

Educational (1912.) Department.

ORDINARY MS.

G.O., No. 318

DATED 16/4/

[Despatch Abstract.]

Sanction for the remission

Sanctioning with remark. The remission of the sum of Rs 61-9-1 disallowed by the A.G. from the pay and allowances due to Mr P. N. Ramalinga Sagar, late acting Supervisor of elementary schools in Coimbatore.

PAPERS PUT UP WITH CURRENT No. _____

Papers of the department to which the current belongs.

Number	Date.	Original (= O.) or spare copy (= S. C.)	Remarks. (In this column such of the papers as have been removed for copying, printing, etc., should be marked with a cross.)	Initials of clerk with date in token of return to Reference department.

Papers of other departments.

Department.	Number.	Date.	Original (= O.) or spare copy (= S. C.)	Initials with date of (1) clerk of the Chief Secretariat department acknowledging returns of the paper concerned or (2) Despatcher to denote the return of the papers to departments outside the Chief Secretariat.
Judicial	1520	10-10-10	se	
Rev-	2043	26-7-09	se	
Fincl	380	31-7-11	SC	

Stock Form No. 185.
4,000-6-10.

EDUCATIONAL DEPARTMENT.

Received  191 Registered *8* *3* 1912

Subject.

Submitting for orders of Government a legal notice served by N. Ramalinga Aiyar late acting Supervisor of Madura in which he claims the arrears of salary and allowances for the period he acted in the above capacity.

ENCLOSURES.

No. _____

Spare copies _____

Ref. on Cur. No. 607/12

Station, Madras, Dated the *6th* March 1912.

From (Name) The Hon'ble Mr. A.G. Bourne, D.Sc.F.R.S.C.I.E.,

(Designation) Director of Public Instruction,

Madras.

To The Secretary to the Government of Madras,

Educational Department,

Su,

I have the honour to submit for the orders of Government a legal notice served by N. Ramalinga Aiyar, late acting Supervisor of Elementary Schools Madura in which he lays claim to arrears of salary and allowances amounting according to his own account to Rs. 61-14-3.

2. In the years 1910 and 1911 N. Ramalinga Aiyar, who had some time previously lost his appointment as a board schoolmaster, was appointed to act as Supervisor of Elementary Schools, Madura, in the second class on a salary of Rs. 40 per mensem. He was so employed from 1st June to 3rd November 1910 and from 2nd April to 10th July 1911, when he was relieved at his own request as he wished to practise as a pleader.



2.

His appointment in the Second class of Supervisors was sanctioned in this office prior to the receipt of G.O. No. 380 Financial dated 31st July 1911 under the impression that it could be done because he had no substantive appointment in the Department either in Government or in Local Fund Service and the permanent incumbent of the post was also in that class. The Accountant-General, however, admitted N. Ramalinga Aiyar's salary at Rs. 30 per mensem only i.e., the pay of the third or lowest class, under article 141 of the Civil Service Regulations and ordered the recovery of the amounts overdrawn by him - Vide his objection slips submitted herewith for reference and favour of return. The matter was then discussed with him for a while with the view of his withdrawing his objections; but as he insisted on the recovery of the excess amount, the recovery was effected by shortdrawal in respect of the salary and allowances due to N. Ramalinga Aiyar for June and July 1911. The amount so deducted is Rs.49-10-8 according to a statement furnished by the Sub-Assistant Inspector, Madura Range, but it is put down at Rs.61-14-3 in the legal notice. I am asking the Inspector of Schools, 7th Circle, to explain the discrepancy between the two figures and shall communicate with Government on receipt of his further report on the point.

