~~5218~~ 9738

Public Works (1896) Department.

G.O., No. 3226 W

DATED 11th November 1896.

[Despatch Abstract.]

Rules for executing Commissions: Proc: Judicial Dept
Courts: Resolution of the Govt of India on the
subject of the receipt by Govt servants, of
— issued by Civil Courts, Courtesy offices
of the P.W.D.

T-e 11/11.

[P.W. 55.
5,000—23-10-96.]

INDEXED

13/11

BACK PAPERS.

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

FURTHER PAPERS.

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

Public works (1896) department

Current Numbers: 9738

Government {1896} of Madras.

JUDICIAL.

Recd. 29. 10. } 1896.
Regd. 29. 10. }

Enclosures \

Spare copies 40.

G.O., No. 1601, 5th October 1896.

P.D. No 3226 dt 11th Nov 1896

Communicated to

OCTOBER. Public W. dept

for information & guidance

5/11/96

Ch.
Ch. E. from S. ✓
C. E. Fortress ✓
Supt Surveys ✓
C.A. to Govt ✓
Com Roads ✓
Engr Surveys ✓

Recd 12/11/96

Receipt of fees by Government Servants for executing Commissions issued by Civil Courts.

Communicating to Secretariat departments, &c., Resolution of the Government of India on the subject of the —.

Extract read

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—again the following paper :—

G.O., No. 1719, Judicial, dated 4th August 1875.

Read—the following Extract from the Proceedings of the Government of India in the Home Department, dated Simla, 21st July 1875, No. 10—1101 (Judicial) :—

Read—the following papers :—

Letter from the Government of the North-Western Provinces, No. 48-A, dated 16th January 1875.
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No. 1102.

Order—Ordered that this Resolution be forwarded to Local Governments and Administrations for information and guidance; to the High Court, Calcutta, for information; and to the Legislative Department, with letter from the Registrar of the Calcutta High Court, No. 976, dated 1st May last.

(True Extract.)

(Signed) ARTHUR HOWELL,
Offg. Secretary to the Govt. of India.

Order—No. 1719, Judicial, dated 4th August 1875.

Communicated to the Honourable the Judges of the High Court and to all District Judges for information.

2. It is observed that this ruling is in accordance with the views of this Government, and with the prevailing practice in this Presidency.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Officiating Chief Secretary.

To the Honourable the Judges of the High Court.
" all the District Judges.
" the Accountant-General.

Read—also the following paper :—

Extract from the Proceedings of the Government of India, Home Department (Judicial), under date Simla, the 8th September 1896, No. 11-Judicial—1173–1190.

Read again—

The undermentioned papers on the subject of the receipt of fees by Government servants for executing Commissions issued by Civil Courts :—

Home Department Resolution No. 10—1101–1113, dated the 21st July 1875.

Letter to the Government of Bombay, No. 1816, dated the 13th December 1888.

Read also—

The following correspondence :—

Letter from the Accountant-General, Madras, No. 1967, dated the 26th July 1895.
Letter to the Government of Madras, No. 1573, dated the 29th October 1895.
Letter from the Government of Madras, No. 218, dated the 30th March 1896.
Letter from the Government of Madras, No. 289, dated the 29th April 1896.

Resolution.—In the Resolution in the Home Department, dated the 21st July 1875, the Government of India directed 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 general 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 of 1875 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. As, however, these orders were not published, they have not hitherto taken general effect. They were based upon the following considerations :—

(1) the 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 receive the fees granted in respect of it; and

(2) the practice of allowing salaried officers of Government to retain fees in return for the performance of such additional duties is open to the objection that it may tend to encourage them to seek such work to the detriment of their proper duties.

The matter has now come under reconsideration on a reference from the Government of Madras, and the Governor-General in Council is of opinion that, while the principle underlying the orders communicated to the Bombay Government should be maintained, it should be declared subject to certain limitations.

2. There can be no question as to the proper course when the officer to whom the Commission is addressed acts in the exercise of his official functions, for example when a Commission to examine a witness is addressed by one Civil Court to another. In such cases fees realised from the applicant for a Commission should be credited to Government. But there may be other cases in which it is not possible to lay down the rule with such inflexibility. In such cases, as for example, Commissions for local investigations, or to examine accounts, an officer, in executing a Commission, may (besides giving his time and labour) be required to use privately acquired skill or knowledge which has no connection with his official work, or knowledge which is connected with his official work and has perhaps in great measure been acquired in the discharge of official duties.

