

Public (1899) Department.

ORDINARY M.S.

G.O., No. 625

Dated 8-6-99

4

INDEXED.



[Despatch Abstract.]

Informing Mr. W. E. T. that
Ag. Chief Secy Magistrate, Madras, that
does not contemplate appointing
to a Dist. Sessions Judgeship, and
recording petition from him on the subject.

T
10/6/99

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 (189) Department.

CURRENT No.

S
22/4/18

From

P.S. to H.E.

Order

No.

16/12/18

Dated

Received

Registered

do in Part-19

Enclosures

Spare copies

SUBJECT.

Passing on for official discussion petition from Mr. W. E. T. Clarke B.A. Ag. Chief magte maddas, praying to be enabled to share with native subjudges in all the advantages attached to the office of sub judge including promotion to the post of S. Sessions Judge whenever such an appointment may be open to the judicial branch of the P. B. S.

R
11/12/18

BACK PAPERS.

G.O.	No.	Department.	Date.
	877	Feb	16.12.92
	342	"	18.3.92

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Go 342
18.5.92
p. 2165 p. 2165
Vol. 1

To.

His Excellency Sir Arthur Elibank Havelock

G.C.M.G. G.C.I.E.

Governor of Madras.

The humble Petition of William Edward Thompson Clarke B.A.
Barrister-at-Law, Sub-Judge of the Nilgiris, and at present
Acting Chief Magistrate Madras, sheweth as follows:-

1. That your Petitioner is the son & grandson
of former members of the Madras Civil Service; and is a
Barrister of nearly 27 years standing.

2. That whilst practising as a Barrister at Calicut
in 1881, your Petitioner was offered & accepted service
under Government as Sub-Judge of the Nilgiris & assumed the
duties of that office on February. 1. 1882.

3. That since your Petitioner's appointment as Sub-Judge
in 1882, he has received no promotion with the exception of
his being advanced to the grade of First Class Sub-Judge &
acting thrice as Chief Presidency Magistrate Madras.

4. That certain listed appointments have been declared
by Government open to the Provincial Service of which your
Petitioner is a member in its Judicial branch, amongst such
listed appointments, are posts of District and Sessions
Judges.

5. That hitherto when vacancies have occurred, and members
of the Provincial Service have been appointed to act as
District & Sessions Judges, such vacancies have been filled
by appointing Sub-Judges to act who are junior to your
Petitioner in the gradation list of Sub-Judges.

Your Petitioner fears lest such acting appointments may
prove prejudicial to his prospects of promotion in the
service, & therefore prays for an assurance that they shall
not be deemed to afford such acting officials preferential
claims to his own, should a permanent vacancy among the
posts of District Judges open to the Provincial Service

189
 Dept.
 Encl. No.
 To
 C. No.



GOVERNMENT HOUSE.

Madras. 10th April 1899.

My dear Stokes,

His Excellency
 wishes me to pass the
 enclosed on to you for
 official discussion. You
 will remember, no doubt,
 that para 5 of the Secy of State's
 letter on page 4 of J.O. of 16th
 Decr 92, no. ⁸⁷⁷~~874~~ Pub., bears
 on the matter.

Yours truly,
 Donald Gordon

*. P. M. of Mr. W. S. T.
 Clarke.

In Private Secretary

1195 Presy Magte
Mr H E Clarke, Ag Chief, dated 7-4-1889.

For orders

Mr. H. E. Clarke, Sub
Judge of the Nilgiris, and
at present Acting Chief
Presidency Magistrate, Madras
prays (1) that he may be given
an assurance that the
acting appointments of
District and Sessions Judge
at present held by certain
members of the Provincial
Civil Service shall not be
deemed to afford those officers
preferential claims to his
own, should a permanent
vacancy ^{arise} amongst the post
of District Sessions Judges open
to the P.C.S. ~~and~~
and (2) that, as a special case, H.

