M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1077	Press Mis-
185-186		
Dated	25-8-	1860

4/4

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 25th August 1860.

No. 185. Read the following Extract from the Proceedings of the Government of India, in the Financial Department, dated 24th July 1860, No. 6,568.

No. 1,311, *Home Department, Fort William, the 20th June* 1860.

Forwarded to the Financial Department, for consideration and orders.

From T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, to the Secretary to the Government of India, dated 2nd June 1860, No. 696.

Judicial Department.

I am directed to forward copy of a letter, 26th ultimo, No. 520, from the Civil Auditor, with copy of its enclosure, and to solicit the decision of the Government of India, on the claim for deputation allowance preferred by Mr. W. H. Rose, as Acting First Judge of the Small Cause Court, for Mr. Burgass, who has proceeded to Europe on six months' leave under Section VIII, of the Uncovenanted Service Absentee Rules.

Gazette, Vol. 1 of 1860, page 819.

From E. F. HARRISON, Esq., Civil Auditor, Madras, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 26th May 1860, No. 520.

I have the honor to forward, for the Orders of Government, copy of a letter from Mr. W. H. Rose, 2nd and Acting 1st Judge of the Madras Court of Small Causes, on the subject of the deputation allowance which he claims while officiating for Mr. Burgass, the 1st Judge, absent on special leave on private affairs.

In reply to an enquiry on the subject made by Mr. Rose, I informed him, that he would not be entitled to deputation allowance, while acting for Mr. Burgass, under the rule contained in paragraph 94, Chapter II. of the Civil Auditor's Manual.

The authority for the rule I have referred to, is contained in the 1st and 2nd paragraphs (quoted in the margin*) of a Resolution of the Government of India, in the Financial Department, dated the 31st March 1841, No. 235.

* Paragraph 1. The question referred in paragraph 4 of the Acting Civil Auditor's letter, dated the 15th December 1840, notices the higher emoluments drawn by the 1st and 2nd and 3rd Judges, respectively, of the Madras Provincial Courts.
Paragraph 2. The Governor General of India in Council observes, that the Acting Civil Auditor has justly concluded that one of those Judges acting during the absence of the other enjoying the higher emoluments, the duties of all being the same, is not entitled to deputation allowance.

The rule was passed with reference to the Covenanted Service Absentee Rules, and perhaps applies in strictness to such appointments only as are held exclusively by members of the Covenanted Service, such as the appointments of Members of the Board of Revenue.

I have some doubt as to the applicability of the rule to the case of the Judges of the Small Cause Court, nor am I aware of the practice in the other Presidencies in similar cases.

From W. H. ROSE, Esq., Acting First Judge of the Madras Court of Small Causes, to E. F. HARRISON, Esq., Civil Auditor, Fort Saint George, dated 19th May 1860.

With reference to your letter of the 9th instant, whereby you inform me, that I shall not be entitled to deputation allowance whilst acting for Mr. Burgass, I have the honor to request that you will refer the matter for the decision of Government.

I have not the "Civil Auditor's Manual" at hand, and am, therefore, unable to ascertain the exact terms of the Order of the Government of India, referred to in your letter; but I am informed that it declares that where the acting appointment involves no additional labor or responsibility, the allowance is not to be drawn.

I take leave to submit that the First Judge of the Court of Small Causes has both moer labor and more responsibility than the others; and if such were not the case, it is difficult to imagine the object of giving to that Officer a salary exceeding by one-half that of the Second and Third Judges.

Since the establishment of the Court, the First Judge has usually taken upon himself the responsibility of trying all matters involving the consideration of difficult points of law, many of which of course arise at every sitting of the Court, especially in suits relating to the title to land which are of constant occurrence in the Court.

Besides the additional labor and responsibility thus thrown upon the First Judge, the ordinary work of each Judge has been most seriously increased since Mr. Burgass' departure, by the reduction of the number of Judges from three to two.

In addition to the responsibility above referred to, I believe that Government consider the First Judge answerable that the Clerks and Subordinate Officers of the Court do their duty; at all events, Mr. Burgass has always taken the lead in these matters, and as a Junior Judge, I have never considered it as part of my duty to interfere in the matter, except when Mr. Burgass has deemed it proper that the conduct of one Officer of the Court should form the subject of investigation in open Court, and in presence of all its members.

No. 5,550, Financial Department, Fort William, the 30th June, 1860.

Forwarded to the Officiating Civil Auditor, Fort William, for report.

From H. D. SANDEMAN, Esq., Officiating Civil Auditor, Fort William, to C. H. LUSHINGTON, Esq., Secretary to the Government of India, Financial Department, dated 6th July 1860, No. 2,539.

With reference to your endorsement, No. 5,550 of the 30th ultimo, forwarding for my report a letter,* in original, from the Chief Secretary to Government, Fort Saint George, regarding the claim preferred by Mr. W. H. Rose to deputation allowance as Acting 1st Judge of the Small Cause Court of that Presidency, I have the honor to state, for the information of His Excellency the Viceroy and Governor General of India in Council, that the Resolution of the Government of India, in the Financial Department, dated 31st March 1841, as quoted by the Madras Civil Auditor, does not appear to have been communicated to this Office, and that there is no precedent here which meets the case; but the practice has been to pass to an Uncovenanted Officer holding Civil appointments, the forfeited portion of the Absentee's salary. In cases, however, where appointments are by classes, the deputation allowances are regulated on the average rate of salary attached to the particular class to which the appointment may belong.

*No. 696, dated 2nd June 1860.

The original documents are herewith returned.

Financial Department, Fort William, the 24th July 1860.

RESOLUTION.

The Governor General in Council remarks, that the rule of 31st March 1841, referred to by the Madras Civil Auditor, was intended for Judges of the *Covenanted* Civil Service; that Mr. Rose's case cannot be treated under that Rule; but that Mr. Rose may be permitted, under the Uncovenanted Service Absentee Rules of the 22nd February 1856, to draw the forfeited salary of Mr. Burgass, the permanent 1st Judge of the Small Cause Court at Madras, viz., one-half, in addition to one-half of his own salary as 2nd Judge of that Court.

Proceedings of the Madras Government, Judicial Department,
25th August 1860.

Copy sent to the Home Department, with reference to endorsement, No. 1,311, dated 20th ultimo, for communication to the Government of Madras.

Copy also sent to the several Civil Auditors, for information.

(A true Extract.)

(Signed) C. HUGH LUSHINGTON,
Secretary to the Government of India.

No. 1,634.

Forwarded to the Government of Fort Saint George, for information.

By order,

(Signed) H. U. BROWNE,
Under Secy. to the Govt. of India.

FORT WILLIAM,
HOME DEPARTMENT,
4th August 1860.

No. 186.

ORDER THEREON, 25th August 1860, No. 1,077.

Communicated to Mr. W. H. Rose.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. S. T. Augustin.

Fm 10th June 1860 per ship Essex
Lt Alexander
Ch: N. to Rear. No 35/5.
Hd Qrs: Genl. Div. 20th

No 1077 — 25th August 1860 —

Communicated to Ch: N. Rear.

W—

185 V/86.

Fm Acting Gr Mr
Charles Alexander
Ship Essex
at Montevideo

Aug 21st 1860

Sir.

I have the honor to report for the information of the Commander in Chief on the 20th inst. at 10 A.M. that the ship was hove short & at 11 A.M. made sail to the Eastward.

I am Sir
Your obedient Servant
Charles Alexander
Acting Gr Mr

To Lieut. Wm. Wilkes
Commanding
H.B.M. Ship Esk