

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

303-304	G.O. No. 1375	Press
		~~MIS~~
	Dated 23-8-1867	

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
23rd August 1867.*

No. 303. Read the following letter from W. DONALD, Esq., Examiner of Claims, to the Acting Chief Secretary to Government, Fort Saint George; dated Fort Saint George, 13th August 1867, No. 627.

I have the honor, by direction of the Acting Accountant General, respectfully to request that Government will re-consider their Order, dated 6th instant, No. 1265, Judicial Department.

2. The Government Order, dated 17th April 1867, No. 594, Judicial Department, directed me to continue to pass the personal allowance to Mr. Brooks pending a reference to the Home Government. The Secretary of State's reply to this reference is communicated in the Government Order first above named, and, as it negatives Mr. Brooks' claim, he must, under the rules of audit, refund the amount paid to him, in accordance with the *interim* Order of the Madras Government, from 3rd January to 31st July 1867, amounting to Rupees 1187-1-6.

3. In case Mr. Brooks should claim a right to revert to the personal allowance in question from 10th June last, because he again, upon that date, assumed charge of the appointment of Assistant Registrar, High Court, Original Side, which compels him to devote the whole of his time to the service of Government, I think it right, now that the subject is before Government, to say that I consider such a claim cannot be entertained.

4. The personal allowance was given in consequence of the pecuniary loss he, as Assistant Registrar, sustained when Government changed the manner of his remuneration by giving him a monthly fixed salary of Rupees 300, and not allowing him to receive the fees that were formerly paid to him. This appointment, with its attendant emoluments, he voluntarily resigned in January last, and became, as the Secretary of State has held, a private practitioner, and, as a matter of course, his claim for consideration at the hands of Government in connection with that post ceased simultaneously.

5. His re-appointment by the Honorable the Chief Justice to the same post upon the new and higher salary of Rupees 600 a month can be viewed only as that of an entirely new incumbent, who necessarily has no right whatever to the compensation allowance that was granted to the Officer who held the appointment on its original terms.

No. 304. ORDER THEREON, 23rd August 1867, No. 1375.

In the foregoing letter the Examiner of Claims represents that, as the Secretary of State for India has, in his Despatch of the 29th June last, negatived Mr. Brooks' claim to the personal allowance of Rupees 200 which was drawn by him, Mr. Brooks must, under the rules of audit, refund the amount paid to him, in accordance with the Orders of Government, dated the 17th April last, from 3rd January to 31st July 1867, amounting to Rupees 1187-1-6.

2. The Examiner of Claims further brings to notice that, in case Mr. Brooks should claim a right to revert to the personal allowance from the 10th June last, because he again, on that date, assumed charge of the appointment of Assistant Registrar,

Refund 1187-1-6

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**Proceedings of the Madras Government, Judicial Department,
23rd August 1867.**

trar, High Court, Original Side, which compels him to devote the whole of his time to the service of Government, his claim cannot be entertained. Mr. Donald bases this objection on the ground that Mr. Brooks has been re-appointed as Assistant Registrar upon a new and higher salary of 600 Rupees per mensem, and must, therefore, be regarded as an entirely new incumbent, having no right to a compensation granted to him when he held the appointment on its original terms.

3. The Governor in Council concurs with the Examiner of Claims that as Mr. Brooks' claim to personal allowance has not been admitted by the Secretary of State, Mr. Brooks should be called upon to refund Rupees 1187-1-6, being the amount of the allowance drawn by him from the 3rd January to 31st July 1867. As a convenience to Mr. Brooks, he may be permitted to repay this amount by instalments of 200 Rupees per mensem.

4. No orders are at present required on the question raised by Mr. Donald in paragraph 3 of his letter, no application on the part of Mr. Brooks, to revert to the personal allowance, being before Government.

(True Extract).

Acting Chief Secretary.

To the Honorable the Judges of the High Court.
" Examiner of Claims.
" Accountant General.

Ed. J. H. Burns.

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

*Read the following letter
from the Examiner of Claims.*

(Recd. under 10th August 1867. N. 627)

Order thereon 23rd August 1867 N. 1375

*In the foregoing letter the
Examiner of Claims represents
that as the Secretary of State
for India has in his Despatch
of the 29th June last, negatived
Mr. Brooks' claim to the
personal allowance of Rupees
200 which was drawn by him,
Mr. Brooks must under the
rules of Audit, refund the
amount paid to him, in ac-
-cordance with the orders of
Government dated the 17th April
last from 3rd January to
31st July 1867 amounting to
Rupees 1187-1-6.*

The

*I have not thought
it necessary to send a
copy of this letter to the
Examiner of Claims as I have
been informed that he has
been informed of the
order thereon.*

W. H. B.

2 The Examiner of Claims further brings to notice that in case Mr. Brooks should claim a right to revert to the personal allowance from the 10th June last, because he again on that date assumed charge of the appointment of Assistant Registrar High Court Original Side, which compels him to devote the whole of his time to the service of Government his claim cannot be entertained. Mr. Donald bases

3 this objection on the ground that Mr. Brooks has been reappointed as Assistant Registrar upon a new and higher salary of 200 Rupees per mensem and must therefore be regarded as an entirely new incumbent having no right to a compensation granted to him when he held the appointment on its original terms.

