

[Mdl.]  
500-24-8-97.

# Educational (1897) Department.

ORDINARY MS.

G.O., No. 656

DATED 19-11-97

INDEXED.

16/17

19/11/97

[Despatch Abstract.]

Stating that the sum paid by the  
H<sup>h</sup> Board, Coimbatore, as pensionary  
Contribution on behalf of Kurthyamjaya  
Aiyar will be refunded on the understand-  
ing that the suit brought by the  
Board against Govt is with drawal

T  
19.11.97

19/11/97

19/11/97

# BACK PAPERS.

| G.O. | No. | Department. | Date. | G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|------|-----|-------------|-------|
|      |     |             |       |      |     |             |       |

# FURTHER PAPERS.

| G.O. | No.        | Department. | Date. | G.O. | No. | Department. | Date. |
|------|------------|-------------|-------|------|-----|-------------|-------|
|      | CP-1549/97 |             |       |      |     |             |       |

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

# Educational (1897) Department.

CURRENT No. 1250

From

The Govt. Solicitor

Order No. 2254 & 2.11.97

With ref. to his letter Re.

no. 2901 of 97 & 18th August 1897.

the Collector of Coimbatore is requested to be good enough to forward <sup>by return</sup> ~~at an~~ <sup>post</sup> ~~early date~~ the notice given by the Dt Bd of Coimbatore under Section 424 of the Civil Procedure Code and to report <sup>without delay</sup> whether the sum of Rs 413 paid by the Dt Bd as arrears contribution on behalf of A. Mistyrajaya Aiyar was paid by that body under protest.

Dated 28  
Received 29 } 10-97  
Registered 29  
Enclosures -  
Spare copies. -

# SUBJECT.

Requesting with reference to G.O. No. 589 Bd. of 97 that he may be furnished with the notice sent to the Collector of Coimbatore by the Dt. Board of Coimbatore and that he may be furnished with certain information re sum paid as contribution to Govt.

Wb  
29/10/97

To  
The Coll of Coimbatore) Sept 2. XI. 97

# BACK PAPERS.

| G.O. | No. | Department. | Date.    |
|------|-----|-------------|----------|
|      | 589 | Edul        | 23-10-97 |
|      |     |             |          |
|      |     |             |          |
|      |     |             |          |

## FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |
|      |     |             |       |

CURRENT No 1250

No 638

Madras 28th October 1897

From,

William Morgan

Acting Government Solicitor

M A D R A S

To,

The Secretary to Government

Local & Municipal Department



Sir,

With reference to G.O No 589 dated 23rd October 1897, Educational Department the Offg Advocate General writes to inform me that before expressing his opinion on the point referred to in the order under reference he wishes to refer to the notice sent to the Collector of Coimbatore under Section 424 of the Civil Procedure Code by the District Board of Coimbatore, and to ascertain whether the sum of Rs 413 claimed by Government as contribution from the District Board was paid by that body under protest.

2. I have therefore the honor to request that you will be good enough to send me the notice above referred to.

I have the honor to be

Sir

Your Obedient Servant

William Morgan

Acting Government Solicitor

✓  
Educational (1897) Department.

CURRENT No. 1289

Wm. 5.11.97

From

Endowment No. 2312 26.11.97  
Order

The collector of  
Coimbatore

R.O.C. No. 2901 (as) of 97  
Rev

Forwarded to the Govt.  
Solicitor with reference to his  
letter No. 638 dated 28<sup>th</sup> ultimo.

Dated

Received

Registered

Secretary to Government: Enclosures 4 (30 sheets and 107 of notice)  
3.

Spare copies

SUBJECT.

Forwarding the notice of suit  
given by the District Board and  
stating that the contribution was paid  
by the District Board under protest.

To  
The Govt. Solicitor.

# BACK PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |

# FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |

Copy of letter R.O.C. no.  $\frac{994}{D.B.}$  of '96 dated 4<sup>th</sup> August 1897  
 Herbert Bradley, Esq.,  
 from the President, District Board, Coimbatore, to the  
 Collector of Coimbatore.

I have the honor to intimate that the District  
 Board has in its resolution no. 57 dated 26 July  
 last, resolved to institute a suit against Govern-  
 -ment in the matter of the pensionary contribution  
 which Government in its order dated 17-9-96  
 no. 1682 has directed to be paid from  
 Local Funds. I therefore give notice to you under  
 Section 424 of the Code of Civil Procedure that  
 the District Board intends to file a suit for the  
 amount of Rs. 413 paid under the orders of  
 Government.

