

14683

Government of Madras

HOME DEPARTMENT (EDUCATION)

G.O. No. 192, 15th February 1918

Building grants

Restoring the orders passed in G.O. No. 1128, Educational, dated the 21st December 1912, regarding the scale of fees chargeable by the Government Solicitor for his work in connexion with — and cancelling paragraph 1 of G.O. No. 1324, Home (Education), dated the 23rd October 1917.

12

N. P.

N. P. ORIGINAL
Government of Madras

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Building grants

Restoring the orders passed in G.O. No. 1128, Educational, dated the 21st December 1912, regarding the scale of fees chargeable by the Government Solicitor for his work in connexion with — and cancelling paragraph 1 of G.O. No. 1324, Home (Education), dated the 23rd October 1917.

READ—the following papers :—

I

G.O. No. 1128, Educational, dated the 21st December 1912.

G.O. No. 1324, Home (Education), dated the 23rd October 1917.

II

Letter—from H. BRIGHTWELL, Esq., Government Solicitor, Madras.

To—the Chief Secretary to Government.

Dated—the 9th November 1917.

No.—1465.

I have the honour to acknowledge receipt of G.O. No. 1324, dated the 23rd October 1917, directing the Government Solicitor in modification of the previous orders on the subject to charge only such fees as are admissible under the usual conveyancing scale for the examination of titles and settlement of mortgages in connexion with building grants and agreeing to bear one-half of the legal expenses connected with building grants.

2. With great respect I am not prepared to accept payment of fees for examination of titles and settlement of mortgages on the scale stated in the above Government Order as I am entitled under G.O. No. 1128, Educational, dated 21st December 1912, to be paid at a rate not exceeding 1 per cent of the grant.

3. When I was appointed Government Solicitor in June 1916 it was on the implied understanding that I was entitled to the same emoluments which attached to the appointment as my predecessor Mr. David, and since my appointment I have been paid at the rate mentioned in the said G.O. No. 1128.

4. With reference to the statement in the order that the ad valorem scale has not worked equitably, I beg to point out that there is no evidence so far as I know of this, on the other hand it would seem to me to have worked equitably, as the colleges, etc., receiving grants of small sums have reaped the benefit of the ad valorem scale, being less able to pay the conveyancing scale than those receiving large grants, and I submit that in the case out of which this order has arisen it is equitable that the recipient of the grant should pay on the ad valorem scale. The order will, I submit, be unfair to the recipients of small grants as they may have to pay far more than those receiving large grants, and in this connexion I beg to call attention to paragraph 3 of my letter No. 775, dated 21st June 1917, to the Director of Public Instruction.

5. With all deference, I submit it is not open to the Government now to alter the scale of fees payable to me and in the circumstances I respectfully request that the G.O. No. 1324, dated 23rd October 1917, be cancelled.

Order—No. 192, Home (Education), dated the 15th February 1918.

On a reconsideration of the question of the fees chargeable by the Government Solicitor for the examination of titles and the settlement of mortgages in connexion with building grants sanctioned for educational institutions, the Government have decided to restore the orders passed in G.O. No. 1128, Educational, dated the 21st December 1912. Paragraph 1 of G.O. No. 1324, Home (Education), dated the 23rd October 1917, is accordingly cancelled.

(True extract)

R. RAMACHANDRA RAO,
Secretary to Government.

To the Director of Public Instruction.
" Accountant-General (through Financial).
" Home (Judicial) Department.
" Financial Department.
" Government Solicitor.
Editors' Table (order only).

NOTES CONNECTED WITH G.O. No. 192, HOME (EDUCATION),
DATED 15TH FEBRUARY 1918

[SUBJECT.—*Fees to Government Solicitor.*]

HOME (EDUCATION) DEPARTMENT.

From the Government Solicitor, No. 1465, dated 9th November 1917.

Please see G.O. No. 1324, Education, dated the 23rd October 1917, and the notes connected with it, specially the Honourable Member's (Judicial) orders on page 6 of those notes with which His Excellency the Governor agreed. The Government Solicitor's protest against that Government order shows the undue advantages he had under the terms of G.O. No. 1128, Educational, dated 21st December 1912, and it is prompted by no other reasons than that he was deprived of those advantages. It is for consideration whether he may be informed that the Government see no sufficient reason to modify the Government order. The file may be forwarded to the Judicial Department unofficially for remarks.

P.R.—15-11-17.

T.K.—16-11-17.

