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. Capoor 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

dispose of the rights of the parties to the suits, cannot be said to be a final judgment or order. The finality of an order has to be determined only in relation to the suit. If the suit is still alive, in which the rights of the parties have yet to be determined, no appeal lies against such an order under section 109(*a*) of the Code of Civil Procedure. (Para 3)

Held, that word "judgment" in clause (c) of section 109 of the Code has the same sense as the word "decree" in the Code, meaning thereby the declaration of the final determination of the rights of the parties in the matter in controversy in suit.

(Para 3)

Application under Article 133(1) *of the Constitution of India, praying that a certificate of fitness for leave to appeal to the Supreme Court of India be granted against the judgment of Hon'ble Mr. Justice S. B. Capoor and Hon'ble Mr. Justice H. R. Sodhi passed in R.S.A. No.* 898 *of* 1964 *on 8th July*, 1968.

ATMA RAM, ADVOCATE, for the Appellant.

S. L. PURI, ADVOCATE, for the Respondent

JUDGMENT

SODHI, J.—This is an application under Article 133(1) of the Constitution praying that the Regular Second Appeal No. 898 of 1964, decided by this Court on July 8, 1968, be certified to be fit for further appeal to the Supreme Court. No clause of Article 133 under which the case can be said to fall has been indicated in the heading of the application.

(2) The trial Court had dismissed the suit of the plaintiff on what may be described as a preliminary issue holding that the suit was barred under section 92 of the Code of Civil Procedure. The Court of first appeal concurred with that finding, but the second appeal preferred by the plaintiff to this Court was allowed and the case was remanded to the trial Court for determination of the other issues on merits. It is needless to recapitulate those issues here and suffice it to point out that the suit of the plaintiff can still be decreed if he succeeds on the issues on merits.

(3) Leave to appeal has been sought only on the ground that this Court has varied the judgement and decree of the Court of

first appeal and the value of the subject-matter in dispute, both in the Court of first instance as well as now, is more than Rs. 20,000. This value has been worked out on the basis of the price of agricultural land of which lease is said to have been granted for 99 years by the defendant. We have held that this lease amounts to a permanent alienation. No counter-affidavit has been filed by the learned counsel for the plaintiff, though he orally contended that it was the value of the lease which alone should be taken into consideration. Be that as it may, we do not find it necessary to go into this question since the leave has to be refused on the short ground that no final adjudication in respect of the rights of the parties to the suit has yet been given by this Court. It has been observed in the case reported as *V. M. Abdul Rahman and others v. D. K. Cassim and Sons and another* (1). that where the order does not finally dispose of the rights of the parties to the suit it cannot be said to be a final judgment or order, no matter even when it goes to the root of the suit and involves the jurisdiction of the Court to entertain the same and that the finality has to be determined only in relation to the suit. If the suit is still alive, in which the rights of the parties have yet to be determined, no appeal lies against such an order under section 109(a) of the Code of Civil Procedure. It is true that in section 109(a) of the Code of Civil Procedure, as it stood at the time of the decision of the Privy Council in *V. M. Abdul Rahman's case*, the word 'judgment' did not appear and it was introduced afterwards. The word 'judgment' was also introduced in clause (c) of that section by the Civil Procedure Code (Amendment) Act, 1956 (Act 66 of 1956), the object of all these amendments being to bring in line the provisions of section 109 with those of Article 133. The word 'judgment', though introduced later, has been interpreted by the Courts in the same sense as the word 'decree' in the Code of Civil Procedure meaning thereby the declaration of the final determination of the rights of the parties in the matter in controversy in the suit. The observations of the Privy Council as made in *V. M. Abdul Rahman's case* were approved by their Lordships of the Supreme Court in a case reported as *Messrs Jethanand and Sons v. State of Utter Pradesh*, (2), where the same test was applied in determining the finality of a judgment.

(1) A.I.R. 1933 P.C. 58.

(2) A.I.R. 1961 S.C. 794.

(4) Mr. Shambhu Lal Puri. learned counsel for the respondent, has made a reference to similar views expressed in the cases reported as *Bombay Steam Navigation Company Limited* v. *Damodar Savailal* (3), *Mohd. Mohmood Hasan Khan* v. *Government of Utter Pradesh*, (4), and *Rattan Chand v. Central Board of Direct Taxes and another* (5).

(5) Mr. Atma Ram, learned counsel for the applicant, invited our attention to cases reported as *Sultan Singh* v. *Murli Dhar and others* (6), *Union of India* v. *Kanahya Lal Sham Lal* (7) and *Dhanalakshmi Vilas Cashew Company and others* v. *President, Cashew Industries Staff Association and others* (8). None of these cases helps Mr. Atma Ram as the facts there are distinguishable. *Sultan Singh's case* decided by a Full Bench of the Lahore High Court and relied upon by Mr. Atma Ram rather goes against him. On an appeal by the plaintiffs in that case, a Division Bench of the High Court holding that the plaintiffs had established an interest within the meaning of section 92 of the Code of Civil Procedure remanded the case for trial on remaining issues. On an application being filed for leave to appeal to the Privy Council, the High Court held that the order of remand in those circumstances did not amount to a final order and the leave was accordingly refused. The determination of the matter regarding finality of an order was held to depend not only upon the nature of the issue itself, but upon its importance as compared with that of the other points arising in the suit. It has been observed in that case that it is impossible to lay down any hard and fast rule which could solve the problem in every case and that an issue, which does not dispose of the rights of the parties, does not belong to that category which could be treated as finally disposing of a cardinal point in the suit. In the instant case, there are issues on merits which have yet to be decided and on which the suit, as already observed, can either be decreed or dismissed. *Kanahya Lal Sham Lal's case* (F.B.) is also not of any assistance to the learned counsel for the petitioner.

(3) A.I.R. 1953 Sau. 166 (F.B.).
(4) A.I.R. 1956 All. 457 (F.B.).
(5) 1967 P.L.R. 93.
(6) A.I.R. 1924 Lah. 571 (F.B.).
(7) I.L.R. 1957 Punj. 255=A.I.R. 1957 Pb. 117 (F.B),
(8) A.I.R. 1962 Kerala 1 (F.B.).

(6) In *Dhanalakshmi Vilas Cashew Company's case* decided by the Kerala High Court, the word 'judgment' has been given the same interpretation so as to mean that it must finally dispose of a dispute between the parties as contrasted with an interlocutory judgment or order. It is not understood how this judgment can possible be of any assistance to the learned counsel for the petitioner.

(7) For the foregoing reasons, it must be held that our judgment 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. The application for leave to appeal has, therefore, no merit and stands dismissed with costs.

S. B. CAPOOR, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BHIM CHAND,—*Petitioner*

versus

THE DEPUTY COMMISSIONER, DISTRICT ROHTAK AND OTHERS,—*Respondents*

Civil Writ No. 1295 of 1967

September 18, 1968

Punjab Civil Services Rules, Volume II—Rule 5.32—Order of retirement under—Such order not passed by appointing authority—Whether bad in law.

Held, that under Rule 5.32 of the Punjab Civil Services Rules, Volume II, the decision to retain a Government employee in service or to retire him by giving him three months' notice after he attains the age of 55 years, is with the appointing authority. If that decision is not arrived at by the appointing authority himself but is made on the dictation of some other authority, the order is bad in law.

(Para 3)