Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2169-70

Dated 24th Oct. 1895

INDEXED.

[Despatch Abstract.]

AMENDMENT OF THE PRESIDENCY SMALL CAUSE COURTS ACT.

Informing the Government of India that this Government is of opinion that no notification should be issued under section 75 of the Presidency Small Cause Courts Act XV of 1882, directing that no fee shall be levied on an application for a new trial of a contested case under section 38 of the Acts as amended.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Judicial Deptt

CURRENT NO. 2755

P.D. 533/4 : 11 March 93 with Os & papers -

2367

C.S.

Order Fin 27 June 1895. GN° 736.

Rep. to the Hon. the Judges of the High Court with the request that a draft Rule may, if they consider it necessary, be transmitted to Govt. to issue under section 75 of the Presidency Small Cause Courts Act, XV of 1882.

D 26.6.95

LP 26/6/95

Subject.

Requesting that a notification similar to the one issued by the Govt of Bengal under section 75 of the Presy: Small Cause Courts Act, XV of 1882, may be issued should the Govt of Madras think fit to issue it.

From, The Govt of India,

Home Dept (Judicial)

DEPARTMENT
ORDER.
ROUTINE SERIES
No. 736
Date 27-6-1895

No 808

Fr. Endt No 3888 (93) Fin. dt. 4th

Dated 27th May
Recd 3d June } 1895
Rep'd 6th do

Encls: 7 Sets of Rules.

Ltr 24/6/95.

To the Hon. the C. J. and C.C. (C.S.C.)

5 JUL 95
IN M.S.

CURRENT No. 2755.

No. 808.

FROM

J. P. HEWETT, ESQ., C.I.E.,
Offg. Secretary to the Government of India,

TO

The Chief Secy to the Govt. of Madras.

CHIEF SECRETARY'S
3 JUN 1895
GOVERNMENT OF MADRAS

Home Department.
Judicial.

Simla, the 27th May 1895.

SIR,

THE attention of the Government of India has been drawn to a defect in the drafting of the Presidency Small Cause Courts Act, I of 1895. Section 37 of Act XV of 1882 dealt entirely with applications for new trials, for which no fees were charged, while section 38 of the same Act related to applications to the High Court for re-hearing of suits, for which the same fees were charged as on the original institution of the suits. In the Act as modified by Act I of 1895, section 37 has been split up into sections 37 and 38, and the former section 38 has been removed altogether. Section 71 of Act XV of 1882, which has not been altered by the amending Act I of 1895, requires that fees shall be paid on every application under section 38. It appears to the Government of India that the original section 38 having been repealed and nothing substituted for it, the reference to it in section 71 has become mere surplusage, but it seems possible that the Courts may so interpret section 71 as to require the full institution fee in the case of a new trial.

2. In order to remove any misapprehension upon the point, the Government of Bengal has issued a notification under section 75 of the Presidency Small Cause Courts Act, XV of 1882, directing that no fee shall be levied on an application for a new trial of a contested case under section 38 of the Act as amended, and such a notification would, should the Government of Madras think fit to issue it, be equivalent to a notice to the public that they need not pay the fee in such cases.

I have the honour to be,

SIR,

Your most obedient Servant,

J. P. Hewett.

Offg. Secretary to the Government of India.

CURRENT NO. 3883.

Judicial {1895.} Department.

No.

FROM

The Registrar of the High Court of Judicature, Appellate Side, Madras.

DEPARTMENT ORDER. ROUTING SLIPS

No. 999

Date 5-9-95

Dated 12th August 1895.

Received _____

Regd 16-8-95

CHIEF SECRETARIAT GOVERNMENT 15 AUG 95

No. 2175.

Enc Nil

Stating that the High Court sees no objection to the Government issuing a notification under section 75 of the Presidency Small Cause Courts Act, XV of 1882.

R 20/8/95.

736 RD 27.6.95
5 B 3/4 dy U.S. 93 only
16 2D 23.1.93 only
Calcutta Gazette Notifn 93 82 83
pp 602-8, 383-350.

Read again G.O of 27. June 95. R 20/36
& Ch No 3883.

