

1939.
Nov. 6.

KISHORI LAL

v.

GOVERNOR IN COUNCIL, PUNJAB.

[SIR MAURICE GWYER, C. J., SIR SHAH SULAIMAN
AND SIR SRINIVASA VARADACHARIAR, JJ.]

*Government of India Act, 1935, s. 205—Refusal of
Certificate by High Court—Application for revision—Jurisdiction of Federal Court.*

A certificate under s. 205 of the Constitution Act is a necessary condition precedent to all appeals to the Federal Court, and if a High Court refuses to grant a certificate it is not for the Federal Court to inquire into the reasons for the refusal, against which no appeal lies to the Federal Court.

Lakhpat Ram v. Behari Lal Misir, [1939] F. C. R. 121, applied.

APPLICATION for special leave to appeal.

The applicant was employed by the North-Western Railway under a contract, but was discharged from service in January, 1937, being paid one month's pay in lieu of notice in accordance with the contract. In October, 1937, he brought a suit *in forma pauperis* against the Governor-General in Council, in the Court of the Subordinate Judge, I Class, at Lahore, for the recovery of more than two lakhs of rupees as damages for breach of contract, which was dismissed as not disclosing any cause of action. The applicant then filed three applications for revision in the Lahore High Court, all of which were dismissed. Thereupon he brought a fresh suit against the Governor in Council, Punjab, claiming the same amount of damages by reason of the failure of the Punjab Government to arrange for a proper hearing of his case by the Lahore High Court, alleging that this duty was enjoined upon Provincial Governments by s. 49 of the Constitution Act. This suit was dismissed, and so also was his application for revision to the

High Court at Lahore. It was from this last decision of the High Court that the applicant appealed to the Federal Court; but he also prayed that the entire proceedings in the High Court as well as the lower court might be set aside.

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The application was heard *ex parte*.

The applicant in person.

The Judgment of the Court was delivered by

GWYER C. J.—The appellant in this case appears to have begun proceedings against the Governor General in Council in 1937 claiming damages for breach of contract. His application for permission to sue *in forma pauperis* was rejected by the learned Subordinate Judge who held that the plaint disclosed no cause of action. There were three applications for revision of that decision and all three were rejected by the High Court. The appellant then began new proceedings against a different party, namely, the Governor of the Punjab in Council, claiming damages for the alleged failure of the defendant to see that the law had been enforced, that being the way in which he put his case. In these second proceedings also there was an application for permission to sue *in forma pauperis*, which came up before the learned Subordinate Judge in June of last year, and was dismissed, firstly, because the allegations in the plaint did not disclose any cause of action, and secondly, because the provisions of s. 80 of the Code of Civil Procedure had not been complied with. The appellant applied to the High Court for the revision of this decision, but his application was dismissed. It appears from his formal claim for revision and from what he told us that he had sought to go into the facts and merits of his original action against the Governor-General in Council, but was not allowed to do so by the learned Judge of the High Court, who rightly observed that it was not competent for him (the Judge) to revise the decision of the High Court in the previous case. The appellant seems to have misunderstood these observations of the learned Judge and to have thought, without justification, that he was being prevented from putting before the Court what he conceived to be his case.

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The appellant then appealed to the Federal Court, and it was pointed out to him by the officials of the Court that the Court could not entertain any appeal from a High Court unless the High Court had first given a certificate under s. 205 of the Constitution Act. On receiving that information, he returned to the High Court and asked for a certificate, which the High Court refused to grant, holding, we must assume, that the case did not involve any question as to the interpretation of the Constitution Act. These being the facts of the case, this Court has no jurisdiction to entertain the appeal.

A certificate under section 205 is a necessary condition precedent to all appeals to this Court, and if the High Court refuses to grant a certificate it is not for us to enquire into the reasons for the refusal, against which no appeal lies to this Court. This was decided some months ago in *Lakhat Ram v. Behari Lal Misir*(¹). The application must therefore be dismissed, but we desire to add this. We have heard this application at some length not only because the appellant was appearing before us in person, but also because litigants, and possibly lawyers also, may not yet be aware of the previous decision of this Court to which we have just referred. There will be no excuse in future for any such ignorance of the law; and if the refusal of a High Court to grant a certificate is made hereafter the ground of any further applications or appeals, we shall regard them as frivolous and vexatious and an abuse of the process of this Court, and deal with them accordingly.

Application dismissed

(¹) [1939] F. C. R. 121