

Educational (1900) Department.

ORDINARY MS.

G.O., No. 269

DATED 6. 7. 00

INCURRED.

Encl. - 9 -

[Despatch Abstract.]

Informing the High Court, Madras that persons who held permanent appointments before the Civil judicial test was prescribed for the post of H.S. clerk, District Munsif's Court, should not be promoted to it without passing the test, & that those who held the post before the test was prescribed may be promoted to the same post on a higher salary.

BACK PAPERS.

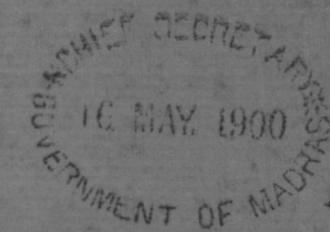
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

ad *2*
Judicial (1900) Department.

CURRENT No. *687* *2000*



From

Order Endorsement No. 1332 of 19-5-00

Transferred to the Educational Department.

The Registrar,
High Court of Judicature,
Madras.

Ref. on Cur. No. 911 of 1900.

Adm. Secy

Under Secretary.

Dated 11th May 1900.

Received

Registered

Enclosures

Spare copies.

SUBJECT.

Forwarding for orders a letter from the Ag. District Judge of Godavari, requesting instructions as regards the construction of rule 5 of the — Public Service Notification.

BACK PAPERS.

G.O.	No.	Department.	Date.
	327	Notification	28-5-96
	317		9-5-94
	308		10-4-96
	103		28-2-96

FURTHER PAPERS.

G.O.	No.	Department.	Date.

10387: 12-7-97
 " 597: 25-9-96
 " 424: 11-7-96

as per list

District Court, Godavari,

2nd April 1900.

No. 1289.

From

J. H. Munro, Esquire,
 Ag. District Judge, Godavari.

To

A. L. Hannay, Esquire,
 Registrar of the High Court of Judicature, Madras.

Sir,

Under rule 5 of the Public Service Notification (revised up to 31st March 1899) candidates before appointment to the post of Head Clerk in a District Munsiff's Court or before promotion to or confirmation in such post, are required to have passed the Civil Judicial Test and Translation Test, Lower grade, but under note 1 to the preamble to the aforesaid notification it is provided that the "Rules contained in this notification shall in no wise affect the promotion of persons who held permanent appointments before they first came into force on 1st July 1894 provided that their promotion was not already barred by any rules previously in force nor shall they apply to persons acting in appointments for which though qualified under the rules in force on 30th June 1894 they may not be qualified under the present notification, such persons being eligible for confirmation in appointments in which they are officiating if they fall permanently vacant before the termination of the acting incumbency."

2. I have the honour to request that I may be instructed whether persons who held permanent appointments before the rules first came into force on the 1st July 1894, and who under the rule previously in force were qualified for promotion to the post of Head Clerk in a District Munsiff's Court, may now be promoted to the post without their passing the tests prescribed by rule 5 and whether a person who is already Head Clerk in a District Munsiff's Court on Rs. 40 but who has not passed these tests may be promoted to the same post on a higher salary (Rs. 50) there being two grades of

of

of Head Clerks in District Munsiffs' Courts.

3. With regard to the first point, my attention has been called to G.O., No. 327, dated 29-5-96, passed on a reference made by the Kistna District Judge in his letter, No. 1076, dated 12-3-96, but the G.O. has not been communicated to this office.

I have &c.,

(Signed.) J. H. Munro,

Ag. District Judge.

True Copy.

High Court of Judicature,
Madras, 11th May 1900.)

for Registrar.

1900.
Dept.
Enclos. No. 1
To
C. No. 2000.

No. 230A 32-12-98.
1,000

CURRENT No. 2000.

687

High Court of Judicature,

Madras, 11th May 1900. 469

Ref. on Cur. No. 911 of 1900.

~~Not~~

FROM

A. L. Hannay, Esquire, I.C.S.,
REGISTRAR OF THE HIGH COURT OF JUDICATURE,
Madras,

TO

THE HONOURABLE MR. G. Stokes, I.C.S.,
Chief Secretary to the Government of Madras.

HONOURABLE SIR,

I am directed to refer for the decision of His Excellency the Governor in Council the following questions -- raised by the Ag. District Judge of Godavari, viz., (1) whether persons who held permanent appointments before the public -- service notification first came into force on the 1st July 1894 and who under the rules previously in force were qualified for promotion to the post of Head Clerk in a District Munsiff's Court may now be promoted to the post, without their passing the Civil Judicial Test and Translation Test, Lower Grade, -- prescribed for such posts by rule 5 of the Notification, and -- (2) whether a person who is already Head Clerk in a District Munsiff's Court on Rs. 40, but who has not passed these tests, may be promoted to the same post on a higher salary (Rs. 50), there being two grades of Head Clerks for District Munsiffs' Courts.