U.

Order 5th September 1895, R No 999.

The letter from the G.G. received in the first of the foregoing papers will be comd to the Judges of the Madras Court of Small Causes, Madras, with the request that a Bench of the may, if they consider it necessary, be invested by Govt. for issue under Sec 75 of the Presy. Small Cause Courts Act, XV of 1882.

D
29-8-95

LP 4/9/95

(Note this appears necessary as the High Court will not express an opinion, apparently upon the 29/8/95 ground that the matter will be before the Chief Judge of the C.S.C.

Chief 12/9/95
Bench 11/9/95
concerned the Small Cause Court. It is desirable that a form

736 S.C. of

WL 7/9

sent in full to the Chief Judge.

Every letter, whether printed or in manuscript, should be docketed and abstracted on the back; and the abstract should state clearly the purport of the letter and not merely its title subject. * * * * * * * *

Enclosures and statements also, whether sent with letters, or merely under cover, should be numbered, docketed and abstracted. The headings of statements should be written in full to prevent mistakes. (G. O. 8th April 1893, No. 289, Public.)

500—13-7-95.

No. 2175.

High Court of Judicature,
Madras, 12th August 1895.

CURRENT NO. 3883.

From

D. W. G. Bowie Esquire,
Ag. Registrar of the High Court
of Judicature, Appellate Side,
Madras.

To

The Honorable J. F. Price, C.S.I.,
Chief Secretary to Government,
Fort St. George.

Honorable Sir,

With reference to G.O. dated 27th June 1895, R. No. 736, Judicial, referring a letter from the Officiating Secretary to the Government of India dated 27th May 1895, No. 808, Home Department, Judicial, regarding the issue of a notification similar to that issued by the Government of Bengal under section 75 of the Presidency Small Cause Court Act, XV of 1882, directing that no fee shall be levied on an application for a new trial of a contested case under section 38 of the Act as amended, and requesting that, if the

Go 736 RD 27.6.95

Honorable the Judges of the High Court consider it necessary, a draft notifi-
-cation may be transmitted, I am directed to state that the High Court sees no objection to the Government issuing a notification similar to the Bengal notification, if they think proper. The matter does not appear to be one with which the High Court is concerned.

I have the honor to be,
Honorable Sir,
Your most obedient Servant,

D. W. E. Comrie

Ag. Registrar.

1895.

From

The Chief Judge & other Judges of the Court of Small Causes, Madras,

To

The Chief Secretary to the Government of Madras.

No. 829.

Dated

Despatched 18 SEP. 1895 Sept. 1895.

CHIEF SECRETARY TO GOVERNMENT OF MADRAS

Recd 19th

Enclosure: nil

Subject.

Giving reasons for not submitting a draft notification for issue under Sect. 75 Act 15 of 1882.

Ref

Please put up a copy of the Bengal Govt (criminal) under Sec 75 of the S.C. Courts Act) referred to in para 2 of the Madras letter in G.O. of 27 June 95. R No 736

2. Pl see pencil note of the Registrar that the notification in question is not traceable. Besides the Calcutta Gazette is not here

24/5/55

Eo. 999 dt 5.9.95 R.
& papers marked in it

Read again G.O of 27 June 95. R No 736
5 Sept 95. R No 999
& C No 4439.

H.H.

For orders

The argument of the Judges of the Small Cause Court seems the correct. Orders are requested as to whether the Govt of India may be addressed accordingly.

13-10-95.

14/10/95.

21/10/95

19/10
R 1/10

12/10/55

CURRENT No. 4439

No. 829

Court of Small Causes
Madras, 16 Sept. 1895.

From

The Chief Judge and other Judges of the
Court of Small Causes, Madras,

To

The Hon'ble Mr. J. F. Price, C.S.I.,
Chief Secretary to the
Government of Madras.