Sanction of the Secretary of State for India may be obtained to enable him to share with Native Sub-Judges in all the advantages attached to the office of Sub Judge, including promotion to the post of District and Sessions Judge when ever such an appointment may become open to the Judicial branch of the P.C.S.

2 The question of the appointment of European members of the Provincial Civil Service is dealt with in para 5 of Home Dept letter No 2194, dated the 10th November 1892, at page 2 of G.O. No 847 Public dated the 16th December 1892. From this paragraph it will be seen that Europeans who are not Natives of India within the definition contained in section 6 of the Statute, 33 Viet, Cap 3, cannot be appointed to any listed posts under the Provincial Civil Service rules, inasmuch as the rules themselves and

See also p. 15

Page 262 of the Handbook of Procedure & Precedents

This reproduces in a condensed form the correspondence contained in:-

(a) Paras 29-31 of Secy of State's despatch No 104, of 12-9-89 (on page 34 of P.C.S. Vol I) 401 Pub. of 14 June 1890 (p. 136 of P.C.S. Vol I)

(b) Paras 28-33 of Indian despatch No 58, of 9.10.88 (on p. 19-20 of the same G.O. - p. 121 & 122 of P.C.S. Vol I)

(c) Para 14 of Home Dept letter No 300 of 14.2.90 (on page 9 of the same G.O. - p. 105 of P.C.S. Vol I).

See also

Page 53 of Handbook of Procedure & Precedents

Under Home Dept Notifn No 2159 of 24.4.92 at page 261 of the Handbook of Procedure & Precedents

+ Please see also Rule II of the P.C.S. rules on p. 4 of G.O. No 5 Public of 3.1.99 (page 78 of P.C.S. Vol II), which lays down that the sanction of the Secy of State is required to the appl. of Europeans to listed posts.

See also

Page 51 of the Handbook of Procedure & Precedents

the statute under which they are framed only authorize the appointment of Natives of India as defined in section 6 to posts ordinarily held by members of the Indian Civil Service. But, ~~the fact of~~ ~~section 6, etc.~~ If, however, it is considered desirable at any time in the ~~interests of the~~ public ~~service~~ interests to appoint a European member of the Provincial Civil Service to any of the listed posts, the appointment can only be made in accordance with the procedure of sections 3 and 4 of the Civil Service Statute of 1861 (24 & 25 Viet Cap 3) if the office in question is entered in the schedule to that Statute. Under these sections the Govt can, in special circumstances, provisionally appoint any person to any ^{of the} posts mentioned in the schedule, ~~say~~ as District Judge, Collector &

and report the appointment
forthwith to the Secy of State
together with the special
reasons for making the same.
If the Secretary of State,
with the concurrence of a
majority of the members of
his Council, ~~does not~~ approves
and notified such approval
within a year the appoint-
ment will hold good. Otherwise
it shall be ~~deemed~~ in reverse.

The ground on which
Mr Clarke claims special
treatment is his unique position
as the only European in the
a Judicial branch of the Pro-
vincial Civil Service, in which
for 17 years, of which 11 years have been spent
he has served as a First Grade
Sub Judge. ~~for 17 years~~

Para 9 (2) of Probation

2/5/99 As regards Mr. Clarke's
appt. under the provisions of
§ 24 & 25 Vic. Cap 54. Secs. 3 & 4,
to ~~be~~ ^{the} post of District
Judge, it is to be observed that
he has passed in Tamil (vide
2 page 15 of the Civil list). In

P. 262 of ~~Book~~ ^{file}
P.C.S. Vol I

Page 53 of
Handbook of Procedure

Page 264 of
P.C.S. Vol I

regard to the quotation from
para 5 of Home Dept letter
No. 2194, of 10 November 1892
reproduced in para 2 (pages
2 and 3) of the foregoing
note, it is to be observed
that whilst India has
pointed out that Europeans
cannot be appointed to any
listed post under the P.C.S.
rules, ^{of State} they can be appd. to
such posts under 24 & 25.
Vic. Cap 54 Secs. 3 & 4. It
is submitted, however, that
appls. under this Statute
are appls. to scheduled
posts & not to listed posts,
the appls. to ^{the latter} which posts
are made under the rules
framed under 33 ~~and~~ Vic.
Cap. 3. sec 6 - (please see
preamble to
the ~~existing~~ ^{existing} rules in Home Dept. Notifier
No. 2157 of 2 Nov 1892 on
page 4 of G.O. 877 Pub. of
16 Dec 1892). It would
seem, therefore, that Mr.
Clarke has no claims on