The Government Solicitor's arguments now adduced by him have all been before Government when G.O. No. 1324, dated 23rd October 1917, was passed. No new grounds have been shown except that it is not open to Government to modify the original scale. Judicial may perhaps be able to say whether this objection is tenable with reference to the terms of his appointment.

C. RAMANUJA ACHARIYAR—17-11-17.

The claim is obviously untenable but let Judicial examine.

R. RAMACHANDRA RAO—19-11-17.

HOME (JUDICIAL) DEPARTMENT.

The point of the Government Solicitor's argument is that the remuneration attaching to his office at the time of his appointment and which led him to accept it should not be reduced after he has accepted it. This is correct, but there is no question of reducing the emoluments to which he is properly entitled. The Government Solicitor assumes that G.O. No. 1128, Educational, dated 21st December 1912, gives him a fee of 1 per cent of the amount of the grant for examination of titles and the settlement of mortgages in connexion with the grants. In this he is wrong; 1 per cent is only the *maximum* fee he can claim, the fee being fixed within this maximum in proportion to the amount of work involved. It is open to the Government to reduce it below 1 per cent in particular cases. The Government Solicitor's inference that the Government have altered the scale of remuneration allowed in G.O. No. 1128, Educational, dated 21st December 1912, is not thus correct. Submitted that Home (Education) may be asked to explain the position to the Government Solicitor. It is enough to say that we cannot allow the contention.

C.R.—6-12-17.

HILTON BROWN—7-12-17.

R.R.—8-12-17.

HOME (EDUCATION) DEPARTMENT.

A draft order is submitted for approval.

P.R.—13-12-17.

T.K.—13-12-17.

C. RAMANUJA ACHARIYAR—14-12-17.

R. RAMACHANDRA RAO—15-12-17.

H. F. W. G[ILLMAN]—16-12-17.

OFFICE OF THE PRIVATE SECRETARY TO
HIS EXCELLENCY THE GOVERNOR.

Before the Government are finally committed to the view expressed in the draft order His Excellency would like the question of the interpretation of the G.O. No. 1128, dated 21st December 1912, to be further considered. Subject to a maximum of 1 per cent ad valorem the fees to be charged were left to the Government Solicitor's discretion. To these terms Mr. Brightwell succeeded though we might have revised them when he assumed office. His contention apparently is that the discretion to vary the fee within the maximum was left to the Government Solicitor and not to the Government and that the fact that a maximum was fixed does not entitle the Government to rescind their agreement with him, i.e., any alteration in the terms on which he holds office can only be by mutual agreement. His Excellency would like this point to be examined as bearing upon the spirit of the agreement.

(By order)

T. E. MOIR—19-12-17.

HOME (EDUCATION) DEPARTMENT.

No doubt G.O. No. 1128, Educational, dated the 21st December 1912, gave the Government Solicitor discretion to charge a maximum fee of 1 per cent. But it is respectfully submitted that this discretionary power given to the Government Solicitor did not deprive the Government of their right to reduce fees below 1 per cent. Thus the Government Solicitor's contention that the discretion was left to the Government Solicitor and not to the Government does not seem to be valid. It may also be noted that the orders in G.O. No. 1128, dated the 21st December 1912, are only executive orders and are not of the nature of an agreement and that it is open to the Government to modify them when it is found that they do not work equitably. As, however, the question referred to at A above is one for consideration in Judicial, it is submitted that the file may be sent to that section unofficially for remarks.

T.K.—4-1-18.

Will Judicial kindly note further on this point? It is already dealt with in their note on the previous page.

C.R.—5-1-18.

HOME (JUDICIAL) DEPARTMENT.

Please see this department note on the previous page. The spirit of G.O. No. 1128, Educational, dated 21st December 1912, is the same as its *prima facie* meaning, viz., that the Government Solicitor should charge fees within the maximum of 1 per cent in proportion to the labour involved in each case. The Government Solicitor used this discretion badly in the case which started the present discussion as he demanded the maximum fee for work which was purely nominal. Hence it was found necessary to revert to the usual scale of fees paid to lawyers generally for services of this kind, and G.O. No. 1324, Home (Education), dated 23rd October 1917, provides for this. In the absence of a formal contract as to the terms of the appointment, the Government can modify the scale of remuneration to be attached to the office just as they can do in the case of any other appointment of this kind. It is only open to the

Government Solicitor to give up his office if he is not satisfied with the altered conditions, but not to question the power of Government to curtail his remuneration. The order in question may be hard on him, but any reconsideration of it can be based on this consideration alone and not on the ground that it is a breach of agreement.

A.K.K.—9-1-18.

W.B.S.—9-1-18.

