

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 768	Press
48-49	~~Mis~~
Dated 4-7-1917	10/18/17

Not to be folded or roughly handled

20/10

Fort St. George, Judicial Consultation, 7th July 1857.

No. 48. Read the following Extract from the Minutes of Consultation, in the Public Department, dated 22nd June 1857, No. 822.

Read the following Extract from the Minutes of Consultation in the Military Department, dated 9th June 1857, No. 1899.

Read the following letter from the Honorable Company's Solicitor; to the Secretary to Government, Military Department, dated 30th May 1857, No. 283.

SIR,

I have the honor to report for the information of Government that on the 22nd Instant, I was served in my official capacity with the Summons herewith forwarded, issued from the Supreme Court under Act IX of 1850, at the instance of George Pereira against Major Simpson the Superintendent of the Gun Powder Manufactory and the Honorable Company, for salary alleged to be due to the Plaintiff as 2nd Supervisor of the Gun Powder Manufactory, from 1st June 1856 to 13th March 1857 at 28 Rupees a month.

The service of the Summons was the first intimation which I had of any such demand.

I forthwith communicated with Major Simpson and learnt from him that the Plaintiff had received the salary up to the 31st May 1856, that on the 3rd June 1856, he was suspended from the performance of his duties, but was at the same time directed to attend daily at the Factory until further orders; that he did so attend from the 3rd June 1856 to the 1st November 1856 inclusive; that during the last mentioned period he never performed any duty, not being permitted so to do; that he never attended at the Factory subsequent to the 1st November 1856; that he had no leave or permission to be absent from the Factory during the last mentioned period; that it was believed, he would attempt to excuse such absence on the score of illness but that he really was not incapacitated from attending the Factory by any such cause,—that on the 13th March 1857, Government ordered* him to be discharged

*The Governor in Council orders the discharge from the Gun Powder Manufactory of 2nd Supervisor George Pereira, and 1st Conicopilly Loganathan; and he forbids their re-employment under Government.

from the Factory and forbid his re-employment; that his name continued on the Rolls of the establishment until the 13th March 1857, but that no pay was drawn for him subsequent to June 1856, it being noted on the pay abstract for the Department that he was under suspension and his pay not drawn.

Upon this state of circumstances, and from other information afforded me by Major Simpson, I was clearly of opinion that *in Law* the Plaintiff was entitled to, (and would undoubtedly recover) his *full* salary from the 31st May 1856, (the date to which he had been paid) up to the 31st October 1856, the completion of the month in which he continued to attend at the Factory (altho' doing no duty) in obedience to the orders given him. Looking at the Plaintiff's own conduct subsequent to the 1st November 1856, I considered that he was *not* entitled, either in fairness or equity to any salary beyond the 31st October 1856, and that it was very doubtful whether he could establish any such claim *at law*, although I felt, that the course pursued on behalf of the Honorable Company, more especially the form of the official notification of the 13th March 1857, and the fact that the Plaintiff's name was borne on the Rolls of the establishment up to that date would be strongly relied upon by the Plaintiff in support of his position that the contract between the Honorable Company and himself was not put an end to or effectually terminated until the last mentioned date; and that it would be urged that by ordering the discharge of the Plaintiff on the 13th May 1857, Government necessarily admitted that he was at that time in their employment.

I learnt from Major Simpson, that (bearing in mind the Plaintiff's conduct and character) it was not desirable, on public grounds, to make him any payment in excess of his strict legal rights. I therefore on the 23rd Instant paid into Court the sum of Rupees 158-12-0, being 5 months' salary from 1st June to 31st October 1856, at 28 Rupees a month and costs proportioned to that amount.

Fort St. George, Judicial Consultation, 7th July 1857.

