

APPELLATE CIVIL

Before Mehar Singh, C.J. and H. R. Sodhi, J.

THE STATE OF PUNJAB,—*Appellant*

versus

GURCHARAN SINGH,—*Respondent*

Regular First Appeal No. 14 of 1962

September 17, 1968

Pepsu Service Regulation—Volume I—Regulation 8.2(b)—Suspended government servant reinstated after inquiry—Order regarding subsistence allowance—Whether a consequential order—Show cause notice—Whether necessary—Inquiry not valid—Order withholding portion of the emoluments of the delinquent officer on reinstatement after such inquiry—Whether can be passed without show cause notice.

Held, that where an inquiry has already been held against a delinquent government servant and he is reinstated, the order regarding subsistence allowance is only a consequential order on directing his reinstatement. In such a case where there has been a valid and proper enquiry no further opportunity to the delinquent officer may be necessary to show cause against the action proposed to be taken in the matter of passing an order under Regulation 8 of Pepsu Service Regulation, Volume I, allowing to the said officer only a portion of the salary and allowances instead the full amount of his emoluments to which he would be normally entitled if his suspension was wholly unjustified. The competent authority when passing an order relating to pay and allowances for the period of suspension in consequence of a valid departmental enquiry will have before it the entire record including the explanation of the delinquent officer and be in a position to make an assessment from an objective data as to whether his suspension was wholly unjustified or not. (Para 17)

Held, that where there is some sort of inquiry against a Government servant, but it is wholly illegal either because it contravenes the provisions of the Constitution, any statutory law or statutory rules, or it is opposed to the principles of natural justice, the case has to be equated with the one where there is no inquiry at all and any order passed under Regulation 8 of Pepsu Service Regulation giving only a portion of the emoluments to the delinquent officer cannot be said to be a consequential order passed on his reinstatement. In such a case the officer is entitled to show cause against the action proposed to be taken and in the absence of that any order passed will be struck down as one being in breach of the principles of natural justice. A decision under Regulation 8 has to be taken in accordance with the basic concept of justice and fair play.

(Para 14)

First Appeal from the decree of the Court of Shri O. P. Aggarwal, Sub-Judge, 1st. Class, Patiala, dated the 31st day of August, 1961, granting the plaintiff a decree for Rs. 35,000 with costs against the defendant and ordering the defendant to pay to the plaintiff or deposit in the court, the said decretal amount within three months and disallowing the plaintiff's claim for award of interest.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB, AND H. L. SONI, ADVOCATE, for the Appellant.

J. N. KAUSHAL, SENIOR ADVOCATE, WITH ASHOK BHAN AND M. R. AGNIHOTRI, ADVOCATES, for the Respondent.

JUDGMENT.

SODHI, J.—This Regular First Appeal has been preferred by the State of Punjab against the judgment and decree, dated August 31, 1961, passed by the Subordinate Judge, First Class, Patiala, whereby the suit of the plaintiff-respondent for recovery of Rs. 35,000 claimed as arrears of his salary and allowances from August 12, 1950, when the plaintiff was suspended, till his reinstatement on July 15/18, 1957, was decreed with costs.

(2) The plaintiff was in the service of the erstwhile Patiala State as one of the permanent Deputy Collectors. On the formation of the Patiala and East Punjab States' Union, he was integrated in the said Union Service and posted at Sangrur, as Deputy Collector, Irrigation Department, Sangrur Division. He is said to have reported for duty at Sangrur on December 15, 1948, but immediately afterwards proceeded on a week's casual leave and on the expiry of that leave, he is alleged to have obtained some more leave on medical grounds. It may be mentioned that he was for some time given medical leave and later he persisted for leave without pay. The State Government seemed to form an impression that the officer was malingering in persisting for leave and by a notification No. 177, dated August 12, 1950, the Pepsu Home Department placed him under suspension. This notification is in the following terms—

“His Highness the Rajpramukh is pleased to order that a departmental enquiry should be held by the Secretary, P.W.D., or by such other Senior Officer of the P.W.D., as may be authorised by him in this behalf against Sardar

The State of Punjab *v.* Gurcharan Singh (Sodhi, J.)