2. Since 1st July 1894, under rule 5 of the --- public service Notification, candidates before appointment to the post of Head Clerk in a District Munsiff's Court or before promotion to, or confirmation, in such post have been required to pass these tests; but under note (2), (since omitted), to article 1 of the Special Test Notification, published in G.O.

No.

No. 317, Educational, dated 9th May 1894, candidates for these appointments were not required to pass these tests until 1st January 1896. It seems thus incumbent since 1896 on candidates for these posts to pass these tests before appointment to such posts. The District Judge, however, seems to support his reference by relying upon note (1) to the preamble to ^{the} Public Service Notification, which provides that the "Rules contained in this notification shall in no wise affect the promotion of persons -- who held permanent appointments before they first came into --- force on 1st July 1894, provided that their promotion was not already barred by any rules previously in force, nor shall they apply to persons acting in appointments for which, though ----- qualified under the rules in force on 30th June 1894, they may not be qualified under the present notification, such persons -- being eligible for confirmation in the appointments in which -- they are officiating if they fall permanently vacant before the termination of the acting incumbency".

3. A copy of the District Judge's letter of reference is herewith submitted.

I have the honour to be,

Honourable Sir,

Your most obedient servant,

M. Ackinson

for Registrar.

[E.]
3
500-10-11-00.

Educational DEPARTMENT.

C. No. 687

SUBJECT.

Examination Rules.

FOR ORDERS.

In the letter read above the High Court submits two questions for the orders of Govt:—

(1) Whether persons who held permanent appointments before the Public Service Notification came into force on the 1st July 1894 and who under the rules previously in force were qualified for promotion to the post of Head Clerk in a District Munsif's Court may now be promoted to the post, without their passing the Civil Judicial Test and the Translation Test, Lower grade, prescribed for such post by Art. 5 of the notification:

(2) Whether a person who is already Head Clerk in a District Munsif's

Munsif's Court on Rs 40 but who has not passed the Civil Judicial and the Translation Lower Tests may be promoted to the same post on a higher salary (Rs 50), there being two grades of Head clerks in District Munsif's Courts.

2. As regards the first question it will be seen from the history of the Public Service Notification given in the note stitched with G.O. N° 606 Ed. dt 12th Sept. 1899, that the intention was that note to the preamble to that notification should refer solely to the general Education Test qualification required of candidates for appointment to the Public Service and should have nothing to do with the special qualification required by Art. 5 of the notification.

Dr. Duncanson also in his letter recorded in the same G.O. when speaking of dropping the note altogether from future notifications, makes no reference whatever to Art. 5.

In revising the Public Service and

and Special Test Notifications in 1894, Govt. prescribed the Special Tests for a number of appointments which were not subject to them previously and ruled that candidates for these newly added appointments should not be required to have passed the newly prescribed test or tests until the 1st January 1896. This concession was not, however, extended to candidates for appointments for which the Precise Writing Test was newly prescribed - vide clause (30) of G.O. N° 317 Ed. dt 9th May 1894 and note (2) to Art. 1 of the Special Test Notification. From this also it is clear that the intention was that from and after 1st January 1896 all candidates for the newly added appointments should have passed the newly prescribed special Tests.

3. The Civil Judicial Test and the Translation Test, Lower, were newly prescribed in 1894 for the post of Head clerk in District Munsif's Courts. Candidates for

P page 23

.. page 31

pp 22 & 23 of G.O. 317 dt 9-5-94 (I)
no flag again

for these posts should from & after 1st January 1896 have there fore passed the tests newly prescribed and in G.O. No. 327 Edl. of 29th May 1896 the High Court was informed that the rule applicable in such cases is not note (1) to the preamble to the Public Service Notification but note (3) to Art. 1 of the Special Test Notification. The High Court has however again raised the question. It is submitted that it may now be informed that it was not the intention of Govt. to make note (1) to the Preamble to the Public Service Notification applicable to Art. 5 of the Notification and that the answer to its first question would therefore be in the negative. The Comr. for Govt. Examinations may at the same

time be requested to submit a draft of the necessary Notification modifying note (1) so as to make the intention of Govt. in this respect clearer.

4. In regard to the second question raised by the High Court, it has not hitherto been decided.

CH

O
 See 20th May 1896
 Port Planning
 no 597
 not passed
 May 1896
 Answer to first Qⁿ may be
 #1 in negative. The man
 must pass the test.
 yes. H.A.

Let us avoid further
 modification or codification
 & have case-law.

