

E
Educational (1897) Department.

ORDINARY MS.

G.O., No. 589

DATED 23. 10. 97.

INDEXED.

[Despatch Abstract.]

Referring to the Advocate Genl. for
Opinion Correspondence on the subject
of a proposed suit against Govt by
the D^l Board of Coimbatore in
the matter of the pensionary Contri-
bution paid by the Board on
behalf of ^{school master} A. Mutyam jaya Aiyar

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	CN ^o 1250/97						

Local & Munl. (1897) Department.
Educational

CURRENT No. 983

Order

From The Board of Revenue
(Land Revenue)
Madras

No. 3077 Misc.

Dated 25 August 1897.

Received 27 AUG. 1897

Registered 27-8-97

Enclosures 2

Spare copies

SUBJECT.

Submitting for the orders of Govt in the Educational Department. Letter from the Collector of Coimbatore requesting orders on the notice given by the St. Board of its intention to file a suit against Government in the matter of the pensionary contribution ordered to be paid on behalf of school managers. Mrityanjaya Iyer.

VE

Please complete the file by putting the 50 referring to number 50 1189 L 8 17-9-96, the 50s in the 50s then and in the 50s, copy the L. H. M. & copy of the L. B. Act. 1189

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Copy of order, No. 1684, L. Mis., dated 17th September 1897.

In the Circumstance Stated, the transfer of *A. Mrityanjayam Aiyar* to Local Fund Service from 1st August 1884 to 31st December 1891 is sanctioned. The District Board of Coimbatore will pay the usual pensionary contribution on his behalf under Section 42 (i) of the Local Boards' Act and No. 84 of the Local Fund Rules.

(True copy)

Wm. B. Dudley
Collector.

Wm. B.
21/8/97

Wm. B.
21-8-97

4/6/98

R.O.C No. 2901 of '97
Rev 4/97

Coimbatore COLLECTOR'S OFFICE,
18th August 1897.

FROM

Herbert Bradley Esq.,

COLLECTOR OF Coimbatore.

TO

THE SECRETARY TO THE COMMISSIONER OF

Land Revenue

Madras.

SIR,

I have the honor to submit the following case
for orders.

2. A. Mrityanujaya Iyer, a school master in the service
of Government from 20th January 1877 to 31st July 1884 was,
on the 1st August 1884, transferred by Mr. Munro, the then
Inspector of Schools, 6th Division from a post on
Rs 30 under Government, to one on Rs 40, as Head Master
of the Local Fund Normal School, Karur. On the 31st Decr
91, the School was abolished, and till that date he continued
in the service of the Local Board. The Director of Public
Instruction asked the District Board to pay the pensionary
Contribution on his behalf in order to render his service
from 1st August 1884 to 31st Decr 1891 qualifying for
pension. The District Board, Coimbatore, however,
declined to pay it as the transfer had not been made
with the sanction of Government and he was not a Local
Fund employee on 20th May 84. The Director applied to
Government for the necessary sanction and requested
Government to direct the District Board to contribute
for

Enclosed No 2
60698382097

for A. Mrityambajaya Sger's pension as the transfer was made on public grounds, and not at his request. I may remark that I have been able to discover nothing on record to support this assertion and the fact that the man's pay was raised from Rs 30 to Rs 40 on the transfer seems to show that it was not made without his consent. No arrangement was made for the payment of pensionary contribution nor was such a contribution even mentioned. The Government in its order, dated 17-9-96, No 1684 L. Mil (copy enclosed) accorded the sanction asked for and directed the Board to pay the contribution under Sec: 42(1) of the Local Board's Act and Rule 84 of the Local Fund rules. The President of the District Board asked the Government for a reconsideration of its order on the following grounds under section 42(1) of the Local Board's Act. The Local Board is liable to pay contribution only when the services of a Government servant have been placed at their disposal on the application of the Local Board. The transfer was made not at the request of the Local Board, but either with the consent of the man who obtained an increase of Rs 10 per month, or for the convenience of the Educational Department. The Local Board could not, by law, be called upon to pay the contribution. Moreover, the order of Government was in direct contravention with the last sentence of Rule No 84(a) of the Local Fund rules under which it is laid down that "arrear contributions to render previous service, qualifying will not be accepted." The Government, however, declined to reconsider its order. The amount of Rs 413 has been paid under the orders of Government.

2. The District Board has now issued a notice under section 424 C.P.C. of its intention to file a suit against Government for the recovery of the amount of

Rs 413.

3. As President of the District Board I am a party to the resolution of the Board deciding to file a suit and I shall add that this resolution has been passed after taking Counsel's opinion. I do not think that the suit, if filed, can be successfully defended and I would recommend that a compromise be entered into in order to save costs.

I have the honor to be,

Sir,

your most obedient servant,

Frank Bradley
for Collector.

