

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1647	Press
		<u>Mis.</u>
Dated	15-10-1867	

Not to be folded or roughly handled

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17/10/67

Proceedings of the Madras Government, Judicial Department,
15th October 1867.

No. 131. Read the following letter from B. BROOKS, Esq., Assistant Registrar, High Court, to the Chief Secretary to Government, Fort Saint George; dated Madras, 10th September 1867.

I have the honor to send the enclosed humble Memorial of myself to the Governor in Council, and have respectfully to ask you to lay it before his Lordship in Council.

To

THE RIGHT HONORABLE FRANCIS BARON NAPIER, K. T.,
Governor of Fort Saint George, and

TO THE HONORABLE THE MEMBERS OF THE COUNCIL.

The humble Memorial of BENJAMIN BROOKS,
of Madras, Assistant Registrar of the High
Court of Judicature at Madras,

SHEWETH,

That your Memorialist has received from the Judges of the High Court of Madras a copy of the Despatch of the Right Honorable the Secretary of State to your Lordship in Council, dated the 29th of June 1867, No. 11 (embodied in the Proceedings of the Madras Government, in the Judicial Department, under date the 6th of August 1867, No. 1265), and also the Proceedings of the Madras Government, in the Judicial Department, dated the 23rd of August 1867, No. 1375, with reference to which two several Proceedings of Government your Memorialist begs respectfully to submit the following circumstances for the consideration of your Lordship in Council. Your Memorialist feels compelled to take this step at the present time in consequence of paragraphs 3, 4, and 5 of the letter of the Examiner of Claims to the Acting Chief Secretary to Government, embodied in the Proceedings of the Madras Government secondly above referred to, in which the Examiner of Claims has, in anticipation of any action on the part of your Memorialist, with reference to the two several Proceedings of Government above referred to, brought your Memorialist's present position under the notice of the Government.

2. The Government is aware that, in July last, in consequence, chiefly, of the confused state into which the Department of the Registrar of the High Court, in its original jurisdiction, fell after your Memorialist left it, and partly on account of his long experience therein, the Chief Justice re-appointed your Memorialist as Assistant Registrar, but with new and additional duties attached to the office. Your Memorialist, thereupon, gave up private practice as an Attorney. In order, moreover, that his services might be the more available for the new and additional duties of the office, your Memorialist was required to give up his office of Deputy Clerk of the Crown, the relinquishment of which appointment has entailed a loss to him of Rupees 175 per mensem.

3. The Examiner of Claims, in his letter to Government of the 19th of February 1867, based his objection to your Memorialist continuing to receive the personal allowance, for the loss of former emoluments of appointments abolished and amalgamated, on the grounds that his, your Memorialist's, income as a practising Attorney might or might not exceed the limit of his former emoluments of office, viz., Rupees 870, in consideration of the considerable diminution of which the personal allowance was awarded by the Secretary of State, and, secondly, that the whole of your Memorialist's time had ceased to be devoted to the services of Government. Now that your

Vide Proceedings of Government, Judicial Department,
17th April 1867.

Vide Examiner of Claims' Official Memorandum, No. 92.

Memorialist has reverted to his former position as an Officer of the High Court, and has also given up his appointment as Deputy Clerk of the Crown, as hereinbefore stated, your Memorialist's monthly income is Rupees 600, being Rupees 270 less than the sum of Rupees 870 per month, which was the limit of your Memorialist's income as paid by the Secretary of State, the attainment of which, at any time thereafter, should disentitle your Memorialist to his personal allowance.

Proceedings of the Madras Government, Judicial Department
15th October 1867.

4. With reference to the third paragraph of the Examiner of Claims' letter, dated the 13th of August 1867, No. 303, your Memorialist would respectfully submit that his "status" from the 10th of July last, as an Officer of Government, being precisely what it was in July last, with the exception of the involuntary resignation of the office of Deputy Clerk of the Crown, the short interval of only five months during which your Memorialist, while continuing as Deputy Clerk of the Crown, practised as an Attorney, ought not to weigh against him by a liberal Government with that illiberality which is contended for by the Examiner of Claims. Your Memorialist further respectfully submits that the only two questions which he begs the Government to consider with reference to his past right to the personal allowance are—

First, whether your Memorialist has, since the 3rd of January last, at any time wholly ceased to be a servant of Government, and, secondly, whether his salary now exceeds Rupees 870 a month.

