

(1997) 05 AHC CK 0202
In the Allahabad High Court
Case No : Special Appeal No. 975 of 1995

Kamleshwar Singh

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 22-05-1997

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Civil Procedure Code, 1908 (CPC) — Section 105, 105(1)
Constitution of India, 1950 — Article 227
Uttar Pradesh Intermediate Education Act, 1921 — Section 79
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3, 3(1)

Citation : (1997) AWC 206 Supp

Hon'ble Judges : D.P. Mohapatra, C.J; R.A. Sharma, J

Bench : Division Bench

Advocate : S.K. Srivastava and G.N. Varma, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—This appeal has been filed against the judgment dated 30.11.1995 of a learned single Judge, whereby he has allowed the writ petition filed by Udai Prasad, Respondent No. 2 in this appeal, quashed the order of the District Inspector of Schools, Varanasi (hereinafter referred to as the D.I.O.S.) dated 24.11.1995 and remanded the case to the D.I.O.S. for deciding the dispute of seniority between the Appellant and the Respondent No. 2 in the light of the observations and the directions contained in the judgment.

2. We have heard the learned Counsel for the parties. Learned Counsel for Respondent No. 2 has raised a preliminary objection about the maintainability of this appeal on the ground that the impugned judgment of the learned single Judge has been given in a writ petition, which was filed against the order of the D.I.O.S. passed in exercise of the appellate power. Before proceeding to decide this appeal on merit, it is appropriate that the preliminary objection should be decided at the threshold.

3. Rule 5 of Chapter VIII of the High Court Rules provides for special appeal from a judgment, not being judgments mentioned therein, of one Judge. One of the judgments from which the special appeal does not lie is a judgment by one Judge in a writ petition filed against the appellate or revisional order. If the order of the D.I.O.S., which was challenged in the writ petition, was passed in exercise of the appellate power, undoubtedly this appeal is not maintainable. But that is not the position here. Under Regulation 3(1)(e) of Chapter IIInd of the Regulations framed under the U.P. Intermediate Education Act, the dispute about the seniority of the teachers is to be decided by the Committee of Management of the College. Person aggrieved by such a decision of the Committee of Management can file an appeal under Regulation 3 (1)(ft before the appellate authority. Earlier the D.I.O.S. was the appellate authority; but Regulation 3 (1)(f) was amended vide notification dated 22.8.1992, whereby Regional Deputy Director of Education in place of the D.I.O.S. has been made the appellate authority. The result is that with effect from 22.8.1992, the D.I.O.S. ceased to be an appellate authority. In the instant case, the D.I.O.S. passed the order impugned in the writ petition on 24.11.1995 on which date he was not exercising any appellate power. He passed that order pursuant to the judgment of this Court dated 8.8.1995, whereby he was required to decide the dispute of seniority between the Appellant and Respondent No. 2. The D.I.O.S.'s order impugned in the writ petition was, therefore, not an appellate order. Hence this appeal is maintainable. The preliminary objection raised by the learned Counsel for Respondent No. 2 is accordingly rejected.

4. Both the Appellant and Respondent No. 2 were appointed in 1975 as teachers in Kisan Uchcharat Madhyamik Vidyalaya, Saidpur, district Varanasi (hereinafter referred to as the College). Their appointments were also approved by the D.I.O.S. On 20.5.1976 a draft seniority list of the teachers of the College was published inviting objections. The Committee of Management of the College approved the draft seniority list on 2.7.1976. The approved list was also published. In the said list, the Respondent No. 2 was shown at serial No. 2, whereas the Appellant was placed at serial No. 4. The Respondent No. 2 was thus shown as senior to the Appellant in the seniority list. As on 30.6.1992 the regular Principal of the College was to retire, the D.I.O.S. asked the said Principal to send the seniority list to him for selection of the senior most teacher for appointment of ad hoc Principal. The then Principal submitted a seniority list to the D.I.O.S. in which the Appellant was shown senior to Respondent No. 2. The Respondent No. 2 challenged that list before the D.I.O.S. The D.I.O.S. not having decided the said representation, Respondent No. 2 filed a Writ Petition No. 20205 of 1992 before this Court, which was disposed of by a learned single Judge on 20.5.1992, directing the D.I.O.S. to decide his representation by 25.6.1992. The D.I.O.S. thereafter rejected the representation of Respondent No. 2, holding that the Appellant is senior to him. Being aggrieved by the said order of the D.I.O.S., the Respondent No. 2 filed a Writ Petition No. 26769 of 1992 before this Court, which was allowed by Hon''ble Alok Chakrabarti. J., on 8.8.1995 and the order of

