M.R.O. 1—89,000—16-10-57.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 702 Press ~~Mis.~~

44-45

Dated 6-5-1863 ~~19~~ .

4/9

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 6th May 1863.

No. 44. Read the following letter from R. R. COTTON, Esq., Civil Judge of Madura; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madura, 30th April 1863, No. 112.

I have the honor to submit for the consideration of Government a letter I addressed to the Registrar of the High Court, and his reply thereto, having reference to the late Order of Government, dated 14th instant, Judicial Department, No. 555; the point for determination I would very respectfully remark, is, one which the Judges appear to have overlooked, namely, whether the Order of Government of India, dated 24th July 1862, and which has been ruled not to have retrospective effect, can affect me, *who had obtained my leave, and was taking advantage of it, before the said order was issued.*

From R. R. COTTON, Esq., Civil Judge of Madura; to C. F. CHAMIER, Esq., Registrar of the High Court of Judicature, Madras, dated Madura, 18th April 1863, No. 102.

1. I have the honor to inform you, that I have just received the Proceedings of the Madras Government, Judicial Department, and the Order thereon, No. 555, dated 14th April 1863, and as it appears to me, that by the said order, all Officers who may have had privilege leave since the adjournment of 1862, are precluded from leaving their stations during the adjournment of this year, unless eleven months shall have elapsed since they returned to duty, I request I may be informed whether such is the fact: and if so, beg that my case may be submitted to Government, in order that, under the peculiar circumstances of it, an exception may be made in my favor.

2. The Judges of the late Sudder Court, and the Government, are perfectly aware that I vainly endeavoured to obtain the privilege leave, to which, I was entitled by the Rules, owing to the exigencies of the service not permitting the Government to grant it me. That I was prevented taking advantage of the leave granted to me by Government for *one* month, on the 10th August 1861, as the promise given to extend it to three months, was contingent on Government being able to find an Officer to act for me; and I learnt that, if I should avail myself of the one month's leave, and the Government could not extend it, I should lose altogether the other two months.

3. Subsequently, on the 28th April 1862, I repeated my application for leave, which was *granted me* on the 2nd May; but the leave thus granted was, on the 13th idem, cancelled *by Government*, as it was found impossible to get any one to act for me, I therefore was obliged, after the adjournments of the Courts, to resume my duties at Madura. On the 16th June, I again submitted my application for leave; but the Government for the same reasons were unable to grant it.—vide Order No. 992, 25th June 1862 I subsequently, however, on the 4th July succeeded in obtaining it.

4. It was specially notified, and admitted by the Civil Paymaster, that in taking advantage of the adjournment in 1862, an Officer did not vitiate his title to any privilege leave, that might *then* be due, and I have reason to believe that many Officers, on the strength of this, subsequently applied for, and obtained such privilege leave, as was due to them, for instance, Messrs. H. D. Phillips, Story, Ellis, Davidson, Collett, Harris, and others, who never could have contemplated more than I did, that by availing themselves of leave to which they had become entitled, they would, by so doing, be debarred leaving their stations at the next adjournment.

Proceedings Madras Government, Judicial Department, Order No. 1,511, 15th September 1862.

5. Their cases, however, are so far different from mine that they all appear to have applied for, and obtained their privilege leave, subsequent to the adjournment of 1862, and the order of the Supreme Government. Whereas my application was *prior to both* and my leave was actually granted nearly three months before the date of the latter, though subsequently cancelled by *Government*, because no one could be found to act for me.

6. The leave granted me on the 4th July 1862, was actually the very same for which I had been Gazetted 10th August 1861, and 2nd May 1862, and I would therefore very respectfully submit, that the order of the Supreme Government, dated 24th July, which has been declared not to have retrospective effect, should not affect me, because by the exigencies of the service,

Proceedings of the Madras Government, Judicial Department, 6th May 1863.

I was prevented taking *full* advantage of that leave, till after the Order of the Government of India had been received.

7. As I have made all my arrangements for quitting my station for Ootacamund, at the approaching adjournment of my Court, on the 9th proximo, I request that, if there is any objection to my doing so, it may be at once communicated to me, and that my case may be submitted for the orders of Government without delay.

MEMORANDUM.

3 months first applied for, 22nd July 1861.
1 month granted, 10th August 1861—not taken.
3 months again applied for, 27th April 1862.
3 months granted,... ... 2nd May "
Cancelled by Government, 13th May "
Again applied for,... ... 16th June "
Refused,... ... ... 25th June "
Granted,... ... ... 4th July "
Gave over charge,... ... 18th July "
Order of Government of India, 24th July 1862.

(True Copy.)

(Signed) R. R. COTTON,
Civil Judge.

From C. F. CHAMIER, Esq., Registrar of the High Court of Judicature, Madras; to R. R. COTTON, Esq., Civil Judge of Madura, dated 27th April 1863.

