

CHAPTER 2

Superintendence and Control—Civil Courts

Part

A

SUPERINTENDENCE AND CONTROL

1. Controlling authority—The general superintendence and control over all Civil Courts (other than the High Court) is vested in and all such Courts are subordinate to the High Court.

Subject to the general superintendence and control of the High Court, every District Court has control over all other Civil Courts in the district (Section 33 of the Punjab Courts Act, 1918).

Courts of Small Causes are subject to the administrative control of the District Court, and to the superintendence of the High Court (Section 28 of the Provincial Small Causes Courts Act, IX of 1887).

2. Control over establishments of Civil Courts—The powers of appointment and punishment of the ministerial and other establishments of Civil Courts are regulated by Section 36 of the Punjab Courts Act, 1918, and by rules to be made by the State Government (generally in consultation with the High Court) under Article 309 of the Constitution of India. These rules are contained in Chapter 18 of the Rules and Orders, Volume I.

3. Control over process-serving establishment—Under rules framed by the High Court with the previous approval of the State Government under Sections 20 and 22 of the Court-fees Act, 1870 the establishment employed for serving and executing processes issued by all Civil, Criminal and Revenue Courts is subject to the control of the High Court. Their conditions of service are regulated by the rules mentioned in the preceding paragraph.

4. Control over establishments dealing with civil work—The establishments of officers who exercise civil powers conferred upon them under Section 28 of the Punjab Courts Act, 1918, but are also invested with revenue or criminal powers, are under the control of Deputy Commissioners acting under the orders of Commissioners and the Financial Commissioners. District Record Offices being under the control of Deputy Commissioners, the establishments attached to them are also under the control of Deputy Commissioners. The rule laid down by Government on the subject is that:—

“Where it is not specially provided otherwise by law, the control of all classes of district establishments rests with the Deputy Commissioner and District Magistrate of a district as such, and that in regard to such matters, where it is not otherwise especially provided by law, the superior officer of the Deputy Commissioner of the Division [No. 896, dated Lahore, 14th November, 1891 (H. Genl), from officiating Chief Secretary to Government, Punjab and its Dependencies, to the Registrar of the Chief Court.]

5. Fixing of cases during casual leave of Sub-Judges—It has been found that some Subordinate Judges fix dates for proceedings which fall within the period for which they intend to apply for casual leave. This procedure necessarily leads to adjournments and consequent hardship to litigants. All Subordinate Judges should, therefore, submit their applications for casual leave well in advance of the time at which they intend to proceed on casual leave; and in so doing, they should arrange whenever this is practicable, that no cases are fixed for hearing during the period for which they intend to be absent.

6. Circular Orders issued by District Judges—Whenever a District Judge proposes to issue a circular order to the Civil Courts subordinate to him dealing with judicial matters (other than mere office routine, such as, the distribution of work), he must send a draft of the proposed circular to the High Court for approval and may not issue it until such approval is obtained.

Part

B

INSPECTION OF SUBORDINATE COURTS

The following instructions regulating the inspection of subordinate Courts are issued with the approval of the State Government—

1. Power of High Court to frame rules for inspection of lower Courts—Section 33 of the Punjab Courts Act, 1918, vests the power of controlling the Civil Courts of each district in the District Judge and under Article 227 of the Constitution of India, the High Court has the power of framing rules for the inspection of subordinate Civil Courts and for the supervision of their working.

Note—This power of control includes the right of calling for and inspecting the records of all such Courts (including Small Cause Courts) and of commenting on any irregularity of procedure or other impropriety for the guidance of the officers concerned.

2. Chapter I-C, containing general instructions—General instructions for the inspection of subordinate Civil Courts will be found in Chapter I, Part C.

3. Scope of inspection—The annexed list of subjects for inquiry is intended for the assistance of officers making such inspections. It is not meant that inspection should be confined to the matter herein prescribed, nor that each inspection made should embrace all the topics mentioned.

4. Annual inspection of their own Courts by District Judges—District Judges should inspect their own records and registers and the Nazir's registers of each district at least once a year.

5. Surprise inspection to check cancellation Court-fee stamps—With a view to preventing fraudulent use of Court-fee labels. District and Sessions Judges and Judges of Courts of Small Causes should make surprise inspections of their record rooms at least once a year to see that the instructions regarding the checking, second punching and cancellation, etc., of Court-fee labels as prescribed in Chapter 4-C of this volume are strictly followed by the officials concerned.

The report on the inspections should not ordinarily be forwarded to the High Court unless it discloses some matter of importance requiring notice by the Honourable Judges.

Memorandum of points to be attended to by Inspecting Officers.

Part
GENERAL

I

1. State of Court-house—Report on the state of the Court-house, whether it is in good repair and properly kept and provides adequate accommodation. Notice especially the state of the record-rooms and the *Nazirs' malkkana*.

