

MADRAS RECORD OFFICE.

Government of Madras.

Financial

DEPARTMENT.

G.O. No.

114

Press
~~Mis.~~

Dated

23 - 3

1860.

B.no - 4 - 5

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Financial Department,
for the month of March 1860.*

No. 4. Read the following letter from W. HUDLESTON, Esq., Secretary to the Civil Fund, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 10th March 1860, No. 70.

With reference to the correspondence noted in the margin, on the subject of an application

To Government, dated 3rd September 1859.	from Sir Vansittart Stonhouse, for refund to
From do. „ 17th „ „	him of his excess subscription to the Fund, I
To do. „ 30th „ „	am desired by the Trustees of the Civil Fund to
From do. „ 30th „ „	forward for the information and consideration of
From do. „ 6th October „	Government, the accompanying copy of a letter
	since received from that Gentleman on the same
	subject.

From Sir T. V. STONHOUSE, Bart., late of the Madras Civil Service, to the Trustees of the Madras Civil Fund, Madras, dated 18th January 1860.

I have the honor to acknowledge the receipt of your letter of the 12th October last, forwarding copies of your correspondence with the Madras Government on the subject of the claim to a refund of my surplus subscriptions to the Annuity Fund preferred in my letter to you bearing date the 15th July last, and informing me that under the opinion expressed by the Advocate General, the Government was unable to comply with my application.

It appears to be the opinion of the Advocate General that the judgment of the Privy Council in Mr. Robertson's case does not in any way make in favor of my claim. I am bound to receive that Officer's opinion on such a point with the utmost respect, but trust that in a matter which affects me so seriously I shall be pardoned for bringing the subject again under the consideration of that Officer and of the Government and offering the following remarks.

The view taken by the Advocate General as expressed in his letter to Government of the 27th September 1859 is, that under the judgment of the Privy Council in Mr. Robertson's case no Annuitant is entitled to a refund of his surplus subscriptions who did not *claim* his annuity before the passing of the Rules of 1853 by which such refunds were abolished.

I respectfully submit for the consideration of the Advocate General and of the Government that it could not have been the intention of the Lords of the Privy Council to declare that the right to a refund was abrogated simply because a Member of the Civil Service did not retire from the Service on the annuity and claim a refund of his excess subscriptions before the passing of the Rules of 1853. The passage in the judgment of the Privy Council is quoted in the Advocate General's letter to Government of the 27th September 1859 and lays down the question for decision in these words "whether the Respondent had or had not before the revised Rules were passed *acquired* a title to the refund of his excess subscriptions."

I submit that the title to a refund of surplus subscriptions was acquired long before it suited Mr. Robertson to place himself in a position to claim it by the acceptance of an annuity and a retirement from the Service, and so it was with other Members of the Service similarly circumstanced. Surely a right cannot be said *not* to exist till it is claimed. The statutes of limitations in respect to claims to real property and simple debts unequivocally prove that according to the spirit and rule of highest law, rights though dormant still exist, and do not lapse merely because they are not claimed, unless the omission to claim them extends beyond a long though definite term of years and it appears to me that the suppositions that the Lords of the Privy Council intended to declare that a right which had accrued to a refund was forfeited because it was not claimed before the passing of the Rules of 1853 is negatived by the plain inference to be drawn from the ruling in their judgment namely, that an adhesion to the new Rules could not operate retrospectively to destroy rights which had been *acquired* before they were passed, not claimed, be it observed, but *acquired*. I submit that till a right has been acquired there can be no ground to claim it, and that it is not the claiming it which *creates* the right. It is obvious that if a Member of the Service accepted an annuity and claimed the refund before the passing of the revised Rules, he could not be a party to the passing of those Rules, and the adhesion to them referred to by the Privy Council can refer only to those who had not up to the passing of the Rules claimed a

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refund. I may observe further that it is a well known and established rule of the Fund that an annuity when tendered to a Civil Servant *must* be accepted unconditionally and if the acceptance be accompanied by any condition the annuity would not be granted to him.

I would here refer to the recent decision of Lord Chancellor Campbell in *Boldero versus* the East India Company in which while negating Mr. Boldero's claim to a refund His Lordship affirmed that the Judicial decisions in favor of a refund in the cases of Madras Civil Servants were correct, and why? not because the refund had been claimed before the passing of the Rules of 1853, not because they were entitled to it under the terms of the original contract (which is the view which I have always maintained) but because there was ample evidence to show that between the East India Company and the Madras Civil Service a *new contract*, inferrible from the subsequent dealings between the parties, had been entered into. This opinion accords with the decision of the Privy Council in Mr. Robertson's case and explains its scope and meaning, namely that the Madras Civil Servant had *acquired* his right to a refund under a new contract entered into between the parties as self evident from their subsequent dealings. Under this contract the individual's right accrued and existed and was not dependant on his claiming it at any particular period. It existed before the passing of the Rules of 1853 and could not as distinctly ruled by the Lords of the Privy Council be affected injuriously by them, even if the party had given in his adhesion to those Rules which I certainly never did by any vote of assent to them.

The Trustees in their letter to Government of the 30th September most truly remark that the claim to a refund could only have been preferred when accepting an annuity and resigning the Service and that I did not place myself in a position to advance my claim till 1856. I may observe that when I did place myself in that position I requested a recognition of my claim to a refund on the ground of the decree made by the Supreme Court of Judicature at Madras in the case of Mr. Davis.