Sir,

We have the honor to acknowledge receipt on the 13 Inst. of Copy of Proceedings of the Madras Government in the Judicial Department containing order dated 5th September 1895, R. No. 999, and the letter of the Government of India referred to therein, viz., letter to the Chief Secretary to the Government of Madras dated 27 May 1895, No. 808.

2. We are of opinion that, if it was by an error and was not intentionally, that the Legislature in drafting act 1 of 1895, did not amend the provision in Section 71 of act 15 of 1882 relating to Section 38, so as to prevent that provision from applying to the new Section 38, this error cannot be cured by an act of the Executive Government, but can only be corrected by an Amendment Act of the Legislature. As the act 15 of 1882, as amended by act 1 of 1895, now stands, the Courts would, in our opinion, be obliged to hold the provisions of Sect. 71 relating to Sect. 38, to apply to that Section of the act as amended, and would not be at liberty to hold them to be mere surplusage.

3. Section 75 empowers the Local Government to

to vary the amount of fees payable under Section 71, but it does not, in our opinion, empower the Local Government to abolish payment of fee in any case in which Section 71 makes a fee payable.

4. For the reasons given above, we do not consider it necessary that a Draft notification should be submitted to Government for issue under Section 75 of Act 15 of 1882, and we therefore are not submitting such draft.

We have the honour to be,
Sir,
Your most obedient Servants,

R. B. Mitchell
Chief Judge.

V. Ramakrishnayya
V. de Rozario
} Judges

[G. 2/2 Jud] 500—21-5-95.

Jud. DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. 2755 of 1895, dated 27.5.95 from Govt. of India
" " 4439 " 1895, " 16.9.95, " Small Causes Court, Madras
" " " 189 , " : "

ORDER. 24 Cette lre No 2169

The Govt. agrees with the Judges of the Small Cause Court and the following letter will accordingly be despatched to the Govt. of India

(From Orders)

D
22-X-95

Letter No 2170

To
Govt of India
The Secretary to the Govt. of India
Home Dept.

Draft 29/10/95

Sir, I am directed to acknowledge the receipt of Mr. Hewett's letter dated 27th May 1895, No. 808, Home, Jud., suggesting the desirability of issuing a notification under sec. 75 of the Presidency Small Cause Courts Act XV of 1892 directing that no fee

fee should be levied on an applic-
ation for a new trial of a contested
~~for entry of a decided~~ case.
under sec. 38 of the Act as amended.

2. In reply I am to state that the Chief Judge and other Judges of the Court of Small Causes, Madras, to whom Mr. Hewett's letter was referred, have expressed their opinion that the issue of such a notification would be illegal. This opinion is based upon the view that if it was by an error and ~~was~~ not intentionally, that the Legislature in drafting Act I of '75 did not amend the provision in sec. 71 of Act XV of 1882 relating to sec. 38, so as to prevent that provision from applying to the new section 38, then that error cannot be cured by an Act of the Executive Govt., but can only be corrected cured by an Amendment Act of the legislature. Sec. 75, the Judges point out, empowers the Local Govt. to vary the amount of fees payable under sec. 71, but does not empower it to abolish the payment of fees in any case in which sec. 71 makes the fee payable. I am to express the concurrence of H.E. the Governor in Council in these opinions and to state that he is accordingly of opinion

[G. 2] 500—21-5-95.

DEPARTMENT.

Papers to be read in proceedings:—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. of 189 , dated from

" " " 189 , " , ,

" " " 189 , " , "

ORDER.

opinion that no notification should be issued in the terms suggested by the Govt. of India

(Mm Orders)

23/10/95

D. x. 91

Amendment of the Presidency Small Causes Courts Act.

C.S.

(From Orders)

When given for copying ____
Then copied ____
Then examined ____
Then signed ____
189.

AD AGAIN G.O., No. DATED
189 ,

URRENT No.

NCLOSURES TO C. No

RDER OF GOVERNMENT	A	A	A	A	A	A	A	
ETTER OF GOVERNMENT.								
TATEMENT WITH DITTO.								
APERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

N.B.—
A = Copy in full.
B = Not to be copied.
F = Copy abstract only.
Q = Copy heading only.