M.R.O. 1—39,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1570
56-57

Press
~~Mis.~~

Dated 28 -10- ~~1956~~ 1957

Not to be folded or roughly handled

Re
1570

No. 56. To His Excellency the LORD HARRIS, G. C. B., Governor in Council, Fort St. George.

The humble petition of Samy Row, the late Government Pleader of the Civil Court of Madura.

MY LORD,

Dissatisfied with the order of Government, dated 14th May 1858, passed on a petition, No. 1215 of 1858, which the petitioner had presented to your Lordship; your petitioner presents herewith an Appeal Memorial against that order, to the address of the Honorable Court of Directors, and prays your Lordship will be graciously pleased to direct it to be forwarded to that Honorable Court, together with its accompaniments, Nos. 1 to 14, and A. and B., for all of them three copies are prepared and kept under the existing rules.

Shall ever pray,

சாமாராவு, மா - ஒக - பிளீடர்.

SAMY ROW,
late Govt. Vakeel.

Madras, 11th October 1858.

To the Honorable COURT OF DIRECTORS.

The humble Memorial of Sama Row, late Government Pleader of the Civil Court of Madura, under the Presidency of Madras.

SHEWETH,

1. This is an Appeal made to your Honorable Court, against the orders passed by the Governor in Council at Madras, on the 14th May 1858, on a petition presented to him by the memorialist in No. 1215 of 1858. The original order is herewith submitted together with its enclosures, Nos. 1 to 14.

2. A & B.—Before dwelling upon the nature of the case under appeal, your Honorable Court's memorialist begs to observe that, under the existing rules of the Government, which generally induce the Natives, (subjects or servants) who would be aggrieved by the orders passed as against them, to entertain a general hope of success by appealing to your Honorable Court, not knowing that the same Court are not perpared to take the matters decided by local authorities, according to the Regulations, and the matters connected with inferior offices, except high and responsible posts as Head Sheristadar or Principal Sudr Ameen, &c., so by the generality of the misunderstanding, the people of India (number of applicants) generally present numberless Appeals to your Honorable Court, who lay them all over without orders, *i. e.*, that "they are not appealable," such unnoticing plans of your Honorable Court are in the eyes of India-people that "the home authorities too are not disposed to do justice to the parties aggrieved;" your memorialist's case is not such generality of memorials, but the one which was not reported upon by any local authorities, but sanctioned by the Governor in Council himself, upon a report from the Government Pleader of Sudr Udalut, Mr. Dale. Therefore your memorialist ventures to state that this Appeal should reasonably lie to your Honorable Court and should therefore receive their consideration and orders.

3. Although the petition, No. 1215, above mentioned, contains at full length the feature of the case, yet your Honorable Court's memorialist respectfully states it succinctly as hereunder.

4. That your memorialist after having practised as Pleader in the late Provincial Court at Trichinopoly and in the Civil Court at Madura for years, was promoted or appointed to be Pleader on behalf of Government, in the latter Court, and continued to act his duties to the satisfaction of his immediate employers (Civil and Sub Court and Principal Collector) in conducting the Government suits.

5. That an European, Mr. Fisher, filed two suits in the Madura Sub Court against the Deputy Post Master at Madura, one for Rupees $3\frac{1}{8}$, and the other for Annas 3, being the postage collected from him illegally.

6. That the Deputy Post Master against whom those suits were filed, having been since changed to other district and in consequence not having put in an answer, the Sub-Judge tried the suits on ex-parte tenure, and passed Judgments upon the evidence adduced by the plaintiff, (Mr. Fisher,) both in his favor. Vide Decrees in No. 3, and in No. 4.

7. That the Post Master General, Mr. Williamson at Madras, knowing that the Judgments were passed as against the Deputy Post Master, and with a view to make Appeals, in consideration of his removal to other district, has sent to your memorialist the order, No. 1.

8. That your memorialist, as Government Pleader, thinking to represent the defendant (Deputy Post Master,) but considering his absence in other district, and especially as the suits were against the Government, has thought it proper to mention the name of the Post Master General, Mr. Williamson, for the Deputy Post Master, in the heading of the two Appeal Petitions, and accordingly filed them in the Sub-Court. The Sub-Judge never objected to them, but sent them to the Appellate Court, *i. e.*, Civil Court. The Civil Judge too, without objecting to the mention of the Post Master General's name, in the Appeal Petitions, passed his Judgments reversing the Original Decree in the one number, and confirming the Original Decree in the other. Vide No. 4, and in No. 4.

