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[Despatch Abstract.]

Recording certain papers
books connected with the question of
the legality of placing Dy Collectors
in charge of the office of Head Assistant
or Sub Collectors

T
21/7/19

2-10-98

Hon. Mr. Arncliffe.
Hon. L. H. Villiers.
H. E. The Earl?

Passed 1st Aug. 1861. /
H.C.

Pub Dept.

NOTE

At the present moment there are four Dy. Collectors "in charge" of the office of Head Assistants and one of a Sub-Collector. Of the former one has been in charge for over two years. These officers are in fact discharging ^{not a little appointments} all the duties of Head Assistant and the question which I find it necessary to raise in connection with Hon'ble Members notes on the annexed file is whether this arrangement is legal.

33 George III, Cap. 52, sec. 57, laid down that all places or employments in the civil line in the Company's service should be filled from amongst the Civil Servants of the Company belonging to the Presy.

24 & 25 Victoria Cap. LIV laid down that all appointments to the offices specified in the schedule to the Act should be filled up from amongst the Covenanted servants of the Crown. Amongst those scheduled appointments are all ^{Assts. to Magistrate or} Assts. to Magistrate and ^{Assts. to Collectors or} Assistants to Collectors in the Provinces. The same Statute allows an appointment "under the special circumstances of the case" of others than Covenanted Civilians but such persons must have resided 7 years in the country, must have passed an examination in the vernacular ^{the} district and must be subject to all ^{the} demerits

BACK PAPERS.

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tests and other qualifications and restrictions which are or may be imposed on civilians. The appointment must be forthwith reported to the Secy. of State and unless he approves within 12 months the appointment must be cancelled. The appointments in question have not been made and cannot be brought under this Statute.

These appointments again cannot be justified under Act VII of 1857, for under that Act ^{as by Coler} performs so much of the duties of an Asst. Collector, (not of an Assistant to a Collector, which the Statute carefully distinguishes) ^{as the Act makes him}. The expression "Assistant Collector" seems to me certainly not to include an Head Assistant Collector but the expression "Assistant to a Collector" seems to me from the Acts to do so. The two phrases are also used in sections 48 and 50 of Regulation I of 1803 and in section 59 and following of Regulation II of 1803.

I have heard it stated that as under the C.P.C. a Dt. Magte. can employ his magistrates in any division he pleases and under the Act of 1857 he can assign to a Dy. Collector any of the duties of an Asst. Collector, therefore he can employ as many Dy. Collectors as he pleases in his district. I do not think the conclusion follows. The correct interpretation seems to me that he can employ as many Dy. Collectors as he pleases

subject

subject to the limitation of the Statute i.e. there are so many sanctioned Civilian appointments for each district and provided these are full he can employ as many Dy. Collectors as he pleases. Any other interpretation seems to me to lead to the inference that it would be possible to officer all the districts without any Civilians at all notwithstanding the Statute. Had anything of this sort been possible, it seems hard to understand why any Head Assistant appointments should have been listed under Statute 33 Vic., Cap. 3, section 6.

I have also heard it asserted that it is extremely convenient from an administrative point of view to be able to put in a Dy. Collector into a Civilian appointment. The answer seems to me to be that should any such need for the appointment of a Dy. Collector arise, it must be due to bad management i.e. for example to the employment of Civilians on duties outside the cadre of the service or the undue grant of leave or not stopping it at the proper time or improper recruitment, all matters if intelligently watched, easily controlled/or if the need be supposed to arise from plague or famine or such cause it seems to me that the proper way to meet it is by the employment of Civilians from outside the District or by the employment of military officers under the control of the District

authorities

authorities. The Civilian element is as it were the backbone of the administration and should be preserved intact.

The matter seems to me of much importance. The question which is

involved is the monopoly of the Civil Servants. It may be said I think that

the present position of British rule in India is largely due to the maintenance of the principle in question

which has made the Civil Service what it is. One or other of the two courses

should be taken. Either give up the monopoly or else maintain the legal

position and avoid ^{irregularly} slipping men into service appointments.

7/11/98.

