M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1450	Press ~~Mis.~~
Dated	4 — 10 — 19 1864	

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 4th October 1864.

Read the following papers :—

No. 17. From SUBRAMANIA AIYAR, Acting Record-keeper, Collector's Office, Madura ; to the Honorable C. PELLY, Commissioner to the Uncovenanted Civil Service Examinations, Madras, dated Madura, 3rd December 1863.

I beg to submit for decision the following question, as to the construction of Section 13 of the Uncovenanted Service Examination Rules, dated 26th April 1861, by which it is provided that the Government do not undertake to provide appointments for all persons who may pass the prescribed examinations. The present question is, whether this extends to the appointment of Pleaders also, and whether the orders of the late Sudder Court quoted below are over-ruled thereby.

" The appointment of passed candidates to the office of Pleader will remain with the Zillah Judges, and the holder of a diploma (now the passed candidate), if not open to objection on the ground of general conduct and character, such objection being open to appeal to the Sudder Court, *is entitled to an appointment in any Zillah on application, without a reference to the number of Pleaders at the time attached to the Courts in it*"—(Page 315, Sloan's Land Revenue and Judicial Code. Note—Rules of Sudder, dated 15th July and 5th September 1855).

2. Having passed the last Pleaders' Test Examination, I applied the other day to the Judge of this District for admission to practise in his Court, he refused to comply with my request on the ground that there were too many in his Court already. He had no business to do so under the Sudder order above cited. Nor do I believe, could he have thought of doing so, but for a reliance upon the above-mentioned Section 13, as allowing a discretion in the appointment, unreasonable as such a construction is. My object therefore in making this reference is to have an authoritative declaration *of the right* of the passed candidate for Pleadership to plead in any of the Mofussil Courts, *irrespective of the number of practitioners that may have been attached to it.* This is not a new right that I seek to establish, inasmuch as it is fully recognized in the above Sudder Order, and justly so. As to Government or the Judge, what do they care whether two or twenty men plead in the Court, provided they possess the requisite qualifications. Pleaders are not paid by Government. The suitors pay them, and their interests require that the number of Pleaders should be large in order that a few monopolize not the trade and exact exorbitant fees. I earnestly request you will take a liberal view of the subject, and be good enough to procure us the declaration solicited, thereby setting at rest the opposition which we, passed candidates, meet with out here in reaping the fruit of our labors. Highly desirable as the infusion of the new order of men amongst the Mofussil Pleaders is, it has, I regret to say to the prejudice of the rights of the public and the passed candidate, not as yet been allowed to take place.

MEMORANDUM.

Transferred to the Chief Secretary to Government.

(Signed) C. G. MASTER,
Secretary.

OFFICE OF THE COMMISSIONER FOR THE U. C. S. EXAMINATIONS.
9th December 1864.

To the Chief Secretary to Government, Fort Saint George.

No. 18. From C. F. CHAMIER, Esq., Registrar of the High Court of Judicature at Madras ; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 18th March 1864, No. 18.

I have the honor by direction of the Judges to acknowledge the receipt of your letter, dated the 26th January last, explaining the grounds on which the petition of T. Kuppaswami Aiyar and others, claiming, in virtue of their having passed the special test of 1862, the privilege of practising in the Lower Courts without previous admission, was referred by the Government for the opinion of the High Court ; and inquiring " whether the Judges see any objection to a notification being published,

similar to that promulgated by the late Sudder Court in 1855, to the effect that persons who have passed the prescribed special test for the offices of Pleader and Moonsiff, shall be entitled to practise as Pleader in any Zillah without reference to the number of Pleaders attached to the said Courts, if not open to objection on the ground of general conduct and character: such objection being open to appeal to the High Court." The opinion of the Judges is also asked as to the expediency of furnishing passed candidates with diplomas, and the authority by whom they should be issued.

2. In reply, I am directed to state that the Judges are unanimous in thinking—(1) that in the present state of litigation there should be some restriction upon the number of practitioners admitted to each Court; and (2) that no other diploma is necessary than the diploma or certificate of qualification granted by the Commissioner for the Uncovenanted Civil Service Examinations.

3. As, however, the Judges are unanimously of opinion that *primâ facie* the proper course would be the admission of all passed candidates, and their present opinion is based upon the views entertained by three of the Judges of the Court as to the peculiar circumstances of this country. I am further directed to submit so much of the Minutes of Sir A. Bittleston, and Mr. Justice Holloway as relate to this subject.