the D.I.O.S., rejecting the representation of the Respondent No. 2, was quashed, and he was directed to decide the dispute of seniority afresh in the line of the said judgment. The D.I.O.S. thereafter vide his order dated 24.11.1995 remanded the matter to the Committee of Management to decide the question of seniority between the Appellant and Respondent No. 2 on the basis of Regulation 3 of Chapter IIInd framed under the U.P. Intermediate Education Act. The Respondent No. 2 thereafter filed the Writ Petition No. 34348 of 1995, which has been allowed and the order of the D.I.O.S. dated 24.11.1995 has been quashed and the D.I.O.S. has been directed to decide the dispute in accordance with the judgment dated 8.8.1995 of Hon"ble A. Chakrabarti, J. Feeling aggrieved by the said judgment, this appeal has been filed.

5. Hon"ble A. Chakrabarti, J., while allowing the Writ Petition No. 26769 of 1992 vide judgment dated 8.8.1995 has held as follows:

(i) seniority list which was finally approved by the Committee of Management of the College in 1976 became final and, therefore, it was not open to disturb the same after about fifteen years. In this connection reliance was placed on a decision of Full Bench of this Court in S.K. Chaudhary v. Committee of Management 1991 (1) UPLBEC 250;

(ii) the Principal of the College has no power to fix the seniority of the teachers; and

(iii) Regulation 3 of Chapter IIInd framed under the U.P. Intermediate Education Act, which has laid down the criteria and norms for fixing the seniority of the teachers, is not applicable to the instant case, because the same was enacted after the seniority has already been fixed and finalised in 1976. In this connection the learned Judge has held as under:

The impugned order apparently does not consider any of the said aspects and the seniority list has been decided on the basis of the age applying the provisions of Regulation 3, Chapter IIInd. As in my view the said Regulation 3 does not apply in the case of seniority between the Petitioner and the Respondent No. 3 already decided in June, 1976, the impugned order is apparently illegal and is liable to be struck down.

In the circumstances, the writ petition succeeds and is allowed. The impugned order dated 8.7.1992 at Annexure 10 to the writ petition is hereby quashed. The D.I.O.S., Varanasi is directed to decide the representation of the Petitioner in the line of the present judgment and such decision be taken within a period of three weeks from the date of production of a certified copy of this order.

(Emphasis supplied)

6. The D.I.O.S., however, vide order dated 24.11.1995 held that Regulation 3 of Chapter IIInd framed under the U.P. Intermediate Education Act is applicable to the present case and the seniority of the Appellant and Respondent No. 2 is liable to be determined on the basis of the said Regulation. After holding as above, the

D.I.O.S. directed the Committee of Management of the College to determine the seniority of the Appellant and the Respondent No. 2 on the basis of the aforesaid Regulation. This order of the D.I.O.S. is in flagrant violation of the judgment dated 8.8.1995 of Hon''ble A. Chakrabarti, J., who has held that Regulation 3 of Chapter IInd does not apply in the case of seniority between the Appellant and the Respondent No. 2. Hon''ble A. Chakrabarti, J., recorded the findings and declared the law on three questions mentioned before and thereafter directed the D.I.O.S. to decide the dispute "in the line of the present judgment". Therefore, it was not open to the D.I.O.S. to record a finding contrary to the finding and the declaration recorded by Hon''ble A. Chakrabarti, J., in his judgment. That apart, the D.I.O.S. did not take into consideration the other two findings recorded by Hon''ble A. Chakrabarti, J. The learned single Judge was, therefore, Justified in condemning the action of the D.I.O.S., who has passed the order in contravention of the direction and the order of Hon''ble A. Chakrabarti, J. If an order has been passed in disregard of the direction issued by this Court in its earlier judgment, the same has to go. In this connection, reference may be made to a decision of the Division Bench of this Court in Satyendra Pal v. Regional Transport Authority 1982 ALJ 310, wherein it was laid down as under:

In fact, there is another principle of law still more puissant and not less irrevocable viz. that he who chooses to defy the order of a Court must face the nemesis, the wages of disobedience is penalty. It follows as a corollary that if a person is able to secure any advantage by flouting an order of the Court, he must be made to disgorge such gain. Likewise, proceedings taken by an authority in flagrant disregard of the order of a court are nullity and the court should have no compunction in putting the hand of the clock back and restoring the status quo ante, where an order of a court is disobeyed, a writ must be issued to redress the injury suffered by a person on account of the disobedience of such order. To borrow the words of Chinappa Reddy, J., in Capt. Dushyant Somal Vs. Smt. Sushma Somal and Another, :

Where what is complained of is an impudent disregard of an order of a court, the fact certainly cries out that a prerogative writ shall issue.