Gurcharan Singh, Deputy Collector, Sangrur, for his remaining absent without leave in spite of notice to join duty and for his having adopted a malingering attitude and spirit of indiscipline. His Highness the Rajpramukh is further pleased to suspend Sardar Gurcharan Singh in connection with the said inquiry till further orders."

By another notification No. 41/N, dated November, 20, 1950, a Commission of Enquiry as envisaged in the notification of August 12, 1950, and consisting of Shri Sohan Singh, then Deputy Secretary, P.W.D., and one Shri Ram Sarup, Superintending Engineer, was constituted to enquire into the alleged misconduct of the plaintiff. Shri Ram Sarup was to act as Chairman of the Commission of Enquiry. A charge-sheet, exhibit D. 1, signed only by one member of the Commission, namely, Shri Sohan Singh, was served on the plaintiff on December 11, 1950. The forwarding letter (exhibit D. 2) with the charge-sheet also bore the signatures of Shri Sohan Singh alone. There were then three more charge-sheets, exhibits D. 3, D. 4, and D. 5, served on the plaintiff in quick succession, but they were again signed by one member of the Commission only, i.e., Shri Sohan Singh. The plaintiff submitted his explanation, exhibit D. 6, on December 18, 1950. It is not necessary to refer to the details of the explanation except that it was emphasised by the plaintiff that he was genuinely ill and that some false propaganda had been done against him. A reference was also made by the plaintiff in his explanation as to how he had been denied an opportunity for personal explanation by the Head of the Department. An additional explanation was submitted by the plaintiff before the Commission on December 20, 1950. The plaintiff appeared before the Commission on January, 24, 1951, before whom practically no proceedings took place and the matter was being, hithertofore, postponed from time to time.

(3) A report, dated January 24, 1951, exhibit D. 8, purporting to contain the views of the Enquiry Commission and signed by some Executive Engineer, whose signatures are not legible, was submitted without recording any evidence, in which a recommendation was made that it was a fit case for the termination of the services of the plaintiff with effect from January 15, 1950.

(4) The enquiry against the plaintiff had a very strange history and it was continued again after the report of January 24, 1951, exhibit D. 8. The same Shri Sohan Singh, Deputy Secretary, wrote to him on March 8, 1951, a letter, exhibit D. 9 asking the plaintiff to see him in his office on March 10, 1951, as some omissions in the defence statement had to be supplied. It is significant to note that Shri Ram Sarup never took part in the enquiry proceedings and no document purports to have ever been signed by him and it was only the Deputy Secretary, Shri Sohan Singh, who was now and then writing letters to the plaintiff.

(5) There is then another enquiry report, exhibit P. 1, dated July 1, 1954, signed again by Shri Sohan Singh alone and it is stated therein that it could not be signed by Shri Ram Sarup, who was suddenly relieved in a day after the enquiry was completed. We find no indication in this report as to whether any evidence was recorded and on what material it was based. No action was taken on this report and the matter kept on lingering till there came about in the year 1956 the merger of the States of Punjab and PEPSU.

(6) A show-cause notice No. 2398/(1)/Irr./:(C)/57/6581, dated April 15/23, 1957, exhibit P. 2, was served on the plaintiff under rule 7(6) of the Patiala and East Punjab States Union Civil Services (Punishment and Appeal) Rules, 1953, hereinafter called the Rules, and he was called upon to show cause within a fortnight of the receipt of this notice as to why he should not be dismissed from service. This presumably purported to be a show-cause notice before the proposed action by way of dismissal from service on the basis of the so-called enquiry report, exhibit P. 1, could be taken. It was stated in the said notice that a copy of the relevant report of the enquiry had been enclosed. The plaintiff claims that he made a request in writing asking for a complete report of the enquiry and other information to defend himself against the action proposed to be taken, but no reply was given to him; nor was a copy of the complete enquiry report supplied. According to the plaintiff, only an extract from the enquiry report had been enclosed with the show-cause notice and that instead of meeting his request, the State of Punjab passed an order exhibit P. 5 on July 15/18, 1957, reinstating him and at the same time holding him guilty of the

The State of Punjab v. Gurcharan Singh (Sodhi, J.)

charges levelled against him, stopped his increment for one year and allowed him only the subsistence allowance for the period of his suspension, which was almost seven years. The impugned order, for facility of reference, may be quoted here in *extenso*—

“Government have carefully considered the explanation, dated 17th May, 1957, furnished by Shri Gurcharan Singh, Deputy Collector (under suspension) and after examining the whole record of enquiry, find him guilty to the charges of malingering, indiscipline and misconduct for which he was proceeded against departmentally. Regard being paid to all the circumstances the Governor of Punjab is pleased to stop the next increment of Shri Gurcharan Singh, Deputy Collector, for one year without future effect. He should be re-instated immediately and allowed subsistence allowance according to rules for the period of his suspension.