4. Mr Justice Holloway's Minute opened the present discussion, and will show the considerations which have induced the Chief Justice and Sir A. Bittleston to concur in the opinion that unrestricted admission is not desirable; but I am to add that this opinion was recorded by two of the three Judges above referred to, when this subject first came under consideration by the High Court.

Minute of the Honorable Mr. Justice HOLLOWAY.

The questions on which our opinion is asked, and on which in my opinion it should be given, are:

Whether the passing of the test prescribed in the notification of the 4th February 1862, shall entitle the person passing it to admission to practice as a right in the Civil Courts?

Whether diplomas should be issued to those who have passed; and if so, by whom and under what regulations they should be issued?

2. It is quite clear that the language of the notification by no means holds out as a right the privilege of practising. To render himself a candidate, the person must have passed. We do not want much philology to tell us that the putting on of the white robe, and the obtaining of the office sought, are perfectly distinct. There would be no breach of faith whatever in telling the successfull examinees that the result has made them candidates only, but that their admission as Vakeels is still a question to be determined on a number of considerations of which their personal character is one only.

3. Undoubtedly there is something very antagonistic to the principles of political economy in narrowing to any person the range of employments not rewarded with the money of Sthe tate. Let the ordinary law of supply and demand, correct, as it speedily will, any excess of practitioners will be the natural answer of the disciple of Mill or Adam Smith. The prescription of a test, however, shows that an absolutely free trade in law is not at present thought expedient, and will, if special grounds be shown for it, no doubt be thought to justify some further restriction.

4. The very nature of the subject matter to which this free trade is to be applied seems to me a very important element in the correct solution of the question. If all litigation was a genuine effort of the litigants to ascertain and secure their rights, although I should still think a system of unlimited competition with under-selling and its attendant evils, not desirable, it would be open to fewer objections. Indian litigation is, however, nothing of the kind. A large proportion of it is wholly fictitious, and used as a mere instrument for punishing an adversary. Legal practitioners are not passive recipients of cases entrusted to them, they are in every village creators of suits and stirrers up of dissension. Figure an unscrupulous Attorney newly settling in a rural neighbourhood, and the ill blood and bad feeling following the inauspicious visitant, and we may have some slight idea of the effect to be produced by scattering over such Districts as Tanjore, Malabar, or Madura, hundreds of practitioners, for in a year or two they will be hundreds.

5. My decided opinion is that Civil Judges should still have the power of rejection, with reference to the actual requirements of the legitimate wants of their District. There is no reasonable ground for fearing the encouragement of a monopoly, and any such disposition would be corrected on appeal.

6. The trumpery test prescribed may be, with the power of selection and rejection, a tolerable security.

7. It is wholly insufficient to have acted in any way upon the characters of those who have passed it. * * * * I would certainly not issue diplomas to every person who can pass this test. I would render them eligible at the discretion of the Civil Judge, of course not to be exercised capriciously. We know what objections to moral character mean. There may be nothing tangible, nothing to be weighed and measured and counted or written down in able papers, but a Civil Judge worth his salt will often know that a particular man is wholly unfit, sometimes from his personal and sometimes from his family connections, to be entrusted with the power of stirring up strife and conducting it in the judicial arena. * * * * A notification in the Civil Court and report to the High Court should suffice.

Minute of the Honorable Sir Adam Bittleston, Knight, Justice, inwhichthe Chief Justice concurred.

The principal question on which the Government desire the opinions of the Judges is, whether all persons who have passed the prescribed test should be declared entitled to practise as Pleaders in any Zillah Court, if unobjectionable on the score of character.

