

In Re: Reference Under Rule 1 Order 46, C.P.C.

Court: Calcutta High Court

Date of Decision: March 23, 1918

Acts Referred: Civil Procedure Code, 1908 (CPC) " Order 46 Rule 1

Citation: 76 Ind. Cas. 353

Hon'ble Judges: Walmsley, J; Richardson, J

Bench: Division Bench

Judgement

1. This is a Reference by the Munsif of Chittagong under Rule 1, Order XLVI, Civil Procedure Code, on the question whether Government

servants and the persons in Municipal or private service cited as witnesses in civil suits are entitled, as part of their expenses, to the payment of the

salary which they would earn in their ordinary employments for the time which they spend in attending Court. As stated by the learned Munsif at

the end of his letter the two questions for the decision to this Court are: "first, whether any salary is payable to a Government servant when

summoned to attend before a Civil Court as a witness? and the second, whether salary is payable to the servants of other employers when claimed

by them?

2. As to these questions, we heard the learned Government Pleader and gave him an opportunity to make enquiry into the existing Government

rules on the subject and their legal justification. Having made enquiry, the learned Government Pleader is in a position to inform us that the Circular

and letter to which the Munsif refers "the Bengal Government Circular No. 6 J, D, dated the 11th September 1885, and the letter addressed by

the Government of Bengal to the District Judge of Rangpur, dated the 18th October 1882, may now be regarded as obsolete. We understand that,

under existing arrangements, no deduction is made from the salaries of Government servants cited as witnesses. They are paid their salaries in full in

the ordinary course and are not entitled to compensation for loss of time. The answer to the first question propounded is, therefore, in the negative.

As to the servants of Municipal bodies and private employers, the learned Munsif is right in supposing the question depends on the provisions of

Rules 2, 3 and 4 of the CPC and on the rules made by the High Court under Clause (3) of Rule 2. We have not had the advantage of hearing

arguments upon that question, but, as at present advised, we are of opinion that the learned Munsif was right in deciding as he did, and the claims

for compensation made by the witnesses in the case before him were inadmissible. As the question may otherwise come before the Court either

judicially or administratively, we prefer, on the present occasion, to say no more in answer to the Munsif's second question.