5. When the Examiner of Claims, in the 4th paragraph of his letter referred to in the last paragraph of this Memorial, observes that your Memorialist's resignation of the office of Assistant Registrar was voluntary, he overlooks the fact that it was occasioned by an arrangement for the disposal of the business in the Registrar's Department made by Mr. Justice Bittleston, during the absence from Madras of the Chief Justice, and which arrangement was not acquiesced in by him on his return; but an entirely new arrangement was made by the Chief Justice, by means of which your Memorialist has been restored to his former status, submitted in the second paragraph of this Memorial.

6. The Examiner of Claims has, as your Memorialist respectfully submits, taken an erroneous view of your Memorialist's position with reference to Government, when he observes that your Memorialist should be regarded as a new incumbent of the office. The office of Assistant Registrar is no new one, and your Memorialist, as the present incumbent of it, is the same individual who occupied it in January last. A re-appointment of a former incumbent to his former post ought not, as your Memorialist would respectfully submit (with reference to the two points for consideration submitted in paragraph 4 of this Memorial) to be either termed "new," or operate to deprive your Memorialist of his claim to the future payment of the personal allowance of Rupees 200 per month. Your Memorialist would respectfully urge attention to the fact that new and additional duties have been added to his office, that his salary is still below the sum of Rupees 870 (by Rupees 270)—Rupees 870 being the amount of your Memorialist's monthly emoluments at the date when his personal allowance of Rupees 200 per month was sanctioned—and that there is now to be added to that loss of Rupees 270 per month, the additional loss to your Memorialist of Rupees 175 per month (in all Rupees 445 per month), the pay of his late appointment of Deputy Clerk of the Crown.

7. Under all the foregoing circumstances, and for the reasons respectfully urged, your Memorialist again requests the indulgent and favorable consideration of Government of his case, and prays to be allowed, notwithstanding the short interval of five months in which he practised as an Attorney, to be allowed to revert to his former personal allowance, if not from the 3rd of January last, at least from the 10th of June, the date of his re-appointment as Assistant Registrar.

In disposing of this application, the Government will, your Memorialist hopes, not overlook the fact that he has been in its service over twenty years.

8. The allowance having been originally sanctioned, and, under the circumstances then before him, disallowed, by the Secretary of State, and those circumstances being now again altered and restored to their former state as affecting your Memorialist, should your Lordship in Council not feel at liberty to sanction a resumption of the personal allowance without a reference to the Secretary of State, your Memorialist humbly begs that he may be favored by that reference being made, and with a recommendation of Government's support under the special circumstances already mentioned. Your Memorialist also solicits that, pending the order of your Lordship in Council on this application, or upon a reference of it to the Secretary of State, the operation of the Order of Government, dated the 23rd of August, No. 1375, and abovementioned, with reference to a refund-

Proceedings of the Madras Government, Judicial Department,
15th October 1867.

ment of the personal allowance drawn by your Memorialist from the 4th of January to the 31st July 1867, may remain in abeyance.

And your Memorialist, as in duty bound, will ever pray.

REGISTEAR'S OFFICE, HIGH COURT,
10th September 1867.

(Signed) B. BROOKS.

No. 132. ORDER THEREON, 15th October 1867, No. 1647.

The Governor in Council directs that the Memorial submitted with the foregoing letter be forwarded to the Secretary of State, with a recommendation that, under the circumstances of the case, Mr. Brooks be relieved from the necessity of refunding the amount of the personal allowance drawn by him from the 3rd January to the 31st July 1867, and that, in consideration of his having reverted to his appointment as Assistant Registrar of the High Court, the salary of which, though increased, is less by Rupees 270 than the amount, the receipt of which in the shape of official emoluments was, under the terms of Sir C. Wood's despatch of the 17th October 1864, to terminate the grant of the personal allowance, Mr. Brooks be permitted to resume the personal allowance of Rupees 200 per mensem from the 1st August last.