2. Shri Gurcharan Singh, Deputy Collector, under suspension, Sadar Adalat Bazar, Patiala, may be informed accordingly.”

It is in these circumstances that the plaintiff filed the present suit praying for a declaration that the show-cause notice No. 2398/(1)/Irr./ (C)/57/6581, dated April 15/23, 1957, and order No. 7185/Irr./C.57/13396, dated July 15/18, 1957, were illegal, *ultra vires*, without jurisdiction, *mala fide*, unconstitutional, null and void, inoperative and ineffective. Amongst other pleas raised by him, the plaintiff alleged that no evidence whatsoever was examined by the Commission and no opportunity was afforded to him to cross-examine the witnesses. He was not shown the relevant records and was only asked to be present for his defence in person and that he made several requests to the Commission which remained unheeded.

(7) The plea of the plaintiff was that he had been punished by way of stoppage of increment and denied his legal right to full salary and allowances during the period of his suspension on the basis of the enquiry report, which was patently illegal, void and against the principles of natural justice. The present suit was, therefore, filed for recovery of his salary and allowances for the period of his suspension after serving the State of Punjab with a notice under section 80 of the Code of Civil Procedure.

(8) The State of Punjab defendant resisted the suit and it was pleaded that the suspension order passed on August 12, 1950, was legal. It was, however, not admitted that there was any fault with the charge-sheets and the enquiry proceedings culminating in the final order of stoppage of increment of the plaintiff and refusal of full pay and allowance for the period of suspension.

(9) On the pleadings of the parties, the following issues were framed by the trial Court—

- (1) Whether the plaintiff has a justifiable cause of action and this Court has jurisdiction to entertain the present suit
- (2) Whether the suit is within limitation ?
- (3) Whether the enquiry held by the Enquiry Commission is illegal, void and unconstitutional as alleged in para 6 of the plaint ?
- (4) Whether the show-cause notice, dated the 15th/23rd April, 1957, is illegal, void and inoperative as alleged in para 6 of the plaint ?
- (5) Whether the order, dated 15th/18th July, 1957, is illegal, unconstitutional, null and void, without jurisdiction, against the principles of natural justice, *mala fide*, ineffective and inoperative, as alleged in paras 8 and 9 of the plaint ?
- (6) Whether the plaintiff had been illegally and unjustly placed under suspension as alleged in para No. 2 of the plaint ?
- (7) To what amount is the plaintiff entitled to recover from the defendant ?
- (8) Whether the notice under section 80, Civil Procedure Code, is an invalid one ?
- (9) Relief.

The State of Punjab *v.* Gurcharan Singh (Sodhi, J.)

There was not much of oral evidence led in the case. The plaintiff examined only two witnesses, besides himself going into the witness-box as P.W. 3. P.W. 1, Shri Wazir Chand was a Clerk in the office of the Accountant-General, whose evidence is not of any significance, since he could not produce the relevant records as required by the plaintiff. Shri Sohan Singh, retired Deputy Secretary, P.W.D., who was a member of the Enquiry Commission, is the principal witness in the case and was examined as P.W. 2. He has deposed about the conduct of the enquiry against the plaintiff and his evidence leaves no manner of doubt that the enquiry was merely a farce and no opportunity had really been afforded to the plaintiff to defend himself against the charges levelled against him. The enquiry, if it could be said at all to be an enquiry, was conducted by one member only in a queer way, though the Commission consisted of two members. Shri Ram Sarup, Chairman, according to the statement of this witness, did not participate in the enquiry proceedings.

(10) On behalf of the defendants, only one witness Shri Balwant Rai, Executive Engineer, was produced who stated that Shri Ram Sarup, Chairman of the Enquiry Commission, died in the year 1955, though he was earlier suffering from paralysis.

