unnecessary, and perhaps would be unwise, to attempt an exhaustive definition), we know of no authority for the proposition that a Court by the exercise of any inherent powers can extend its appellate jurisdiction or increase its revisional authority over other Courts. The observations of Edge C. J.

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in *Dhonkal Singh* v. *Phakkar Singh*(1), which were cited to us, had reference to the domestic procedure of the Court and are quite irrelevant in the present connection. Nor is any support for the theory of an inherent power to be found in the analogy of the revisional and supervisory jurisdiction of the High Courts in British India. That jurisdiction is entirely a creature of statute, *e.g.*, s. 224 of the Constitution Act and s. 115 of the Civil Procedure Code. Outside the statutory provisions no High Court has any inherent powers of revision over the subordinate Courts within its jurisdiction, such for example as the Court of King's Bench in England has for centuries exercised over Courts inferior to itself; and if there have been during recent years tentative efforts on the part of one or two High Courts to assert such powers, they have now been decisively negatived by s.s. (2) of s. 224 of the Constitution Act. It is not possible to point to any statutory powers of revision or superintendence possessed by this Court like those possessed by the High Courts under the sections to which we have referred; and the relation between this Court and the High Courts of British India bears no resemblance to the relation between the High Courts and Courts subordinate to them. Lastly, the concluding words of s. 205 (1), which impose a duty on every High Court to consider in each case whether or not a substantial question of law as to the interpretation of the Act or of any Order in Council made thereunder is involved, "and of its own motion to give or to withhold a certificate accordingly", may reasonably be construed as giving the High Court the last word in the matter, so far as this section is concerned; and it is unnecessary to consider whether Parliament omitted to give an appeal against the refusal of a certificate because it overlooked the point, or because (what seems equally possible) it trusted the High Courts to act with reasonableness and impartiality.

We have one other observation to make. It is clear from the facts stated above that the questions of law, if any, involved in the applicant's case could not in any circumstances be concerned with the interpretation of the Constitution Act or any Order in

(1) (1893) I. L. R. 15 All. 84, at p. 95.

Council made thereunder, since his original cause of action, if he ever had one, arose as long ago as 1933, some four years before that Act came into force. This would of itself be sufficient to dispose of the whole matter, for we cannot take seriously the fantastic argument advanced on behalf of the applicant that since s. 240 of the Constitution Act had re-enacted with amendments s. 96B of the earlier Act (on which his alleged cause of action was based), the Constitution Act must *pro tanto* be regarded as retrospective, so that a Court which had founded its judgment on the provisions of s. 96B of the Government of India Act, 1919, must in law be deemed to have been interpreting the provisions of s. 240 of the Constitution Act. We have little doubt that it was because it was plain on the face of the record that the applicant's cause of action arose before the Constitution Act ever became law that the High Court were content to dismiss summarily his application for a certificate and did not think it necessary to give any formal statement of their reasons for doing so, which in an ordinary case they would no doubt agree to be the more appropriate course to adopt.

The application must be dismissed.

Application dismissed.

Agent for Applicant: *Ganpat Rai.*