9. That the Post Master General, Mr. Williamson, with a view to make Special Appeal, against the above confirmed Decree has, it would appear, consulted with Mr. Dale, the Government Pleader of Sudr Udalut at Madras, for that purpose, who when drawing his Appeal Petitions referred to the Decrees, and found Deputy Post Master's name, as defendant in the Original Decree, and Post Master General's name, as appellant in the Appeal Decree. Mr. Dale, directly corresponded with your memorialist, and directly submitted certain correspondences to Government, accusing him, petitioner, that he has substituted, Post Master General, Mr. Williamson's name, for the Deputy Post Master in the Appeal Petitions, which your petitioner as Government Vakeel presented to the lower Court.

10. That although the Government passed the order A, dated 9th December 1857, exonerating your petitioner as not fit object for censure, yet by the continued direct correspondence submitted by Mr. Dale, the Governor in Council, at once passed orders, that the Sunnud granted to your memorialist may be withdrawn, that is, to dismiss him from Government Pleader's office.

11. The grounds upon which your petitioner makes this Appeal, and which your Honorable Court should be pleased to review, and pass orders, setting aside the orders passed by Madras Government, are among others as follows :—

I. The office of Government Pleader, to which your petitioner was appointed, is, the one that the Civil Judge and Collectors of the District, are the nominating authorities, and the Government is the sanctioning power. To dismiss this officer, any recorded misconduct or negligence must be before the Government, which ought to be submitted by the Civil Judge and Collector, without such reports the Government have effected your petitioner's dismissal, merely upon certain correspondences submitted by Mr. Dale, (the Sudder Government Vakeel.)

II. Any orders which the Governor in Council may pass in removing your memorialist upon the Sudr Government Pleader's direct correspondence, are, your memorialist observes, unwarranted, or in other words, not legal, for the Sudr Government Vakeel, however European, is not empowered to exercise control over the interior Government Vakeels, nor are there any rules published that the interior Government Pleaders should subdue to the advice of the Sudr Government Vakeel. The appointment of Sudr Government Pleader's office having been sanctioned only in 1853, and the interior officials, from the establishment of the Judicial Courts in India, in 1802, it would appear to your Honorable Court that the Sudr Government Pleader's duty or advice are only limited to the cases he may have to defend in the Sudr Court on behalf of the Government functionaries, and not to meddle with the duties of the interior Government Pleaders, and find fault upon them, for, the local authorities (Sudr Court, Civil Judge, or Collector) must do so.

III. On the receipt of Mr. Dale's reports, the Government should, your memorialist observes, not have passed any orders thereon, but to have required the local authorities to explain whether his giving the name of the Post Master General, Mr. Williamson, in the Pleadings in the stead of Deputy Post Master, is consistent or inconsistent, in consideration of the strong reason of the institution of the suits abovementioned against the Government officers. This legal course

the Governor did not at all pursue, but founded his decision at once upon the direct report of Mr. Dale.

IV. All what Mr. Dale writes in his reports to Government as against your memorialist is, that he mentioned Post Master General's name in the Appeals before the Civil Court, instead of that of the Deputy Post Master. This your memorialist has done in consequence of the latter officer having been removed to other district. By the change of the name, it would appear to your Honorable Court that the merits of the suits will never be changed. In doing so, it is highly necessary to infer whether your petitioner did so in fond of any personal profit. The amounts of the suits being so trifle as Rupees $3\frac{1}{8}$ and Annas 3, there will never be any such means for him to have acted so. Only one thing is that your petitioner has entered Post Master General's name for Deputy Post Master. This he has done in consideration of his absence in other place. So your petitioner is free from any blame that can bring him under the loss of his appointment. The legal inference adverted to, has been properly made in the Minutes of Consultation, dated 9th December 1857, and the course your petitioner followed was finally considered and pardoned. When the matter was put to end thus, and while there is no other fault mentioned in the subsequent report of Mr. Dale, except continuing the same, the Governor in Council has without remembering his own resolution of the 9th December 1857, as final, issued orders, dated 18th February 1858, directing your memorialist's removal from office, a circumstance quite irrelevant to the precedents hitherto observed in Madras Government.

