

5267
No. 1573

From -

L. M. Thornton, Esq.,

Deputy Secy. to the Govt. of India,

To -

The Chief Secy. to the Govt. of Madras.

Home Department.

(Judicial.)

CHIEF SECRETARY
G-NOV. 1895
Simla, 6th October 1895.

Sir,

I am directed to forward a copy of a letter from the
* No. 1967, dated the 26th July 1895, addressed to the Finance and Commerce Department. Accountant General of Madras relative to a case in which the

District Judge of Godavari appointed the Port Officer of Cocanada to be a Commissioner to take certain observations in connection with the disputed title to certain formations in the bed of the Godavari and Kistna rivers, and fixed his remuneration at Rs. 100 per diem plus travelling expenses. The Port Officer having earned for work on two occasions Rs. 1,130 according to the scale fixed, the Accountant General requests instructions as to the rule or rules in the Civil Service Regulations which should be held to govern the case.

2. I am to say that the case does not appear to the Government of India to come within the scope of the Civil Service Regulations. The question of the disposal of fees received by Government officers for executing Commissions issued by Civil Courts came under the consideration of the Government of India in the year 1888 with reference to certain orders of the Government of Bombay on the subject. It was decided that the prohibition contained in the Resolution

*Vide enclosed extract from a letter to the Govt. of Bombay No. 1816, dated the 13th Decr. 1888. of this Department No. 10-1101-1113, dated the 21st July 1875, against Judicial Officers of one Province receiving fees for executing Commissions issued by Courts of other Provinces should apply to all cases in which Government servants might be called upon to execute Commissions whether issued by Civil Courts of the Province in which they are employed or

of other Provinces, and that fees paid to them for any additional work that they have to perform in a public capacity should be credited to Government and not retained by them. As, however, these orders were not published, they have not hitherto taken general effect.

3. In the present case, if the Port Officer of Cocanada withdrew time from the service of Government in order to execute the Commission issued by the District Judge of Godavari, it appears to the Government of India that he should credit to Government, out of the fees received, so much as may be deemed by the Madras Government to represent the value of the time thus withdrawn. It is understood that, had his acceptance of the Commission been optional, he would have had to obtain the permission of his official superiors: but even assuming that the execution of the Commission was obligatory, the Government of India suppose that the consent of a public servant's official superiors is applied for by Courts in such cases. In this connection I am to refer to rule 4 of the rules regarding Commissions under Chapter XXV of the Civil Procedure Code, contained in the Rules of Practice in Civil Courts in the Madras Presidency and to enquire whether it applies to the present case, and, if so, whether it was observed by the District Judge of Godavari.

I have the honour to be,

Sir,

Your most obedient servant,

L. M. Theroat

Deputy Secy. to the Govt. of India.

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Extract para: 1 from a letter to the Govt. of Bombay No. 1816 dated the 13th December 1888.

1. I am directed to say that the attention of the Government of India has been drawn to the Resolution of the Government of Bombay, No. 5401, dated the 9th August last, on the subject of the disposal of fees received by Government officers in the Bombay Presidency for executing Commissions issued by Civil Courts. It appears that in September 1886 the Bombay Government directed that such fees were to be credited to Government in all cases, but that, by the present Resolution, the practice which obtains in the Judicial Department based on an order of the High Court at Bombay, and in accordance with which Commission fees are credited to Government only in those cases in which the work is not executed entirely out of office hours, has been extended to Government servants in other Departments. I am, however, to invite a reference to the Resolution of this Department

Ap

N^o 10-1101-1113, dated the 21st July 1875, in which the Government of India ordered the discontinuance of the practice, where it existed of allowing officers in the Judicial Department of one Province to retain fees for executing Commissions sent out by Courts of other Provinces. The Governor General in Council is inclined to think that this prohibition should apply to all cases in which Government servants may be called upon to execute Commissions whether issued by Civil Courts of the Province in which they are employed or of other Provinces. Government pays its officers for the whole of their time, and if they have any additional work to perform in a public capacity, it is the Government and not the officers themselves who should, in the opinion of His Excellency in Council, receive the fees levied in respect of it. The practice of allowing salaried officers of Government to retain the fees is also open to objection on other grounds, as it is likely to have the effect of making them seek such work to the neglect of their proper duties.

Gene Extract

Value

Off: Registrar, Madras

4934

Garretted Audit Department

Fort St. George.