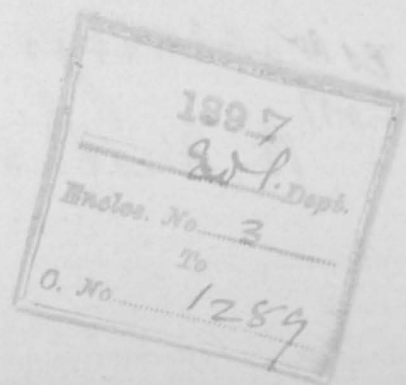
*[Signature]*  
 For Ag Collector

Esq.  
 5-11-97

Proceedings of the District Board Coimbatore  
at a meeting held at 3 P.M. on Saturday the  
28 November 1896.

Present.

- Herbert Bradley, Esquire, President.
1. L. G. Moore, Esquire, Head Assessor of Coimbatore.
  2. J. L. Wood, Esquire, Deputy Collector - Quarters  
Coimbatore.
  3. Mr. R. P. Krishna Rao Esq. acting  
Assistant Engineer of Schools, Coimbatore.
  4. " J. Minakshi Sundaram Pillai Esq. B.A. B.L. as  
of City Municipal.
  5. The Rev. D. Borell.
  6. Mr. R. P. C. V. Narasayya Esq., Barrister at Law.
  7. " B. Venkataswami Mudr. Esq., B.A. B.L.
  8. " K. Narayana Sastri Esq., B.A. B.L.
  9. " C. M. Padmanabha Chari Esq., B.A. B.L.
  10. " S. P. Narasimma Raya Esq.
  11. " D. Alagiriwami Raya Esq.
  12. " Angappa Chettiar Esq.
  13. " K. Seshayya Esq.
  14. " Subbaraya Mudr. Esq.
  15. " A. Krishna Chetty Esq.



Read:

Read:-

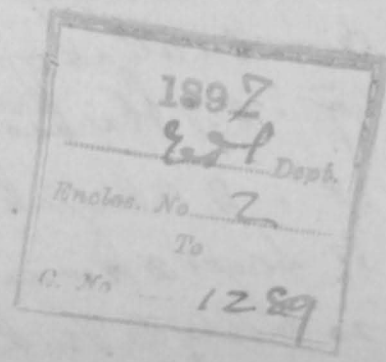
G.O. dated 10.11.96, No. 2105 L. Mis; informing that the Government saw no reason to reconsider its order No. 1684 L. Mis. dated 17.9.96 regarding the payment of usual pensionary Contribution on behalf of A. Mridyanjayar Aiyar and that a letter will be addressed to the Government of India on the subject.

Resolution No. 109 of 1896.

The Board regrets the decision of Government and will pay the Amount as ordered. It requests that the Government will be pleased to furnish it with a copy of the letter to the Government of India. The Board proposes to take a legal opinion as to the legality of the G.O. -

(Sd) Herbert Braslay  
President

(True Extract)



Proceedings of the District Board for the year, at a meeting held, at 3 P.M. on Saturday the 29<sup>th</sup> May 1897. -

Present.

1 Herbert Braslay, Esq. Collector and President.

Members.

2. L. G. Moore, Esquire, acting subcollector of Jombator.
3. M. R. Dy. V. Chappan Menon a/c, B.A. Deputy Commr., Northern Division. Kottayal.
4. " J. S. Balakrishna Aiyar a/c, B.A.B.L., P. G. O. Prosecutor Jombator.
5. The Rev. D. B. B. B.
6. M. R. Dy. A. J. Tiruvankataswami Mudr. a/c.
7. " S. P. Narasimulu Nayudharu
8. The Rev. A. W. Brough.
9. M. R. Dy. S. Lakshminarasimha Aiyar a/c.
10. " Angappa Chettyar a/c.
11. " C. M. Padmanabha Charavaral, B.A.B.L.
12. Mahomed Kassim Sahib.
13. M. R. Dy. J. Appaji Aiyar a/c. Tahsil ad of Shorapuram.
14. " P. C. Kandaswami Chettyar a/c.
15. " K. Narayana Sastriar a/c. B.A.B.L.
16. " Subbalingam Mudr. a/c.
17. " C. V. Narasayya a/c. Barrister at Law.
18. " D. Alagiriwami Nayudharu
19. Sayed Dawan Sayed Abdul Ruzak Sahib.
20. M. R. Dy. B. Venkataschella Mudr. a/c. B.A.B.L.
21. " W. Krishna Aiyar a/c.
22. " K. Seshu Aiyar a/c.