*Suit returned -
vide page 129 of
J*

3. The legal notice was forwarded to the Government Solicitor for his opinion as to whether in the circumstances of the case (which were explained to him) the suit intended to be filed by N. Ramalinga Aiyar would stand in a Court of Law and, if so, whether his claim should be admitted. In his reply No. 219 dated 17th February 1912 (copy enclosed), he stated that the notice was of a claim against me personally and not against Government, that it was in respect of a valid contract

to which I personally and the claimant were principals and that - as the matter was thus a private one - I should, if a suit were instituted, obtain the sanction of Government to its being defended at the public expense. As, however, the notice is addressed to me in my official capacity as "The Director of Public Instruction, Madras, holding office at the Old College, Nungambakam", is served under section 80 of the Civil Procedure Code and was delivered at my office by registered post, I again addressed the Government Solicitor and requested him to inform me whether it might not be taken to have been served on me in my official capacity in respect of a claim alleged to have arisen in consequence of certain acts done by me in my official capacity. But as will be seen from the enclosed copy of his letter No. 253 dated 23rd February 1912 he still holds that the notice is of a suit against me personally and not against the Secretary of State.

I have the honour to be,

S i r,

Your most obedient servant,

Charles Macpherson

For Director of Public Instruction.

P.V.S.

M. S. S.

No. 219

Madras, 17th February 1912.

From

W. O. David

Government Solicitor,

Madras.

To

The Director of Public Instruction,

Sir,

1. I have perused and considered and return herewith the enclosures to your letter Ref. on G. No. 607 of 1912 dated the 14th instant.

2. The notice served on you is of a claim against yourself personally and not against Government. If the suit were intended to be filed against Government the notice would have to be served on the Collector or a Secretary to Government. There are two forms which such a claim against you personally might take : the first on the footing of a valid contract to which you personally and the claimant are principals and being a claim for damages for its breach and the other being on the footing that you purported to make the contract on behalf of Government but were exceeding your authority the claim in the latter case being for damages for breach of an implied warranty by you of your authority to enter into the contract on behalf of Government. The notice served appears to contemplate a suit on the footing of the first of the above alternate forms of claim but I do not think it possible for the claimant to successfully contend that the proceedings appointing him to act as Supervisor constitute a personal contract with yourself nor do I think that a suit on the footing of a breach of an implied warranty would be successful if the notice were held to be a valid notice of such a suit. It has been held by the Court of Appeal in England and the case, *Dunn - v- Macdonald* (1897) 1 Q.B. 555 C.A.

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For Director of Public Instruction.

From

W.O. David,

Government Solicitor,

Madras.

To

The Director of Public Instruction,

Madras.

Sir,

1. I have the honour to return herewith the enclosure to your letter Reference on G. No. 607/1912 dated the 21st Instant.

2. The provisions of Section 80 of the Code of Civil Procedure which you quote relate to private suits. The notice is of a suit against yourself & not against the Secretary of State. As stated in my previous letter if the suit were intended to be filed against the Secretary of State the notice would have to be served on the Collector of the District or a Secretary to Government. In similar cases special sanction of Government has been obtained for suits being defended at the public expense.

I have the honour to be,

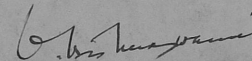
Sir,

Your most obedient servant,

/Sd/ W.O. David,

Government Solicitor.

/True Copy/



For Director of Public Instruction.

C. No. 742. From the D.P.I. No 607 dated 6-3-1912.
" 901. " D.P.I. " 607 " 20.3-12

SUBJECT.

notice of suit against the D.P.I.

9/10

Page 4 of G.O. no. K
1520 dated 10-10-10

Under para 1 (iii) of G.O. no. 2927 Rev. dated 3rd Sept. 1910, the D.P.I. should in this case arrange for the defence of the suit himself. He does not raise the question that the suit, if instituted, should be defended at the public expense. This question may it is submitted be considered, when the suit is actually instituted. It does not appear what orders the D.P.I. seeks at this stage.

