

E
Educational (1897) Department.

ORDINARY MS.

G.O., No. 581

DATED 21-10-97

INDEXED.

W.I.
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[Despatch Abstract.]

Cons: to the D.P.D. opinion of the
Advocate Genl: regarding the defense
of the suit for the payment of grant
in aid brought against Govt by the
Manager of the Anglo Vernacular
Upper Primary School, Madanapalle.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Cuo 904/98							

[Ed. 5]
1,000-5-3-87.

Educational (1897) Department.

CURRENT No. 1171

From

William Morgan Esq.,

Ag. Government Solicitor,

Madras.

Order no. 581 & 21-10-97.

Communicated to

the D.P.I. in continuation of SO.

no 564 & 8th oct-97.

No. 602.

Dated 14th

Received 14th

Registered 14th

October 1897.

Enclosures

Spare copies.

SUBJECT.

Forwarding with original enclosures, the opinion of the Honorable the Advocate-General, regarding the defence of the suit brought against Govt. by M.R.Ry. M.K.Subba Rao, Manager, Anglo-Vernacular Upper Primary School, Madanapalle, Cuddapah

To the D.P.I. no. 581 & 21/10/97.

BACK PAPERS.

G.O.	No.	Department.	Date.
	564	Ed	8 10 97
	466	.	13 8 97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

[63]
2,000-24-8-97.

Educational Department.



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers—

From M.R.Ry. M.K.Subba Rao, Manager, Anglo-Vernacular, Upper Primary School, Madanapalle, Cuddapah, dated 5th April 1897.

From the Director of Public Instruction, Madras, No. 6110, dated 9th June 1897:—

In returning herewith Government Endorsement No. 932, dated 27th April 1897, on petition from M.R.Ry. M. K. Subba Rao, Manager, Primary School, Madanapalle, claiming results grants for 1896-97, I beg to submit the following report.

2. I must begin by inviting the attention of Government to my letter No. 5637, dated 23rd May 1896, wherein I have detailed the several irregularities committed by M.R.Ry. M.K.Subba Rao during 1895-96 and in the previous years in the matter of inter school rules. For these irregularities, however, the Manager was not punished at all during that year; for, ~~th~~ from the last paragraph of my letter above referred to, it will be noticed that though recognition was withdrawn from his school, M.R.Ry. M.K.Subba Rao was allowed to retain the grant passed for the year.

3. Now, in regard to the grant for 1896-97, I beg to submit that M.R.Ry. M.K.Subba Rao is quite wrong in thinking that he has a legal claim to the grant and that the Department is under a contractual obligation to pay it. For, in the

the first place, no punishment having been inflicted on the manager for his gross violation of the Departmental rules during 1895-96, the Department was quite justified in refusing grants to the school during 1896-97 by way of punishment for the above irregularities (vide article 29 of Chapter IV of the Grant-in-Aid Code). In the next place as will be observed from the enclosed copy of paragraph 1 of the Assistant Inspector's letter No. 64 Cu., dated 18th January 1897, the school was admitted by the Inspecting officers into the aided list of 1896-97 only pending recognition; in other words, grant was promised to the school for 1896-97 only upon an unconditional restoration of the privilege of recognition, the manager thus being made to take upon himself the risk of either not getting back recognition at all, or of getting it back only subject to conditions which the department might deem fit to impose upon him. Recognition, however, was not unconditionally restored to the school, nor with retrospective effect, as will be seen from copy of the Inspector's memorandum enclosed. The Inspector took care to instruct the Assistant Inspector ~~to~~ that the payment of grant to the manager for 1896-97 should not be authorized until final orders were passed by the Director on the subject. When this fact was communicated to me, I approved of the Inspector's action in restoring recognition to the school in view of the backward state of education in the district, though I was fully convinced that the manager did not merit this favour at my hands. This favour was, however, shown subject to the distinct understanding that the manager should not thereby claim any grant for 1896-97, vide copy of my enclosed Proceedings No. 3630, dated 1st April 1897. The restoration of the privilege of recognition to the school during the middle of a year and just before the Primary Examination must be viewed as a special favour intended more to benefit the locality and the pupils of the school than the manager, and I fail to see how M.R.Ry.M.K.Subba Rau could take advantage of this circumstance to contend that his school is entitled to grants for 1896-97, altogether overlooking the important fact that in the order restoring recognition, it was distinctly stated that certifying memoranda

should

should not be issued until orders were passed by the Director on a reference ^{then} pending before him. There is also another circumstance which altogether weakens the position taken up by M.R.Ry.M.K.Subba Rau. His school was examined in October, but recognition was restored only in December 1896 or nearly two months after the examination of the school. This order cannot certainly be considered to have retrospective effect unless this was specially ordered, and in the present case, the fact that the Assistant Inspector was instructed not to issue certifying memorandum for grant for 1896-97 pending further orders is not favourable to the presumption that retrospective effect was intended to be given to the order of recognition. The examination of the school under these circumstances in October, that is, when the school was not borne on the list of recognised schools, should therefore be ~~considered~~ as one for improvement and not as one for grant. Lastly, it must be remembered that the results grant is an annual grant due for the period between one inspection and the subsequent inspection. The school in question was inspected for 1895-96 in the last week of August 1895 and for 1896-97 on the 3rd October 1896. The privilege of recognition was withdrawn in December 1895 and was not restored till December 1896. Thus between the inspections in 1895 and 1896 the school was without recognition for about nine months and the manager's claim for a year's grant is quite untenable. Even if it is assumed that the annual grant is for the official year for the period from April to March, a school which was borne on the list of recognised schools for a period of three to four months only cannot lay claim to a grant intended for a full year. In view of the fact set forth above, I fail to see how the Department is under a legal obligation to pay the grant claimed by the manager for 1896-97.