Accountant-General's Office,

26th July 1895

N^o 1961,

From

J. C. Harrison, Esquire,

Offg. Accountant-General to the Govt of Madras.

To

The Secretary to the Government of India, Department of Finance and Commerce.

Sir,

I have the honour to submit the following case for the orders of the Government of India.

2. In connection with an important suit in the Godavari District between the Madras Govt. and a Zemindar about the title to formations in the bed of the Godavari and Krishna rivers within the influence of the tide which runs up these rivers and distant about 3 miles from Cocanada, the High Court on appeal directed that observations be taken by a person of nautical experience to ascertain if the tide reaches a certain spot. - The District Judge accordingly appointed as Commissioner the Port Officer at Cocanada,

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a servant of the Madras Government and fixed his remuneration at Rs. 100/- per diem and travelling expenses. The Port Officer worked on 2 occasions, and earned, according to the scale fixed, Rs. 130/- in all. The Board of Revenue has asked this office to take any action that may be necessary under the rules regarding the acceptance of commission and other fees by Government Officers. I am however in doubt as to which of the provisions of the Civil Service Regulations are applicable.

If Article 88-a, applies, the Port Officer cannot accept any fees;

If Article 89-a, the Sanction of the Secretary of State is required for the payment of the honorarium;

To apply Article 90-b, would be, I think, to strain the ordinary meaning of the word 'reward';

If the case comes under Article 91-b, then it will be necessary for me to address the Local Govt. with a view to getting the sanction of the Govt. of India;

Or it may be that Article 122,4 should be applied.

applied in which case the Port Officer gets no fees, but, can draw travelling allowances under the ordinary rules.

I have the honour therefore to request that I may be instructed as to which of the above articles governs the present case.

I have &c.

sd: F. C. Harrison

Offg: Accountant General.

(True copy)

Unlue

Offg: Registrar Home Deptt.

4934

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reference under the ordinary rules

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that I may be instructed with regard to
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5267
Mar. 1st
1895

Transferred to the Bureau
Bureau

H. Burr

Post of Bureau
Bureau

1573
10-10-88
11-11-88
12-12-88

During the time in
the office of the
Bureau the following
in a recent report
has been furnished
to the Bureau

To the Bureau

10/12

Marine Current No: 906
Recd. 18.11.95

Current No. 5267

DEPARTMENT.

From

Govt of India
Home

No. 1573

Dated 29-10-95

Received 6-11-95

Enclosures 2

SUBJECT.

Stating, that the case in
the S. J. J. Goddard
appointed the Port Officer of
Cocanada as a Consul
in a certain dispute &
fixed his remuneration,
does not come within the
scope of C.S.R.

Re. Fisheries

Civil Rules of
Practice

2.0 4/8/75 No. 1719 Jud. S.C.
- 22/2/75 No. 1719 - in

822. 8721-2-96

7.

Endorsement No. 2763 d/11-95

Transferred to the Marine
Dept.

Marine

A. Under Secretary

14/11/95

No. 410 of 22-2-75 ✓

" 1719 " 4-8-75 ✓

Rules of practice in civil
courts - with its appendix

To the Marine Dept.

Marine

PUBLIC WORKS DEPARTMENT.

No. 365 Marine of 6th December 1895

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following

Endorsement in the Judicial
dept. on letter from the Govt
of India, Home Dept., No.
1573 dated 29 October 1895 (H.E. No. 2763 d/16.10.95)

Communicated to
the Presidency Port Officer
who will, with reference
to para 3 of the letter of
the Government of India
No. 1573 dated 29 October
1895, report whether the
Port Officer at Cocanada
withdrew time from
the service of Government
in order to execute the
Commission issued by the
District Judge of Godavari;
and if so, how much of the

fee received should be credited to Government in consideration of the value of the time thus withdrawn. // Inquiry will be made in the judicial department as to whether rule 4 of the rules referred to by the Government of India applies to the present case, and if so whether it was observed by the District Judge.

The Hon: the Chief Secy:
for Govt of India

CHIEF SECRETARY
27-NOV. 1895
GOVERNMENT OF INDIA

DESPATCHED
17 DEC. 95

The Presidency Post Office
" Judicial Dept ✓
" Financial Dept ✓
" Accountant Genl ✓

J
26/11/95

CHMS
26/11/95

W. 28/11/95

C.S. 26/11/95

16/12