Recd
19/8/97

21-8-97

FROM

THE COLLECTOR OF

To

THE SECRETARY TO THE
COMMISSIONER OF

Madras.

Dated

Received

189

No.

ENCLOSURES.

SUBJECT.



Proceedings of the Board of Revenue

(Land Revenue).

No. 3147 Misc; dated 25 August 1897.

Read letter from Herbert Bradley Esq.
Collector of Coimbatore, to the Secretary
to the Commissioners of Land Revenue,
Madras, dated 18 August 1897, R. C.
No. 2901 Rev 7/97

Resolution

Submitted for the orders
of Government in the Educational
Department.

1 True Exhbit 1

Reelan

Secretary.

To. The Secretary to Govt. ~~Local~~
Municipal Department
with the Collector's letter & Encl. in original

Educational

1/17

Enclosed to be No. 983 2097

189 .
Board of Revenue

(Land Revenue),

MADRAS.

To

Subject.

20997 C15.0-7
R2097 R18/10/7

Edl. Sept

Cuo 983

Pensionary contribution paid by the Dt. Bd. of Coimbatore
on behalf of A. Mrityanujaya Aiyar.

- (1) Mr. W. Fox
(2) Mr. S. H. Bliss

For orders

The case is set out
in the current and in the D.P.I.'s
letter in G.O. no. 1684 L. & 17th
Sept 1896 — flag B.

In the above G.O. the Govt.,
agreeing with the D.P.I. that
the transfer of A. Mrityanujaya
Aiyar to the Local Fund Service
was on public grounds, accorded
formal sanction to his transfer
from 1st Aug. '84 to 31st Dec '91
and ordered the Dt. Bd. of Coimbatore
to pay the usual contribution
on his behalf. The Dt. Bd.
at once applied for a reconsideration
of the order, contending that the
transfer was not made at its request
and that it was not therefore
liable to pay any contribution.
It was also pointed out that in
his letter to the President Dt. Bd.

I or there any precedent for
such a suit as this by a L-7.
Bd against Govt? According
to Sec 40(3) it seems
that the order to pay
Rs 413 cannot be questioned.
Put up a complete copy
of the L + mss.

JG
30/9/97

H.M.

No precedent has been
liased: & there is no
rule.

JG
13/10/97

I don't think the suit should
be allowed.

I show the Hon. Mr. H. Bliss
I don't see how the L.P. can be
presented from him if it
corrects do so. Flag C
Question is whether the suit can

JG
16/10/97

applying for the services of J. S. Ramasastri, Hdmaster, L. H. Normal School, Karur, Mr. Munro did not state that the transfer of Mrityanujayam Aiyar was on public grounds - The Govt declined to reconsider its previous order. vide G.O. no. 2105 L. & 10th Nov. 96.

The St. Bd. thereupon paid Rs 413 as arrears contribution and has now given notice, under section 424 C.P.C., of its intention to file a suit against Govt for the recovery of the amount.

The Collector states that the Board decided to file a suit after taking Counsel's opinion. He thinks that the suit cannot be successfully defended and recommends that it be com. promised.

Under Rule 81(a) of Local Fund rules, servants of Local Boards entertained subsequent to the 20th May 1891 are not in any case entitled to pension and para 1 of G.O. no. 1874 L. & 7th Aug. '91, which approved the above rule, says that "since

and should be defended. I have a copy of the L. Bd. Act & refer to my books having gone to Madras. The case seems to be governed by L. 7. Rule 84(a), which is a sub-part of the Act as S. 42(1), and which requires the L. Bd. to pay contribution on account of Govt servants transferred to L. 7. Service, who do not come under Rule 83.

I take it this man does not come under Rule 83. He is therefore entitled to claim that contribution shall be paid by the L. Bd. on his behalf, irrespective of any application having been made for his service. I don't see what rule 81(a) has to do with the matter - That applies to L. Bd. servants entertained. But this man was not entertained by the L. Bd. He was accepted in lieu of another man.

In addn to the above, is there not a section of the Act under which, in the last resort, the Govt. can order any payment it pleases?

I should say the Govt. position in the case was strong, but perhaps it will be safer to take the Adv. Genl's opinion, especially as the L. Bd. is stated to be acting on Counsel's advice.

In this connection, I observe - The rule says entitled "as a matter of right"

that Mr. Madly says this is a party to the case of the L. Bd. to file a suit against Govt. This is

The first time I have heard of a Col. putting himself in such a position and I don't think it should be allowed that he should do so. Perhaps however he has believed himself to be - Let us see (after the war in question of the defence of the suit has been decided) the rest of the L. Bd. has voted for a suit against it

Rs
16/10/97

to 20th May 1891, it has always been clearly laid down that such (Local Fund) service is not pensionable and consequently any person who accepts promotion in such service is, or ought to be, perfectly well aware that he is thereby engaging to perform the duties of a post, the incumbents of which are not entitled to a pension. According to Mrityanujaya Aiyar, who entered the L. 7. Service on the 1st Aug. '84, must, in the absence of any thing to the contrary, be presumed to have accepted the appointment with the full knowledge that his service in the post will not be pensionable. His failure to move, at the time of the transfer, for the payment of the pensionary contribution seems to support this view.

