

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	738	Press
		~~Mis.~~
90-91		
Dated	15.5.1883	19

Not to be folded or roughly handled

6/6

Proceedings of the Madras Government, Judicial Department,
15th May 1863.

No. 90. Read the following letter from H. L. ANDERSON, Esq., Chief Secretary to Government of Bombay, Judicial Department; to the Secretary to the Government of Fort Saint George, dated Bombay Castle, 25th April 1863, No. 975.

I am directed by the Honorable the Governor in Council to forward, for the information of the Government of Fort Saint George, the annexed transcript of a letter addressed this day to the Secretary to the Government of India with the Right Honorable the Governor General, together with a copy of its accompaniments.

From the Chief Secretary to the Government of Bombay; to the Secretary to the Government of India, with the Right Honorable the Governor General's Camp, dated Bombay Castle, April 1863, No. 974.

I am directed by the Honorable the Governor in Council to forward, for submission to the Right Honorable the Governor General of India, the accompanying transcript of a letter, dated the 16th March 1863, from Mr. R. H. Pinhey of the Bombay Civil Service, at present holding the appointment of Registrar of the High Court of Bombay on the Appellate side.

2. Mr. Pinhey enquires, 1st, whether his previous services in the Judicial Department in the appointments which he describes in the 3rd paragraph of his letter, bring him within the 3rd class of persons eligible, under Section 2 of 24 and 25 Victoria Chapter CIV, for seats on the Bench of the High Court. 2nd, whether service in the appointment of Registrar of the High Court, and other similar appointments which, though strictly speaking not Judicial, yet require those who hold them to possess some Judicial knowledge and experience, is to be regarded as service qualifying for a seat in the High Court.

3. Copy of a Minute, dated the 19th March 1863, recorded on Mr. Pinhey's letter by the Honorable W. E. Frere, is also hereto appended, and, as it is desirable that one rule should be followed in all three Presidencies, I am directed by His Excellency in Council, to request that this Government may be favored with the decision of the Right Honorable the Governor General of India on the questions submitted by Mr. Pinhey.

4. A copy of Mr. Pinhey's letter and of the Honorable Mr. Frere's Minute will be forwarded by the next Mail to Her Majesty's Secretary of State for India, who, at the same time, will be informed of the reference made in this communication.

(True Copies.)

(Signed) R. WEST.

Offg. Under Secy. to Govt.

From R. H. PINHEY, Esq., Bombay Civil Service, and Registrar of High Court; to the Honorable HENRY LACON ANDERSON, Chief Secretary to Government of Bombay, Judicial Department, dated Bombay, 16th March 1863.

I have the honor to solicit the decision of His Excellency the Governor in Council (and, if necessary, of Her Majesty's Secretary of State for India) as to whether my past services in the Judicial Department render me eligible, without serving as "a Zillah Judge" for appointment as a Judge of Her Majesty's High Court of Judicature at Bombay, under Section 2 of the "Act for establishing High Courts of Judicature in India." (24 and 25 Victoria Chapter CIV.)

2. His Excellency is aware that the Section I have quoted declares four classes of persons eligible for appointment as Judges of a High Court, I have never been for a day a Pleader of a Sudder Court or High Court. I have not yet been called to the Bar. I have only exercised the like powers as those of a Zillah Judge, for 10½ months, i. e., as Judicial Assistant at Sattara and Joint Judge and Session Judge at Dharwar from 30th June 1859 to 12th May 1859. I am clearly, therefore, not eligible, according to the qualifications required of the 4th, 1st and 2nd classes of persons from whom selections for the Bench of the High Court are required to be made. But the 3rd class of persons appears to include me, as it declares eligible "persons who have held Judicial office not inferior to that of Principal Sudder Amera

*Proceedings of the Madras Government, Judicial Department,
15th May 1863.*

"or Judge of a Small Cause Court for a period of not less than five years," and I have "held Judicial office not inferior to that of Principal Sudder Ameen" ever since my appointment as Assistant Judge and Session Judge of Dharwar on 9th January 1855, during which period I have constantly been in the habit of hearing appeals from the decisions of Principal Sudder Ameen, besides presiding over a Criminal Court and exercising other powers beyond the legal competence of a Principal Sudder Ameen. During the eight years, which have elapsed since January 1855, there has been only one break in my service of a year and a half, which I passed in study at Lincoln's Inn.

3. The Judicial offices, "not inferior to that of Principal Sudder Ameen," which I have held are as follows:—

	Years.	Months.	Days.
(1.) From 9th January 1855 to 12th May 1859 being.....	4	4	3
During the whole of this period I was Assistant Judge and Session Judge of Dharwar, while I was also Acting as Senior Assistant at Rutnagiree, Judicial Assistant at Satara, and Joint Judge and Session Judge at Dharwar.			
(2.) From 14th November 1860 to 23rd September 1862, being.....	1	10	17
During which I was successively Acting Assistant Judge and Session Judge at Surat, Assistant Judge and Session Judge at Ahmednuggur, and Senior Assistant at Khairat.			
	6	2	20

