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Revenue Department

Minutes of Consultations

30th June 1857

Back Numbers 20-21

Order No 646 dated 25th June 1857

பாதுகாப்பு பிரிவு - 1

செப்பனிடுபவர் பெயர்

செப்பனிடுவதற்காக எடுத்துக் கொள்ளப்பட்ட நாள்

செப்பனிட்டு முடித்த நாள் 7/10/57

சரியாகவும் முதல் மு. நி. பா. கையொப்பம் 17/10/57

சரிபார்க்கும். நி. பா. எ. கையொப்பம்.

ஆராய்ச்சி உத்தியோகர் கையொப்பம்

25

Fort Saint George, Revenue Consultation of 30th June 1857.

No. 20. Read the following Extract from the Minutes of Conslutation in the Military Department dated 9th June 1857, No. 1899.

Read the following letter from J. R. BOYSON, Esq., Honorable Company's Solicitor, to the Secretary to Government, Military Department; dated 30th May 1857, No. 283.

Sir,

I have the honor to report for the information of Government that on the 22nd Instant I was served in my official capacity with the Summons herewith forwarded, issued from the Supreme Court under Act IX of 1850, at the instance of George Pereira against Major Simpson, the Superintendent of the Gun Powder Manufactory, and the Honorable Company, for salary alleged to be due to the Plaintiff as 2nd Supervisor of the Gun Powder Manufactory from 1st June 1856 to 13th March 1857 at 28 Rupees a month.

Requested to be returned.

The service of the Summons was the first intimation which I had of any such demand.

I forthwith communicated with Major Simpson and learnt from him that the Plaintiff had received his salary up to the 31st May 1856,—that on the 3rd June 1856 he was suspended from the performance of his duties, but was at the same time directed to attend daily at the Factory until further orders; that he did so attend from the 3rd June 1856 to the 1st November 1856 inclusive,—that during the last mentioned period he never performed any duty, not being permitted so to do; that he never attended at the Factory subsequent to the 1st November 1856; that he had no leave or permission to be absent from the Factory during the last mentioned period,—that it was believed he would attempt to excuse such absence on the score of illness, but that he really was not incapacitated from attending the Factory by any such cause,—that on the 13th March 1857 Government ordered* him to be discharged from the Factory and forbid his re-employment; that his name continued on the Rolls of the establishment until the 13th March 1857, but that no pay was drawn for him subsequent to June 1856, it being noted on the pay abstract for the Department that he was under suspension and his pay not drawn.

**The Governor in Council orders the discharge from the Gun Powder Manufactory of 2nd Supervisor George Pereira, and 1st Conicopillay Loganathan and he forbids their re-employment under Government.*

Upon this state of circumstances and from other information afforded me by Major Simpson, I was clearly of opinion that *in law* the Plaintiff was entitled to (and would undoubtedly recover) his *full* salary from the 31st May 1856 (the date to which he had been paid) up to the 31st October 1856, the completion of the month in which he continued to attend at the Factory (altho' doing no duty) in obedience to the orders given him. Looking at the Plaintiff's own conduct subsequent to the 1st November 1856, I considered that he was *not* entitled either in fairness or equity to any salary beyond the 31st October 1856, and that it was very doubtful whether he could establish any such claim *at law*, although I felt that the course pursued on behalf of the Honorable Company, more especially the form of the official notification of the 13th March 1857 and the fact that the Plaintiff's name was borne on the Rolls of the establishment up to that date would be strongly relied upon by the Plaintiff in support of his position, that the contract between the Honorable Company and himself was not put an end to or effectually terminated until the last mentioned date; and that it would be urged that by ordering the discharge of the Plaintiff on the 13th March 1857, Government necessarily admitted that he was at that time in their employ.

I learnt from Major Simpson that (bearing in mind the Plaintiff's conduct and character) it was not desirable, on public grounds, to make him any payment in excess of his strict legal rights—I therefore on the 23rd Instant paid into Court the sum of Rupees 158-12-0 being 5 months' salary from 1st June to 31st October 1856 at 28 Rupees a month and costs proportioned to that amount.

The action was tried on the 26th Instant by His Lordship the Chief Justice when I appeared on behalf of the Honorable Company and pleaded the payment into Court and that the Plaintiff was not entitled to damages ultra the amount so paid in, or in substance that the Plaintiff was not entitled to any salary beyond the 31st October 1856 on the grounds above mentioned. The

Plaintiff alleged continuous illness from the 3rd November 1856 as the cause of his non-attendance at the Factory subsequent to that date; but in my opinion he did not succeed in establishing this assertion by any thing approaching credible or satisfactory evidence. The Chief Justice did not however dispose of the action altogether on this ground, but decided ultimately that the contract between the Honorable Company and the Plaintiff was not put an end to until the 13th March 1857 by the official notification in the Gazette and the communication thereof to the Plaintiff; that all the facts admitted and proved during the trial led him to the conclusion that the Honorable Company never intended to terminate the contract at an earlier period; that inasmuch as it was proved that the Plaintiff in November last sent an intimation of his illness to the Factory, that such intimation was brought to the notice of Major Simpson who afterwards sent his Apothecary to the residence of the Plaintiff for the purpose of verifying his alleged illness; and that Major Simpson never called upon or required the Plaintiff to return to his duty or to renew his attendance at the Factory, it must be assumed that he assented to his absence; that under all the circumstances of the case the Plaintiff was entitled to his full salary up to 13th March 1857, and gave a verdict accordingly.