Has L & M. office any remarks to make
S/R 579/97
Please see note/submit
19/10/97

Suit by the dt Bd of
Coimbatore against
Government

NOTE FOR THE SECRETARY.

The grounds on which the district Board objects to pay pensionary contribution on behalf of A. Mrityanjaya Aiyar are:-

(1) that his services were not placed at the Board's disposal on its "application," as contemplated by Section 42(1) of the Local Boards Act and

(2) that the order of Government directing the payment of pensionary contribution is in direct contravention of No 81 (a) of the Local Fund Rules, which lays down that " arrears contributions to render previous service qualifying will not be accepted."

2. With regard to the first objection, the Government was of opinion that the Board "clearly must have consented to the arrangement by which A. Mrityanjaya Aiyar was transferred" to its service. If however, it is considered that the Board cannot be held liable to pay the pensionary contribution unless it had actually applied for the transfer of the services of A. Mrityanjaya Aiyar, as required by Section 42(1) of the

This is unilateral i.e. the Govt may refuse to accept; but it does not mean that Govt cannot accept.

E

the Local Boards Act, then it would be desirable to refund the amount paid by the Board and recover it from the teacher in question. This cannot be hard upon him, as there is nothing on record to show that the transfer was made on public grounds, but, on the other hand, he obtained an increase of Rs 10 by such transfer and he ought to have taken the necessary steps to render his service under the Local Fund Board qualifying for pension by demanding payment of a contribution from the Board under No. 84 (a) of the Local Fund rules. The Director of Public Instruction also admitted this responsibility on the part of the teacher, but said that he did not ^{take the necessary steps} ~~do so~~ apparently owing to ignorance of rules. Vide para 2 of Dr. Duncan's letter in G.O. No. 1684 L dated 17th September 1896. Ignorance of rules however cannot be a valid excuse.

3. As regards the second ^{objection}, it is submitted that the rule in question ^{81(a)} refers to Local Fund service rendered pensionable under article 863 of the Civil Service Regulations and not

NOTE FOR THE SECRETARY.

not to Government servants transferred to service under Local Boards, whose cases are governed by Rule 84 (a) under which these servants "are entitled to claim payment by such Local Boards of the usual contribution to Government in order to maintain their claim to pension eventually from state funds." The payment of the contribution in arrears has also been approved by the Government of India.

4. The extract from para 1 of G.O. No. 1874 L dated 7th August 1891 quoted in the note of the Educational Department refers to servants of Local Boards holding a pensionable appointment before the 20th May 1881 and promoted after that date to a higher appointment in the same service and not to the case of Government servants transferred to Local Fund service which should, as stated above, be dealt with under Rule 84 (a).

V.R.
11/9/97

H.M.

If the Board did not regard it as a transfer under Sec 42(1) of the Act why did they not protest at the time: for prima facie it was such a transfer & they ~~must~~ presumably knew the man's status at the date of transfer.

However it is not easy to judge in what light the Comrs may regard the transaction & the advice of the Adv. Gen. may be considered desirable, if the H.M. thinks the case should be fought.

87.4
28/8/17

[G
24]
1,0 0-18-9-97.

Ed. DEPARTMENT.

Papers to be read in proceedings:--

Again G.O., No.	, dated	189 .
Again G.O., No.	, dated	189 .
Current No. 983	of 1897, dated 25 th Aug -	, from the Bd of Rev. (LR)
" "	" 189 , "	" "
" "	" 189 , "	" "

ORDER. No. 589 of 23. 10-97
Mis.

Mr Bradley's letter no 2901 of 27
of 18th Aug-1897, together with copy
of the previous correspondence on the
subject, will be referred to the
Advocate-General for an expression
of opinion as to whether the suit
~~should~~ brought against Govt by
the Comrs before the Bd. can
be defended. It will be
noted that the Govt holds that the
case of Mrityanujaya Aiyar is governed
by rule 84(a) of the Local Fund Rules
and that under it an application
from the Local Board for the
services of Mrityanujaya Aiyar was
not necessary.

Wd
21/1/97

(from adms)
20/4/97

To The Govt Secy to Govt

To the Secy to Govt (A+0)

with Mrs's letter in original & copies of 200

1874 & 1682 & 2105 & 134 &
7-8-91 17-9-96 18-11-96 21-1-97

When given for copying 22/60
When copied 22/60
When examined 22/60
When signed _____

189

READ AGAIN G.O., No
189

DATED

CURRENT No.

ENCLOSURES TO G. 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.
- B = Not to be copied.
- P = Copy abstract only.
- Q = Copy heading only.

A A A A A A A