No. The question that
 was not similar.

M

There an unpassed man holding
 one listed appⁿ, aspired to
 another; of course he had
 to be exempted.

Here an unpassed man holding
 a listed appⁿ, aspires to pro-
 motion in the ordinary course
 to the higher grade of the
 appⁿ, & there is absolutely
 nothing in the Pub. Serv. Notifi-
 cation to forbid him getting it. Indeed
 Rule 5 is all to his favour.

N

I submit there is no analogy.
 In the case cited, there was a definite
 order of Govt. requiring certain
 men to pass. In the case in question,
 there is only the Pub. Serv. Notifi-
 cation which does not require ^{any} person to
 make any distinction between the two grades, on
 the 50th grade any more than for the
 40th or 50th grade. The man is competent
 to hold the former; ergo, so far as the
 Notifiⁿ goes, he is competent to hold
 the latter. H.T. Jagu. H.

A similar question was raised in
 the note for orders under cover of
 G.O. No. 387 Edl. of 12th July 1897
 but Govt. did not pass any
 orders on it at the time.

Before 1894 the Precis Writing
 Test was presented for all appoint-
 ments on Rs 80 and upwards; but
 from July 1894 Govt. extended it to
 all appointments on Rs 60 and up-
 wards and ruled that persons
 in receipt of salaries less than Rs 80
 but not less than Rs 60 should be
 required to pass the test before they
 could be promoted to any post
 carrying higher pay and persons
 in receipt of salaries less than
 Rs 60, before they could be pro-
 moted to posts carrying a pay of
 Rs 60 or upwards. Vide para. 3(2)
 of G.O. no 67 Edl. of 2nd February 1894.

On the analogy of this ruling
 the answer to the second question
 of the High Court will also be
 in the negative (ie) Head clerks
 of District Munsifs Courts
 on Rs 40 may not be pro-
 moted as Head clerks on Rs 50,
 without

without passing the Civil Judicial
and Translation Lower Tests.
Orders are solicited.

PH
9/10/00

This office note
seems to state the case
quite correctly, and the
disposal suggested at A may
be the best under the circum-
stances. But the Government
might stop there, as although
it would be convenient to
have note (C) recast, it has
rather a bad appearance to
keep tinkering at a noti-
fication of the kind. Some
further ambiguity or want
of clearness might next be
discovered in the revised wording.

As regards the promotion
of ~~any of the~~ a district
municipal head clerk of the
lower grade to the upper
grade, there has been no
ruling as yet. It is
hard to draw ^{unpopped} any line
now in the service to draw
a line between the two
grades, & refuse them pro-

not quite. I think the
answers are simply be
in the negative. H.T.

Exactly. This admits that the
line will be newly drawn. The
proper test is, what was the in-
tention of the Pub. Serv. Notifica-
tion as read by any reasonable man.
Was it intended that men then

Papers to be read in Proceedings:—

Again G.O., No.	, dated	189
Again G.O., No.	, dated	189
Current No.	of 189, dated	, from
" "	, 189, "	, "
" "	, 189, "	, "

ORDER.

holding Rs. 40 head clerkship
in Courts, could not rise to
the Rs. 50 grade without
passing? No, because in
that case Rule 5 would
have been worded differently.
The test was required of a
Candidate

- (a) before app^r to a particular post
- (b) before promotion to such
- (c) " Confirmation in "

And this particular post was
listed as
Head Clerk, Dist. M^ts Court.

H.T.

yes.

27.6.00

motion. Still, all things con-
sidered, it may be wiser to
deal with the case as pro-
posed at the conclusion of
the office note, replying in
the negative to the High
Court.

So do otherwise may only
lead to further hopes in
other quarters.

12.6.1900

Secy.

H.M. Answer to first Qⁿ may be in
negative.

Second

affirmative.

H.T.

26.6.00

Educational DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., No.	, dated	189 .
Again G.O., No.	, dated	189 .
Current No. 687	of 1900, dated 19 th May	, from the Judicial Department
" "	" 189 , "	" "
" "	" 189 , "	" "

ORDER. *resp*
no. 269 of 6.7.00

The first question submitted for the orders of Govt in para. 1 of the letter from the Registrar of the High Court, Ref: on Cur no 911 of 1900 dt 11th May 1900, will be answered in the negative and the second, in the affirmative.

/ From orders

2/7/00

4.7.00

To Secy. H.T.
4.7.00
The Hon'ble the Chief Justice
with C.K.
distd 4/7

2/7/7

When given for copying _____
 When copied _____
 When examined _____
 When signed _____

190 .

READ AGAIN G.O., No. _____, DATED _____
 190 .

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

N.B.—
 A = Copy in full.
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