(11) The trial Court found issues Nos. 1, 2, 3, 4 and 5 in favour of the plaintiff, whereas issue No. 6 was not pressed. Issue No. 8 was held to be not proved, as there was nothing to indicate how the notice under section 80 of the Code of Civil Procedure was invalid. It has been held under issues Nos. 7 and 9 that the plaintiff is entitled to a declaration that the order of his suspension, the enquiry proceedings, the show-cause notice and order, dated July 15/18, 1957, whereby one increment of the plaintiff had been stopped, the plaintiff had been debarred to count the suspension period to his service and part of his salary had been forfeited inasmuch as a full pay had not been allowed to him for the suspension period, are all illegal, *ultra vires*, without jurisdiction, *mala fide*, unconstitutional, null and void, inoperative and ineffective. As a consequential relief the plaintiff has been awarded a decree for a sum of Rs. 35,000 with costs against the defendant. Hence, the present appeal.

(12) The learned Advocate-General appearing for the State of Punjab appellant, has not controverted the findings of the trial Court that the enquiry proceedings were illegal, inoperative, void, unconstitutional and against the principles of natural justice. He concedes that the impugned order, exhibit P. 5, cannot be supported so far as the stoppage of increment of the plaintiff is concerned, since the punishment is based on enquiry proceedings which are certainly not valid but submits that suspension was not ordered by way of penalty. According to him, the Government had the inherent right to suspend the plaintiff during the departmental inquiry and to give him such proportion of pay and allowances as it thought fit unless it was found by the Government that the suspension of the plaintiff was wholly unjustified. In regard to the powers of the Competent Authority to grant such a proportion of emoluments during the period of suspension as it thinks fit, our attention has been invited to Regulation 8.2(b) of the Pepsu Service Regulations, Volume I, hereinafter called the Regulations. It is necessary to reproduce at this stage Regulation 8.2(b) which is in the following terms —

“8.2(b). (1) When the Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make specific order—

(a) Regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty.

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority held that the Government servant has been fully exonerated, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be, together with any allowance of which he was in receipt, prior to his dismissal, removal or suspension.

The State of Punjab *v.* Gurcharan Singh (Sodhi, J.)

- (3) In other cases, the Government servant shall be given each proportion of such pay and allowances as such competent authority may prescribe :

Provided that the payment of allowances under clause (2) or (3) shall be subject to all other conditions under which such allowances are admissible.

- (4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.
- (5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specific purpose."

Regulation 8 is almost in the same terms as rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, and corresponds to a similar provision in rule 54 of the Fundamental Rules.

(13) Regulation 8.2(b)(1) postulates that when a Government servant who having been dismissed, removed or suspended is reinstated, the competent authority shall apply its mind and make a specific order whether or not the period of suspension shall be treated as a period spent on duty. Regulation 8.2(b)(3) permits the competent authority to decide in each case as to what proportion of pay and allowances are to be given to the Government servant during the period of suspension, though Regulation 8.2(b)(2) provides that the Government servant is entitled to full pay to which he would have been entitled had he not been suspended if the suspension was wholly unjustified.

(14) The learned Advocate-General has also referred to two cases reported as *R. P. Kapur v. Union of India* and another (1) and *R. P. Kapur v. Union of India* (2), to support his contention that the authority entitled to appoint a Government servant has the inherent right to suspend him. There cannot be any dispute

(1) A.I.R. 1964 S.C. 787.

(2) A.I.R. 1967 Pb. 417.

