

Government of Madras.

EDUCATIONAL DEPARTMENT.

Recd.

Regd.

} 1911.

Enclosures

Spare copies

G.O., No. 555, 10th August 1911.

Mr. R. A. Nelson.

Declining to address the Secretary of State on the question of allowing — to count the first five years of his service for pension.

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GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—the following paper :—

Letter—from R. A. NELSON, Esq., Principal, Law College, Madras.
To—the Secretary to Government, Educational Department (through the Director
of Public Instruction, Madras).
Dated—Coonoor, the 5th June 1911.

I have the honour to invite the attention of Government to certain matters in connection with my service which amounted to twenty years on 2nd May last.

2. My service has consisted of three temporary appointments as Principal followed by a permanent appointment to the same office as follows :—

	Years.
(1) 2nd May 1891 to 2nd May 1896	5
(2) " 1896 " " 1901	5
(3) " 1901 " 17th Sept. 1907	6½
+ (4) 17th Sept. 1907 " 2nd May 1911	3¾
Total	20

* Including two temporary extensions. † Appointed permanently after three temporary appointments.

3. As regards *period* (1), it was stipulated in my agreement, dated 2nd April 1891, with the Secretary of State that I should "not be entitled to either leave allowance or pension" for this temporary service of five years.

4. As regards *period* (3), having at the time of this second extension served ten years it was proposed by the Governments of Madras and India that on completion of this third period (or a service of fifteen years) period (1) should count for pension, G.O., No. 426, Educational, dated 24th July 1902, but the Secretary of State refused sanction to this proposal, having regard to the terms of the original agreement of 1891, whilst allowing service thereafter to be pensionable.

5. Early in 1907 the Madras Government on proposing a further five years' engagement recommended that period (1) should now be made pensionable. The Government of India, however, replied offering a permanent re-appointment, but refused to consider the question of the first five years as pensionable by reason of the previous decision of the Secretary of State. Consequently I had either to refuse this offer (and thereby lose my appointment and claim to any pension) or accept it, which I did by agreement with the Secretary of State, dated 17th September 1907.

6. I now pray for a revision of the above-mentioned decision of the Government of India on the following grounds :—

(a) Up to 1907 I held a merely temporary appointment, which in that year was converted into a permanent one. Article 370 of the Civil Service Regulations provides that on such a conversion the temporary service shall count for pension. I submit that on being permanently appointed in 1907 all my previous service became *ipso facto* pensionable under that article; and further a reference to the papers connected with my case will show that the provisions of article 370 appear to have been overlooked by all parties (including myself) and accordingly the ruling of the Government of India on the question and my subsequent agreement with the Secretary of State were made under a mutual mistake.

(b) The previous decision of the Secretary of State on a temporary re-appointment had no reference to the subsequent permanent appointment, and that by making it applicable I have been deprived of the benefit of article 370.

(c) By analogy to the rules of the Educational Service my first five years' service became pensionable on my permanent appointment in 1907.

(d) Owing to my first five years' service being disallowed and to the operation of the 55 years of age rule I shall be greatly prejudiced in that I cannot obtain a full pension, in spite of the allowance of three years provided for in 1902. This, I submit, would be exceptionally hard, for during that five years and for the six following ones I had no leave at all (beyond the ordinary vacations), but in later years I have been compelled owing to illness to take over three years' leave on medical certificate.

7. I therefore request that in view of these facts Government may be pleased to secure the amendment of my agreement with the Secretary of State, dated 17th September 1907, in paragraph 5 thereof, by the substitution of the year 1891 for 1896 as the date from which my service shall be pensionable.

R. CL. No. 42, dated 8th June 1911.

Submitted to Government through the Accountant-General.

J. H. STONE,
Ag. Director of Public Instruction.

No. Pen. Mis. 3-4213, dated 23rd June 1911.

Forwarded to the Chief Secretary to the Government of Madras, Pension Department (through the Secretary to Government, Educational Department).