4. The above Statement shows me to be a "person who has held Judicial office not inferior to that of Principal Sudder Ameen" for a period of more than six years, and I am, therefore, led to believe that I am one of the 3rd class of persons declared eligible for the High Court, by Section 2 of the High Court's Act. The only argument which will admit of a different conclusion must be based on the proviso that, because I am a Covenanted Civilian I am *ipso facto*, incapable of belonging to the 3rd class "persons;" but I would, respectfully urge that such an interpretation of the law would not be borne out of the text. It is true that "members of the Covenanted Civil Service" are mentioned in class 2nd, and are not specially mentioned in class 3rd, and it may be suggested that the particular mention of them in one class, and their omission in the other, show that it was never contemplated that they should be included in the class in which they are not specially mentioned; but I think this view can be shown to be erroneous. To belong to class 3rd all "persons (Covenanted Civilians as well as others) must have held Judicial office not inferior to that of Principal Sudder Ameen or Judge of a Small Cause Court for a period of not less than five years." But to the Covenanted Civilian is reserved the special privilege of belonging to class 2nd and becoming eligible for the High Court by *three years' service as "a Zillah Judge, provided he be of not less than ten years' standing."*

5. Perhaps, however, the legitimate meaning of the Act will be more evident by applying it to persons, than from any argument based on its wording. Even if Covenanted Civilians are excluded from class 3rd, it is evident that Natives of India must be included in that class. Hence it follows that all those Principal Sudder Ameen from whose decisions I have heard appeals since 1855 were qualifying for the Bench of the High Court, while I who tried the appeals was not qualifying; and that my late second Assistant Mr. Gopalrow Hari Deshmookh, is now daily qualifying himself for admission into class 3rd, while Acting as Assistant Judge and Session Judge of Ahmedabad, while I, his late superior, should not be allowed to count my service in exactly similar appointments, because I am a Covenanted Civilian. I do not think it likely that Government can either desire or contemplate an interpretation being put on the High Court's Act which would affect its servants so unequally.

6. His Excellency the Governor in Council will perceive that I am not proposing an abstract question for decision but one of great practical importance to myself personally, and one,

*Proceedings of the Madras Government, Judicial Department,
15th May 1863.*

the decision of which will necessarily affect others hereafter whom it may be considered advisable to employ in any of those offices, which though not, strictly speaking, Judicial, require those who hold them to possess some Judicial knowledge and experience, *e.g.*, Secretary to Government, in the Judicial Department, Registrar to the High Court, &c.

7. If five years' service as Assistant Judge and Session Judge does not count as service qualifying for the High Court, I presume it will be held that the Registrarship of the High Court, which I now hold, will not be considered to be a qualifying office. Therefore any Officer holding the appointment of Registrar, or other similar appointment would be actually disqualifying himself for the highest prize in his line of the service by retaining it voluntarily in preference to a Zillah Judgeship or Acting Judgeship, should the latter be at any time within his reach.

8. Having reason to believe that, according to the seniority list, my own turn for such appointment must come within a few months, I trust that His Excellency will excuse my anxiety to have a point settled which must so seriously influence any decision I may be called upon to make with regard to my future career.

MINUTE by the Honorable Mr. FRERE, dated 19th March 1863.

I think Mr. Pinhey has strong claims to consideration; but I do not think that it would be, at all, advisable to make the Registrar of the High Court, on the Appellate side, eligible for a seat on the Bench without some guarantee that he has other qualifications than those derived from his appointment as Registrar.

There is nothing, that I am aware of, to prevent any person being appointed Registrar if the Chief Justice thinks him fit for the appointment, and though, in Mr. Pinhey's case, we know that he has served well as an Assistant Judge, we have no security that his successor will be equally eligible; I would, therefore, inform Mr. Pinhey that, on a vacancy occurring among the Zillah Judges, his claim to be appointed a Zillah Judge will be taken into consideration, notwithstanding his appointment in the High Court.

(Signed) W. E. FRERE.

No. 91.

ORDER THEREON, 15th May 1863, No. 738.

To be recorded.

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

Exd. T. McMootry.

Shoular

the appointment of Registrar of the High Court of Bombay on the appellate side.

2nd Mr Pinhey enquires, 1st Whether his previous services in the Judicial Department in the appointments which he described in the 3rd para. of his letter, bring him within the 3rd class of persons eligible, under Section 2 of 24 and 25 Victoria Chapter CIV, for seats on the Bench of the High Court.

3rd Whether services in the appointment of Registrar of the High Court, and other similar appointments which, though strictly speaking not Judicial, yet require those who hold them to possess some Judicial Knowledge and experience, is to be regarded as service qualifying for a seat in the High Court.

3. Copy of a Minute, dated the 19th March 1863, recorded on Mr Pinhey's letter by the Honble M. C. Fane, is also hereto appended, and, as it is desirable that one rule should

should be followed in all three
Presidencies, I am directed by His
Excellency in Council, to request that
the Government may be favored with
the decision of the Right Honble
the Governor General of India on
the questions submitted by Mr. Pinhey.

4 A copy of Mr. Pinhey's
letter and of the Honble Mr. Freer's
Minute will be forwarded by the next
Mail to Her Majesty's Secretary of
State for India, who, at the same
time, will be informed of the reference
made in this communication. -

Bombay Castle } I have the honor to do so.
25 April 1863 } Signed A. L. Anderson
Chief Secretary

True copies.

R West
Offg. Under Secy. to Govt.

No

Communicated to the Honorable
the Judges of the High Court.

The Honble the Judges of the High Court.

Ans^d 1863 Sept
Pro May.

Pro May

From the Chief Secy
to the Govt of Louisiana
And Capt. 1. 3/5

A/25th
 19/30th } April 1863

Ms. 936

Forwards for information transcript of a letter addressed to the Govt. of India with its accompanying memorials respecting the eligibility of Officers holding the appointments of Registrar of the High Court and other similar appointments, to seats in the Bench of that Court.

15 May 1863 No 7/38.

15th May 1863
Bewick

With an Order,

copy 7046/113