1. I am directed to acknowledgethe receipt of your letter, dated the 18th inst, statinstag that the privilege leave you have had since the last adjournment was leave to which you were eligible two years ago; but which it was not, till lately, convenient to the Government to grant; and requesting, under the circumstances, that you may be allowed, as a special case, to absent yourself during the approaching recess.

2. In reply, I am directed to inform you that the Orders of Government on the point to which you refer, are clear and distinct, and the Judges do not feel justified in making any further reference on the subject.

(True Copy.)

(Signed) R. R. COTTON,
Civil Judge.

No. 45. ORDER THEREON, 6th May 1863, No. 702.

Under the order of the Government of India of the 24th July last, the Governor in Council is precluded from permitting any Judicial Officer to absent himself from his station, who has been absent on privilege leave within a period of eleven months. This order is merely declaratory of the rules which were in force when Mr. Cotton took his privilege leave in July last; and, inasmuch as that leave was granted to Mr. Cotton, without loss of salary, although he had been absent from his station on account of the adjournment only a few weeks previously, it cannot be said that retrospective effect has been given to the rules in question.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. O'Connor.

Paper

But on the other hand P2 of Mr Drummonds letter is open to a different construction, for it clearly makes a distinction between a Judge's mere absence from his station during adjournment & between his absence at that time on regular leave. If this difference was not recognised why should such a case have been alluded to by Mr Drummond as that of a Judge taking leave "on private affairs" "while absent during the recess"

As the question thus turns on the construction to be placed on an Order of the Supreme Govt how we have viewed the Order & how the High Court views it, & nothing which is right? - the principle involved we agree with the High Court. -

The various complications seem due to trivial [illegible] though it may not be worth while noticing it. The recess is due for 2 months so that an interval of 10 months subsist. - But 11 months must elapse between two Special leaves - If therefore mere absence during recess is to count as Special Leave, Judges must either absent themselves during a portion of the recess, instead of stationed having a portion of the recess, instead of devoting their energies for work at a neighbouring station - How unwise this is - The

The chief point is whether a judge's absence from his Station during the adjournment of the Court is to count as leave - In the case supposed the Judge is absent with the sanction of his superiors the Judges of the High Court but does not apply for regular leave - he is absent on the same terms as when he takes ordinary casual leave -

Govt in its Order of 18th Oct 1862 No 1715 has ruled (under the letter of the Secretary Drummond dated 24 July/62) that absence during the adjournment of the Court is to count as Special Leave - To this opinion the Bycroft Law officers, while the Judges of the High Court argue that the order engaged in the Drummond's Letter bears a different construction - See P 10 of the Registrar Mr Chevis's letter to Mr Douglas of 30 March '63 - I incline to think that the view taken by the Govt is that the Govt of India intended - but Mr Drummond's letter is certainly wanting in clearness and is open to either construction.

For instance on P 1 he shows that the question put by the Civil Paymaster Govt related to Judges "who leave their stations during the adjournment of their Courts" i.e. as the Govt intended strictly applying for regular leave - the same is shown in other parts of the correspondence, & it might therefore be inferred that the reply of the Govt of India was directly & unconditionally on this point.

It seems to me that R. Civil Paymaster is correct on all the points raised.

By the orders of Govt of India 24 July 1862, absence during Judicial recess is expressly put on the same footing with privilege leave. 3 Month in 10 yrs

When a Judicial Officer may take either of his option, provided that he has been 11 months continuously at his

station – but he cannot take both loans with in eleven months of each other –

The order of 24 July/62 was subsequently ruled not to have retrospective effect. Officers known who were absent during the creation of Treasury Chest/62 who were thereby precluded from taking private loan if otherwise entitled to it –

but if they took it they took it on the usual terms, that is they could not have any part loan of that sort – i.e. private loan or the special Recess loan until eleven months after return to duty.

Then in the case put in the correspondence Mr. Chung having had private loan in April of this year

cannot be absent from his station during the ensuing vacation.

7/4/63

Judicial Department

Proceedings of the Madras Government

Read the following letter from the Civil & Sessions Judge of Madura. New Series 30th April 1863 No 112

Order thereon May 1863. No

His Excellency the Governor in Council cannot comply with Mr Cotton's application for permission to leave his station during the adjournment of his Court. Retrospective effect has already been given to the Order of the Government of India of the 24th July last in the Case of Mr H. D. Cook who returned from leave on the 1st of that month.

To R. R. Cotton, Esqre, Civil & Sessions Judge, Madura.
The Honble The Judges of the Sudr Court.
Dick Cook

Sudr

PROCEEDINGS OF GOVERNMENT,

Dated

No.

136 . Department.

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Council

Jud^l Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

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Order thereon 6th May 1863 No. 702.

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J. A. R.

To A. R. Cotton Esqre
Civil & Sessions Judge
of Madura

To the Hon'ble the Judges
of the High Court.

Sec. Reg.

Judicial 1863. Department.

No. 702.

PROCEEDINGS OF GOVERNMENT,

Dated 6 May 1863.

44 to 45