In the case which led to the reconsideration the fees worked out as follows:—

	RS.	A.	P.
At 1 per cent ad valorem ...	340	0	0
At usual conveyancing rates ...	39	8	0
Difference ...	300	8	0

i.e., the Government Solicitor made a clear Rs. 300 in excess of the work done. But, as pointed out by the Honourable Member on page 6 of notes to G.O. No. 1324, dated 23rd October 1917, this cuts both ways. The Government Solicitor might have lost a similar amount. He has made this comment in paragraph 3 of his letter No. 775 at page 2 of the same Government Order. It would therefore be natural to him to charge the maximum where he could to make up for cases which did not pay. The conclusion to be drawn from this is that already arrived at by Government—that the ad valorem system was bad and inequitable.

There can be no question of Government's right to rescind their order. It is, however, a fact that the present Government Solicitor took up his appointment under these terms and it is clear that the ad valorem system paid him on the whole better than that now instituted or he could not now complain. It is for consideration whether any concession is to be made to the present holder of the appointment for these reasons. He can, of course, resign if he does not like it; but Government may not wish to drive him to such a course.

HILTON BROWN—10-1-18.

The point at issue is whether during the incumbency in office of a Government Solicitor it is open to Government to alter the scale of fees for services in vogue when the particular Government Solicitor entered on his duties. (There is no question, in this further examination, of the equity or discretion of the specific Government Order under consideration.)

I submit yes. Scales of emoluments, as distinguished from salaries, are being modified from time to time—e.g., rates of travelling allowance. And we always give effect to the orders from the dates of issue.

R. RAMACHANDRA RAO—11-1-18.

HOME (EDUCATION) DEPARTMENT.

The file may be circulated to His Excellency the Governor with reference to the Private Secretary to His Excellency the Governor's note on page 2 ante.

P.R.—15-1-18.

C.R.—16-1-18.

C. RAMANUJA ACHARIYAR—17-1-18.

There was no specific agreement with Mr. Brightwell. When he entered on his duties there were some standing rules. I believe that it is open to us to modify these rules of service from time to time.

R.R.—18-1-18.

Discussed in Council on the 4th instant and decided that G.O. No. 1128, Educational, dated 21st December 1912, should stand and that the recent order modifying it should be cancelled.

H. F. W. G[ILLMAN]—6-2-18.

A draft order is submitted for approval. Apparently it is intended to cancel only paragraph 1 of the Government Order relating to the Government Solicitor's

4. NOTES TO G.O. No. 192, HOME (EDUCATION), 15TH FEBRUARY 1918

remuneration [G.O. No. 1324, Home (Education), dated 23rd October 1917]. The draft order proposes to retain paragraph 2 in which the Government have undertaken to bear one-half of the legal expenses.

2. The draft may go to Financial for perusal before issue.

P.R.—7-2-18.

C.R.—8-2-18.

C. RAMANUJA ACHARIYAR—9-2-18.

R. RAMACHANDRA RAO—11-2-18.

FINANCIAL DEPARTMENT.

Submitted that the case may be returned to Home (Education) after perusal.

V.G.K.—13-2-18.

L. E. KERSHAW—13-2-18.

L. DAVIDSON—13-2-18.

HOME (EDUCATION) DEPARTMENT.

Issue.

C.R.—19-2-

[G.O. No. 192, Home (Education), dated 15th February 1918.]

Building Grant

Restoring the orders passed in G.O. No. 1128 Edl on the 21-12-12 regarding fees chargeable by the Govt. Solicitor in connection with and cancelling para 1 of G.O. No. 1324 Home (Edu) on the 23.10.17.

READ AGAIN G.O. No. 1128 Edl, dated the 21-12-1912. (Q)

" " " " 1324 Home (Edu), " 23-10-1917. (R)

READ ALSO:-

C. No. 1427 B, From the Govt. Solicitor, No. 1465, dated the 9.11.1917.

" " 1202 B, " " 1672, " " 20.12.1917.

" " " " " " " " 1917.

ORDER.

No. 192, dated the 15-2-1918.

On a reconsideration of the question of fees chargeable by the Govt. Solicitor for the examination of titles and the settlement of mortgages in connection with building grants sanctioned for educational institutions, the Govt. have decided to restore the orders passed in G.O. No. 1128 Edl of the 21-12-12. Para. 1 of G.O. No. 1324 Home (Edu) on the 23.10.17 (accordingly) is cancelled.