2. The request of Mr. Nelson that he may be permitted to reckon his temporary service prior to 1st April 1896 as pensionable under article 370, Civil Service Regulations, is inadmissible. During that period he was allowed the privilege of private practice and was not a whole-time servant of Government—vide paragraph 2 of the Secretary of State's Despatch No. 46, dated 16th May 1902, to the Government of India, recorded in G.O., No. 426, Educational, dated 24th July 1902. His case is not therefore governed by article 370, Civil Service Regulations, but by article 352 (c), Civil Service Regulations.

A. NEWMARCH,
Offg. Accountant-General.

Order—No. 555, Educational, dated 10th August 1911.

The Director of Public Instruction will be requested to inform Mr. Nelson that the Government do not see sufficient reason for addressing the Secretary of State again on the question of allowing the first five years of his service to be counted for pension. The considerations now put forward by Mr. Nelson were substantially before the Secretary of State when the latter gave his decision in 1902.

(True Extract.)

L. DAVIDSON,
Ag. Secretary to Government.

To the Director of Public Instruction.

EDUCATIONAL DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 555, EDUCATIONAL, DATED
10TH AUGUST 1911.

[SUBJECT.—*Pensionary claims of Mr. Nelson, Principal, Law College, Madras.*]

Previous papers :

G.O., No.	360, Educational, dated 18th May	1891.
" "	167 " " 26th March	1896.
" "	265 " " 28th April	"
" Nos.	538-39 " " 26th October	1900.
" "	636-37 " " 10th December	"
" No.	69 " " 13th February	"
" "	447 " " 12th August	1901.
" Nos.	9-10 " " 6th January	1902.
" No.	426 " " 24th July	"
" "	763 " " 26th November	1906.
" Nos.	64-65 " " 7th February	1907.
" "	234 " " 21st April	"
" "	290 " " 15th May	"
" "	466-A " " 20th July	"
" "	843 " " 18th December	"

From the Director of Public Instruction, dated 8th June 1911,
No. Cl. 42.

Mr. R. A. Nelson was first engaged as the Principal of the Madras Law College for a term of five years from the date of his reporting his arrival at Madras. He reported his arrival on 2nd May 1891.

2. By clause 4 of his agreement his pay was fixed at Rs. 1,200 per mensem. By clause 2 he was allowed consulting or chamber practice but not court or other practice. Clause 4 also expressly stated that he was not entitled to either leave allowance or pension.

3. In 1896 Mr. Nelson was re-engaged for a further period of five years on the same terms as before with the modification that he would be permitted to draw exchange compensation allowance and to practise in the courts of the Madras City upon the condition and understanding that such practise should not in any way interfere with the performance of his duties as Principal.

4. In 1900 a re-organization of the Law College took place under which the Principal's pay was fixed at Rs. 1,000—25—1,250. Mr. Nelson who was then asked whether he would continue for another term of five years agreed to do so on the following three conditions, namely,

(1) that he should be permitted to draw the maximum pay, namely, Rs. 1,250 per mensem, with exchange compensation allowance;

(2) that on the termination of this period, and should the college be permanently established, his service of fifteen years in the temporary appointment should, under article 405 of the Civil Service Regulations, be counted towards pension, leave and other privileges; and

(3) that should he desire to do so, he should be permitted to take furlough with leave allowance at some time during the said period of five years.

In letter No. 637, Educational, dated 10th December 1900, this Government, Paragraph 3 of letter No. 637, Educational, dated 10th December 1900, in recommending Mr. Nelson's re-engagement for a further period of five years on the maximum pay of Rs. 1,250 with exchange compensation allowance, considered it unnecessary to decide then the question of Mr. Nelson's past service counting for pension. The Secretary of State sanctioned the re-engagement of Mr. Nelson on these conditions.

5. On receipt of the Secretary of State's orders Mr. Nelson re-opened the question of his pension. He urged that from his point of view the condition that his whole service of fifteen years (including the first term of five years) should count for pension was more important than the other two which were granted by the Secretary of State and that his desire for re-engagement was mainly due to the hope that it would be granted. He asked for an assurance that in the event of the college being permanently established at the end of his then current engagement and of his services being retained, the fifteen years he would then have completed as the head of the college should be counted for pension.

