

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No.	534	Press ~~Mis.~~
Dated	29.10	1860

B/nr 59-60

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Financial Department,
29th October 1860.*

No. 59. Read the following Extract from the Proceedings of the Government of India, in the Financial Department, dated 24th September 1860, No. 9,948.

Read the following papers relative to the Officers of the Supreme Courts being brought under the operation of the Uncovenanted Absentee Rules :—

Letter from Civil Auditor, Bombay, No. 891, dated 9th August last, with enclosures.

Endorsement to Officiating Civil Auditor, Fort William, No. 7,896, dated 3rd instant.

Letter from Officiating Civil Auditor, Fort William, No. 2,951, dated 8th instant.

OBSERVATIONS.—The Governor General in Council observes, that Mr. Nowrojee Furdoonjee, Third Translator and Interpreter of the Supreme Court at Bombay, having obtained in January last a fortnight's privilege leave under Section VII of the Uncovenanted Absentee Rules; and again in May last of five weeks' leave under the same Section, of which he availed himself to the extent of 29 days, thus exceeding the one month allowed under the Rules during the year by 13 days, the Civil Auditor at Bombay, in passing the Pay Abstract of the Translator's Offices for May, objected to pass the salary of Mr. Nowrojee Furdoonjee for the 29 days of that month, observing that the same was to be charged in a separate Abstract, as he was not entitled to privilege leave in May, in addition to that granted in January.

2. Accordingly, Mr. Nowrojee Furdoonjee submitted a separate Abstract for the 29 days in question which the Government of Bombay, at the request of the Chief Justice of the Supreme Court, instructed the Auditor to pass.

3. The Auditor, however, refused to pass the Bill, as the Orders of the Government of Bombay were in opposition to standing Rules which had been sanctioned by the Home Authorities, and afterwards promulgated by the Government of India. He said, that under Orders of Her Majesty's Secretary of State for India of the 30th September 1859, the Officers of the Supreme Court were admitted to all the benefits of the Uncovenanted Service Pension Rules, and were therefore of course subject to the provisions of the Uncovenanted Service Absentee Rules, as their time of service must be computed according to those Rules. By those Rules, one month's privilege leave in a year is granted without deduction under Section VII, and Mr. Nowrojee Furdoonjee having exceeded his month by 13 days, must lose his pay for those days. He further said, that the Chief Justice having recognized the Absentee Rules in granting the leave, he must abide by them when the penalties of their neglect were enforced.

4. Thereupon, the Government of Bombay repeated their instructions to the Auditor for the passing of the Bill, observing that it was nowhere stated that the Officers of the Supreme Court were subject to the Uncovenanted Service Absentee Rules; that these Rules were applicable only to Officers receiving their appointments from Government, or from Officers under the Government, and to Officers under the authority of Government, that it nowhere appeared that the Chief Justice had granted the leave to Mr. Nowrojee Furdoonjee under the Absentee Rules; that the authority of granting leave to Officers of the Supreme Court was vested in the Judges of that Court; and that the Government and the Civil Auditor had no right whatever to interfere in the arrangements of that Court.

5. With reference to the observations of the Government of Bombay mentioned above, "that it nowhere appeared that the Chief Justice had granted the leave to Mr. Nowrojee Furdoonjee under the Absentee Rules," the Auditor forwarded to that Government extract from 3 Leave Returns furnished to his Office, shewing that the leave to Mr. Nowrojee Furdoonjee was granted under the Absentee Rules, inasmuch as the leave in question was entered in the Returns in the column headed "Privilege leave under Section VII;" and he stated that having protested to the extent of his power against what he considered to be an erroneous decision of the Government of Bombay, nothing now remained for him to do but pass the Bill and to forward the whole of the correspondence respecting it to the Government of India.

6. In now forwarding the above mentioned correspondence to this Government, the Civil Auditor at Bombay solicits instructions on the point therein mooted, viz., whether the Officers of the Supreme Court are now like other persons subject to the provisions of the Uncovenanted Absentee Rules.

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7. He says, that he is well aware that formerly the Officers of the Supreme Court were not subject to the provisions of the Absentee Rules; but then they had no claims to pensions, and the Honorable Company's Government being distinct from that of Her Majesty, the Judges of the Supreme Court could fairly claim exemption from those Regulations with regard to their establishments, which were binding on all other heads of Departments.

8. But matters have now changed in every respect. Her Majesty's Government has replaced that of the Honorable Company; and under the orders of the Secretary of State for India, contained in his Despatch, No. 94, dated 30th September 1859, the Officers of the Supreme Court have been admitted to pensions, and are to receive those pensions on the same conditions as all other of Her Majesty's servants in India.

9. Consequently, it follows, the Civil Auditor at Bombay submits, that as their time of service has to be computed in the same manner as that of other people, they must be held to be placed under the restrictions and provisions in point of leave of absence contained in the Absentee Rules.

10. Nor has this fact, the Auditor says, been disputed in any way hitherto, for regular monthly Absentee Returns are sent in to the Audit Office, wherein the leave granted on different occasions is regularly entered in the different columns assigned to the various species of leave treated of in different Sections of the Absentee Rules, and those Sections are quoted in the headings.