V. Your memorialist humbly begs to bring to the attention and consideration of your Honorable Court, a very rare or unheard advice which Mr. Dale gave your petitioner to follow, that is, that gentleman wrote a letter to him (No. 12,) requiring him to ask the lower Court to take off Post Master General's name and enter that of Deputy Post Master. Doing this after the Judgments were passed in the suits, however irregular, your memorialist did do so, but the Civil Judge to whom such application was presented, has rejected this prayer, vide his diary proceedings, (No. 14.) While your memorialist has acted up to Mr. Dale's requisition, and while it was rejected by the Civil Judge, your Honorable Court, should consider whether he is guilty of what Mr. Dale directed him to do, and whether the Civil Judge is right to treat the prayer as such. In that case where the fault stands? While the Civil Court, admitted the pleadings and passed Judgments upon my counsel, it must be judged that your petitioner is in no way to be blamed. If his pleadings were irregular, the Civil Judge would have noticed and corrected it, while that authority did not do so, it is very evident that that authority thought that the insertion of Post Master General's name for his Deputy, will never vary the merits of the suits. In such a clear point, the Governor's order to remove your petitioner from office remain unreversed, although your petitioner did present to him the petition, No. 1215 of 1858, stating all reasons (set forth in this memorial) in so detail a manner that he can be compelled to re-consider his own order and do him justice, but to no effect. Therefore your Honorable Court's petitioner with a view to know whether your Honorable Court will, going through all the papers, being the enclosures, Nos. 1 to 14, kept with the Government petition, No. 1215, arrive at a conclusion that the order of the Governor in Council under Appeal is entirely unjust and that your memorialist be restored to his office, has therefore submitted this Appeal to your Honorable Court, in the hope that they (Home authorities) are impartial and not disposed to respect the European's opinion (however legal or illegal) as is the systematic private rule or determination among the India Government European Officers.

With the foregoing determination, your Honorable Court's petitioner lastly begs to state that it is wholly incumbent upon your Honorable Court themselves to read the Government petitions, No. 1215, with its enclosures, Nos. 1 to 14, and collect from them the propriety or impropriety of the Governor's order as to his ordering your memorialist's removal without having before him any of the local officers' reports against or in favor of your memorialist, merely confiding the trivial impeachment which the Sudr Government Pleader directly submitted to him and to reverse the order now under Appeal, with orders that your memrrialist may be re-placed in the post from which he was removed by order of the Governor in Council of Madras.

Shall ever pray,

[illegible]

SAMY ROW,

late Govt. Vakeel.

Madras, 18th June 1858.

Fort St. George, Judicial Consultation, 29th October 1858.

No. 57. ORDER THEREON, No. 1510; dated 28th October 1858.

By Law, Regulation XIV, 1816, Section XXXVII, the nomination of Government Pleaders in the Civil Courts is subject to the approval of the Governor in Council, and by the terms of the Sunnud issued—Appendix to the same Regulation No. 1—they are subject to removal by the same authority for failing to conduct themselves with propriety, zeal, ability or integrity.

2. In the present instance the Government were not satisfied with the conduct of Sawmy Row, their Pleader in the Civil Court of Madura, as brought to their notice in connection with certain suits then pending, and they therefore recalled his Sunnud and confided their business in the Court to other hands, but as has already been intimated to Sawmy Row, this was, without prejudice to his practising as Vakeel in any of the Company's Courts or to his obtaining promotion if duly nominated and approved in the usual way.

3. No Appeal lies to the Honorable Court in such matters as this. The Government therefore decline to forward the Memorial and it will be returned to Sawmy Row.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

Judicial Department

4.

No. 1510.

Extract from the Minutes of Consultation
Dated 28 October 1858.

Read Petition from Saumy Row.

/Here enter 11th October 1858./

By Law - Reg XIV. 1816
Sect XXXVII - the nomination of pot Pleaders
in the Civil Courts is
subject to the approval
of the Governor Council,
and by the terms of the
summary abstract - Ap-
-pointing to the same Reg
not — they are subject
to removal by the same
authority for failing
to conduct themselves
with propriety - qual-
-ifiy and integrity -
2 In the present instance
the pot cannot be satisfied
with the conduct of
Saumy Row the Pleader

In Dy. D. Cons: 29 October
Judicial 1858 Depart.

No. 1510.

Extract Mins: of Board:

d/28 October 1858.

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