6. The Madras Government in strongly supporting Mr. Nelson's request observed as follows:—
Para 3 of Letter No. 10, Educational, dated 6th January 1902.

"In regard to the previous service of ten years, under clause 2 of his agreement G.O., No. 360, Educational, dated 18th May 1891, "with the Secretary of State Mr. Nelson "had to devote his whole time to the "duties of his office subject to the "proviso that he could take such chamber "practice as would not in any way "interfere with the performance of his "duties. On the renewal of the agree- "ment by this Government in 1896 he "was given permission to practice in the "courts of the Madras City, but on the same understanding as before, and in 1899 "he voluntarily gave up his practice. By thus reserving to themselves the right to "claim the whole of his time for his duties as Principal of the Law College the "Government clearly considered him to be a full-time servant of theirs and informed "him accordingly when the question arose in 1899. It is true in clause 4 of his "original agreement it was expressly provided that he would not be entitled to "pension, but the establishment of the college had then been sanctioned only as a "tentative arrangement first for five years and afterwards for a further similar "period. This aspect of the case is now altered and it is anticipated that the college "will become a permanent institution. There has been no break in Mr. Nelson's "service and he has given ten years of his life to the service of Government. His "Excellency the Governor in Council is therefore strongly of opinion that in the "event of Mr. Nelson continuing in the college he may be allowed to count for "pension those ten years with the five which he will have completed at the end "of the present term of his engagement."

7. The Government of India supported this proposal, but the Secretary of State stated that he saw no reason to set aside Mr. Nelson's agreement (clause 4) and allow the first period of engagement to be counted for pension. The reasons assigned for this refusal were—

(1) that Mr. Nelson had been granted the privilege of private practice—permission to practise a profession; and

(2) that it was expressly stated in his agreement that he would not be entitled to pension.

The Secretary of State, however, sanctioned that the service rendered by Mr. Nelson after the expiration of his first agreement should qualify for pension and further allowed him the benefit of article 404, Civil Service Regulations (addition of three years to qualifying service) and exempted him from the operation of article 478 (deduction of one-fortieth of pension for every year by which his age at the commencement of his qualifying service exceeded 30 years).

8. Towards the end of this period, Mr. Nelson asked for a further re-engagement, but the Government considered that before re-engaging his services again the question whether the Law College should continue as a Government institution should be decided. Pending decision of this question Mr. Nelson was re-engaged for a period of one year.

9. Mr. Nelson then offered a continuation of his services on certain conditions, one of which was that the first term of his service for five years should be made pensionable. Mr. Nelson then urged—

(1) that the privilege of private practice during this term of five years was confined to chamber or consulting practice, which in Madras did not exist for a Barrister debarred from appearing in court, the position of a chamber practitioner of the Chancery Bar in London having no analogy in the condition of things here; and

(2) that the proviso that the five years' service would be non-pensionable was clearly incidental to the purely temporary nature of the appointment as then contemplated.

10. This Government recommended Mr. Nelson's request, but the Government of India expressed themselves unable to support this proposal. They were prepared to re-engage Mr. Nelson permanently on an increased pay of Rs. 1,500 without exchange compensation allowance and desired to know whether Mr. Nelson was willing to accept their modified terms. These terms were placed before Mr. Nelson and he accepted them. His permanent appointment as Principal of the Law College was thus on the understanding that his first five years' service would not count for pension, and paragraph 5 of his agreement with the Secretary of State, dated 17th September 1907, states that only "his previous service under Government (commencing from the first day of April one thousand eight-hundred and "ninety-six) shall count as service towards leave and pension".

11. Mr. Nelson now seeks a revision of the terms of his agreement on the following grounds:—

(a) that up to 1907 he held a temporary appointment which in that year was converted into a permanent one, that under article 370 of the Civil Service Regulations all his previous service then became pensionable, but that during the time of his re-engagement, the provisions of this article were overlooked and his agreement with the Secretary of State was made under a mutual mistake;

(b) that the previous decision of the Secretary of State on the occasion of a temporary re-appointment had no reference to the subsequent permanent appointment and that by making it applicable he has been deprived of the benefit of article 370;

PENSION DEPARTMENT.

