

Educational (1904) Department.

ORDINARY PRINTED.

G.O., No. 568

DATED 12-7-04

INDEXED

N. F.

ORIGINAL

[Despatch Abstract.]

Reformatory, Chingleput

Agreeing with the Government
that the two pupils of the —
who committed an offence, is undesirable and considering
that they should receive the maximum punishment available
under the reformatory rules.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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Order complete 45

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Government {1904} of Madras. EDUCATIONAL.

Recd.

Enclosures

1904.

Regd.

Spare copies

ORIGINAL

G.O., No. 568, 12th September 1904.

N. P.

SEPTEMBER.

Reformatory School, Chingleput.

Agreeing with the Director that the prosecution of Lourd Asari (No. 501) and Raju (No. 540), two pupils of the —, who committed an unnatural offence, is undesirable and considering that they should receive the maximum punishment awardable under the Reformatory rules.

GOVERNMENT OF MADRAS.
EDUCATIONAL DEPARTMENT.

READ—the following paper :—

From the Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S., Director of Public Instruction, to the Secretary to Government, Educational Department, dated Madras, 28th July 1904, Ref. on Cur. No. 5564.

Two pupils of the Reformatory school, Chingleput, Lourd Asari (No. 501) and Raju (No. 540) committed an unnatural offence on the night of the 21st June 1904. In the ordinary course the former will be discharged on 23rd March 1906 and the latter on 4th December 1908. Under rule XIII (v) of the Reformatory school rules, sanctioned in G.O., No. 599, Educational, dated 26th September 1898, the pupils should be prosecuted for the offence, but as they are young, the Superintendent recommends that they may be awarded lighter punishment, viz., birching (fifteen cuts) penal diet and solitary confinement for the offender (No. 501), eight cuts on the buttocks and three days' solitary confinement for the younger boy (No. 540). I approve of this recommendation. In connection with a similar case which occurred in 1900 the offenders were not prosecuted but were punished departmentally under the orders of Government conveyed in G.O., No. 495, Educational, dated 8th October 1900.

2. I have taken notice of the delay on the part of my office in dealing with this matter.

ORDER—No. 568, Educational, dated 12th September 1904.

The Governor in Council agrees with the Director that the prosecution of the offenders in the present case is undesirable and considers that they should receive the maximum punishment awardable under the Reformatory rules. The elder boy (No. 501) should accordingly be given fifteen cuts with penal diet and three days' solitary confinement and the younger boy (No. 540) fifteen cuts with penal diet and three days' solitary confinement. They should also both be put in gunny clothing for the maximum period of twenty days allowed by the rules.

2. The Director should satisfy himself that precautions are taken to prevent the occurrence of similar offences in future. The Government observe that the Director's report is meagre with regard to the circumstances in which the commission of the crime became possible.

3. The age of the boys is not stated. It is presumed that they both belong to the senior division : if either belongs to the junior division the number of cuts should be reduced in his case to twelve.

(True Extract.)

H. D. TAYLOR,
Ag. Secretary to Government.

To the Director of Public Instruction.
,, Judicial department.

Enl. V. Ramachandra Rao.

EDUCATIONAL DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 568, EDUCATIONAL, DATED
12TH SEPTEMBER 1904.

[SUBJECT.—A case of unnatural offence at the Reformatory School, Chingleput.]

From the Director of Public Instruction, dated 28th July 1904, No. 5564.

Following the precedent of * 1900, it is submitted that the Director's recommendation in regard to the punishment to be awarded to the pupils of the Reformatory School, Chingleput, who committed an unnatural offence, may be approved.
N.L.R.—5-8-04.

It is submitted that the precedent of 1900 should not be followed in this case. It is not exactly similar. There the Director had already issued orders to award punishments under the rules of the school and what Government had to consider was the question of approving the action taken by him. Here no punishment has yet been inflicted.

2. Then again the chief culprit in 1900 was in the school for nearly seven years and had passed the primary and two technical examinations and was about to be discharged. A prosecution would have blasted his prospects. The culprits in the present case have time till March 1906 and December 1908 and no information is furnished about their career in the school, probably because there is nothing to record on this point.

3. In these circumstances further information about the past conduct of the culprits may be called for. Prosecution will probably have a deterrent effect on the other boys in the school.

4. Information may also be called for from the Director regarding the circumstances under which the commission of the offence was possible. Under the arrangements approved in G.O., No. 598, Educational, dated 23rd November 1900, the senior and junior divisions of the school are kept entirely separate—please see also paragraph 16 (g) of the report for 1900 in G.O., Nos. 295, 296, dated 31st May 1901. Perhaps the present culprits may both belong to the senior division but there is no information on the point—the younger boy cannot however be more than 14 now as his term runs to December 1908.