2. Pending the receipt of further orders from the Secretary of State, and subject to such orders, the retrenchment confirmed by Government in their Proceedings of the 23rd August last will remain in abeyance on Mr. Brooks furnishing sufficient security for the payment of the money, should the retrenchment be upheld by the Secretary of State.

(True Extract).

Chief Secretary.

To the Honorable the Judges of the High Court.

„ Accountant General.

„ Examiner of Claims.

Exd. J. H. Burns.

an apartment
at Regt's
wardship

is a fresh and
higher salary

Mr. Brooks is now before you as a new man. He has voluntarily abandoned his post of Deputy Clerk of the Court yielding \$175 a month & has relinquished private practice as an attorney yielding me know not what. He says he has done this to accept an offer on Govt. account & that he has been asked to fill vacant on the disorbit into which the business of the Registrar's office on the original side of the High Court, fell, after Mr. Brooks. I visited the ^{apt} Registrar's office. This may be true, but the Govt. have no information whatever on the point. The reason I do not attest the Chief Justice in appointing Mr. Brooks, apt Registrar, has not been, and will be, come asked to the Govt.

It is, however, for the Chief of State to determine whether Mr. Brooks is now to be permitted again to draw a comfortable allowance of 200 \$ a month, & in view to clearing order on the point, Mr. Brooks' report that the matter be referred home, may be acted on.

But I do not feel that the Govt. are bound favorably to support it. Compensation is not called for in the case of a man who has ~~used~~ ^{the} resources within himself, to enable him to follow ^{the} ~~in~~ ^{his} lucration. Calling ~~back~~ ^{back} Mr. Brooks both up & has now relinquished because he finds he cannot find himself in a post yielding Govt. monthly salary of, by originally accepting service in the late Supreme Court on a nomination (and its order, Mr. Brooks lost the opportunity of following a promising calling, he ought reasonably expect compensation. But we see that he was in that position by the practical proof he has himself furnished and I doubt therefore whether that the State can now again be fairly asked

to add to means at Mr Brooker is quite
able himself to acquiesce.

I am also unable to see any just reason
for holding in abeyance the settlement of
the post ordered to be enforced. Mr Brooker
has in hand public funds, but he is not
satisfied, & I should consider that he can justly
expect to be left in possession of the property
as interest, derivable from those funds, pending
the decision of a matter personal to himself.

I am also the repayments of the
Court in this to Mr Brooker, submitted from
my friend in the post per: 23 Aug: 1867
para 3.

Wm

I adhere to the view expressed by
Sir Thomas Ogilby.

R

Mr Brooker came to the view taken by the
Examiner of Claims in his letter of 18 Aug: 1867
and that Mr B's assumption of the
app: of the Registrar was not in itself
to count to his former personal allowance.

Strictly speaking, in Donnell's case,
the Court is bound to follow the decision of the
Judges of the High Court of State
in the matter should be decided.

In making this reference in my
name, I shall be bound to Mr B's
claim for personal consideration.

It has been remarked before me on the 5th
of Aug: 1867, possibly, would not have any
effect of a full objection on its part
to take for private practice, but in the
event that by so doing he would have
for his full personal allowance. He
has only practised as an Attorney
for months. He has been appointed
to the app: of Registrar on the 1st of Aug: 1867.

PROCEEDINGS of the MADRAS GOVERNMENT:

Read the following letter from
Mr B Brooks, Asst. Registrar of the High
Court, Madras.

Recd letter 10th Sept. 1867.

Order thereon 15th October 1867 N. 1647.

The Governor in Council
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Recd letter 10th Sept. 1867.

Order thereon 15th October 1867 N:1647.

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will
WOL

consideration of his having
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the High Court, the salary
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October 1864 to terminate
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personal ^{allowance} of Rs 200 per
mensem from the 1st August
last.

2. Pending the receipt
of further orders from the
Secretary of State and
subject to such orders, the
retrenchment confirmed
by Government in their
Proceedings

7
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security for a period
of a month should
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The Honble the Judges of the
H.C. }
Act General } despt 17/6
Ex of Claims }

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Indl. Letter to Cong 22. Oct 1867
N^o 18 of 1867.
Applied to - Oct 5 of 1868.

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Indiana 1867 Department.

No. 1647

PROCEEDINGS OF GOVERNMENT.

Dated 15th October 1867.

131-132.