(c) that by analogy to the rules of the Indian Educational Service his first five years became pensionable on his permanent appointment in 1907; and

(d) that owing to first five years of his service being disallowed and to the operation of fifty-five years' rule he could not obtain a full pension in spite of the addition of three years to his service under article 404 of the Civil Service Regulations which was allowed to him in 1902.

12. The Accountant-General is of opinion that Mr. Nelson's request to be permitted to reckon his temporary service prior to 1st April 1896 as pensionable under article 370, Civil Service Regulations, is inadmissible as during that period Mr. Nelson was allowed the privilege of private practice and was not a whole-time servant of Government. The Accountant-General considers that Mr. Nelson's case is governed by article 352 (c) of the Civil Service Regulations and not by article 370.

13. The Accountant-General's statement that Mr. Nelson was allowed "private practice" during the first five years of his engagement is not quite correct. Mr. Nelson was allowed to take only "consulting or chamber practice but not court or other practice" and this was on the strict understanding and condition that such practice should not in any way interfere with the due performance of his duties as Principal. In 1906 Mr. Nelson pointed out that this consulting practice was non-existent in Madras and Sir George Forbes in agreeing with him observed that Mr. Nelson's rights as to consulting practice, though they looked well on paper, were of no real value—*vide* his

Clause 2 of his agreement on pages 1 and 2 of G.O., No. 360, dated 18th May 1891.

Paragraph 5 of his letter on page 3 of G.O., No. 64, Educational, dated 7th February 1907.

note, dated 12th January 1907, on page 4 of the notes with G.O., No. 64, Educational, dated 7th February 1907.

14. It is for consideration whether there are sufficient grounds to justify the re-opening of the question and a further reference to the Government of India on the subject. Attention is solicited to paragraph 3 of the Secretary of State's despatch on page 3 of G.O., No. 426, Educational, dated 24th July 1902.

15. The remarks of the Financial Department may first be obtained *u.o.*

K. RANGASWAMI AYYANGAR—7-7-11.

Mr. Nelson discussed his case personally with me but neither he nor I was then aware of the stumbling-block created by article 352 (c) of the Civil Service Regulations; we looked only to article 370 which appears to have been lost sight of in the previous discussions.

2. The strength of his case depends on (i) the proposition that the concession of chamber practice was of no real value and (ii) the argument embodied in clause (d) of paragraph 6 of his letter, *viz.*, that having taken no furlough during the initial five years of temporary service, he was forced by considerations of health to take more leave during his permanent service than most men find necessary. Mr. Nelson will be 55 on the 7th April 1918, when his total permanent service will be a few weeks under 22 years. With the three extra years under article 404 of the Civil Service Regulations this is made up to nearly 25 years, but under article 408 only two years of Mr. Nelson's leave will count as service, and he has already had "over three years' leave". From the "history of services" I gather that he has had some two years and seven months' leave with allowances—of which seven months will not count for pension—and also five months without allowances which does not count. When therefore he becomes 55, his total qualifying service will be some weeks short of 24 years and he will only be eligible for a pension of 23/60 instead of 30/60, and this on the assumption that he takes no further leave in the next seven years!

3. The case is, I think, a hard one, but there is not much new matter on which to base an application for reconsideration.

L. DAVIDSON—8-7-11.

To the Pension
To the Financial } Departments.

Mr. Nelson's request to count his five years' service from the 2nd May 1891 to 2nd May 1896 has already been fully considered by this Government, the Government of India and the Secretary of State and was rejected—see notes on pages 1 to 3 *supra*.

2. He now requests that he may be permitted to reckon the service in question under article 370 of the Civil Service Regulations and the Accountant-General points out that the request is inadmissible, in as much as during the period he was allowed the privilege of private practice and was not a whole-time servant of Government. The Accountant-General says that the case is governed by article 352 (c) of the Civil Service Regulations and *not* article 370, Civil Service Regulations.