7A/
20.3.12

Obviously it is the opinion of the Govt. Secy that has evoked this reference from the D. P. I. This opinion, which is to the effect that the claim is against the D. P. I. personally and not against Govt., is chiefly based on Section 80 of the Civil Procedure Code. This section does not ~~however~~ ~~however~~ lay down that notice of all suits against Govt. should be served on the Collector or Secretary to Govt. It contemplates the institution of suits against ^{and advice of Secretary} a public officer in respect of "any act purporting to be done by such public officer in his official capacity." It appears

that the proposed suit against the D.P.I. may fall under the latter category. If this view is accepted, there will be no objection for arrangements being made to defend the suit at public expense.

2. It is, however, for consideration whether it is not desirable to have the matter settled out of court. The claim appears to be equitable. Perhaps a special sanction of the local govt. under Art. 278-A of the Civil Account Code for the payment may obviate the necessity for a reference to the govt. of India. It is submitted that the Accountth. General may be asked to state whether this course may be adopted or whether there is any other way out of the difficulty.

22/3/12

[Signature]

The D.P.I. was acting officially & if the notice institutes in a suit & shd. continue to be defended at the cost of Govt. But the claim is equitable & shd. I think, be admitted to the extent of Rs 64-9-1 (p. 12 if c.f.). If no recovery has been effected from the notice-giver, Govt. shd. then remit the amount of award. Art. 279 A of the Civil Account Code as in force are dealt with in G.O. No. 380. In this case

(H)

31. 7. 11

also I said "remit the disallowance" under that article. The amount in case will be. I take it, he refunded as a matter of course.

Ld.
24.22

20th 0901-1
25.3.12
25/3/12

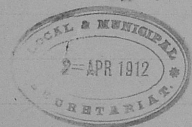
A. G. S. no. for
same remark as to
procedure for refund.

② The book is not available at
Colaba.

I see no objection to the Local Government sanctioning the remission of the disallowance in question under the second sentence of Article 279 A. of the Civil Account Code³ as introduced by the 13th list of corrections dated 28th April 1911, if they are satisfied that the conditions laid down in clauses (1) and (3) in that article are fulfilled in this case. If such sanction is given, the Director of Public Instruction should be asked to arrange to draw and refund the amount to the party concerned.

A. G. S.
1/4/12
Offg. A. G.

A. G. S. No. 4
1.4.12



To
The Secretary to Government,
Educational Department.

The conditions laid down in clauses (1) & (3) of Article 279 A of the C. A. Code are clearly fulfilled in this case; the Govt. may therefore sanction the remission of the disallowance in question.

2. The draft below is for approval.

TH
1.1.12
CA
7.4.12

I cannot pass it until the notes
You can find me a copy of the
C.A. Code.

J
Hup

A copy of the Civil Account Code is put up.

PP
13.4.12

new Sept
16.4.12

191

C. No. 742, From the D.P.O., No. 607/12, dated 6-3-1912.

77 77 901, 77 77 11, 77 77 u, 77 77 20-9-1912.

191

No. 318, dated 16-4-1912.

Dr 16/4

Page 12 of CF.

Under article 279 A of
the C. A. Code the Govt. are
pleased to sanction the remission
of the sum of Rs 61-9-1 dis-
allowed by the A.G. from the
pay and allowances due to Mr. Dy.
N. Ramalinga Aiyar, late acting
supervisor of elementary schools,
Madura -

2. The D.P.I. will be requested to arrange to draw ^{and pay} the amount to Mr. R. N. Ramalinga Aiyar.

78.1 CR
44-12 7.4!2

Kehl
16.4.12

70 The ~~299~~ with quads. netted.
-- A.G. ✓ Dec 27/4/12

In given for copying _____
 Not copied _____
 Examined _____
 Signed _____

191

HAD AGAIN G.O., No. _____
 191

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT TILED UP, BEING MEANT FOR DESPATCH
 IN ORIGINAL.

A A A A A A A

N.B.—

A = Copy in full.
 B = Not to be copied.
 P = Copy abstract only.
 Q = Copy Heading only.