Rev. Secy.
Please look the matter up on the Rev. side with ref. to the appt. of Dy. Collectors.
The question must surely have been under discussion before.

Mtg. 10.98.

No 2175 d. 11-10-98

Rev. Secy. to O. with reference to the above matter.

After
Please get from Pub. Dpt. 8. of 2.

Resolves 15 Dec. 1881 regarding the reorganization of the Gov. & Secret.

as many Dy. Collectors

subject

series
as the Dy. about the reorg. of the
as Dy. C. in 1883 (referred to in the
8th - also in the 1st - 1883)

To the Hon. Mr. Arundel

I regret I have detained the paper raising the theoretical question broached by the C.S. so long. I wanted to look into the statutes & the constitutional law, but with so many Ad. Com. legislation I regret I have had to lay it aside.

The divisions into which a district is divided are not the creations of statute law, that is, at any rate not so as to mark one as the head courts & another as the sub. & a third as reserved in a Dy. collector. So far as the law goes any one of these officials may be in charge of any one of these divisions indifferently at the pleasure of Govt.

The appt. of a deputy collector in the cases brought before

I understand quite the
Dpt collector may make
than his grade pay.

To place a Dpt collector
in charge of the division wh.
is ~~ordinarily~~ in charge
a H. A. act. does not
make him a Head ass't
or alter his status as a
Dpt collector in the slightest
degree.

Perhaps the chief del^{is}
point is that there is the
danger of putting a Dpt.
in a Head ass't place &
the demeritification of a
Demeritified official who
is entitled to perform
a Head ass't's duties.
where the case is an ass't
to a competent & qualified
to hold the post were as
kept out of it, there is
he a cause of grievance
also whether it is a
legal thing it might be
difficult.

If in each case

submitted
in choice separate

22 XI 2

the post were of ^{need} ¹⁵
that no ass't was
qualified or competent
nothing at he said. I
presume Govt. wd. be
able to say so. 441
every instance 154

82.7

111

I want to know whether the
matter has been under
official discussion & if
it has, to what the
measures taken.

To Under Secy

a file of papers
(separately held up) on the
subject is submitted and
attention is specially soli-
cited to the G.O.S. No.

3077 Res. of 14th Oct 1877

663 " 21st May 1884

1178 Pub. 4th June 1884

6350 Res. of 22nd Oct 1886

The second order embodies a letter from the Govt of India in para 2 of which that Govt gives an exposition of the law relating to Asst and Dy Collectors and points out that legally there is no objection to a Dy Coll^r being placed in charge of a Head Asst Collectorate. It was also then decided that no charge allowance should be given to

$A \times \mathbb{Z} \times D \times E$

"A H² must color must himself
be a Gov? Civilian, but his
charge is not necessarily venal
only by officers of the Gov? service"
H²

a By Coll when placed in
charge of a Head Ass'ts
division.

The remaining orders relate to the question whether any difference should be made when a D.C. is placed in charge of a Sub Collector's division. The Govt of India was at first inclined to give an allowance in such cases but on the representation of this Govt that in modern times there was no change in the character of the powers and responsibilities of a D.C. Coll^r in charge either of a Sub Collector's or N.C. division, the idea of treating the two cases differently was given up.

Ann

Dec
1886

He distinguished. And
to a Col.!"

1874 The 1875 argument hangs on
the term "Ass^l Coll^l" Sec. 17 of 8
which he will not allow to include
Lead Ass^l Co.

It has not. The question before me is, how
long he remains that he is. Submitted that he is clearly
your opinion is correct. I am not sure that he is not
without a doubt.



trip law and without
240 is the

1776

gives the president of the Bd.
of Rev. authority to call on
Coll^{rs} or Ass^{ts} Coll^{rs} for
papers, accounts etc. It cannot
be contended that the president
was not to have similar authori-
ty over Head Ass^{ts}; ergo, the
term includes H^d Ass^{ts}.

So with S. 50 where the Bd.
can dep^{te} Ass^{ts} Coll^{rs}.

In the same year (S. 60 Reg^y
II of 1803) ^{passed} in a Reg^y passed
on the very same day as Reg^y "I"
- the term "Assistants to Coll^{rs}"
is employed.