Salary from 1st June 1856 to 13th March 1857 at 28 Rupees per month	263	11	10
Amount of costs of Summons...	34	8	0
Do. do. of Subpœna...	1	8	0
Amount of Attorney's costs	10	0	0
Rupees.....	309	11	10
Paid into Court on 23rd May 1857 on account ...	158	12	0
Do. on 27th Do. balance... ...	150	15	10
Rupees.....	309	11	10

I have since paid into Court the further sumof Rupees150-15-10 in discharge of this Judgment as per Memo. noted in the margin.

1. The Governor in Council sanctions payment of the amount disbursed by the Honorable Company's Solicitor as reported in the foregoing letter.

2. The Solicitor's letter will be communicated to Departments for information, and in order that individuals serving on the same footing as Supervisor Pereira may on similar occasions be formally discharged instead of being suspended.

3. This will shut out all such claims as the present, and individuals so discharged can afterwards be re-admitted if necessary.

(True Extract and Copy.)

(Signed) H. MARSHALL, Lieut. Colonel,
Dy. Secretary to Government.

No. 21. ORDER THEREON, No. 646; dated 25th June 1857.

Ordered to be communicated to the Board of Revenue for information.

(Signed) H. FORBES,
Acting Secretary to Government.

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MILITARY DEPARTMENT.

No. 1899.

Extract from the Minutes of Consultation, 9th June 1857.

Read the following letter,

No. 283.

From

The Honorable Company's Solicitor,

To

The Secretary to Government, Military Department.

Sir,

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**The Governor in Council orders the discharge from the Gun Powder Manufactory of 2nd Supervisor George Pereira, and 1st Conicopillay Loganathan and he forbids their re-employment under Government.*

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I learnt from Major Simpson that (bearing in mind the Plaintiff's conduct and character) it was not desirable, on public grounds, to make him any payment in excess of his strict legal rights—I therefore on the 23rd Instant paid into Court the sum of Rupees 158-12-0 being 5 months' salary from 1st June to 31st October 1856 at 28 Rupees a month and costs proportioned to that amount.

The action was tried on the 26th Instant by His Lordship the Chief Justice when I appeared on behalf of the Honorable Company and pleaded the payment into Court and that the Plaintiff was not entitled to damages ultra the amount so paid in, or in substance that the Plaintiff was not entitled to any salary beyond the 31st October 1856 on the grounds above mentioned. The Plaintiff alleged continuous illness from the 3rd November 1856 as the cause of his non-attendance at the Factory subsequent to that date; but in my opinion he did not succeed in establishing this assertion by any thing approaching credible or satisfactory evidence. The Chief Justice did not however dispose of the action altogether on this ground but decided ultimately that the contract between the Honorable Company and the Plaintiff was not put an end to until the 13th March 1857 by the official notification in the Gazette and the communication thereof to the Plaintiff; that all the facts admitted and proved during the trial led him to the conclusion that the Honorable Company never intended to terminate the contract at an earlier period; that inasmuch as it was proved that the Plaintiff in November last sent an intimation of his illness to the Factory, that such intimation was brought to the notice of Major Simpson who afterwards sent his Apothecary to the residence of the Plaintiff for the purpose of verifying his alleged illness; and that Major Simpson never called upon or required the Plaintiff to return to his

duty or to renew his attendance at the Factory, it must be assumed that he assented to his absence; that under all the circumstances of the case the Plaintiff was entitled to his full salary up to 13th March 1857 and gave a verdict accordingly.

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Do. on 27th Do. balance... ...	150	15	10
Rupees.....	309	11	10

I have since paid into Court the further sumof Rupees150-15-10 in discharge of this Judgment as per Memo. noted in the margin.

May 30th, 1857.

I have &c.,
(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

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2. The Solicitor's letter will be communicated to Departments for information, and in order that individuals serving on the same footing as Supervisor Pereira may on similar occasions be formally discharged instead of being suspended.
3. This will shut out all such claims as the present and individuals so discharged can afterwards be re-admitted if necessary.

(True Extract and Copy.)

Dy. Secretary to Government.

To the Adjutant General.
" Quarter Master General.
" Dy. Adjutant General H. M.'s Forces.
" Dy. Qr. Mr. General H. M.'s Forces.
" Inspector General.
" Clothing Department.
" Marine Board.
" Brigade Major H. M.'s Forces.
" Military Auditor General.
" Accountant General.
" Medical Board.
" Judge Advocate General.
" Commissary General.
" Auditor of Commissariat Accounts.
" Superintendent of Pensions.
" Chief Engineer D. P. W.
" Town Major.
" Revenue Department. With 2 spare Copies.
" Public Department.
" Honorable Company's Solicitor—with Summons.

Exd. R. Spears.