Oba

Read:-

Bill for Rs. 413 being the Contribution  
towards the pension of A. Mrityanjaya aiyar,  
Head Master Late L. & Normal School,  
Coimbatore from 1<sup>st</sup> August 1884 to 31<sup>st</sup>  
December 1891 vide Accountant General's No.  
I.A.C. dated 30-4-97.  
28-C

Resolution No 44 of 1897:-

Sanctioned. Mr. Narasayya's opinion  
is awaited.-

(Sd) Herbert Bradley  
President

(True Extract)

Proceedings of the District Board Coimbatore  
at a meeting held at 3 P.M. on Monday the  
26 July 1897.-  
Present.

1. M.R. Ry. S. Sundararaja aiyangar aml., B.A.,  
Treasury Officer & Vice President District Board  
Coimbatore

2. J. C. Wood Esq., Dy. Collr. & Quarter Master Genl., Coimbatore

3. M.R. Ry. V. Narasimha aiyangar aml., B.A.,  
Tahsildar of Bhavani

4. " B. Vankatachella mudr aml. B.A.B.L.

5. M.R. Ry. S. P. Narasimhamulu Nayudhan
6. " S. Lakshminarasimha aiyangar aml.
7. " Angappa Chettyar aml.
8. " D. Magirishwami Nayudhan
9. " K. Seshu aiyangar aml.
10. " P. C. Kandaswami Chettyar aml.
11. Mahomed Kassim Sahib
12. Sayyid Dewar Sayyid Abdul Razak Sahib.

Read:-

Letter from M.R. Ry. C. V. Narasayya aml.  
Barrister at Law, District Board member,  
Coimbatore, dated 2<sup>nd</sup> July 1897, forwarding  
his opinion on the question of the Pensionary  
Contribution on behalf of A. Mrityanjaya aiyangar.

Resolution No 57 of 1897.

Resolved that the Board do give notice of  
suit to the Collector.-

(Sd) S. Sundararaja aiyangar  
Vice President

(True Extract)

for acting collector.

(Col. Ry.)

R. ac No. <sup>2901(a)</sup> of 97  
Rev

Dated 4<sup>th</sup> November 1897.

CURRENT NO. 1289

FROM

Alan Butterworth, Esquire,  
By COLLECTOR OF THE  
Coimbatore DISTRICT,

TO

THE SECRETARY TO GOVERNMENT,  
Educational DEPARTMENT,  
Madras.

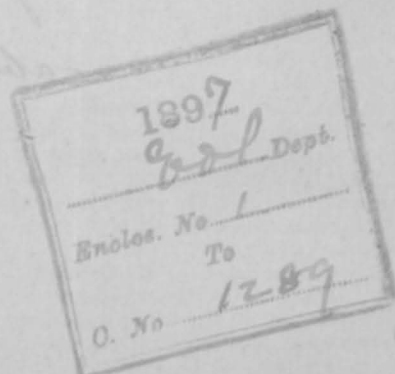
SIR,

With reference to the Government's Memorandum  
No. 2254 dated 2<sup>nd</sup> November 1897, I have the  
honour to forward herewith a copy of the Notice  
given by the District Board of Coimbatore under  
Section 424 G.P.C. with a copy of its resolution  
therein referred to. I also send a copy of the District  
Board's resolutions of the 29<sup>th</sup> May 1897 No. 44  
and 28<sup>th</sup> November 1896 No. 109. These two resolutions  
show that the District Board paid the amount in  
question under protest and without prejudice to its  
right to sue should Council's opinion be unfavour-  
-able to the claim put forward by Government.

I have the honour to be,  
Sir,

Your most obedient servant,

*[Signature]*  
For the Collector.



Educational  
(1897) Department

From William Morgan  
Ag. Government Solicitor  
Madras

589/97

To  
The Secretary to Government  
Local & Municipal Department  
Madras

No. 22

Dated 12<sup>th</sup> November 1897

Recd 12

Reg 1231-97

Enclos. Gd. e no. 1289 to  
1 file.

Forwarded with Enclosures  
with reference to the orders  
of Government No 589 dated  
23<sup>rd</sup> October 1897 Educational  
Department.

William Morgan  
Ag. Government Solicitor

R e

Question as to whether the suit proposed to be brought against Government by the Coimbatore District Board can be defended (vide G.O. No 589 dated 23rd October 1897, Educational Department).