11. "Thus," the Auditor continues, "the Judges of the Supreme Court have for a long time tacitly acknowledged the liability of Her Majesty's legal servants to the Absentee Regulations; and by tendering these Leave Returns monthly to the Civil Auditor, have acknowledged his authority to check any irregularities connected with those Rules; otherwise, it is impossible to understand why these Leave Returns should be forwarded to my Office at all."

12. The Auditor adds, that he is quite at a loss to understand how under the ruling of the Bombay Government, *viz.*, that the Civil Auditor is not to interfere with the Judges of the Supreme Court, and that they are to have full liberty to act as they please in granting leave to their subordinates, his department is to regulate the time of service for pension in the case of persons connected with the Supreme Court, or what can be the object of sending him monthly Leave Returns framed on the Absentee Rules to act as his guide in passing the salaries of these persons.

13. He therefore thinks that the Bombay Government have taken an erroneous view of the question; and he solicits instructions for his future guidance in cases similar to that of Mr. Nowrojee Furdoonjee.

14. He further requests, that if this Government agrees in opinion with him, he may be informed whether the sum overpaid to Mr. Nowrojee Furdoonjee is to be retrenched from future Abstracts.

15. On receipt of the above reference from the Bombay Auditor, the Civil Auditor, Fort William, was called upon to report the practice observed in respect to the Officers of the Supreme Court at Calcutta. That Officer, in reply, states, that leave statements are not submitted to his Office by the Officers of the Supreme Court at Calcutta, as is the practice at Bombay; but that he is of opinion with the Civil Auditor at Bombay, that as the servants of the Supreme Court are permitted to receive pensions from the State like other Uncovenanted Officers, they should like them be brought generally under the operation of the Uncovenanted Absentee Rules.

16. The Governor General in Council agrees in the above opinion; and he accordingly desires that such of the Officers and servants of the Supreme Court, at Calcutta, Madras, and Bombay, respectively, and of those employed under the Recorder of Prince of Wales' Island, Singapore, and Malacca, as are admissible to pensions under the orders contained in Her Majesty's Secretary of State's Despatch, No. 94 of the 30th September 1859, be brought under the operation of the Uncovenanted Absentee Rules.

17. With regard to the case of Mr. Nowrojee Furdoonjee, His Excellency in Council directs that the sum overpaid to that gentleman be retrenched from his next Pay Bill.

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Ordered, that a copy of the above resolution be forwarded to the Home Department, for communication to the Honorable the Judges of the Supreme Court at Calcutta, and to the Governor of the Straits' Settlements, and that another copy be forwarded to the Governments of Bombay and Madras, for the issue of further necessary orders.

Ordered, also, that a copy of the resolution be forwarded to the Civil Auditor at Bombay, for information and guidance, with reference to his letter, No. 891, dated the 9th August last, and to the Civil Auditors at Fort William and Madras, respectively, for information and guidance.

Ordered, further, that a copy of the resolution be forwarded to the Government of Bengal, for information.

• (A true Extract.)

(Signed) C. HUGH LUSHINGTON,
Secy. to the Govt. of India.

No. 60. TO THE HONORABLE THE JUDGES OF THE SUPREME COURT, OF JUDICATURE AT
MADRAS, dated 29th October 1860, No. 534.

We have the honor to transmit to you a copy of an Extract from the Proceedings of the Government of India in the Financial Department, dated the 24th ultimo, No. 9,948 and of the Secretary of State's Despatch referred to in paragraph 16 of those Proceedings, together with the prescribed Form of Return to be made to the Civil Auditor; and to request that you will be so good as to cause monthly Returns to be furnished to that Officer of the leave of absence that may be granted by you to the Officers and servants of the Supreme Court under the Uncovenanted Absentee Regulations.

We have, &c.
(Signed) W. MOREHEAD.
(") P. GRANT.
(") E. MALTBY.

Exd. F. Cartledge.

Cartledge

disptd 29 Oct. 1860.

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Financial Department.

N^o 534.

To the Hon^{ble}

The Judges of the Supreme Court of Judicature
at Madras.

Hon^{ble} Sirs,

We have the honor to
transmit to you a copy of an Extract
from the Proceedings of the Court of
India in the Financial Depart-
ment dated the 24th Ultimo N^o 9948-
and of the Secretary of State's Despatch
referred to in para 16 of those Pro-
ceedings - together with the prescribed
Form of Return to be made to the
Civil Auditor; and to request
that you will be so good as to cause
monthly Returns to be furnished
to that Officer of the leave of
absence that may be granted by
you to the Officers and Servants
of the Supreme Court under
the Uncoventured Absentee
Regulations.

Forb. St. George,
29 October, 1860.

We have &c

W. H. H.

Mineral 1860 Sept 10

No 534.

To The Honorable
The Judges of
St. Louis Supreme
Court of Judicature
at St. Louis.

Dated 29 Oct 1860

No 574

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