7.2.18
CR
8.2.18

9.2.18

11.2.18

To, The Secy, Home (Edu) Dept, Govt. of Madras.
A.G. (H.E. Dept)
Home (Edu) Dept
H.E. Dept
Govt. Solicitor

spare copy to be kept
CR
25/2/18

Received
16.2.18

Handwritten notes: (col) 40, 602 & Rev, 22/12/17

Handwritten 'B' in a circle

Handwritten '3' and 'omit in printing'



No. 1672

Madras 20th December 1917.

From
Henry Brightwell
Government Solicitor,
M a d r a s



Handwritten: Jan B, 1204, 22-12-17

To
The Chief Secretary to Government,
M a d r a s

Sir,

I have the honour to request that I may have a reply to my -
letter No.1465 dated the 9th November 1917 on the subject of my -
fees for examination of titles and settlement of mortgages in --
connection with building grants.

I have the honour to be,

Sir,

Your obedient servant,

Henry Brightwell

Government Solicitor.

NOTES CONNECTED WITH G.O. No. 192, HOME (EDUCATION),
DATED 15TH FEBRUARY 1918

[SUBJECT.—Fees to Government Solicitor.]

HOME (EDUCATION) DEPARTMENT.

From the Government Solicitor, No. 1465, dated 9th November 1917.

Please see G.O. No. 1324, Education, dated the 23rd October 1917, and the notes connected with it, specially the Honourable Member's (Judicial) orders on page 6 of those notes with which His Excellency the Governor agreed. The Government Solicitor's protest against that Government order shows the undue advantages he had under the terms of G.O. No. 1128, Educational, dated 21st December 1912, and it is prompted by no other reasons than that he was deprived of those advantages. It is for consideration whether he may be informed that the Government see no sufficient reason to modify the Government order. The file may be forwarded to the Judicial Department unofficially for remarks.

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T.K.—16-11-17.

The Government Solicitor's arguments now adduced by him have all been before Government when G.O. No. 1324, dated 23rd October 1917, was passed. No new grounds have been shown except that it is not open to Government to modify the original scale. Judicial may perhaps be able to say whether this objection is tenable with reference to the terms of his appointment.

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The claim is obviously untenable but let Judicial examine.

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HOME (JUDICIAL) DEPARTMENT.

The point of the Government Solicitor's argument is that the remuneration attaching to his office at the time of his appointment and which led him to accept it should not be reduced after he has accepted it. This is correct, but there is no question of reducing the emoluments to which he is properly entitled. The Government Solicitor assumes that G.O. No. 1128, Educational, dated 21st December 1912, gives him a fee of 1 per cent of the amount of the grant for examination of titles and the settlement of mortgages in connexion with the grants. In this he is wrong; 1 per cent is only the *maximum* fee he can claim, the fee being fixed within this maximum in proportion to the amount of work involved. It is open to the Government to reduce it below 1 per cent in particular cases. The Government Solicitor's inference that the Government have altered the scale of remuneration allowed in G.O. No. 1128, Educational, dated 21st December 1912, is not thus correct. Submitted that Home (Education) may be asked to explain the position to the Government Solicitor. It is enough to say that we cannot allow the contention.

C.R.—6-12-17.

G. H. BROWN—7-12-17.
R.R.—8-12-17.

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A draft order is submitted for approval.

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T.K.—13-12-17.

C. RAMANUJA ACHARIYAR—14-12-17.

R. RAMACHANDRA RAO—15-12-17.

H. F. W. GILLMAN—16-12-17.

OFFICE OF THE PRIVATE SECRETARY TO
HIS EXCELLENCY THE GOVERNOR.

Before the Government are finally committed to the view expressed in the draft order His Excellency would like the question of the interpretation of the G.O. No. 1128, dated 21st December 1912, to be further considered. Subject to a maximum of 1 per cent ad valorem the fees to be charged were left to the Government Solicitor's discretion. To these terms Mr. Brightwell succeeded though we might have revised them when he assumed office. His contention apparently is that the discretion to vary the fee within the maximum was left to the Government Solicitor and not to the Government and that the fact that a maximum was fixed does not entitle the Government to rescind their agreement with him, i.e., any alteration in the terms on which he holds office can only be by mutual agreement. His Excellency would like this point to be examined as bearing upon the spirit of the agreement.

(By Order)

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HOME (EDUCATION) DEPARTMENT.

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The order in question may be hard on him, but any reconsideration of it can be based on this consideration alone and not on the ground that it is a breach of agreement.

A.K.M.—9-1-18.

W.B.S.—9-1-18.