OPINION

1. I do not think that section 42 (1) is applicable to the case of Mrityamjaya Aiyar, and that the Governor in Council has any legal claim against the District Board of Coimbatore for contribution towards the pension payable by Government to Mrityamjaya Aiyar. In July 1884, Mr Munro proposed to transfer Mrityamjaya Aiyar on promotion from a Government School to a Local Fund Normal School, and the then President of the District Board of Coimbatore approved of the same. It does not appear that the matter was placed before the Board and sanctioned by it. There was no application made to Government by the District Board or even by the President for the services of Mrityam Jay Aiyar, a servant of Government. The approval of Mr Munro's proposal by the President of the District Board cannot be regarded as an application, under section 42 (1), made to Government at the suggestion of Mr Munro for the services of Mrityamjaya Aiyar. For, there was no intimation to the President that Mrityamjaya Aiyar's services would be available only on the District Board being prepared to contribute to his pension under section 42 (1). The President might well have been under the impression that Mrityamjaya Aiyar was willing to serve under the Local Board on an increase of pay without right to pension from Government. In my opinion, the application under that section should be one made by the District Board and not by the President himself without the authority or sanction of the Board.

2. It is stated that the case of Mrityamjaya Aiyar is governed by rule 4 (a) of the Local Fund Rules, which

1315  
12 NOV 1897  
SECRETARY TO GOVERNMENT  
LOCAL FUND MUNICIPAL DEPARTMENT

provides that all servants of Government other than those referred to in rule 83, transferred from qualifying service to service under Local Boards 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. This rule purports to be made under Section 144 of Act V of 1884, and was apparently intended as a mere reproduction of the provision enacted by section 42 (1). But if it means that a servant of Government who is transferred to a Local Board whether on application made by the Board or not, is entitled to claim from such Board, payment of the usual pensionary contribution to Government, it is ultra vires and is inconsistent with section 42 (1). Under section 144 (vii), the Governor in council may frame rules not inconsistent with the Act as to the qualifications of the servants of Local Boards, and the pensions, gratuities, and compassionate allowances, if any, payable to such servants. This does not authorize the framing of any rule as to contribution to be made by a Local Board to one of its servants in view to enable him to contribute to his pension from Government. Section 42 (1) provides for the Local Board itself contributing to Government towards the pension of a Government servant whose services have been transferred to a Local Board on its application, and such contribution is regulated by rules in that behalf in force for the time being. The rules referred to are apparently not rules to be framed under the Act, but the rules of the civil service Regulations for the time being in force.

The notice of suit given on behalf of the District Board under Section 424 of the code of civil Procedure is clearly bad in as much as it does not at all state the cause of action as required by that section. It may also be a question whether the District Board can claim the payment of the sum which, on demand being made by

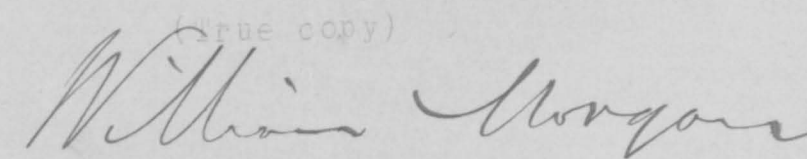
Government, it has in the eye of law voluntarily paid with full knowledge of all the facts. It does no doubt appear from copies of the resolutions of the Board dated 18th November 1896 and 25th May 1897, that the District Board, while acquiescing in the order of Government and sanctioning payment of the bill for Rs 415 sent by the Accountant General, intended to take legal opinion in the matter. But it does not appear whether these resolutions were communicated to Government at the time of payment. There can be no doubt that the action of the Board in making the payment demanded by Government without forcing it to establish its claim against the Board in a court of law was due to its desire to respect the order of Government, without prejudice, though it did not consider the claim preferred by Government to be well-founded. Under these circumstances, Government may not feel disposed to contest the suit on the technical ground that payment was made voluntarily with knowledge of all the facts. And in that case, it will be unnecessary to express an opinion as to whether the suit could be maintained even if the payment had, in fact, been made under protest.

Madras

10th November 1897

V. Bhashyam Iyengar

Cffg Advocate General

(true copy)  


Acting Government Solicitor

Continental

1912 997

Ad. Gault's opinion on the suit proposed  
to be brought against Govt by the  
District Board of Corimbatore.

Please see the previous note  
for orders under cover of G.O. no  
589 Ed & 13<sup>rd</sup> Oct. 97 - Reg. A.

Mr. The claim may be  
before provided the suit  
is withdrawn, the notice  
of Ad. Gault may be served  
out to the D. B. and  
to the advice of the A. G.  
had in law

G.  
S. A.  
500-2-9-97.

C 15/11/97  
D 15/11/97

Educational DEPARTMENT

C. No. 1315 997

SUBJECT.

