

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 330

DATED *14th Feb. 1895*

INDEXED.

[Despatch Abstract.]

EXECUTION OF A COMMISSION

Declining to reconsider the order accepting the recommendation of the High Court that M.R.RY.G.Ramaswami Aiyar Avargal, retired District Munsif of Tanjore, should make good the sum due in connection with the -- at Saigon issued by him in suit No.46 of 1890 when he was District Munsif of Tanjore.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	2333		26-7-94				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	1023		1895				

[G
9]
1,000-5-3-94.

Current No. 5979

DEPARTMENT.
ORDER.
ROUTINE SET
From No. 110
Date 22-11-94
Ramanasingu Anger

Retired D. Munsiff
Howah Chudambaram

No.

Dated 6 2
Received 8 } Nov 1894
Enclosures 8

SUBJECT.

Praying that the sum
of Rs 40 may not be curtailed
from his pension, for reasons
stated within

For order
Strictly speaking it would appear
that the Petr was entitled to an
opportunity for giving his ex-
planation. He cannot give a
full explanation without access
to the records of the case. It is
submitted therefore that his request
is reasonable D
14-11-94

He simply adopted
the recommendation of the
H.C. - Should send this for
their remarks
19/11/94

Endorsement
Referred to the Hon. the Chief
Justice High Court for
favor of recommendation

To The Hon. the C. J. H.C.
22 Nov 1894
20-11-94 The Hon. the Judge of the
in the said suit. The

CHIEF SECRETARY
8 NOV. 1894
GOVERNMENT OF MADRAS

5979

To,
The Chief Secretary to the Government
of Madras

The humble petition of G. Ramakrishnan
Retired District Munsif now residing
at Fridanbaran

Sir,
The Order of Government dated 26th September
1894, No. 2333 giving cover to the proceedings of Govt.
No. 1916 dated 10th August 1894 reaches me.

The suit in connection with which the
facts spoken of in the above mentioned proceedings occur-
red, was suit No. 46 of 1890 in the Tanjore District Munsif
file and therefore those facts occurred about 3 or 4 years
ago when I was District Munsif of Tanjore. I was after-
wards transferred to Coimbatore in 1892 wherefrom I
retired in 1893.

The Government, in August 1894,
on the representation of the District Judge of Tanjore,
through the High Court, ordered to stop Rs. 40 out of my
pension on the ground that I was responsible for not
taking care to have a sufficient sum deposited to defray
the fee due on the Commission issued by me in that suit.

The facts having occurred 3 or 4 years ago, in
so far as I can now recollect, I lay before the Govt.
for its consideration the circumstances which occurred in
the suit. I paid the sum of Rs. 5 for the Commission issued
in the said suit. The small fee was paid in consideration
of

of the little work which the Commissioner had to do in
executing it, viz. to show a document to a witness & to as-
certain whether he had attested it. Section 397 of the Code
of Civil Procedure vests in the Court absolute discre-
tion in fixing the fee. The section runs thus. "Before is-
suing any Commission" x x x "The Court may order such sum
(if any) as it thinks reasonable for the expenses of the Com-
mission" x x x "to be paid into Court."

If the fee so fixed is inadequate the per-
son to whom the Commission is issued is not bound to ac-
cept it. The Commissioner in the present case raised
no objection to execute the Commission, as he should
have done if he really had any objection on the score
of fee. He executed the Commission, though not in strict
accordance with the warrant, and applied for some larger
fee at the discretion of the Court. I ordered payment
of Rs. ten, and the Commissioner should be satisfied
with this sum.

But somehow the present Munsiff
of Tanjore, after my transfer, happened to be called upon
to fix a fee for the Commissioner. He fixed the sum of
Rs. 20 and collected the amount from the party concern-
ed and reported the circumstance to the District Judge
of Tanjore. The Commissioner should be satisfied with
this sum which is four times the sum originally fixed.
But the District Judge instead of reporting the facts
to the High Court fixed the very large sum of Rs. 60 for
the fee, deducted the 20 Rs. which the party paid and
recommended that Rs. 40 should be recovered from me.

The District Judge had no right,
in my humble opinion, to exercise any discretion in
fixing the fee under the section of the Civil Procedure
Code.

P. Ramaswami

Code above named and evidently had no means of cor-
rectly exercising discretion since he had not the
reason of the suit before him & knew nothing of the
value of the suit, of the nature of the Commission
issued and of the other circumstances going to deter-
mine the fee of the Commissioner.

As I understand, the District Judge
did not correctly represent the facts to the High Court
when he said that the party in the suit agreed to pay
only Rs. 20. The party was never asked to pay more
than Rs. 20 and he could not therefore pay more than Rs. 20.
The said sum of Rs. 20 was much more than what the
party could reasonably be asked to pay & was not
therefore asked by the present District Munsiff or
by the District Judge to pay any larger sum.

The High Court & Govt. were not thus
correctly informed of the proceedings of the District Munsiff,
& were induced to inflict a loss on the petitioner for a
judicial act performed by me, in good faith, a long time
ago. At the time when I fixed Rs. 5 as Commission fee
when the present Munsiff fixed Rs. 20, neither of us had
reason to foresee that the District Judge would fix
the abnormal sum of Rs. 60 for fee.