3 The Governor in Council observed that it was not the

The Governor in Council concurs with the Examiner of Claims that as Mr. Brooks having a personal allowance has not been reappointed by the Government of India, and should be called upon to refund Rs. 1187 1 6 being the amount of personal allowance drawn by him from the 31st January to 31st July 1867. But as a convenience to Mr. Brooks, he may be permitted to discharge the amount by instalments of 200 Rs. per mensem.

4

No order is at present required on the question raised by Mr. Donald in para 3 of his letter, inasmuch as before Govt. no application on the part of Mr. Brooks to revert to the personal allowance being before Govt.

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To the Honble the Secy of the High Court
Examiner of Claims
Acet pueral

intention of Government when passing their orders dated the 17th April last, or in addressing the Secretary of State for India on the 20th idem, to require Mr. Brooks to refund the personal allowance which they directed to be continued to him in the event of the decision of the Secretary of State being adverse to the claim advanced by Mr. Brooks in respect of the allowance. Under these circumstances Mr. Brooks will not be called upon now to refund the sum of Rupees 1187 1 6 which he had drawn between the 3rd January and 31st July last.

4 In reference to the other point raised by the Examiner of Claims, the Government observe that according to the terms of the Despatch dated 17th October 1864 Art. 26, the personal allowance to Mr. Brooks of 200 Rs. per mensem was granted to him as long as his office emoluments including such

such personal allowance shall not exceed Rs 870. The recent Despatch dated the 29th June 1867, No. 11, clearly explains the ground upon which the personal allowance was granted, namely that in consequence of the receipt of certain official emoluments Mr. Brooks was debarred from private practice, and on a reduction of these emoluments the personal allowance of 200 Rupees was granted to him. The Secretary of State withdraws in this Despatch this personal allowance on the ground that Mr. Brooks has placed himself in the position of a private practitioner retaining the Deputy Clerkship of the Crown. But when this Despatch was framed the Secretary of State was not informed that under the new arrangements of the High Court Establishment Mr. Brooks has again become Assistant Registrar and has again

been debarred from private practice. He would therefore if the salary of the Assistant Registrar had not been raised, have reverted to the personal allowance granted to him in 1854, but this allowance was to continue so long as Mr. Brooks' office emoluments, including such personal allowance, shall not exceed 870 Rupees."

* Mr. Brooks at present draws 175 Rs. as Dy. Clerk of the Crown and 600 as Dy. Registrar, or a total of 775 Rs. per annum. He is only therefore entitled to draw such a portion of the personal allowance ^{granted} to him in 1854 as will raise his office emoluments to the ^{870 Rs. per annum, the} maximum contemplated by the Secretary of State.

* Assistant Registrar 600
Clerk to Crown — 175
Personal allowance 95

Rs 870.

I don't object to the arrangement being made but I think that Rs 5 of 5 is not suitable. I suggest Mr. Donaldson's name.

This amount Rs 95 will therefore be deducted to Mr. Brooks pending a further reference to the Secretary of State. B. 2000
I don't know whether Mr. Brooks will have the same allowance. R. 95 is the same as Rs 100.

303-864

Any impression is that
his attachment against Mr
Brooke of M 1187-1-6 should
prevail, as Mr Donald has
suggested. If Mr Brooke is
permitted to retain this sum,
he has been getting the profits
of a private practice, some
good pay, & his 200 M com-
pensation too.

If Mr Brooke should choose
to memorialize the S of S
for the withdrawal of the
attachment, he may do so -
but it seems to me that
Mr Donald's proposal, relying
on departmental rule, should
be adopted - information
being made to Mr Brooke,
that under the original
order, giving him compensation
he may now draw M. 95 -

W.D.

confirm Donald's opinion -
not necessary to go into
question -

Dated 23rd of the 1st 1875

27th 1960.

PROCEEDINGS OF GOVERNMENT.

Judge Sir E. D. 2793
October 22nd 18 of 1867.
Applicant - M. 5 of 1867

Judicial 1867 Department.

No. 1375.

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