P. T. THARYAN—6-8-04.

Prosecution.—The elder boy who is over 16 as he will be discharged in March 1906 can't be whipped but only sent to jail (section 5, Whipping Act; section 4 only applies to repeated offence); i.e., he can only be transferred from the Reformatory, a jail specially adapted to juveniles, to the Penitentiary, a jail not adapted to them.

2. The punishment proposed by the Inspector-General, which includes whipping, would probably be more deterrent.

3. The same considerations apply to all cases. In practice—in 1889 and 1900—prosecutions were not instituted. The rule that a prosecution should be instituted in each case where there was sufficient evidence seems to have been passed, because in

1889 an offender was discharged and it was considered that it would have been better to send him to the Penitentiary. There does not seem to be any necessity to discharge offenders. In an ordinary boarding school where boys are left very much to their

Against further offence?

H. D. TAYLOR.

own devices, offenders are expelled as a precautionary measure. In a Reformatory contamination is or ought to be

guarded against by special vigilance on the part of the staff.

4. If it is considered desirable to remove the offenders from the Reformatory, they should be prosecuted. The Inspector-General has not reported whether the evidence is sufficient.

A. GALLETTI—6-8-04.

The proposals of the Director of Public Instruction may be approved with the concurrence of Judicial.

H. D. TAYLOR—6-8-04.

To the Judicial Department.

JUDICIAL DEPARTMENT.

The estimate of the ages of the boys is based on the supposition that the boys will be 18 on the date of their discharge. This need not necessarily be so. Section 8 of the Reformatory Schools Act, 1897, merely requires that a youthful offender sent to a Reformatory school shall be detained there for a period which shall be not less than three or more than seven years, and India's notification No. 1076, dated 30th June 1887, adds that "no boy shall be sent to a Reformatory school, if under ten years of age, for a less period than seven years; if over ten years of age, for a less period than five years, unless he shall sooner attain the age of 18 years."

2. It is for consideration whether the punishment proposed is adequate. Under section 377, Indian Penal Code, the punishment for the offence is ten year's imprisonment. Under section 392, Criminal Procedure Code, the maximum extent of whipping is limited to 30 stripes. It is proposed that the principal offender is to get 15 stripes, penal diet and solitary confinement. It is not said how long the penal diet and solitary confinement are to last. As regards solitary confinement rule XIII (iii) of the rules under the Reformatory Schools Act, says that no boy shall be kept in solitary confinement for more than three days: probably the maximum solitary confinement is intended in the case. By penal diet is probably meant the punishment referred to in rule XIII (vii). The younger boy is to get 8 stripes and three days' solitary confinement. There is no information as to the circumstances in which the offence was committed and of the degree of the younger boy's guilt: it is therefore difficult to say whether the punishment proposed is adequate or not.

J. A. DE ROZARIO—6-8-04.

Presumably the Director would not recommend the punishment of the younger boy unless he considered him to blame and deserving of punishment. The Director should have reported the periods for which the elder boy is to be given penal diet and to be kept in solitary confinement.

A. Y. G. CAMPBELL—8-8-04.

Surely in cases of this kind Government may trust the discretion of its subordinate officers. Probably a conviction in a court of law may be doubtful, and for many reasons it seems best to dispose of the matter in the manner suggested, with a word of

G. S. F[ORBES].

warning that the Director should satisfy himself that precautions are taken, if

necessary, to prevent recurrence of the offence.

2. I submit it best to sanction the proposal.

M. HAMMICK—9-8-04.

I agree it would be better not to prosecute in this case but I think the punishment proposed is quite inadequate. I would give the elder boy at least 30 cuts and penal diet and solitary confinement as proposed. The second boy should get 15 cuts and the rest as the other and I would put both in gunny clothing for the maximum of 20 days.

G. S[TOKEs]—11-8-04.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

Submitted to the Honourable Member.

H. D. TAYLOR—12-8-04.

I agree with the Hon'ble Mr. Stokes.

G. S. F[ORBES]—16-8-04.

Please draft accordingly.

H.D.T.—17-8-04.

Attention is respectfully solicited to rule XIII (iv) of the rules relating to the constitution and working of the Reformatory school, Chingleput, on page 6 of G.O., No. 599, Educational, dated 26th September 1898, under which the maximum number of stripes in the case of boys of the junior division is twelve and in the case of boys of the senior division, fifteen. Subject to approval, therefore, no mention is made in the draft about increasing the number of cuts proposed in the present case.

A. GALLETTI.

Submitted No.