Judicial officers are protected from
any infliction, for acts done in good faith in the exercise
of judicial functions. Otherwise it is impossible for them
to exercise their functions without fear or favour. That
I acted in good faith appears from facts above set out.

I had no opportunity of informing the
Government

Letter No. 6649/94

Government the facts of the Case before the order
was passed and I humbly entreat that the Govt.
may be pleased to excuse the stoppage ordered
by giving me, if necessary, an opportunity of
fully explaining the Circumstances of the Case
by directing the present District Munsiff to show
the records & correspondence connected with the
Suit. I beg to remain

Yours most obedient servant.
Chidambaram
Ramaswami

No. 221.

High Court of Judicature,
Madras, 30th January 1895

From

H. W. Foster Esquire,
Registrar of the High Court of Judicature,
Appellate Side, Madras.

To

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

Honorable Sir,

I am directed to reply to G.O., dated
22nd November last, R. No. 1110, Judicial, asking
for the remarks of the High Court on a Petition
(herewith returned) from M. R. Syp. G. Ramaswami
Aiyar Avargal, retired District Munsiff, pray-
ing that he may be excused the payment of
Rs. 40, directed in G.O. dated 10th August 1894,
No. 1916, Judicial, to be recovered from his
pension.

2. The recommendation for the
stoppage of the above amount was made in
the following circumstances. - In A.O. No. 46 of 1890,
on the file of the District Munsiff's Court of
Tanjore, M. R. Syp. G. Ramaswami Aiyar Avargal,
the then District Munsiff, issued a commission
to H. B. M. Consul at Saigon for the
examination of a witness. A sum of Rs. 5
was

was levied to cover the costs of the commission, but it was found that the Post Office does not issue money orders on Saigon, and the result was that no remittance was made. The Commission was returned imperfectly executed in consequence of the omission to forward a document which was essential for the complete execution. The District Munsif therefore passed an order that the document should be forwarded to Saigon with a fee of Rs. 10, but the party having failed to deposit this sum, the suit was disposed of without issuing a fresh commission and no further steps were taken to remit the fee due to the Consul.

3. On a reference by the High Court, the District Judge of Laupore was intimated that Rs. 60 would be a reasonable remuneration for the Consul's services, and, as the party was not willing to pay more than Rs. 20 and there was no means of recovering more from him, recommended that the balance, Rs. 40, should be collected from the retired District Munsif. This suggestion was approved by the High Court and recommended to Government as the District Munsif was undoubtedly to blame for the want of consideration shown towards the Consul. On the other hand, as pointed out

for, it was "open" to the Consul to do so, but he would have shown my bad taste if he had adopted such a course.

It was surely for the High Court to say this, & make a definite recommendation.

out by the District Munsif, ten Rupees was what he, in the exercise of his judicial discretion, considered a reasonable sum to levy as expenses and it was open to the Consul, if he deemed the remuneration inadequate, to decline to accept the Commission. Had he taken this course and returned the Commission unexecuted with an intimation of the amount of the fee he required, there would have been an opportunity for levying the proper fee from the party concerned. Under these circumstances, it is for the Government to say whether it will insist on the recovery of the amount from the retired District Munsif's pension.

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

Quarles

Registrar.

EDW.

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.

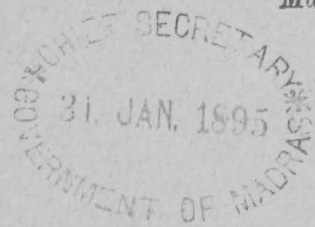
Enclosures and statements also, whether sent with letters, or merely under cover, should be numbered, docketed and abstracted. The headings of statements should be written in full to prevent mistakes. (G. O., 8th April 1893, No. 239, Public.)

Judicial {1895.} Department.

No.

FROM

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



Dated 30th January
Received 31 1895.

Reg 1/2

No. 221.

Enc. one.

Intimating the circumstances
under which the stoppage of
Rs. 40 from the pension of
Mr. R. Py. G. Ramaswami Nayar
Avargal was recommended.

Go. MOR: 224.94
Go. 2333: 269.94
+ papers.

Stoppage from a District Munsiff
pension.

H.M.

For Order Please see reverse of C. 5779
The High Court which made an
explicit recommendation that the Dist.
Munsiff should be made to pay up this sum
200 leaves the matter in the hands of Govt
without expressing any definite opinion.

The High Court was under its hands of the
whole business and leaves Govt. to decide
what is to be done. It seems rather hard
on the man to make him pay up;
if he does not pay Govt. must.

I don't see why Govt. 7/2/95
should pay him the H.C.
should go back from its former
recommendation. Make
the man pay.

C.P.

On 14 February 1895 No. 330

The Govt. sees no reason to
reconsider its order accepting the re-
commendation of the High Court that the
petr. should make good the sum due

13/2/95. 11-2-95.
To Petr, 9 Ramaswami Nayar, Retired D.
Munsiff.

Note. The Petr. is deprived of the full
advantage of explaining matters which he might

When given for copying
When copied
When examined
When signed

189.

READ AGAIN G.O., No.
189.

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

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