2. Library—Notice whether the Subordinate Judges' libraries are in good order and under whose charge each library is and generally whether the provisions of Chapter 18 of this volume are complied with. Note how for each subordinate Court has been furnished with the minimum library prescribed by the High Court. In inspecting other Courts, at the headquarters of the district and Courts at out-stations, notice whether books of reference are sufficient and whether files of circulars are complete.

Correction Pamphlets, etc.—See that the correction pamphlets and slips have been pasted and filed at their proper places.

3. Accommodation for the Bar—Report on the arrangements of the Bench, and whether the accommodation for the Bar is sufficient, and the separation of its members from the Bench complete.

4. Court establishment—Is the Court establishment sufficient and capable ? Are there any unpaid candidates and, if so, have the rules issued by the State Government and the High Court on the subject been complied with ?

Part
CIVIL REGISTERS

II

1. Register I—Examine Register No. I (Register of Civil Suits) and check columns 8 to 12 with at least ten records of decided suits still in Court.

Note whether column II appear in any case to have been filled in before judgment has been written and whether columns 13 to 22 are kept up-to-date.

2. Register X—Examine Register No. X (Execution of decree), noting whether decrees are promptly executed, and whether realisations bear a fair proportion to sums in execution. Check some of the entries in column 19 (noting how many) with records still in Court and state whether the officials of the Court appear in any case to be answerable for any default.

3. Register XI—Ascertain from Register No. XI (Objections in cases of execution of decree) whether objections are properly and promptly disposed of.

4. Registers VI and VII—Examine Register Nos. VI (Miscellaneous petitions and applications) and VII (Applications to sue as a pauper) with a similar object.

5. Register IX—Examine Register No. IX (Dates fixed for the trial of suits and for cases of execution of decree), and trace a few cases not yet consigned to the record-room through their various

stages, noting whether adjournments are unnecessarily granted, and whether cases are regularly called up for hearing on dates fixed and action taken. Is it the custom in the local Courts to enter cases of execution of decree in this register ?

6. Others—Examine the other civil registers. State whether they are neatly and properly kept, and note whether errors and omissions noticed at previous inspection have been corrected and supplied.

Part III

(a) Regular Suits

1. In whose custody is the bundle of pending records ? Is it neatly kept and arranged according to date ?

2. What was the total number of institutions of the previous year ?

3. What is the number of the suit last instituted ?

4. Has there been any noticeable increase or decrease in litigation during the past twelve months; and, if so, what is the cause assigned for it ?

5. On what dates were the five oldest undecided suits instituted ?

6. Do the records of those suits show any unnecessary delay in their decision ?

7. Take out ten records at random, and note whether the proceedings disclose any noticeable irregularity or unnecessary delay.

8. Is a day reserved for execution work ? Are execution cases attended to properly by the presiding officer ? Are all orders except purely routine orders written by him ?

(b) Execution of decrees

1. In whose charge is the bundle of pending records ?

2. Is it neatly kept and arranged to date ?

3. How is it kept (that is, by tahsils or only chronologically) ?

4. What was the total number of execution of decree cases last year ?

5. How many applications have been filed this year up-to-date ?

6. If decree-holders are unusually active or passive note the cause.

7. What was the proportion of realization to the amount sought to be realized in execution of decrees ?

8. Examine ten of the records taken at random, and note whether the proceedings show any noticeable irregularity or unnecessary delay.

9. Does the presiding officer complain of anything which causes his execution file to be unduly encumbered ?

(c) *Miscellaneous cases*

1. In whose charge is the bundle, and is it neatly and properly kept ?

2. How many cases were dismissed in default and how many were decreed *ex parte*? How many out of these were subsequently restored? Ascertain by examination of a few records if the reasons for dismissal, *ex parte* proceedings and restoration were satisfactory.

3. Examine three cases at random, and note whether they show any unnecessary delay.

(d) *General*

Ascertain whether decided cases of each kind are sent punctually into the record-room; and note any instances there may have been of undue delay, and the cause assigned for the same. Also see whether paragraphs of judgments are serially numbered.

Part IV

(a) *Nazir*

1. Check the registers of receipts and repayments of deposits, and note whether there are any deposits of longstanding date.

2. Examine Register No. XXIII (Processes served by each peon), and note whether the distribution of work is fair. Are any of the process-servers employed on other than their legitimate duties ?

3. Are there any complaints against any of the establishment on account of inefficiency due to age or any other cause ?

4. Does the staff appear sufficient, or in excess of requirements ?

5. Examine Miscellaneous Register C (Miscellaneous proceedings received from other districts and Courts), and ascertain from the entries in columns 3, 6, 8, and 9 whether unnecessary delay occurs in the disposal of references.

6. Examine Miscellaneous Register F (Property received into the Nazir's store room) carefully, and check the correctness of the entries in column 4 by an examination of at least twelve bundles taken at random. Are the arrangements of the *malkhana* satisfactory as regards the preservation of the property stored therein? What officer of the headquarters staff is in charge of the *malkhana* (Rule 4, Chapter 10-A of this volume) and are the requirements of that and the other rules herein contained carefully carried out ?

