Financial (1895) Department.

ORDINARY MS.

G.O., No. 1038

Dated 20th Dec. 1895

INDEXED.

[Despatch Abstract.]

REMUNERATION FOR EXECUTING A COMMISSION

Recording Proceedings, Marine Department, regarding the fees earned by the Port Officer, Cocanada, as -- issued by the District Judge of Godavari.

BACK PAPERS.

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No. 365, MARINE, 6TH DECEMBER 1895.

GOVERNMENT OF MADRAS.

MARINE DEPARTMENT.

READ—the following paper:—

From L. M. THORNTON, Esq., Deputy Secretary to the Government of India (Home Department—Judicial), to the Chief Secretary to the Government of Madras, dated Simla, the 29th October 1895, No. 1573.

I am directed to forward a copy of a letter from the Accountant-General of Madras relative to a case in which the District Judge of Gódávari appointed the Port officer of Cocanada to be a commissioner to take certain observations in connection with the disputed title to certain formations in the bed of the Gódávari and Kistna rivers, and fixed his remuneration at Rs. 100 per diem *plus* travelling expenses. The Port officer having earned for work on two occasions Rs. 1,130 according to the scale fixed, the Accountant-General requests instructions as to the rule or rules in the Civil Service Regulations which should be held to govern the case.

* No. 1967, dated 26th July 1895, addressed to the Finance and Commerce Department.

2. I am to say that the case does not appear to the Government of India to come within the scope of the Civil Service Regulations. The question of the disposal of fees received by Government officers for executing commissions issued by Civil Courts came under the consideration of the Government of India in the year 1888 with reference to certain orders of the Government of Bombay on the subject. It was decided † that the prohibition contained in the Resolution of this department No. 10–1101–1113, dated the 21st July 1875, against Judicial officers of one province receiving fees for executing commissions issued by Courts of other Provinces should apply to all cases in which Government servants might be called upon to execute commissions whether issued by Civil Courts of the province in which they are employed or of other provinces, and that fees paid to them for any additional work that they have to perform in a public capacity should be credited to Government and not retained by them. As, however, these orders were not published, they have not hitherto taken general effect.

† *Vide* enclosed extract from a letter to the Government of Bombay, No. 1816, dated the 13th December 1888.

3. In the present case, if the Port officer of Cocanada withdrew time from the service of Government in order to execute the commission issued by the District Judge of Gódávari, it appears to the Government of India that he should credit to Government, out of the fees received, so much as may be deemed by the Madras Government to represent the value of the time thus withdrawn. It is understood that, had his acceptance of the commission been optional, he would have had to obtain the permission of his official superiors; but even assuming that the execution of the commission was obligatory, the Government of India suppose that the consent of a public servant's official superiors is applied for by Courts in such cases. In this connection I am to refer to rule 4 of the rules regarding commissions under chapter XXV of the Civil Procedure Code, contained in the Rules of practice (pages 28—32) in Civil Courts in the Madras Presidency and to enquire whether it applies to the present case, and, if so, whether it was observed by the District Judge of Gódávari.

Enclosures.

From F. C. HARRISON, Esq., Officiating Accountant-General to the Government of Madras, to the Secretary to the Government of India, Department of Finance and Commerce, dated Fort St. George, 26th July 1895, No. 1967.

I have the honour to submit the following case for the orders of the Government of India.

2. In connection with an important suit in the Gódávari district between the Madras Government and a zemindar about the title to formations in the bed of the Gódávari and Kistna rivers within the influence of the tide which runs up these rivers and distant about three miles from Cocanada, the High Court on appeal directed that observations be taken by a person of nautical experience to ascertain if the tide reaches a certain spot. The District Judge accordingly appointed as Commissioner the Port officer at Cocanada, a servant of the Madras Government and fixed his remuneration at Rs. 100 per diem and travelling expenses. The Port officer worked on two occasions and earned, according to the scale fixed, Rs. 1,130 in all. The Board of Revenue has asked this office to take any action that may be necessary under the rules regarding the acceptance of commission and other fees by Government officers. I am however in doubt as to which of the provisions of the Civil Service Regulations are applicable—