3. In a case in which an officer is required to use privately acquired skill or knowledge which has no connection with his official work there does not appear to the Governor-General in Council to be any objection to his retaining a fee, provided that the Commission was accepted with the consent of his official superior and executed without detriment to or delay in his official duties. And even in cases

falling under the second head above referred to, in which an officer is required to use knowledge which is connected with his official work, it has been customary in some departments to allow Government servants to retain fees for executing Commissions issued by Civil Courts. Thus the rule * in the Public Works Department Code permits an officer of the department, called upon by a Court to act as a Commisson to give reliable information on certain technical points of Engineering, to retain such fees as are fixed by the Court. In cases of this nature where the consent of the officer's official superior has been obtained, and where the additional duty in no way interferes with his regular work, the Government of India see no objection to his retaining the remuneration which, if not a Government servant, he would receive for his trouble. Cases of this sort, however, will obviously sometimes approximate to those in which an officer is called on to execute a Commission in his capacity as a Government servant and in such cases discrimination will have to be exercised in permitting fees to be retained. The Governor-General in Council is prepared to leave it to Local Governments to decide in any doubtful cases of this nature whether the fee should be credited to Government or not.

Para 375 Vol I

* *Vide* Chapter IV, paragraph 3, Note III.

Order—Ordered that this Resolution be communicated to Local Governments and Administrations for information and guidance, and to the High Court, Calcutta, and the several departments of the Government of India for information.

(True Extract.)

(Signed) H. J. S. COTTON,
Offg. Secretary to the Govt. of India.

To the Government of Madras.

Order—No. 1601, Judicial, dated 5th October 1896.

Communicated to all departments of the Secretariat, the Honourable the Judges of the High Court and to Heads of Departments under the Judicial Department for information.

(True Extract.)

for *Ag. Chief Secretary.*

To all Departments of the Secretariat. P. W. D. S
„ the Honourable the Chief Justice with C.L.
„ the Inspector-General of Police.
„ the Inspector-General of Prisons.
„ the Inspector-General of Registration.
„ the Commissioner of Police, Madras.
„ the Registrar of Joint Stock Companies.
„ the Chief Judge, Court of Small Causes.
„ the Chief Presidency Magistrate.

Exd. Shaik Karim.

40-8c

Government {1896} of Madras.

JUDICIAL.

Recd. } 1896. *Enclosures*

Regd. } *Spare copies*

G.O., No. 1601, 5th October 1896.

No 3226 w dy 11th November 1896

Communicated to officers of the P. W. Dept: for information & guidance.

(Sd) D. Mahal
Comptroller & Secy to Govt P.W.D.

OCTOBER.

Ch: E. for I
C. E. for Ry
Supdg: Engrs:
C. & to Govt
Extr. P.W. accts
Extr. Ry: accts.

Receipt of fees by Government Servants for executing Commissions issued by Civil Courts.

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Letter from the Government of the North-Western Provinces, No. 48-A, dated 16th January 1875.
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Resolution.—The question whether Judicial Officers of one Province should be permitted to accept remuneration for executing commissions issued by courts of other Provinces has been submitted to the Government of India. After considering the opinions received from certain Local Governments and from the High Court, Calcutta, the Government of India concur with the majority of these opinions and with the Lieutenant-Governor of the North-Western Provinces that the receipt of such fees by officers who are paid by Government for all they do in their official capacity is improper; and the Governor-General in Council hereby directs that the practice of taking such fees, wherever it exists now, shall be discontinued.

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Order—Ordered that this Resolution be forwarded to Local Governments and Administrations for information and guidance; to the High Court, Calcutta, for information; and to the Legislative Department, with letter from the Registrar of the Calcutta High Court, No. 976, dated 1st May last.

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(Signed) ARTHUR HOWELL,
Offg. Secretary to the Govt. of India.

Order—No. 1719, Judicial, dated 4th August 1875.

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N^a 3226 W 8/11-11-96

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Order—No. 1719, Judicial, dated 4th August 1875.

Communicated to the Honourable the Judges of the High Court and to all District Judges for information.

2. It is observed that this ruling is in accordance with the views of this Government, and with the prevailing practice in this Presidency.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Officiating Chief Secretary.

To the Honourable the Judges of the High Court.
" all the District Judges.
" the Accountant-General.

Government {1896} of Madras.

JUDICIAL.

Recd. } 1896. *Enclosures*
Regd. } *Spare copies*

G.O., No. 1601, 5th October 1896.

OCTOBER.

Receipt of fees by Government Servants for executing Commissions issued by Civil Courts.

Communicating to Secretariat departments, &c., Resolution of the Government of India on the subject of the —.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

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G.O., No. 1719, Judicial, dated 4th August 1875.