(b) Copyists

Who is the officer placed in charge of the copyists' department ? Note particularly whether unnecessary delay occurs in the preparation of copies. Are there any unclaimed copies in the copyists' hands ? Are the directions contained in Chapter 17 of this Volume carefully followed ?

(c) Records

1. Are the records properly kept and promptly furnished as required for purposes of inspection ?
2. Are the Record-Keepers' Registers No. XV—Civil (General Register of Suits and Appeals Disposed of), No. XVI—Criminal (General Register of Decided Cases) and Miscellaneous Register B (of files taken from the record-room for reference) properly kept ?
3. Are the stamps in the records properly punched—according to the orders in force ?
4. Are the instructions contained in Chapter 16 of this volume, for the preparation of an index of papers in judicial proceedings, observed ?

(d) Petition-writers

Are the Petition-writers' Registers properly maintained (Volume I, Chapter 17)?

(e) Pleadings

Is the Register of Pleadings required by Volume V, Rules and Orders, Chapter 6—F, Part (a), Rule 3, duly maintained ?

Part
INSPECTION OF CIVIL RECORDS

V

In examining the records of pending or decided cases, note especially the following points:—

(a) Original suits

- 1. Verification and stamping plaintiffs**—The attestation and verification of plaintiffs; the proper stamping of plaintiffs, and the proper cancellation of stamps.
- 2. Summons of defendant**—Whether sufficient time is apparently granted for the defendant's appearance, and whether the issue of summons for final disposal is largely or improperly restored to.
- 3. Service of process**—Does the presiding officer pay personal attention to service of process ?
- 4. Adjournments**—Are suits heard from day to day ? Are adjournments granted without sufficient cause or without examining witnesses who are present ?
- 5. Proof of service**—Whether proper proof of service has been taken before a case is heard *ex parte*.

6. Setting aside *ex parte* orders—Whether cases dismissed in default or decreed *ex parte* are admitted without notice to the opposite side, or without inquiry into the merits of the application for re-admission of the case to the register.

7. Documents—Are documents produced at the proper time with the prescribed lists ? Are parties examined about the documents they wish to produce or rely on the prescribed forms at the first hearing ?

8. Documents—Are documents admitted in evidence duly marked as exhibits endorsed and stamped in accordance with the High Court instructions ? Are documents not admitted in evidence returned promptly?

9. Abstract of order—Is the chronological abstract of orders regularly and correctly kept up.

10. Drawing up decrees—Are decrees carefully drawn up and do they faithfully embody the decision arrived at in the judgment ? Is that portion of the decree which specifies the relief granted recorded by non-English speaking Judicial officers with their own hands ? Are costs correctly ascertained and apportioned in conformity with the judgment ?

11. Arbitration—Are submissions to arbitration inordinately frequent, and are the requirements of the law in reference to arbitration duly observed ?

12. Commission—Is the resort to Commissions for local inquiry or for the examination of accounts too frequent ? Are the rules published in Volume I, Chapter 10, properly observed ? Is the evidence taken by a Commissioner filed with his report? Is he subjected to examination by the Court, and is the Court's decision ever based exclusively on the Commissioner's report ?

13. Review of judgment—Are reviews of judgment frequently applied for, and, if granted, are the grounds of admissions sufficient ? Is due notice to show cause against application being granted given to the opposite party ?

14. Rejection and return of plaints—Is the rejection and return of plaints frequent ? And does it appear from Register No. VIII (Rejected and Returned Plaints) that the grounds for rejection and return are adequate ?

15. Pauper applications—Are applications to sue *in forma pauperis* numerous? Is the enquiry into the alleged poverty of the applicant made by the Court itself or delegated to a tahsildar ? Does the Deputy Commissioner receive notice of the application and does he take any (and, if so, what) steps to protect the interests of Government ?

(b) Appeals

1. Stamps—Are appeals properly stamped and the stamps duly cancelled ?

2. Memoranda of appeal—Are the memoranda of appeal concisely drawn and accompanied by copies of the decrees appealed against ?

3. Dismissal in limine—Are the provisions of Order XLI, Rule 11, of the Code of Civil Procedure, observed in a fair proportion of cases, or is the respondent invariably summoned ?

4. Judgments—Does the judgment in appeal conform with the requirements of Order XLI, Rule 31, of the Code of Civil Procedure ?

5. Remands—Are remands frequent ? Are they based on adequate grounds and in accordance with law ?

6. Order XLI, Rule 11—Is a decree framed in appeals rejected under Order XLI, Rule 11 ?

7. Decree—Does the decree embody the grounds of appeal ?

Part
GENERAL

VI

General—Make any suggestions which, in your opinion, would simplify the registers, etc., and which would facilitate the action of the Courts.