with the proposition that an authority entitled to appoint a public servant can suspend him pending a departmental enquiry into his conduct or pending any criminal proceedings, but that is not the question before us. The plaintiff has claimed the full amount of salary and allowances for the period of his suspension and what is to be determined is the amount to be paid to him. It is no doubt true that it was open to the competent authority to have fixed the proportion of the pay and allowances payable to the plaintiff in terms of Regulation 8.2(b), but the circumstances of the instant case and the order, exhibit P. 5 leave no doubt in our mind that subsistence allowance only had been granted by the State Government instead of full emoluments because of the report of the Enquiry Commission which, according to the learned Advocate-General's own submission, was not valid and could not be acted upon. If the State Government had chosen to act independently of the report, it was bound to give an opportunity to the plaintiff to enable him to represent in order to show that the suspension, as ordered on August 12, 1950, was wholly unjustified. Their Lordships of the Supreme Court in *M. Gopal-krishna Naidu v. The State of Madhya Pradesh* (3), where a similar provision under rule 54 of the Fundamental Rules was being interpreted, observed that a competent authority while considering whether suspension of a public servant was wholly unjustified or not in order to determine the question of subsistence allowance or the salary to be granted to him, has to act on an objective data which implies a duty to act judicially. It has been held that in such a case the plaintiff is entitled to show cause against the action proposed to be taken and in the absence of that any order passed will be struck down as one being in breach of the principles of natural justice. A decision under Regulation 8 in the light of the observations of the Supreme Court, had to be taken in accordance with the basic concept of justice and fairplay. It is conceded by the learned Advocate-General that no such opportunity was given to the plaintiff.

(15) The State Government acting under Regulation 8 is also to give a decision as to whether the period of suspension has to be considered to be on duty or absence therefrom. There is no mention of any such finding in the impugned order, exhibit P. 5. As

(3) A.I.R. 1968 S.C. 240.

The State of Punjab *v.* Gurcharan Singh (Sodhi, J.)

already stated appellant simply acted on the enquiry report alone which found the plaintiff guilty and on the basis of that it awarded the punishment of stoppage of increment and further directed that he be paid mere subsistence allowance.

(16) The State of Punjab in its written statement never took the plea that it had allowed a proportion of pay and allowances to the plaintiff for the period of suspension as it found the suspension of the plaintiff not to be wholly unjustified in terms of Regulation 8. As a matter of fact, the State Government had not directed its mind to this aspect of the case when passing the impugned order, exhibit P. 5. It might have been a possible defence for the State in resisting the claim of the plaintiff to say that the suspension was not wholly unjustified, but it was not pleaded and could not indeed be pleaded as the State depended on the order, exhibit P. 5 and the findings as given in the enquiry report. It had given no thought to the question that the plaintiff was entitled to full pay and allowances unless the competent authority had found his suspension not to be wholly unjustified or that a deduction could be made only after giving a reasonable opportunity to the plaintiff to show-cause against the proposed action.

(17) The next contention of the learned Advocate-General is that the order about pay and allowances is only a consequential one because of the order of reinstatement. There may be cases where an enquiry has already been held against the delinquent officer and the order regarding subsistence allowance is only a consequential order on directing his reinstatement. In such a case where there has been a valid and proper enquiry no further opportunity to the delinquent officer may be necessary to show-cause against the action proposed to be taken in the matter of passing an order under Regulation 8 allowing to the said officer only a proportion of the salary and allowances instead the full amount of his emoluments to which he would be normally entitled if his suspension was wholly unjustified. The competent authority when passing an order relating to pay and allowances for the period of suspension in consequence of a valid departmental enquiry will have before it the entire record including the explanation of the delinquent officer and be in a position to make an assessment from an objective data as to whether his suspension was wholly unjustified or not. In a case where there is no enquiry at all, the question of there

being any consequential order does not arise and this distinction has been very clearly brought out by their Lordships of the Supreme Court in *M. Gopal Krishna Naidu's case*. A case, where there was some sort of enquiry but it was wholly illegal either because it contravened the provisions of the Constitution, any statutory law or statutory rules or it was opposed to the principles of natural justice, has to be equated with the one where there was no enquiry held at all and any order passed under Regulation 8 giving only a portion of the emoluments to the delinquent officer cannot be said to be a consequential order passed on his reinstatement. The explanation of the plaintiff and all that happened during an illegal enquiry cannot justifiably be even looked at in taking action under Regulation 8.2(b)(3) and determining the proportion of pay and allowances to be paid to the delinquent officer. In the case before us there could be no valid and legal consequential order when the report of the Enquiry Commission, from which the said order under Regulation 8 would be necessitated, could not itself be sustained.