The action was tried on the 26th Instant by His Lordship the Chief Justice, when I appeared on behalf of the Honorable Company, and pleaded the payment into Court and that the Plaintiff was not entitled to damages ultra the amount so paid in, or in substance that the Plaintiff was not entitled to any salary beyond the 31st October 1856 on the grounds above mentioned. The Plaintiff alleged continuous illness from the 3rd November 1856, as the cause of his non-attendance at the Factory subsequent to that date; but in my opinion he did not succeed in establishing this assertion by any thing approaching credible or satisfactory evidence. The Chief Justice did not however dispose of the action altogether on this ground, but decided ultimately that the contract between the Honorable Company and the Plaintiff was not put an end to until the 13th March 1857, by the official notification in the Gazette and the communication thereof to the Plaintiff; that all the facts admitted and proved during the trial led him to the conclusion that the Honorable Company never intended to terminate the contract at an earlier period; that inasmuch as it was proved that the Plaintiff in November last sent an intimation of his illness to the Factory, that such intimation was brought to the notice of Major Simpson who afterwards sent his Apothecary to the residence of the Plaintiff for the purpose of verifying his alleged illness; and that Major Simpson never called upon or required the Plaintiff to return to his duty or to renew his attendance at the Factory, it must be assumed that he assented to his absence; that under all the circumstances of the case, the Plaintiff was entitled to his full salary up to 13th March 1857, and gave a verdict accordingly.

Salary from 1st June 1856 to 13th March 1857 at 28 Rupees per month...	263 11 10	I have since paid into Court the further sum of Rupees 150-15-10 in discharge of this Judgment as permemo. noted in the margin.
Amount of cost of Summons...	34 8 0	
Do. do. of Subpoena...	1 8 0	
Amount of Attorney's costs ..	10 0 0	
	Rupees... 309 11 10	
Paid into Court on 23rd May 1857 on account....	158 12 0	
Do. on 27th do. balance.....	150 15 10	
	Rupees.. 309 11 10	

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

1. The Governor in Council sanctions payment of the amount disbursed by the Honorable Company's Solicitor as reported in the foregoing letter.
2. The Solicitor's letter will be communicated to Departments for information, and in order that individuals serving on the same footing as Supervisor Pereira may on similar occasions be formally discharged instead of being suspended.
3. This will shut out all such claims as the present and individuals so discharged can afterwards be re-admitted, if necessary.

(True Extract and Copy.)

(Signed) H. MARSHALL, Lieut. Colonel,
Dy. Secretary to Government.

Ordered to be communicated to the undermentioned Departments:

Judicial Department.
Financial „
Political „
Board of Examiners.
Director of Public Instruction.
Government Photographer.
Superintendent of Stamps.
Post Master General.
H. C. Astronomer.
Private Secretary to the Right Honorable the Governor.
Secy. Govt. Savings Bank.
Officer in charge Govt. Central Museum.

Fort St. George, Judicial Consultation, 7th July 1857.

Dy. Superintendent Electric Telegraph.
Emigration Agent, M. and W. I.
Lord Bishop.
Venerable the Archdeacon.
Registrar of the Diocese and Archdeaconry of Madras.
Consulting Engineer for Railways.

(True Extract and Copy.)

(Signed) E. MALTBY,
Acting Chief Secretary.

No. 49. ORDER THEREON, No. 768; dated 4th July 1857.

Ordered to be communicated to the undermentioned authorities.

Court of Sudder and Foujdaree Udalt.
Inspector of of Prisons.
Magistrates of Police, Madras.
Commissioner of Police.
Judges of the Court of Small Causes.

(Signed) E. MALTBY,
Acting Chief Secretary.

3

Copies

N^o 768

Ordered to be communicated to the
undersigned authorities.

Court of Sudair & Laigdamé Adalat
Inspector of Prisons
Magistrates of Police Madras
Commissioner of Police
Judges of the Court of Small Causes

To Mr. George, J.
4th July, 1857 - 3

W

To Court of Sudair & Laigdamé Adalat
" of Small Causes.
Inspector of Prisons
Magistrate of Police 1st Dist.
Do 2^d Do
Do 3^d Do
Commissioner of Police

Recd 4th