It is optional with a Member of the Civil Service, who has served the period entitling him to retire on annuity to accept it only when it suits his wishes and his circumstances to do so. His right to a refund of his surplus subscriptions accrues as soon as he is entitled to an annuity, and the state of his subscriptions shews that there is a surplus to be refunded. I respectfully submit that this right is not to be forfeited because the party avails himself of the option to remain in the Service, instead of retiring from it, much less should it operate to his injury when circumstances scarcely leave him that option without entailing upon him a greater injury, so it was with myself.

In June 1850, which was three years before the passing of the new Rules, I was appointed Provisional Member of Council, and this Provisional appointment continued till after the passing of those Rules. It cannot with reason be supposed that with the prospect in view of the honor and emoluments of a seat in Council, I could be expected to accept an annuity and retire from the Service. I submit therefore that it is unjust that I should lose a right which had accrued because circumstances, in common reason precluded me from placing myself in a position to claim it before the new Rules were passed and I believe I am not incorrect in saying that up to the year preceding my provisional appointment to Council it had been the practice to make the refunds to retiring annuitants. The practice certainly existed up to 1848 as Mr. Dickinson, who was one of the Annuitants of that year, had his surplus subscriptions refunded to him, and I may observe further that such refunds formed an express provision in the Rules of the Civil Annuity Fund then in force.

As regards the Rules of 1853, abolishing the refund of surplus subscriptions, the Advocate General would seem to think that I was an assenting party to them, and by that assent surrendered all claim to a refund. I must however deny that I was an assenting party to those Rules, I certainly did not vote for them and my assent therefore could be implied only, and that on the mere ground that I did not vote against them. Being resident at the seat of Government, I could not vote except in person at the General Meeting of the Presidency Subscribers, and I believe I am correct in saying that I was prevented attending that Meeting. Is it likely, I submit, that I would be an assenting party to Rules, the effect of which was to abrogate a valuable right which I have always felt, did on equitable grounds exist, a right which if abrogated involved a heavy pecuniary sacrifice.

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The view I took of the Rules of 1853 was that they were intended by the Court of Directors to refer to those Members of the Service to whom the right of refund had not accrued, to those who had not by length of service qualified themselves for the acceptance of an annuity or in the cases of those who had so qualified where the state of their subscriptions shewed that there was no excess to be refunded, to those in short whose rights could not in the then actual state of things be injuriously affected by the passing of the Rules, and who were only asked to surrender a future and contingent privilege, and not to those whose title to a refund had already accrued, and who could scarcely in common reason be asked to vote for Rules which abrogated a valuable existing right, and involved in most cases a heavy pecuniary sacrifice to the individual, and this view assuredly derives confirmation from the dictum laid down by the Lords of the Privy Council, that even an *adhesion* to those Rules could not act retrospectively on rights which existed before they were passed. This view moreover is in accordance with the principle which regulated the adherence or otherwise to the new Annuity Fund established in 1825, which left it entirely optional with the then Members of the Civil Service to belong to that or adhere to the previously existing Fund, and only made the adoption of the new Fund compulsory on all those who should enter the Service from and after that year.

As a Trustee of the Civil Fund as I then was, I could not be unaware of the proposed new Rules, or of the General Meeting at which the votes on them were to be recorded, and in signing the report shewing the result of the votes at the out-stations which the Trustees mention my having done in their letter to Government of the 30th September 1859, it must be obvious that I acted as one of a collective body and was bound as one of the Trustees to sign a report which informed the General Meeting of the result of a reference to the Subscribers at out-stations. It was an official act as one of a body of Trustees reporting to the General Meeting what had been done, and neither expressed in any way, or compromised my individual opinion on the subject.

I earnestly trust that under the foregoing explanation, the Advocate General may be induced to view the effect of the Privy Council's judgment in Mr. Robertson's case, on my claim more favorably, that the Government will view it with indulgence and give me the benefit of a doubt, if a doubt should still exist, seeing that the Advocate General in the opinion submitted to Government with the Company's Solicitor's letter of the 13th September 1859, has stated that I had "a very strong moral ground to a refund."

Should however the Advocate General and the Government still adhere, as I trust will not be the case, to an opinion adverse to my claim, I respectfully request that the Government will be pleased to refer it with copies of the correspondence to the Home Authorities for their indulgent consideration of all the circumstances, and of the hardship of my being deprived of a pecuniary assistance which I had hoped under the judicial decisions which have been passed to have received, and my title to which I have foreborne to advance till I conceived that I had equitable and solid grounds for doing so.

(True Copy.)

(Signed) W. HUDLESTON,

Secretary.

No. 5.

ORDER THEREON, 23rd March 1860, No. 114.

Resolved, that the letter from Sir V. Stonhouse, Baronet, which accompanied the above communication be referred to the Right Honorable the Secretary of State, for his consideration and orders.

(Signed) T. PYCROFT,

Chief Secretary.

Exd. F. Cartledge.

Financial Department.

Proceedings of the Madras Government.

Read the following
letter from the Secy. to the
Civil Fund.

(Dated 10th March 1860. No. 70)

Order thereon. 23rd March 1860. No. 114

Resolved, that the
letter from Sir. V. Stourhouse
Baronet which accompanied
the above communication,
be referred to the Right
Honble the Secy. of State
for his consideration and
orders, and that the following
letter be despatched.

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W

JP

To
The Right Honble the Secy. of State
for India.

7th of Feb. 1837
The 6th of 1837
Rpt to the 41-15th 1837

Forwarded to the
Cott. of Auditors
1837/1838

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Financial 1840 Deficit

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Proceedings of Govt

1837/1838