

SURAJ NARAIN ANAND

v.

THE NORTH-WEST FRONTIER PROVINCE

[SIR MAURICE GWYER, C. J., SIR SRINIVASA VARADACHARIAR
AND SIR MUHAMMAD ZAFRULLA KHAN, JJ.]

Practice—Remand by Federal Court—Decree of lower Court after further trial—Appeal against—Applicability of s. 205 of the Government of India Act, 1935.

When an appeal before the Federal Court has terminated in an order of remand directing the lower court to try other issues in the case and pass the appropriate decree, the decree passed by that court after the remand can be questioned before the Federal Court only by a new and independent appeal, which must itself fulfil the requirements of s. 205 of the Constitution Act.

PETITION.

The Applicant in person. The application was heard *ex parte*.

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

The Judgment of the Court was delivered by

VARADACHARIAR J.—The petitioner was the appellant in an appeal which was before this Court (*Suraj Narain Anand v. The North-West Frontier Province* (1)). On 4th December, 1941, this Court disposed of that appeal, holding that the plaintiff was entitled to a declaration that he had not been effectively dismissed from office, and that he was entitled to his costs in this Court. As the suit had not been tried on the merits, the Court had to remit the case to the Judicial Commissioner's Court for such "further directions as the circumstances of the case may require"; it was also left to the Judicial Commissioner's Court to deal with the costs of the proceedings in the courts below. On receipt of this Court's judgment, the Judicial Commissioner's Court remanded the case to the trial court to hear and determine the plaintiffs' claim to arrears of pay. The trial court passed a decree for Rs. 1,648 for arrears of pay and gave certain directions as to payment of costs, court fee, etc. The plaintiff carried the matter again on appeal to the Judicial Commissioner's Court and that Court increased by a few hundreds the amount awarded to the plaintiff. It has made clearer and more specific the directions in the decree as to costs and payment of court fee.

The petitioner has now filed in this Court what purports to be an application under Order XLIII of the Federal Court Rules and he therein asks this Court to vary the decree of the Judicial Commissioner's Court in certain particulars. This, he prays, should be done in exercise or the inherent powers of

(*) [1941] F. C. R. 37.

1942
Suraj Narain
Anand
 v:
The North-
West
Frontier
Province.
 Judgment.

this Court. We are unable to hold that this Court has any jurisdiction to entertain the application. It is true that when this Court is properly seized of an appeal on a certificate granted under s. 205 of the Constitution Act, it will also have jurisdiction to deal with other questions arising in the case and in dealing with an appeal properly before it, it may have certain inherent powers. But before these powers can be exercised there must be an appeal validly instituted in this Court. In the present case, there was no doubt at one time an appeal before us properly preferred under s. 205 ; but that appeal has been finally disposed of so far as this Court was concerned. The petitioner suggested that the Judicial Commissioner's Court has not properly understood or given effect to the directions contained in the judgment of this Court. We see no basis for this suggestion. Any complaint against the decree passed by the Judicial Commissioner's Court after the remand can, in our opinion, be entertained by this Court only on an independent appeal under s. 205 of the Constitution Act ; and such an appeal must satisfy the requirements of that section. In this case no certificate under that section has been given or obtained. We may also add that it has not been shown to us that any constitutional question arises at this stage at all.

The petitioner's principal objections to the decree of the Judicial Commissioner's Court relate—

- (1) to the amount awarded to him for arrears of pay, and
- (2) to the directions as to costs and payment of court fee.

There appears to be some force in his complaint that arrears of pay should have been awarded to him not merely up to the date of the institution of the suit, but to the date of a valid order of dismissal. We are, however, not in a position to say whether this point was urged before the Judicial Commissioner or why the award has been so limited. As the claim relates to a period subsequent to the institution of the suit, the petitioner may have a separate remedy in respect of the same. But this involves no constitutional question and we do not see how this Court is entitled to deal with it at this stage. The direction as to costs is within the discretion of the Court and the direction as to the payment of the court fee has not even been shown to be improper except as to the method of calculating the amount payable. Though it is not open to this Court to give the plaintiff any relief on the question of court fee, we think it right to point out that the calculation of the court fee, so far as we are able to gather from the papers before us, is open to exception. The plaintiff claimed a declaration and a decree for damages for Rs. 75,000 ; alternatively, a claim for arrears of pay was made. In the courts below, court fee seems to have been calculated on the footing that the case fell under s. 17 of the Court Fees Act⁽¹⁾ as one

(1) Central Act No. VII of 1870.

embracing two distinct causes of action. On a correct reading of the plaint, it seems to us that the case was one in which alternative reliefs were claimed on the same cause of action, either for Rs. 75,000 by way of damages on the ground of wrongful dismissal, or for Rs. 2,500 for arrears of pay on the footing that there had been no effective dismissal. On this interpretation of the plaint, the court fee payable would only be a fixed fee for the declaratory relief and an *ad valorem* fee on the higher of the alternative reliefs, namely, the claim for Rs. 75,000. We have no doubt that the plaintiffs' grievance in respect of the arrears of pay for the period between the date of the institution of the suit and the date of his valid dismissal as well as the excess court fee charged against him will be remedied by the Government now that we have drawn their attention to it.

With these observations the petition is dismissed.

Petition dismissed.

1942

Saraj Narain
Anand
v.
The North-
West
Frontier
Province.
Judgment