3. The Accountant-General's views seem to be correct.

4. The calculation of Mr. Nelson's service on page 4 of these notes is, it is submitted, correct.

5. Attention is also solicited to article 423 (2) (a) of the Civil Service Regulations. Under this article, the Government may condone a deficiency in the officer's qualifying service not exceeding half his non-qualifying and also not exceeding *one year* in all. Mr. Nelson's qualifying service, when he is 55, will be 24 years and he will be eligible for a pension of 24/60ths of his average emoluments, subject to the limit of maximum pension laid down in article 474 (b), Civil Service Regulations.

K. SRIKANTA AYYAR—21-7-11.

The present application for reconsideration is based mainly on the ground that article 370, Civil Service Regulations, was overlooked both by Mr. Nelson and all the authorities in considering his case. Article 370, Civil Service Regulations 5th edition, corresponds to and is identical with article 405, Civil Service Regulations 3rd edition (which was in force from 1st May 1897 to 30th November 1902), and it will be seen that the latter section is expressly quoted in paragraph 3 of this Government's letter No. 10, Educational, dated 6th January 1902, in which Mr. Nelson's request to treat his first term as pensionable was strongly recommended to the Government of India. The reason why the Secretary of State declined to comply with that request in spite of the recommendation of the Madras Government and Government of India was that it was expressly stipulated that Mr. Nelson was not to count his first term for leave or pension and that in consideration of this he was given special pay and the privilege of private (chamber) practice—*vide* 352 (c), Civil Service Regulations.

2. As regards the Accountant-General's endorsement that Mr. Nelson was not a whole-time servant during his first term and that his case is governed by article 352 (c) and not by article 370, reference is solicited to paragraphs 3 and 4 of G.O., No. 69, Educational, dated 15th February 1900, in which the Government argued that he was a whole-time servant in spite of Mr. Nelson's contention to the contrary, and this argument was used on his behalf in Letter No. 10, Educational, dated 6th January 1902, when recommending pension for the first term.

3. It will thus be seen that the case was considered in all its aspects and that there are no grounds to reopen it.

M. S. MASCARENHAS—27-7-11.

I am afraid there are no good grounds for reopening the case at present. When Mr. Nelson retires, the question whether his case is governed by article 370 or article 352 (c) can be considered, and if it is held to come under the latter article the question of condoning the deficiency can also be taken into consideration. I think Mr. Nelson has been rather hardly treated by the Secretary of State but I believe that if we now made another representation on his behalf we should only receive another refusal and that would make it still more difficult to obtain any concession for him at the time of his retirement.

2. It is not necessary to consult Financial Department on this case.

H. A. STUART—30-7-11.

To the Educational Department.

L. DAVIDSON—31-7-11.

I do not think we have any case to go to the Secretary of State again. And as the Chief Secretary points out a refusal now will really prejudice Mr. Nelson's case should he apply again when actually retiring.

2. If Mr. Nelson stays till he is 55, I suppose he will in any case get his Rupees 5,000 a year. He will have earned it and he will get that; it will be less than 23/60 of his average salary. But I suppose he is looking to the chance of his having to go sooner on medical certificate. He must, I think, be told that Government do not see sufficient reason for addressing the Secretary of State again on the matter and the whole of the consideration now put forward were before the Secretary of State when he gave his orders.

M. H[AMMICK]—4-8-11.

Draft submitted for approval.

T.K.—7-8-11.

K. RANGASWAMI AIYANGAR—7-8-11.

L. DAVIDSON—8-8-11.

[G.O., No. 555, Educational, dated 10th August 1911.]

READ AGAIN G.O., No., dated 19...

[illegible]

READ ALSO :—

C. No. 1522, From the D. O. J., No. 42, dated 8. 6. 1944

O R D E R.,

No. 555, dated 10. 8. 1911.

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The D. P. T. will be requested to inform Mr. Nelson that the Govt. do not see sufficient reason for addressing the Secretary of State again on the question of allowing the first five years of his service to be counted for pension. ~~At~~ The consideration ^{put forward} now ~~is~~ by Mr. Nelson ~~in his~~ ^{interview} ~~was~~ were before the Secretary of State when the latter gave his decision in 1902.

Scipio 21/8/11

To The D.O. J. Dept
W-8-U

7. 8. 11

Lt:
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~~LEGISLATIVE~~

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