In the case which led to the reconsideration the fees worked out as follows:—

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At 1 per cent ad valorem ...	340	0	0
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i.e., the Government Solicitor made a clear Rs. 300 in excess of the work done. But, as pointed out by the Honourable Member on page 6 of notes to G.O. No. 1324, dated 23rd October 1917, this cuts both ways. The Government Solicitor might have lost a similar amount. He has made this comment in paragraph 3 of his letter No. 775 at page 2 of the same Government Order. It would therefore be natural to him to charge the maximum where he could to make up for cases which did not pay. The conclusion to be drawn from this is that already arrived at by Government—that the ad valorem system was bad and inequitable.

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C.H. BROWN—10-1-18.

The point at issue is whether during the incumbency in office of a Government Solicitor it is open to Government to alter the scale of fees for services in vogue when the particular Government Solicitor entered on his duties. (There is no question, in this further examination, of the equity or discretion of the specific Government Order under consideration.)

I submit yes. Scales of emoluments, as distinguished from salaries, are being modified from time to time—e.g., rates of travelling allowance. And we always give effect to the orders from the dates of issue.

R. RAMACHANDRA RAO—11-1-18.

HOME (EDUCATION) DEPARTMENT.

The file may be circulated to His Excellency the Governor with reference to the Private Secretary to His Excellency the Governor's note on page 2 ante.

P.R.—15-1-18.

C.R.—16-1-18.

C. RAMANUJA ACHARIYAR—17-1-18.

There was no specific agreement with Mr. Brightwell. When he entered on his duties there were some standing rules. I believe that it is open to us to modify these rules of service from time to time.

R.R.—18-1-18.

Discussed in Council on the 4th instant and decided that G.O. No. 1128, Educational, dated 21st December 1912, should stand and that the recent order modifying it should be cancelled [G.O. No. 1324, Home (Education), dated 23rd October 1917].

H. F. W. GILLMAN—6-2-18.

A draft order is submitted for approval. Apparently it is intended to cancel only paragraph 1 of the Government Order relating to the Government Solicitor's remuneration [G.O. No. 1324, Home (Education), dated 23rd October 1917]. The draft order proposes to retain paragraph 2 in which the Government have undertaken to bear one-half of the legal expenses.

4 NOTES TO G.O. No. 192, HOME (EDUCATION), 15TH FEBRUARY 1918

2. The draft may go to Financial for perusal before issue.
P.R.—7-2-18.
C.R.—8-2-18.

C. RAMANUJA ACHARIYAR—9-2-18.
R. RAMACHANDRA RAO—11-2-18.

FINANCIAL DEPARTMENT.

Submitted that the case may be returned to Home (Education) after perusal.
V.G.K.—13-2-18.

L. E. KERSHAW—13-2-18.
L. DAVIDSON—13-2-18.

HOME (EDUCATION) DEPARTMENT.

Issue.

C.R.—19-2-18.

[G.O. No. 192, Home (Education), dated 15th February 1918.]

ORDINARY.

PRESS SLIP.

REFERENCE.

URGENT (a).

Seett. II-38-1-16.

DEPARTMENT.

Current No dated 191 ..
 G.O. No. 192, dated the 15-2- 1918.

Number of MS. pages sent {
 (b) Correspondence
 (b¹) Notes
 (b¹) Notes

Brief subject

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(b¹) For rules regarding printing of notes, see rule 315 of the office Manual.

(c) The number of copies and the details of distribution should be filled in by the Superintendent or Referencer concerned.

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INSTRUCTIONS FOR THE PRESS.

(a) If, in the opinion of the Superintendent of the Press, a paper has been marked urgent unnecessarily, he should send the Press slip to the Registrar with a remark to that effect.

(b) Unless a note to the contrary is made against the matter, pencil entries should not be printed. The Superintendent of the Press may bring to the notice of the Registrar any instance of incomplete or careless editing.

(c) Signature copies of letters to the Secretary of State or to the Government of India should be printed on hand-made paper.

(d) This slip should be returned by the Press to the Secretariat when proofs are furnished; it will be sent back to the Press when proofs are returned corrected and should be finally returned to the Secretariat when struck-off copies are supplied.

(e) The names of the Secretary and Members should be printed in full when they occur on the right hand side, only the first time when they appear on the left side, the initials alone being printed later.

TO PRESS, MADRAS OOTY.

A
Please send proof in duplicate. The papers have been carefully edited.

B
Proof returned corrected. Please strike off and send number of copies as indicated.

C
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Type may be released after usual interval.

Referencer.
Clerk.

Referencer.
Clerk.

Referencer.
Clerk.

Supdt.

Supdt.

Supdt.

SPECIAL INSTRUCTIONS.

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