4. I beg, in this connection, to inform Government that the petitioner has instituted a suit against Government for the grant claimed by him in the District Munsiff's Court at Madanapalle, and the District Munsiff has issued notice

to

to the Collector of Cuddapah fixing the 28th June 1897 as the date for the settlement of issues (vide the enclosed correspondence). The manager who is a pleader has apparently instituted the suit as a threat to the Department. The Collector recommends that in case it is decided to proceed with the suit, M.R.Ry.O. Lakshmana Sarma, Pleader, Madanapalle, be engaged to defend the suit on behalf of Government. This is within my recollection the first case of the kind. Grants are in many cases refused for various reasons, and it has not occurred to any other manager to sue Government in a court of law. I do not think that any pleader is necessary on behalf of Government. The case not being an intricate one requiring the assistance of a vakil, I am of opinion that the Assistant Inspector of Schools may, after necessary instructions, be ordered to appear before the court ~~en~~ in person to defend the suit on behalf of Government. If however Government is inclined to the opinion that a vakil is necessary, I beg to request that the Collector be required to recommend some other vakil to defend the suit. M.R.Ry.O. Lakshmana Sarma, whom the Collector has now recommended, is the manager of the High School at Madanapalle to which M.R.Ry.M.K.Subba Rau's school is the feeder. I have no objection to furnish the petitioner with the documents he requires. The favour of early orders and instructions on this letter is requested, as the suit is fixed for settlement of issues on the 28th of this month. As it will take sometime for Government to pass orders on this letter and for me to give the necessary instructions to the Assistant Inspector, I beg to request that the Collector be required to apply to the court in time for an adjournment of the case to some date in August.

From the Collector of Cuddapah, No. 2441/Rev. of 1897, dated 1st July, 6th July and 28th July 1897.

ORDER: - No. 466, dated 13th August 1897.

The petitioner will be informed that the Government declines to interfere on his behalf.

2. The suit brought against the Government by the petitioner

must

must be defended. The plea that an entry in the consolidated list of schools admitted to aid, constitutes a contractual obligation to pay any amount of grant should not be allowed; nor should the contention ~~in~~ in paragraph 3 of the plaint that it is for the civil courts to decide whether irregularities are such as to justify Government in withholding the grant. All that the consolidated list indicates is that any school included in it is eligible for aid and that the grant, if given, shall not exceed a certain amount. The inclusion of a school in the list does not affect the power of the Director of Public Instruction ~~or~~ or that of Government to withhold the grant to the school under certain circumstances - Vide Section 29, Chapter IV of the Grant-in-Aide Code.

3. In pursuance of the telegram, dated 19th June last the Collector has engaged N.Venkataramana Rao, a second Grade pleader, to defend the suit and the case has been postponed to 31st August 1897, to enable the defence to file its written statement. The statement will be settled by the Collector in the light of the remarks made in paragraph 2 supra and in consultation with the Director of Public Instruction and the pleader.

4. The copy of the notice served on the Collector and the copy of the plaint and list of documents required by the Court to be produced will be returned to the Director of Public Instruction for the necessary action.

(True Extract)

(Signed) G.S. Forbes,

Secretary to Govt. ret

J.S.
118
11/10/97

Opinion

I am clearly of opinion that a Government grant made under the Educational Grant-in-aid Code does not at all fall within the purview of the Pensions' Act No XXIII of 1871, such grant not being a grant of money conferred or made by the British Government within the meaning of section 4 of the said Act.

2. I am also clearly of opinion that the giving or withholding of such a grant is not an Act of State as defined in Indian Law Reports 5, Madras, 273, in the sense of barring the jurisdiction of Municipal tribunals to entertain a suit in relation thereto against Government.

3. It does not of course follow from either of these opinions that the Manager of an aided school has an actionable claim against Government for a grant, or that the defence to the present suit adverted to in para 2 of G. O., No. 466, dated 13th August 1897, Educational Department, may not be valid.

v Bhashyam Iyengar

Offg: Advocate General

Madras

13th October 1897.

(True copy)

William Morgan

Acting Government Solicitor.

Urgent

(1897) Department

From

William Morgan
Ag. Government Solicitor
Madras

To

The Secretary to Government
Local & Municipal Department
Madras

N^o. 602

Dated 14th October 1897
Recd 14 OCT. 1897

Enclos 2.

Forwarded with enclosures with
reference to the Order of Govern-
ment, Educational, N^o. 564
dated 8th October 1897

W. Morgan
Ag. Government Solicitor

When given for copying 15/10
When copied 15/10
When examined 19/10
When signed 21/10 } 1897

READ AGAIN G.O., No
189

DATED

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO

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

N.B.—

A = Copy in full.
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