By 1822 (Reg^y 12) the phrase
is expanded - "a Coll^r, Sub-Coll^r
or Assistant to a Coll^r."

(2) In 1828 (Reg^y 2 VII) the
powers are declared of "Subordi-
nate & Ass^{ts} Coll^{rs} in charge of
particular divisions." Is it
conceivable that the term
was not meant to include
H^d Ass^{ts}?

(3) The V. G. in 1837 Act 36 of 37
intended to extend the same
in the same manner as the
Act of 1828.

Sec 2 (3)
MA

4.
 1. Ass^y Coll^r by Reg^y of
 22 & 7 of 28. Of course
 this was meant to include
 Ass^y.

sec³ To conclude the Hon^d
 Ass^y as such was not recog-
 -nized; he was merely an
 Ass^y. And under Act 7 of 57
 the Coll^r may assign any of
 his duties & powers to a
 Dep^y Coll^r.

H.T.

12.7.99.

P.S. The Chief Sec^y says that the
 Statute carefully distinguishes
 between Ass^y Coll^r & Ass^y to a
 Coll^r. I can only suppose him
 to refer to the Schedule which
 runs thus: (date 18.1)

Revenue

- Judicial.
3. Mag^e x x
 4. Joint Mag^e x x
 5. Ass^y Mag^e or Assistant to
 magistrates.

4. Collector of Revenue x x
5. Dep^y or Subordinate Coll^r where
 combined with the office of joint
 mag^e.
6. Ass^y collector or assistants to
 collectors.

I agree with the argument
 here set forth that no
 distinction can be drawn
 between Ass^y Ass^y and
 Assistants. I suggest that no "careful
 distinction" but the statute
 employs to designate the
 same officer the two terms
 Assistants.

is put in charge of the Divⁿ
But another consideration occurs
however. The Statute 24 & 25 Vic.
was passed on 1st Augt 1861,
and it is recognized that an Act
of Parliament supersedes & overrides
any Act of the Govt of Madras or
for that matter of India.

Madras Act VII of 1857 must
therefore be valid only so far as
it can be worked in conformity
with ~~Statute~~ 24 & 25 Vic.

Ought not then every appt. of
a Dy. Col^l to take the place of
an Asst. M^r Asst or Sub Col^l
to be reported to the Secy. of S.
for sanction under Sec 4
of the Statute?

Will Secy. please note on
this.

MA 13.7.99.

Quill 2. 16. 31 2y wh.

My M.

H.M.

It seems to me to be a
question of the reasonable
construction of the Statute,
according to the circumstances
of each case.

2. To take the case of Dep^y
Col^l & H^d Asst^y.

If there were a 8 week
inter-regnum of say 10 days
in the office of H^d Asst^y,
the Col^l might with propriety
assign to one of his Deputy
Col^ls all or most of the
duties & powers.

Such a course would not
conflict with the law against
"filling up & supplying the
vacancy" in the office, place
or appointment.

3. On the other hand, if Govt^y
app^y a Dep^y Col^l as
permanent or acting H^d
Asst^y, the step would have to
be reported.

4. The difficulty ^{may be} found
between these two extremes.
If a Dep^y Col^l ^{may be} sent
to ^{act as} H^d Asst^y & charge

2.
of a Jt. Ass. Ship, ^{were} ~~the~~
shown as such in the
Civil List, remained for
many months in the post,
exercising the ordinary duties
& responsibilities of the
office. probably a reasonable
interpretation would hold
that the vacancy had been
"filled up & supplied".

5. ^{But, as} ~~the~~ the object of ^{C. 54} 24 & 25 Vict.
was to create or confirm a
monopoly for the Cor. Civil
Service the test w^d seem

The file may be retransferred to be - Is that Service ^{substantially} ~~demanded~~
by the facts of the
to the C.S.

I don't think it is necessary particular case? -

to disturb the sleeping dog
whose nap has now continued

for 38 years. The conflict
between Act VII of 1857

& the Statute may be of im-
portance if the Secy. closing

query has to be answered
in the affirmative.

KT

Univ. Lr. 1/2779.
order No. 809 of 20-7-99.