

instructions contained in the letters of the Punjab Government, dated 9th February, 1952, 18th May, 1953, etc., have no force in law and the Consolidation Officer acts without jurisdiction in carrying them out. In view of this decision, the petition must be allowed and a direction issued to the Consolidation Officer to proceed with the matter and decide it in the light of the decision given by the Division Bench. There will be no order as to costs.

Suraj Parkash
Kapur
v.
The State of
Punjab
and others
Khosla, J.

APPELLATE CIVIL

Before Dulat and Bishan Narain, JJ.

PRITAM SINGH—Petitioner

v.

UNION OF INDIA, AND OTHERS,—Respondents

S.C.A. 9-D of 1955.

Code of Civil Procedure (V of 1908)—Sections 109(a) and 110—Claim in suit for a declaration that the petitioner was still in service—Such claim whether capable of money valuation under section 110, Civil Procedure Code.

1956

Nov. 9th

Expression “involved directly or indirectly some claim to or respecting property” in section 110, meaning of.

Held that salary that is to be earned in future cannot be capable of valuation as the actual earning depends on various circumstances which may or may not materialize, e.g., continued good conduct in service and good health, etc., The right to continue in service is incapable of valuation and therefore loss suffered by plaintiff by his alleged wrongful dismissal is not and cannot be covered by the provisions of section 110, Civil Procedure Code.

Held further, that a claim can be considered to be directly or indirectly involved within paragraph 2 of section 110, Civil Procedure Code, if the claim is additional

to or other than the considered actual subject matter in dispute in the appeal.

Subramania Ayyar v. Sellammal (1), and *Manganna v. Mahalakshamma* (2), followed, *Radhakrishna Ayyar and another v. Sundaraswamier* (3), considered.

Petition for leave to appeal to the Supreme Court of India under Article 133 of the Constitution and sections 109 and 110 of the Code of Civil Procedure against the judgment of the Division Bench, consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice Bishan Narain, dated the 28th September, 1955, delivered in R.F.A. No. 104-D of 1954.

Original Suit No. 807 of 1951, decided by Sh. Brij Lal Mago, Sub-Judge, 1st Class, Delhi, on 5th June, 1954.

A. N. GROVER, for Petitioner.

HAR PARSHAD, Assistant Advocate-General, for Respondents.

JUDGMENT.

Bishan Narain,
J.

BISHAN NARAIN, J. This is an application by Pritam Singh for leave to appeal to the Supreme Court of India against a judgment and decree of this Court given on the 28th September, 1955, reversing the decision of the trial Court. Pritam Singh joined the Police Force in 1939 and was promoted to the rank of Head Constable in 1946. He was suspended from service in 1948, and was prosecuted under section 161, Indian Penal Code, for obtaining and accepting illegal gratification. He was, however, ultimately acquitted by the Sessions Judge, Delhi. A departmental enquiry was then held against him and he was dismissed from the Police Force by the Senior Superintendent of Police, Delhi, by his order, dated the 2nd August,

(1) I.L.R. 1916 (39) Mad. 843

(2) I.L.R. (1930) 53 Mad. 167, (P.C.)

(3) I.L.R. 45 Mad. 475 (P.C.)

1949. Thereupon Pritam Singh filed a suit, out of Pritam Singh which the present application has arisen, for a ^{v.} declaration that his dismissal was illegal and he ^{Union of India} was still an employee in the Police Force and was ^{and others} entitled to the salary and other allowances attaching to the job. He valued the suit at Rs. 5,100 and paid a fixed court-fee of Rs. 15, for the declaration sought. The trial Court decreed the suit but this Court accepting the appeal dismissed it, hence this application.

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Bishan Narain,
J.

It has been argued on behalf of the petitioner that the leave sought should be granted to him as a matter of right under section 109(a) and section 110, first paragraph, Civil Procedure Code, in as-much as the value of the subject-matter in the trial Court and in dispute on appeal to the Supreme Court is more than Rs. 20,000. The learned counsel has calculated the value on the basis that his client is 36 years old and would have retired in 1974 if he had not been dismissed in 1949 and that by that time he would have received more than Rs. 24,000 as salary even if he had continued in service as a Head Constable without promotion and even if allowances paid to him were ignored. Obviously if either the allowances or promotions are taken into consideration then he would be entitled to much greater amount. The question that requires decision is whether this method of calculating the value of the subject-matter involved in this litigation is appropriate or in accordance with law. The learned counsel has not been able to bring to our notice any decision where the value of a job or a post has been calculated in this manner or any decision which can be of any assistance in determining the present question. Reliance has been placed on *Radhakrishna Ayyar and another v. Sundaraswamier* (1). In that case the dispute related to three years' rent amounting to Rs. 4,560.