a listed post; altho' if foot
so desirous, it can appl. ^{to}
a scheduled post under
the provisions of 24 & 25
Vic. Chap 54

1. C.M.

I do not consider that the position as stated in the letter is correct. The law seems to me correctly put of the above note is correct: laid down in the office note. It seems to me that by Act of Parliament certain appointments which are Dist. Judgeships are reserved by law for the Provincial Civil Service. Certain appointments which are also Dist. Judgeships are reserved by Act of Parliament for the Provincial Civil Service. ~~These~~ The provisions of 24 & 25 Vic. Chap 54 enable the Govt. to intervene in the law equally in both cases and to appoint Mr. Clarke to a listed Judgeship or to one reserved for the C.S. The point is important for if my view is correct Mr. Clarke if appointed to a listed Judgeship will cannot sit in it. But it seems to me unnecessary to go into these matters until it has first been decided that Mr. Clarke is deserving of the concessions he seeks.

I do not agree with the C.S. The law seems to me correctly put of the above note is correct: laid down in the office note. As regards the listed appointments the Secy. of C. in Council has laid down rules under Statute 33 Victoria - vide Notifica of Govt. of India at p. 264 of Vol I P.C.S. But the listed appts. are limited by the Secy. of C. in Council to Natives & India. Mr. Clarke could not therefore obtain one of these.

As to the scheduled appts. on paper the listed appts. Mr. Clarke would be eligible for these with the sanction of the Secy. of C.

But it seems to me unnecessary to go into these matters until it has first been decided that Mr. Clarke is deserving of the concessions he seeks.

as far as I have been able to form an opinion there is nothing in his past career to warrant the ~~the~~ exceptional award of a seat. As Sub- Judge at Botacannand he earned no ~~honourable~~ distinction & is said to have been unable to keep his office for 4 months.

As a Magistrate in Travancore he has little to be proud of. His attitude with regard to the negotiations which Govt. has had to have has been entirely unbecomingly hostile. Several of his decisions have been reversed. But it has

as a member of the Provincial Council sitting at the ... taken ...

The President of the Madras M.C.
 in a difficult position, but owing
 to various causes it has not been
 thought advisable to move the
 High Court in appeal.
 If he has been correctly reported
 Mr Clarke on by a few days ago
 in his report, unless it is decided
 as to whether he should issue a
 summons in a defamation case
 brought by the Hon Bhaskaram Iyer
 against the Editor of the Standard,
 because the Editor admitted his
 offence & tendered an apology!
 The admission of the offence made it
 absolutely certain that there was no
 ground for refusing to issue the
 summons. Of course if the case
 came to trial, the apology wd. properly
 be taken into consideration in passing
 sentence.

I think Mr Clarke's petition should
 be disposed of by an order that
 Court sees no ground for making
 any concession in his favour.

Act 7-27.

(This reached me today)
 13-5-99-

I shd. be inclined to
 say — "Recorded —
~~that~~ Mr. Clarke's
 requests will receive
 consideration if and
 when his appointment
 as District & Sessions
 Judge becomes in
 the opinion of Govt.
 desirable."

Ans H.W.
 13-5-99-

Draft
 H.W.

Revised with the remarks that
 Govt. does not contemplate
 appointing Mr. Clarke to
 this & Session Judge.

M.H.
 12-5-99

H.W.
 31-5-99

H.W.

Done by
 11/8/99.

To H. E. J. Clarke Esq (Q40)

When given for copying
When copied
When examined
When signed

1899

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

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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

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- A = Copy in full.
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