If article 88 (*a*) applies, the Port officer cannot accept any fees;

If article 89 (*a*), the sanction of the Secretary of State is required for the payment of the honorarium;

To apply article 90 (*b*) would be, I think, to strain the ordinary meaning of the word "reward;"

If the case comes under article 91 (*b*) then it will be necessary for me to address the Local Government with a view to getting the sanction of the Government of India;

Or it may be that article 1244 should be applied, in which case the Port officer gets no fees, but can draw travelling allowances under the ordinary rules.

I have the honour, therefore, to request that I may be instructed as to which of the above articles governs the present case.

Extract paragraph 1 from a letter to the Government of Bombay, No. 1816, dated the 13th December 1888.

I am directed to say that the attention of the Government of India has been drawn to the Resolution of the Government of Bombay, No. 5401, dated the 9th August last, on the subject of the disposal of fees received by Government officers in the Bombay Presidency for executing commissions issued by Civil Courts. It appears that, in September 1885, the Bombay Government directed that such fees were to be credited to Government in all cases, but that, by the present Resolution, the practice which obtains in the Judicial Department based on an order of the High Court at Bombay, and in accordance with which commission fees are credited to Government only in those cases in which the work is not executed entirely out of office hours, has been extended to Government servants in other departments. I am, however, to invite a reference to the Resolution of this department, No. 10–1101–1113, dated the 21st July 1875, in which the Government of India ordered the discontinuance of the practice, where it existed, of allowing officers in the Judicial Department of one province to retain fees for executing commissions sent out by Courts of other provinces. The Governor-General in Council is inclined to think that this prohibition should apply to all cases in which Government servants may be called upon to execute commissions whether issued by Civil Courts of the province in which they are employed or of other provinces. Government pays its officers for the whole of their time, and if they have any additional work to perform in a public capacity, it is the Government and not the officers themselves who should, in the opinion of His Excellency in Council, receive the fees levied in respect of it. The practice of allowing salaried officers of Government to retain the fees is also open to objection on other grounds, as it is likely to have the effect of making them seek such work to the neglect of their proper duties.

No. 2763.

Transferred to the Marine Department.

(Signed) W. FRANCIS,
Ag. Under Secretary.

16th November 1895.

Order—No. 365, Marine, dated 6th December 1895.

Communicated to the Presidency Port officer who will, with reference to paragraph 3 of the letter of the Government of India, No. 1573, dated 29th October 1895, report whether the Port officer at Cocanada withdrew time from the service of

Government in order to execute the commission issued by the District Judge of Gódávari, and if so, how much of the fee received should be credited to Government in consideration of the value of the time thus withdrawn

2. Inquiry will be made in the Judicial Department as to whether rule 4 of the rules referred to by the Government of India applies to the present case, and if so, whether it was observed by the District Judge.

(True Extract.)

C. A. D. Burlace

Under Secy. to Government.

To the Presidency Port Officer.
" Judicial Department.
" Financial Department.
" Accountant-General.

Exd. T. K. Narayana Aiyangar.
Spare Copies

Govt. of {1895} Madras.

MARINE.

Dated December, 6th.

Rcvd. 18.12.95 Encl. Nil

G.O. No. 365, 6th Dec. 1895.

DECEMBER.

Remuneration for executing a Commission

Communicating to the Presidency Port officer, for report on certain points, Government of India letter on the question of the disposal of the fees earned by the Port officer of Cocanada as — issued by the District Judge of Gódávari, and requesting that enquiry be made in the Judicial Department as to whether certain rule regarding commission applies to the present case and whether it was observed by the District Judge.

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Order No 1038 } 20 Dec 95

Recorded

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for C.S.

19. XII. 95

Special Index para 2 of G.O.

Issued

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} 189.

READ AGAIN G.O., No. 189 , DATED

CURRENT No.

ENCLOSURES TO C, 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.								

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