It is precisely this principle, which looms large in the present case and all other aspects ultimately converge to this single point.

For the reasons given above, no exception can be taken to the judgment of the learned single Judge impugned in this appeal.

7. The learned Counsel for the Appellant has, however, submitted that the judgment of Hon''ble A. Chakrabarti, J., dated 8.8.1995, being an order of remand, is an interlocutory order and, therefore, not binding on the parties and this Court when it hears the case, which is filed subsequently against the order passed pursuant to the order of remand. This submission cannot be accepted for two reasons, namely (i) Hon''ble A. Chakrabarti, J., has recorded the findings and declared the law on three points. These findings and the declaration were binding

on the D.I.O.S. and it was not open to him to ignore: them, especially in view of the fact that he was directed to decide the dispute of seniority "in the line of that judgment. The D.I.O.S. was thus not free to decide the dispute in any manner he liked. He was to decide the dispute on the basis of and in accordance with the findings recorded and the declaration of the law made by Hon"ble A. Chakrabarti. J. : and (ii) it has been settled by the Courts that principles of res judicata apply not only is separate subsequent proceeding but they also apply in subsequent stages of the same proceeding. Supreme Court in V. B. Patil and Ors. v. Y.L. Patil AIR 1977 SC 392, has in this connection laid down as under:

It is urged that the Tribunal in affirming the finding of the Assistant Commissioner and the Deputy Commissioner regarding the question of the Appellants being strangers qua the land in dispute took, a very restricted view of Section 79 of the Act dealing with revision. This contention, in our opinion, is not well founded. The High Court at the time of the decision of the earlier writ petition on December 18, 1964 recorded a finding and gave directions to the Tribunal not to reopen the questions of fact In revision. The Tribunal while passing the order dated September 12, 1967 complied with those directions of the High Court. The Appellants are bound by the judgment of the High Court and it is not open to them to go behind that judgment in this appeal. No appeal was filed against that judgment and it has become final. It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding. In view of the High Court judgment dated December 18, 1964, the Tribunal while passing the order dated September 12, 1967, disposing of the revision petition filed by the Appellant, could not reopen the questions of fact which had been decided by the Assistant Commissioner and the Deputy Commissioner.

In the aforesaid case, the High Court in a writ petition filed against the order of Tribunal has held that it was not open to the Tribunal to reopen and set aside the findings of fact in a revision. With the above observations, the High Court remanded the case to the Tribunal for fresh decision. Against the fresh decision of the Tribunal, another writ petition was filed in which the question, regarding the jurisdiction of the Tribunal to open the findings of fact recorded by the courts below, was raised. Supreme Court negated that contention, holding that in the earlier writ petition, this question was decided by the High Court and that judgment became final as the same was not challenged. In Thakore Sobhag Singh Vs. Thakur Jai Singh and Others, . the Supreme Court reiterated the same principle holding as follows:

The High Court also held in the writ petition that on the death of the holder of the Jagir without having any issue the Jagir will vest in his adopted son in accordance with the personal law. That finding is now res judicata and is binding upon the parties. Counsel for the Appellant contended that the order passed by

the High Court was an interlocutory order remanding the proceeding to the Board of Revenue, and on that account the decision of the High Court will not operate as *res judicata* either before the Board of Revenue or in this Court. We are unable to accept that contention. Against the order of the Board of Revenue rejecting the claim of Jai Singh to be recognised as the adopted son of Sabhal Singh, a writ petition was moved in the High Court and a prayer for quashing that order was made. The High Court dealt with the dispute on merits and held that the order of the Board of Revenue holding that because of the Matmi Rules the adoption of Jai Singh by Sabhal Singh without the previous sanction of the Ruler could not be recognised for the purpose of determining the succession to the Jagir was erroneous. The High Court did in making the final order direct the Tribunal to decide the case in accordance with the law and in the light of the observations made in the judgment, but the direction was, in our judgment, a surplusage. The direction was, in our judgment, a surplusage. The High Court issued a writ in the nature of certiorari quashing the order of the Tribunal. It was unnecessary thereafter to direct or advise the Board of Revenue to perform its statutory duty to decide the dispute according to law. The Board of Revenue had to decide the dispute in accordance with the law declared by the High Court. All questions which had been expressly decided by the High Court on contest between the parties and other questions which must be deemed by necessary implication to have been decided were *res judicata* and could not be reopened before the Board of Revenue. In this appeal it is therefore not open to the Appellant to contend that the decision of the High Court on the questions decided in the writ petition was erroneous.

