

[PRIVY COUNCIL.]

1940.
Jan. 18.

HORI RAM SINGH

v.

THE KING-EMPEROR.

[VISCOUNT MAUGHAM, LORD PORTER AND SIR GEORGE
RANKIN.]

Federal Court—Appeal to Privy Council—Petition for special leave—“not lightly to be admitted”.

Application for special leave to appeal against the decision of the Federal Court, reported [1939] F. C. R. 159, refused by the Judicial Committee.

Per Curiam : An appeal from the Federal Court will not lightly be admitted, and only if it arises in a really substantial case.

APPLICATION for special leave to appeal.

The facts of the case are set out in the report of the appeal in [1939] F. C. R. at p. 159.

Robert Gibson K. C. and C. J. Colombos for the petitioner.

G. D. Roberts K. C. (W. Wallach with him), for the respondent, was not called upon to argue.

The judgment of Their Lordships was delivered by

VISCOUNT MAUGHAM.—Their Lordships do not require to hear Council for the Crown.

This is an application for special leave to appeal *in forma pauperis* from a judgment⁽¹⁾ of the Federal Court of India, and it has the distinction of being the first application for such leave from that Court.

The question which arises is as to the true construction of s. 270, s.-s. (1) of the Government of India Act, 1935. It is in these terms : “No proceedings, civil or criminal, shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the

⁽¹⁾ [1939] F. C. R. 159.

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Crown in India or Burma before the relevant date”, which is the 1st April, 1937, “except with the consent”, putting it shortly as applying to this particular case, “of the Governor” of the Province in which the petitioner was employed. It is perfectly clear, therefore, that this section is in the nature of an exceptional section which is intended to afford some measure of protection to certain public servants in relation to acts done or purported to be done in execution of their duty being acts done before the date in question.

Their Lordships ought not to forget the fact that the matter has been before the Federal Court and that an appeal from the Federal Court should not lightly be admitted by this Board, and should only be admitted if it arises in a really substantial case.

In this case it does not seem to Their Lordships that the matter is anything but one concerned with the construction of a very exceptional section which will have no application in the future, and it is a technical point. They have had the view of the Federal Court with regard to it and having regard to all the circumstances of the case and bearing in mind the ingenious argument which has been presented to them, they do not think that this is a case in which Their Lordships should advise His Majesty to grant leave to appeal. In those circumstances, the application for leave must be dismissed. The Council Office fees will be remitted as it is a petition *in forma pauperis*, but otherwise there will be no order as to costs.

Solicitors for Petitioner : *Hy. S. L. Polak & Co.*

Solicitor for Respondent : *Solicitor, India Office.*