(1) I.L.R. (1922) 45 Madras. 475

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 Bishan Narain, J.

The defence of the tenants was that they were liable to pay a sum less than the amount claimed by the landlord. The High Court granted a certificate under sections 109 and 110, Civil Procedure Code. The Privy Council when deciding this question applied the Order in Council, dated the 10th April, 1838, wherein it was laid down that the value of matter in dispute fixed in the certificate of leave by the High Court shall be conclusive of that fact. It was argued before the Privy Council that the impugned decree settled the rent payable annually and its capitalized value should be considered to be the value of the subject-matter. The Privy Council, however, did not choose to accept this contention or reject it but relied on the Order in Council of 1838, for its decision. This case, therefore, cannot be considered to be of any assistance in the present case. Moreover, the rent of land or mesne profits therefrom appear to me to be of absolutely different nature from the present mode of calculation for valuing a personal job or post contended for.

Now in the present case Pritam Singh did not choose to file a suit for damages on the ground of wrongful dismissal. In that case he would have valued the subject-matter of the suit and that would have been final. He did not choose either to sue for arrears of salary on the basis that the order of dismissal being illegal he was entitled to receive the salary. The present case is merely for a declaration that the petitioner was still employed in the Police Force.

Now Pritam Singh was a member of the Police Force as an employee of the Delhi State. He was under an obligation under terms of his office to discharge his appointed duties and receive compensation in the form of salary and allowances. This right of the career is not to be valued. The

value must be the market value as ascertained by ordinary commercial standard of the applicant's career. I cannot think of any reasonable method by which it can be valued. It may be said that the right to service is a commodity which can be valued and it may be suggested that its value would be the amount the employer must pay in case of wrongful dismissal or that in other words damages payable to a wrongly dismissed employee are the criterion of the value of the post. The dismissal which causes injury to the employee also sets his time free for use in other service, and in every suit for damages for breach of contract it is necessary that the injured party should minimize the damages and this rule is applicable also to cases of contract of service. The damages, it is well-established, are to be measured in a contract of service by the salary payable less the amount which a dismissed person could earn by reasonable effort. If the suit had been filed for damages, the plaintiff would have fixed this amount but now there is no material on the record to arrive at any figure. Salary that is to be earned in future cannot, in my opinion, be capable of valuation as the actual earning depends on various circumstances which may or may not materialize, e.g., continued good conduct in service and good health, etc. A suit for arrears of salary may be filed, but I have not seen a case in which a suit for recovery of future salary has been filed or entertained. I am of the opinion that the right to continue in service is incapable of valuation and, therefore, loss suffered by the plaintiff by his alleged wrongful dismissal is not and cannot be covered by the provisions of section 110, Civil Procedure Code. In such a case, therefore, leave can only be granted under section 109(c), Civil Procedure Code, on the ground that there is no method by which the value of the subject-matter can be ascertained.

Pritam Singh
v.
Union of India
and others

Bishan Narain,
J.

Pritam Singh v. Union of India and others
 Bishan Narain, J.

It has been argued at one stage before us that the decision of this Court involved directly or indirectly a claim of Rs. 20,000. It is, however, a settled law now that a claim can be considered to be directly or indirectly involved within paragraph 2 of section 110, Civil Procedure Code, if the claim is additional to or other than the actual subject-matter in dispute in the appeal (vide *Subramania Ayyar v. Sellammal* (1), and *Man-ganna v. Mahalakshamma* (2)). In the present case the subject-matter in dispute is only the right to continue in service and there is no additional claim or any claim other than the one in suit. Therefore, it must be held that leave cannot be granted to the petitioner on this ground either.

The learned counsel then submitted that the case may be certified to be a fit one for appeal to the Supreme Court under section 109(c), Civil Procedure Code. In the present case the suit has been dismissed on the sole ground that the plaintiff was given sufficient opportunity under rule 24(ix) framed under the Police Act to show cause why an order of dismissal should not be passed against him. This is a pure question of fact depending on the circumstances of this case and, therefore, it cannot be considered to be a fit case for appeal to the Supreme Court.

For all these reasons, I hold that the applicant is not entitled to get leave from this Court under section 109(a) read with section 110, Civil Procedure Code, or under section 109(c), Civil Procedure Code.

The application is accordingly dismissed. There will be no order as to costs.

Daulat, J.

DULAT, J.—I agree.

(1) I.L.R. (1916) 39 Mad. 843

(2) I.L.R. (1930) 59 Mad. 167, (P.C.)