Ad. Gault's opinion on the suit proposed  
to be brought against Govt by the  
District Board of Corimbatore.

FOR ORDERS.

Please see the previous note  
for orders under cover of G.O. no  
589 Ed & 13<sup>rd</sup> Oct. 97 - Reg. A.

Mr.

The claim may be  
before provided the suit  
is withdrawn, the notice  
of Ad. Gault may be served  
out to the D. B. and  
to the advice of the A. G.  
had in law

JG 15/11/97  
SA 13/11

Cno 1315.

NOTE FOR THE SECRETARY.

may the second sentence  
of the draft be omitted  
with reference to the remark  
of the Honble Sir Henry Bliss.

The enquiries indicated by the  
Hon. member will be made  
when the GO has issued.

Wg  
18/11/27

Yes

875

1312

How the amount of the draft is limited with reference to the amount of the Hon'ble Sir Henry Blair The Commission is not to be made when the Commission is made

1312

[G.]  
250-7-4-97.

C 15-12-97  
N 15-12-97

Educational  
LOCAL AND MUNICIPAL DEPARTMENT.

C. No. ....

SUBJECT.

The Hon'ble Sir H. Bliss. K.C.S.

FOR ORDERS.

With ref. to H's notes  
dated 15.10.97 & 17.11.97 under  
Costs of Rs. 589.80 & 656.80  
23.10.97 17.11.97

The H.M. will see from the Dist.  
Gazette reporting the Procs of the  
Comptrolr Dist. Bd., that the  
Comptrolr Mr. Bradley was not  
present when the Bd. resolved  
to sue for Rs. 12 out of 12  
members present, only 3 were  
officials, it is very possible that  
three were outvoted, but the  
Proc. does not record the  
votes.

H.T.

14. 12. 97.

Accompanied himself  
very bad if this was  
so

157-12-97

[ G  
24  
1,000-18-9-97.

Suit against Government by the District  
Board of Coimbatore.

2171  
Ed. DEPT. ME.

Papers to be read in proceedings :--

Again G.O., No. 16842, dated 17<sup>th</sup> Sept 1896.  
Again G.O., No. 589, dated 23<sup>rd</sup> October 1897.  
Current No. 1250 of 1897, dated 28<sup>th</sup> Oct, from the Govt. Solicitor  
" " 1289 " 1897, " 4<sup>th</sup> Nov, " The Coll. of Coimbatore  
" " 1315 " 1897, " 12<sup>th</sup> Nov, " the Govt. Solicitor

San J. A. Blus

This revokes go. no  
16822. 17 Sept. 96 & ord  
therefore be seen by H. K. before  
some 8.11.97

ORDER. No. 656 D 19. 11. 97  
mis

The sum of Rs 413 paid by  
the Coimbatore Dt Bd as pensionary  
contribution on behalf of A -  
Mutyamjaya Aiyar will be  
refunded <sup>on the understanding that</sup> ~~provided the Board~~  
withdraws the suit of which  
it gave notice to the Collector  
on the 4<sup>th</sup> Aug. 1897. The  
notice, it ~~will~~ be pointed out to  
the Board, is, <sup>in the opinion of</sup> ~~according to~~ the  
advice of the Advocate General,  
bad in law inasmuch as it does  
not state the cause of action as required by  
Sect. 424 of the Code of Civil Procedure (from orders)

L. A. Secretary Telegraph?

Seems to be unnecessary; the go,  
if despatched today, will reach the  
Collector tomorrow morning.

WA  
I should not say this. The L. A.  
is its multiple adviser whom it  
is not the business of Govt. to enlighten  
concern.

Now make the inquiries indicated  
in note of 16/10/97 (in f.O. 589  
23. 10. 97)  
to what happened in the L. B. when the  
the was brought up there & who voted  
and who against, the vs. & see  
if, as we appear, the was thereby  
one of the persons who voted for  
res. it seems some that it is  
of the question that he should be  
as C.M. of Coimbatore - because  
possibly have C.M., in their capacity

WA  
16/11/97

16/11

deposited  
with Secy  
19/11/97

The Coll. of Coimbatore. 940 with copy of go 589  
" L. A. in Sept 240 — " —  
" D. P. D. 240 — " —  
" A. G. 940  
copy to the Govt. Solicitor 22/11/97

Rest of L.H.D., willingly appearing  
as plps in suit against Govt.

ms

7/11/97

When given for copying

When copied

When examined

When signed

19-X

20-X

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.

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.