(18) The last contention on behalf of the State is that appeal be allowed and a direction given to the State Government to decide the matter of award of salary and allowances to the plaintiff for the period of suspension in the light of Regulation 8.2(b)(2) and 8.2(b)(3) of the Regulations after giving an opportunity to the plaintiff. It is submitted that the plaintiff himself admitted in his statement on July 13, 1961, made in the trial Court that he did not wish to challenge the validity of the suspension order and he did not, therefore, press issue No. 6 which related to the validity of suspension. We are afraid no such prayer can be allowed in the present appeal arising out of a suit for declaration. The impugned order, as contained in exhibit P. 5, must be read as a whole which, in our opinion, was nothing but a penal one intended to punish the plaintiff for his alleged misconduct held to have been proved as a result of the illegal enquiry. The mere fact that the plaintiff gave up issue No. 6 did not absolve the competent authority of its obligation to act judicially according to the principles of justice and fairplay and to give an opportunity to the plaintiff to show cause against the proposed action of forfeiture of salary and allowances.

The State of Punjab *v.* Gurcharan Singh (Sodhi, J.)

(19) The plaintiff had pleaded in the suit that no preliminary enquiry had been held and no explanation taken from him before ordering suspension, nor was the suspension order passed by a competent authority. It was in this context that issue No. 6 was framed which the plaintiff did not pursue. He might have felt that the Government could suspend him during the departmental enquiry and still it was open to him to show that the suspension was wholly unjustified. The power to suspend and justification for the same are two distinct matters and the so-called admission of the plaintiff is not relevant for the purpose of determining the liability of the State to pay his full salary during the period of suspension.

(20) The plaintiff respondent filed the present suit for a declaration that he was entitled to his full salary and allowances for the period of his suspension which extended to seven years, challenged the validity of the impugned order, exhibit P. 5 and the entire enquiry proceedings ending in the said order. The State Government did not take the plea in its written statement that the suspension of the plaintiff respondent was not wholly unjustified. The State Government did not offer at any time during the trial of the suit which lasted for over a year that it was prepared to give an opportunity to the plaintiff to show cause against the proposed action of reducing his emoluments for the period of suspension in the light of Regulation 8. The defence throughout was that the enquiry was legal and so the order exhibit P. 5. It is for the first time that the learned Advocate-General has, in the course of the arguments, taken up the position that we should allow the appeal and give directions to the State Government to act under Regulation 8 after giving an opportunity to the plaintiff to show as to whether his suspension was wholly unjustified or not. We are not exercising our extraordinary jurisdiction under Articles 226 and 227 of the Constitution, in which proceedings the question of giving any such directions could possibly be considered. There is no rule of law which empowers this Court to accept such a suggestion in the trial of a suit. We are only concerned with the validity of the order exhibit P. 5 and the suit can either be decreed or dismissed. We are of the considered view that in the circumstances of the present case it is not possible to separate the two orders, one stopping the increment and the other awarding the subsistence allowance only for the period of suspension since both

are intermingled and based on the illegal enquiry. The order exhibit P. 5 has, therefore, been rightly quashed by the trial Court and the declaration granted to the plaintiff respondent as prayed for by him. The order cannot stand even according to the showing of the Advocate-General himself since admittedly the order reducing the emoluments for the period of suspension is opposed to the principles of natural justice in the light of the law laid down by their Lordships of the Supreme Court in *M. Gopalkrishan Naidu's case*. There was thus no justification for the State Government to have deprived the plaintiff of his full emoluments during the period of his suspension on the basis of an illegal enquiry.

(21) For the foregoing reasons, there is no merit in the appeal which stands dismissed with costs.

MEHAR SINGH. C.J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before S. B. Kapoor and H. R. Sodhi, JJ.

BAWA LAL DASS AND OTHERS—*Petitioners*

versus

MAHANT SOHAN DASS,—*Respondent*

Supreme Court Application No. 257 of 1968

September 18, 1968

Constitution of India (1950)—Article 133(1)—Code of Civil Procedure (Act V of 1908)—S. 109—Order of the High Court remanding the case for trial on merits—Such order—Whether a final judgment—Appeal to Supreme Court—Whether lies—“Judgement”—Meaning of.

Held, that an order of the High Court remanding the case for trial on merits cannot be said to be a final judgment within the meaning of Article 133(1) of the Constitution of India as no final adjudication in respect of the rights of the parties has yet been given by the High Court. An order which does not finally