A. GALLETTI.

2. Should the rules be altered so as to raise the maximum number of cuts? If so, what should be the maxima?

P. T. THARYAN—17-8-04.

A. GALLETTI—18-8-04.

The rules are framed under section 26 of the Act and have to be notified in the Gazette. In the absence of such notification I do not think that the prescribed limit can be exceeded.

H. D. TAYLOR—18-8-04.

Yes: as the rules appear to be made under the Act and are in force till formally altered. Circulate to Hon'ble Mr. Stokes.

G. S. F[ORBES]—19-8-04.

Circulated to the Hon'ble Mr. Stokes, C.S.I.

H.D.T.—19-8-04.

True but we are not acting under the rules as I understand. If we act under the rules we must prosecute. I originally inclined to prosecute but the Director urged the other course in the interests of the boys and I thought the proposed punishment insufficient. Possibly the punishment might be technically an assault but I do not suppose that would much matter.

G. S[TOKEs]—19-8-04.

The Hon'ble Mr. Forbes, C.S.I.

H.D.T.—20-8-04.

G.S.F.—21-8-04.

Please draft accordingly.

H.D.T.—22-8-04.

A revised draft is submitted for approval.

P.T.T.—22-8-04.

A.G.—23-8-04.

It is respectfully submitted that an illegal order (viz., 30 cuts) should not issue. Thirty cuts are not more illegal than 15. The Superintendent of the Reformatory would be perfectly justified in refusing to carry out the order and it is not desirable to place him in a position which might cause him to act contrary to the orders of Government.

G. S. [TOKES].

2. In a case of corporal punishment the Government has to consider the remote, though possible, contingency of the punishment resulting in permanent hurt or even death, and if this were to result as the consequence of an illegal order the Government would be liable to damages.

3. If the punishment provided under the rules be deemed insufficient, it is submitted that the elder pupil should be prosecuted.

4. Pending reconsideration of the orders passed, I have not initialled the office draft.

H.D.T.—24-8-04.

Then prosecute both. I would rather see a prosecution myself.

G.S.—24-8-04.

On the whole, I think, considering the age of the boys, and the carelessness of supervision which must have contributed to the commission of the offence, we need not order a prosecution but give the maximum whipping in each case as allowed by the rules—see part XIII of rules in G.O., No. 599, dated 26th September 1898—with maximum solitary confinement of 3 days' and 20 days gunny bags.

G.S.F.—25-8-04.

Circulated to His Excellency the Governor.

H.D.T.—26-8-04.

Since prosecution seems inadvisable, I agree with Hon'ble Mr. Forbes that the limit of other punishment should not be exceeded.

2. I am bound to observe that the Director should have given such information as would have placed Government in a more satisfactory position for dealing with the case.

J. T. [HOMSON]—27-8-04.

The draft is revised and recirculated. Under rule XIII (iv) of the rules, the maximum whipping is 15 cuts for a boy in the senior division and 12 cuts for a boy in the junior division. The Director of Public Instruction does not state to which division each belongs.

G. S. F. [ORBES].

Draft approved.

H. D. TAYLOR—29-8-04.

G. S. F. [ORBES]—31-8-04.

In the face of Rule XIII, clause (v), the order is as much illegal if Government gives 15 as if it give, 30 cuts. In punishing an unnatural offence in this way I understand that the action taken is altogether outside the rules. What is really wanted is the amendment of the rules to allow of an alternative punishment.

G. S. [TOKES]—31-8-04.

Please type fair copy of the draft as revised by the Honourable Member for circulation to His Excellency the Governor. Original draft may be retained in file for reference.

H.D.T.—1-9-04.

A typed fair copy of the draft is submitted. The original draft will be found at the bottom of the file.

P. T. THARYAN—1-9-04.

The first sentence of the draft as revised is not quite accurate as the Director of Public Instruction recommended lighter punishment only, not the maximum punishment awardable under the rules. It is submitted that the draft may be revised as indicated in pencil.

H.D.T.—1-9-04.

The draft may issue. No need to circulate to His Excellency again as he has agreed to the course taken.

G.S.F.—3-9-04.

Will the Hon'ble Mr. Stokes please state whether he accepts the draft, or whether a final reference to His Excellency the Governor should be made.

H.D.T.—5-9-04.

I do not accept the draft for two reasons—

First that a special course being laid down in the case of unnatural offences the punishment ordered is illegal. If the punishment were sufficient however I should not object.

Second that the amending of the rules to make provision for an alternative punishment is not provided for.

G.S.—6-9-04.

Circulated to His Excellency the Governor for orders as to whether the draft order may issue and the Hon'ble Mr. Stokes' minute of dissent recorded.

2. It is proposed to take up the revision of the rules separately.

H.D.T.—7-9-04.