It is unfortunate that the application for certificate to appeal to this Court filed by Sobhag Singh was erroneously rejected by the High Court. But that does not affect the binding character of the judgment of the High Court between the parties. Unless the decision of the High Court on those questions was set aside by appropriate proceeding in this Court, the judgment must be held binding between the parties.

In the above case, the Supreme Court declared the judgment of the High Court in the earlier writ petition as binding on the parties and it was not allowed to be challenged questioned in a subsequent case by which the order passed pursuant to the order of remand in the earlier writ petition was challenged. The position would be different if the High Court in the previous writ petition without deciding any issue between the parties merely directed the concerned authority to decide the matter again after giving opportunity of being heard to the persons concerned. In such a case, the judgment in the previous writ petition cannot operate as *res judicata*. In *Narain Das and Others Vs. The Improvement Trust, Amritsar and Another*, , the Supreme Court rejected the plea of *res judicata* holding that in the previous writ petition the High Court did not decide the controversy and merely directed the authority concerned to decide the matter again after giving full opportunity of hearing to the concerned parties.

8. Learned Counsel for the Appellant in support of his contention has placed reliance on *Jasraj Inder Singh Vs. Hemraj Multanchand*, ; *Smt. Sukhrani (Dead) by L.R.S. and Others Vs. Hari Shanker and Others*, : *Smt. Sukhrani (Dead) by L.R.S. and Others Vs. Hari Shanker and Others*, ; AIR 1981 707 (SC) and *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, .

9. Before considering the decisions cited by the learned Counsel for the Appellant, it is appropriate to consider Section 105 of the Code of Civil Procedure, according to which an interlocutory order can be challenged in an appeal from the final decree unless the case falls under Sub-section (2) of the said section, whereby a party is precluded from challenging the correctness of the order of remand from which although an appeal lies but no appeal was filed. Section 105 is reproduced below:

105. Other order.--

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in Sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

10. Interpreting Section 105 of the Code of Civil Procedure, Supreme Court in *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, , has laid down as follows:

It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however, an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the Supreme Court against an order of remand.

11. Section 105 is applicable to the suits and the proceedings, which are governed by the provisions contained in the Code of Civil Procedure. Appeal is continuation of original suit. Therefore, when dispute is taken in the form of an appeal to High Court and the High Court remands the matter to the lower court, normally the proceedings are not terminated and the same litigation continues.

Therefore, when the appeal is filed against the final decree passed after the remand, the whole subject-matter is open for adjudication before the higher Court. But the position would be different if the order of remand has terminated the proceedings wholly or partly. In such a case, the remand order will operate as *res judicata* atleast to the extent it has terminated the previous proceedings. Supreme Court in *Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr.* (supra) made a distinction between the interlocutory orders, which have terminated the previous proceedings and those interlocutory orders, which do not have such effect and are merely steps towards the final decision of the dispute between the parties. Paragraph 21 of the said judgment being relevant is reproduced below:

It will be noticed that in all these three cases, viz. *Ram Kripal Shukul's* case, *Bani Ram's* case and *Hook's* case, the previous decision which was found to be *res judicata* was part of a decree. Therefore, though in form the later proceeding in which the question was sought to be raised again was a continuation of the previous proceeding, it was in substance, an independent subsequent proceeding. The decision of a dispute as regards execution it is hardly necessary to mention was a decree under the CPC and so in *Ram Kripal's* case and *Ram Ram's* case, such a decision being a decree really terminated the previous proceedings. The fact therefore that the Privy Council in *Ram Kripal Shukul's* case described Mr. Probyn's Order as an "interlocutory judgment" does not justify the learned Counsel's contention that all kinds of interlocutory orders not appealed from become *res Judicata*. Interlocutory orders which have the force of a decree must be distinguished from other interlocutory orders which are a step towards the decision of the dispute between Parties by way of a decree or a final order. *Moheshur Singh's* case. *Forbes'* case and *Sheonath's* case dealt with interlocutory judgments which did not terminate the proceedings and led up to a decree of final order, *Ram Kripal Shukul's* case, *Bani Rain's* case and *Hook's* case deal with judgments which though called interlocutory, had, in effect, terminated the previous proceedings. These cases are therefore of no assistance to the learned Counsel for the Respondent in his argument that the order of remand made by the High Court not having been appealed from to this Court the correctness of that order cannot be challenged now.