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Read—the following papers :—

Letter from the Government of the North-Western Provinces, No. 48-A, dated 16th January 1875.
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Resolution.—The question whether Judicial Officers of one Province should be permitted to accept remuneration for executing commissions issued by courts of other Provinces has been submitted to the Government of India. After considering the opinions received from certain Local Governments and from the High Court, Calcutta, the Government of India concur with the majority of these opinions and with the Lieutenant-Governor of the North-Western Provinces that the receipt of such fees by officers who are paid by Government for all they do in their official capacity is improper; and the Governor-General in Council hereby directs that the practice of taking such fees, wherever it exists now, shall be discontinued.

No. 1102.

Order—Ordered that this Resolution be forwarded to Local Governments and Administrations for information and guidance; to the High Court, Calcutta, for information; and to the Legislative Department, with letter from the Registrar of the Calcutta High Court, No. 976, dated 1st May last.

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Officiating Chief Secretary.

To the Honourable the Judges of the High Court.
" all the District Judges.
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Read—also the following paper :—

Extract from the Proceedings of the Government of India, Home Department (Judicial), under date Simla, the 8th September 1896, No. 11-Judicial—1173–1190.

Read again—

The undermentioned papers on the subject of the receipt of fees by Government servants for executing Commissions issued by Civil Courts :—
Home Department Resolution No. 10—1101–1113, dated the 21st July 1875.
Letter to the Government of Bombay, No. 1816, dated the 13th December 1888.

Read also—

The following correspondence :—

Letter from the Accountant-General, Madras, No. 1967, dated the 26th July 1895.
Letter to the Government of Madras, No. 1573, dated the 29th October 1895.
Letter from the Government of Madras, No. 218, dated the 30th March 1896.
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(1) the 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 receive the fees granted in respect of it; and

(2) the practice of allowing salaried officers of Government to retain fees in return for the performance of such additional duties is open to the objection that it may tend to encourage them to seek such work to the detriment of their proper duties.

The matter has now come under reconsideration on a reference from the Government of Madras, and the Governor-General in Council is of opinion that, while the principle underlying the orders communicated to the Bombay Government should be maintained, it should be declared subject to certain limitations.

2. There can be no question as to the proper course when the officer to whom the Commission is addressed acts in the exercise of his official functions, for example when a Commission to examine a witness is addressed by one Civil Court to another. In such cases fees realised from the applicant for a Commission should be credited to Government. But there may be other cases in which it is not possible to lay down the rule with such inflexibility. In such cases, as for example, Commissions for local investigations, or to examine accounts, an officer, in executing a Commission, may (besides giving his time and labour) be required to use privately acquired skill or knowledge which has no connection with his official work, or knowledge which is connected with his official work and has perhaps in great measure been acquired in the discharge of official duties.

3. In a case in which an officer is required to use privately acquired skill or knowledge which has no connection with his official work there does not appear to the Governor-General in Council to be any objection to his retaining a fee, provided that the Commission was accepted with the consent of his official superior and executed without detriment to or delay in his official duties. And even in cases

falling under the second head above referred to, in which an officer is required to use knowledge which is connected with his official work, it has been customary in some departments to allow Government servants to retain fees for executing Commissions issued by Civil Courts. Thus the rule * in the Public Works Department Code permits an officer of the department, called upon by a Court to act as a Commissson to give reliable information on certain technical points of Engineering, to retain such fees as are fixed by the Court. In cases of this nature where the consent of the officer's official superior has been obtained, and where the additional duty in no way interferes with his regular work, the Government of India see no objection to his retaining the remuneration which, if not a Government servant, he would receive for his trouble. Cases of this sort, however, will obviously sometimes approximate to those in which an officer is called on to execute a Commission in his capacity as a Government servant and in such cases discrimination will have to be exercised in permitting fees to be retained. The Governor-General in Council is prepared to leave it to Local Governments to decide in any doubtful cases of this nature whether the fee should be credited to Government or not.

* *Vide* Chapter IV, paragraph 3, Note III.

Order—Ordered that this Resolution be communicated to Local Governments and Administrations for information and guidance, and to the High Court, Calcutta, and the several departments of the Government of India for information.

(True Extract.)

(Signed) H. J. S. COTTON,
Offg. Secretary to the Govt. of India.

To the Government of Madras.

Order—No. 1601, Judicial, dated 5th October 1896.

Communicated to all departments of the Secretariat, the Honourable the Judges of the High Court and to Heads of Departments under the Judicial Department for information.

(True Extract.)

A. T. ARUNDEL,
Ag. Chief Secretary.

To all Departments of the Secretariat.
„ the Honourable the Chief Justice with C.L.
„ the Inspector-General of Police.
„ the Inspector-General of Prisons.
„ the Inspector-General of Registration.
„ the Commissioner of Police, Madras.
„ the Registrar of Joint Stock Companies.
„ the Chief Judge, Court of Small Causes.
„ the Chief Presidency Magistrate.

Exd. Shaik Karim.

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