2. It appears that, by the Order of Government, dated September 1855, those who passed the examination thereby prescribed were declared to be so entitled, but that order has been superseded by subsequent orders of Government promulgating new rules for the examination of Pleaders and other officers in the Judicial Department; and certainly according to the rules now in force, passed candidates are only in the position of persons "*eligible for the appointment*" of Pleader or District Moonsiff. By passing the examination no title is acquired to the office either of Pleader or District Moonsiff; for, as it was pointedly put in the Government Order of March 1858, "the Government do not undertake to provide appointments for all persons who may pass the prescribed examinations." The consequence of passing the examination is not to confer upon the candidate any thing in the nature of a degree, nor any recognized status carrying with it certain privileges. It amounts only to this, that a door has been passed, on the other side of which there is no possibility of employment. At the same time the just expectations of the passed candidates ought not to be disappointed; and it is a just expectation on the part of a passed candidate that he should be admitted to the employment, for which he has been pronounced eligible, as soon as the interests of the public service will permit. As respects Judicial Officers, such as District Moonsiffs, they must *necessarily* wait till vacancies occur; but as respects the office of Pleader, there is not *necessarily* any limit to the number of Pleaders; and passed candidates might be at once admitted to practise in the Courts, though the number should far exceed the need, and many of them should have but little prospect of business. I own that my impression at first was that it would be right so to admit them, without any restriction in point of number, and to issue such a notification as is suggested in the letter of the Governor in Council; but the unanimous opinions, to the contrary, of the three Judges, who have great experience of the administration of Justice in the Mofussil, and the dark picture which they have drawn of the mischievous results likely to ensue from the adoption of that course, forbid my placing any reliance upon my own impression, and compel me to believe that, in the existing condition of things, it would be inexpedient to take away from the Civil Judges in the Mofussil the power which they now hold of restricting the number of Pleaders entitled to practise in their Courts.

3. Assuming that some power of restricting the numbers is necessary, I do however think that the number of Pleaders in each Zillah Court should, with the sanction and approval of the High Court, be fixed by the Judge, and notified in a rule of the Court; so that the occurrence of a vacancy might be easily known, and that it might not be open to the Judge to raise the objection of numbers, or not to raise it, according to his own opinion of the merits of the applicant. It might of course be necessary to alter the maximum number from time to time according to the wants

of the District; but the maximum should always be fixed by a rule, and whenever that number is incomplete, passed candidates should, in my opinion, be held entitled to admission, if not open to objection on the ground of general conduct and character; and any rejection on that ground would be subject to appeal to the High Court.

4. As to the second question upon which the Government desire the opinions of the Judges, I do not think it expedient that any diploma should be given to the passed candidates. The only diploma that would be of any use to them, would be one declaring the right of the holder to practise in any of the Courts, and I presume that it is such a diploma to which His Excellency in Council refers; but I have already mentioned the reasons which have led me to the conclusion that that right ought not to be conferred.

5. All that can be necessary is, that the passed candidates should be furnished with a certificate of the Examiner that he has passed the prescribed test; that upon his admission as a Pleader in any Court, his name should be entered on the list of Pleaders attached to that Court; that his admission should be publicly notified in the usual manner in the District; and that notice of his admission should also be forwarded to the High Court.

(True Copies.)

(Signed) C. F. CHAMIER,
Registrar, Appellate Side.

No. 19. ORDER THEREON, 4th October 1864, No. 1450.

Under the opinion expressed by the Honorable the Judges of the High Court in the letter and Minutes above recorded, the Governor in Council is not prepared to interfere with the discretion which the Zillah Judges at present exercise, as to the admission or rejection of candidates for permission to practice as Pleaders in their Courts. All persons who have passed the prescribed special test, will be furnished by the Commissioner for the Uncovenanted Civil Servi Examination with certificates of having passed, but it will rest with the Judge of the Court; in which a passed candidate desires to practice as a Pleader, whether or not he shall be admitted.

(True Extract.)

Secretary to Government.

To the Honorable the Judges of the High Court.
„ Commissioner for the Uncovenanted Civil Service Examinations.
To T. Kuppaswami Aiyar.
„ Subramania Aiyar.

Exd. J. Tulloch.

Judicial Department.

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PROCEEDINGS of the MADRAS GOVERNMENT.

Read again the letter from T. Kuppaswami Aiyar and six others from Combaconum dated 26 October and recorded in Proceedings 20 Novr 1863 No 99.

Read also the following papers.

From Subramania Iyen
Acting Record Keeper
Collector's Office
Madura.

3/3d Decr 1863. No 2683.

From the Registrar of the
High Court.

3/18 March 1864. No 18.

Order thereon 4th October 1864. No 1450

Under the opinion expressed by the Hon'ble the Judges of the High Court in the letter and Minutes above recorded, the Governor in Council

it

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To the Honble the Judges of the High Court.
" Commr for the U. C. S. Examns
" T. Kuppasawmi Aiyar
" Subramania Aiyar

despatched

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Judicial 1864. Department.

No. 1450.

PROCEEDINGS *of* GOVERNMENT.

Dated 4th October 1864.

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