12. In *Jasraj Inder Singh Vs. Hemraj Multanchand*, , the matter reached the High Court by way of appeal from a civil suit and the High Court remanded the same to the trial court for deciding afresh. The Supreme Court held that both the subordinate courts and the High Court, which remanded the case are bound by the order of remand but the same is not binding on it. Relevant extract from the Supreme Court judgment is reproduced below:

Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second

occasion or any other court of co-ordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher court when it comes up in appeal before it. Tills is the correct view of the law, although Shri Phadke controverted it. without reliance on any authority. Nor did Shri S. T. Desai, who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it transpires that in Lonankutty Vs. Thomman and Another, , this proposition has been affirmed. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject-matter is available for adjudication before us.

From the perusal of this judgment, it is apparent that the order of remand did not have the effect of terminating the previous proceedings. High Court by its remand order directed the trial court to decide the issue No. 6 in order to find out what amount is due. The Supreme Court held that the true nature of the action "is a suit on account for the sum due on striking a balance. That itself is a cause of action." It was, therefore, held to be a suit on account consisting of a single cause of action. Although the Supreme Court did not expressly observe that order of remand did not terminate the proceedings, but in view of the findings recorded and the observations made in its judgment, it is clear (hat the order of remand did not have the effect terminating the previous proceedings.

13. In Smt. Sukhrani (Dead) by L.R.S. and Others Vs. Hari Shanker and Others, , in a pending suit, the matter was referred to the arbitrator, who gave his award, which on the application of the party aggrieved was set aside by the trial court. Appeal, filed against the order of the trial court, setting aside the award, was dismissed. Consequent to the setting aside the award, suit was decided on merit. Against the final decree when the matter was pending before the Supreme Court, an argument was made that the findings recorded by the High Court while holding the award are binding. While rejecting this plea, the Supreme Court held that if "a matter has been decided at an earlier stage by an Interlocutory order and no appeal has been taken therefrom or no appeal did lie, a higher Court is not precluded from considering the matter again at a later stage of the same litigation". While holding as above the Supreme Court relied on its; earlier decision in Satyadhyam Ghosal and Ors. v. Smt. Deoraji Debi and Anr. (supra). In that case, the award of the arbitrator was set aside consequent to which the suit proceeded to trial. No proceedings so far as the suit was concerned were terminated by the order of the High Court passed earlier while setting aside the award of the arbitrator.

14. Same is the position in AIR 1981 707 (SC) . In that case High Court after holding that the Petitioner has not acquired title to the property by prescription remanded the case to the trial court for a decision only on the question of title. Supreme Court held that as the High Court's order was in the nature of interlocutory order, the same can be agitated before the Supreme Court in an

appeal against the final decree. Supreme Court in this case placed reliance on the following passage of its earlier judgment in *Satyadhyan Ghosal and Ors. v. Smt. Deoraji Debi and Anr.* (supra):

In our opinion the order of remand was an interlocutory judgment which did not terminate the proceedings and so the correctness thereof can be challenged in an appeal from the final order." In coming to this decision this Court relied on an earlier decision in the case of *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , where the same view was taken.

The Supreme Court was thus of the view that High Court's earlier order did not terminate the proceedings.

15. As regards *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, , the Supreme Court held that the order of remand passed by the High Court was under Article 227 of the Constitution of India by which the proceedings were not terminated at all. The Supreme Court further held that the order of the High Court "was not final against which the matter could have been taken in appeal either to a Division Bench of the High Court or to this Court." With the above finding the Supreme Court declared that the order of the High Court remanding the case was not binding. The decision of the Supreme Court in *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, , wherein the decision of the High Court in an earlier writ petition was held to be binding and the issue decided therein was not allowed to be re-agitated in subsequent proceedings, was distinguished by the Supreme Court with the observations that the High Court in that case decided the question of jurisdiction of Industrial Tribunal finally, which operates as *res judicata*.

16. In the present case the Respondent No. 2 challenged the order of the Principal fixing the seniority before the D.I.O.S. The D.I.O.S. rejected the representation of the Respondent No. 2 against which a writ petition was filed, which was allowed by Hon'ble A. Chakrabarti, J., holding that, (i) the Principal has no jurisdiction to fix the seniority of the teacher, (ii) seniority of Respondent No. 2 and the Appellant, which was fixed in 1976 cannot be disturbed after about 15 years; and (iii) Regulation 3 of Chapter II framed under the U.P. Intermediate Education Act cannot apply in the matter of the seniority between the Appellant and Respondent No. 2. After holding as above, the learned Judge directed the D.I.O.S. to decide the Respondent No. 2's representation "in line" of his judgment. Hon'ble A. Chakrabarti, J., has decided the controversy on merit, which has the effect of terminating the previous proceedings. That judgment having become final, the same is binding on the parties as well as on this Court. It operates as *res judicata* and it is not open to go behind the findings and the declarations recorded therein.

17. For the reasons given above, this appeal is dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.