I pass the draft.

2. Hon'ble Mr. Stokes will give directions as to how his view of the case is to be treated.

J.T.—9-9-04.

The Hon'ble Mr. Stokes, C.S.I.

H.D.T.—10-9-04.

I have not recorded any minute of dissent and do not mean to. I note the amendment of the rules will be taken up separately.

G.S.—10-9-04.

Issue.

H.D.T.—12-9-04.

Now please take up the amendment of the rules as to—

(a) length of term for which visitors shall be appointed.

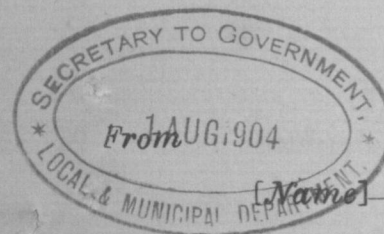
(b) Punishments.

H.D.T.—12-9-04.

[G.O., No. 568, Educational, dated 12th September 1904.]

Educational (190) Department.

CURRENT No. 1341



The Hon'ble Mr. A.G. Bourne, D.Sc., F.R.S.,

[Designation] Director of Public Instruction,

[Station] Madras.

Ref. No. Cur No. 5564 of 04

Received 1-8-1904

Dated 28th July 1904.

Enclosures

Registered 1-8-1904

SUBJECT.

Reporting a case of unnatural offence committed by certain pupils of the Reformatory School, Chingleput, and recommending that they may be punished departmentally.

BACK PAPERS.

to 599: 26 9-98 aff.
to 495: 8-10-00 this

FURTHER PAPERS.

written to
me
on 2/8/04

Educational Department.

Sir,

I have taken notice of the delay on the part of my office in dealing with this matter.

S i r,

S. S. Sullivan
 Director of Public Instruction.

$$\left[\frac{E}{12} \right]$$

1,200-7-10-03.

EDUCATIONAL DEPARTMENT.

READ AGAIN G.O., No. _____, dated _____, 190

READ ALSO:—

C. No. 1341, From the *S.P.2*, No. 5564, dated 28-7-1904

ORDER

No. _____, dated _____, 19____

The Court agrees with the Director that it is ⁱⁿnot desirable to prosecute the offenders in the present case ^{they sh^d receive the} ~~but consider that the~~ ^{allowable} ~~maximum~~ ^{punishment} ~~proposed for the~~ ^{under the Reformatory rules} ~~adequate~~. The Elder boy (no 501) should accordingly be given ¹⁵ ~~30~~ cuts ^{W. H.} ~~beyonds~~ penal diet and solitary confinement and the younger boy (no. 540), ³⁰ ~~15~~ cuts with penal diet and solitary confinement. They should ^{also} ~~be~~ ^{also} put in gummy clothing for the maximum period.

G.No.1341, From the Director of Public Instruction, No.5564,d/23-7-1904

period of twenty days allowed by the rules.
2. The Director should satisfy himself that precautions are taken to prevent the occurrence of similar offences in future.

23/8/14
23.8.4

3. The Govt. assume the Director is satisfied with the report of the District Magistrate and the District Jail Officer regarding the conduct of the boys in the present case.

3. The age of the boys is not stated. It is presumed that they both belong to the senior division: if either belongs to the junior division the no. of cuts should be reduced in his case to twelve.

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To the D.P.I.
" Judicial Department.

I do not think it is possible to prevent the occurrence of the crime.

with regard to the crime in the present case it is possible.

There is no call for further report.

Defendant in and of himself is not a criminal.

12/9/14
Print short + simple note for P.S.

P.S.
O R D E R: -No. 568 d/12-9-04

The Governor in Council agrees with the Director that the offenders in the present case should receive the maximum punishment awardable under the Reformatory Rules. The elder boy (No.501) should accordingly be given 15 cuts with penal diet and 3 days solitary confinement and the younger boy (No.540) 15 cuts with penal diet and 3 days solitary confinement. They should also both be put in gunny clothing for the maximum period of twenty days allowed by the rules.

2. The Director should satisfy himself that precautions are taken to prevent the occurrence of similar offences in future. The Government observe that the Director's report is more with regard to the circumstances in which the commission of the crime became possible.

3. The age of the boys is not stated. It is presumed that they both belong to the senior division: if either belongs to the junior division the number of cuts should be reduced in his case to twelve.

P.T.T.
23-8-04. A.G.
23-8-04. H.D.T.
29-8-04. G.S.F.

To The Director of Public Instruction, Judicial Department.

S. C. S. 7/10/14

First copy sent to Press.

Returned for signature

Despatched in print.

READ AGAIN G.O., No.
190

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DETACH
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B/