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Court : Chennai

Decided On : Sep-25-1901

Reported in : (1902)ILR25Mad402

Judge : Arnold White, C.J. and ;Bhashyam Ayyangar, J.

Appellant : Watson and anr.

Respondent : Lloyd

Judgement :

1. This is an appeal from an order of Boddam, J., dismissing an application for the attachment of a moiety of the pay of a Major in the Indian Staff Corps.
2. The Army Act of 1881, Section 151 (3) provided: 'A Civil Court or Court of Small Causes, upon adjudging payment of any sum by any person subject to military law other than a soldier of the regular forces, may either award execution thereof generally, or may direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor, and the amount named in the direction, not exceeding one half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.'
3. Section 136, of the same Act provides--'The pay of an officer or soldier of His Majesty's regular forces shall be paid without any deduction other than the deductions authorized by this or any other Act or by any royal warrant for the time

being.'

4. In 1895, Section 151 of the Army Act of 1881 was repealed and the words 'or by any law passed by the Governor-General of India in Council' were added to Section 136.

5. Section 266 of the Code of Civil Procedure provides that the following particulars, inter alia, shall not be liable to attachment 'the salary of a public officer or of any servant of a Railway Company or local authority to the extent of (1) the whole of the salary where the salary does not exceed twenty rupees monthly; (2) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and (3) one moiety of the salary in any other case.' Section 2 of the Code defines 'public officer' as including 'every Commissioned officer in the military or naval forces of His Majesty while serving under Government' and defines 'Government' as including the Government of India as well as the local Government.

6. There can be no question that the defendant in the present case is a 'public officer' within the meaning of the Code of Civil Procedure.

7. The learned Judge dismissed the application for attachment because he was of opinion that it was not the intention of the Legislature by adding the words 'or by any law passed by the Governor-General of India in Council' to Section 136 of the Army Act to make Section 266 of the Code of Civil Procedure applicable to a military officer.

8. In considering the construction to be placed upon these words it is important to bear in mind that they were added to Section 136 by the statute (the Act of 1895) which repealed Section 151 in toto. They would appear to be consequential on the repeal of Section 151, and the Legislature in adding the words would seem to have had in view the fact that the provisions of the repealed proviso to Section 151, were substantially the same as the provisions of the Indian Procedure Code, Sections 266--268.

9. We think the case of Calcutta Trades Association v. Ryland I.L.R. 24 Calc. 102 was rightly decided and we are prepared to follow that case.

10. We accordingly allow the appeal with costs and make an order attaching one moiety of the pay of the judgment-debtor.

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