

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. *321*

Press
Mis.

Dated *30 June* 186*0*

Not to be folded or roughly handled

17

*Proceedings of the Madras Government, Financial Department,
30th June 1860.*

No. 89. Read the following letter from W. HUDLESTON, Esq., Secretary Civil Fund, to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 23rd June 1860, No. 175.

I am directed by the Managers of the Civil Service Annuity Fund to submit for the consideration and orders of Government, the accompanying copy of an application from Mr. G. L. Prendergast, (lately removed from the Service by the Home Government) for the refund of his subscriptions to the *Annuity* Fund of 1825.

2. It will be observed that Mr. Prendergast also seeks a refund of his subscriptions to the Charity branch of the Civil Fund of 1814, and as the case is expressly provided for *Clause 36.* by the terms of the Deed under which that Fund is constituted, the Trustees of the Fund have paid over to Mr. Prendergast's Agents the sum of Rupees 5,974-0-9, being the amount of that gentleman's accumulated subscriptions without interest.

3. In regard however to the Annuity Fund, the case is not so clear, and the Managers are disposed to think it desirable that the opinion of the Law Officers should be taken on the point.

4. Annexed are extracts from the Deeds of 1787, 1800 and 1814, and from the Rules of 1825 and 1853, which last were adopted by the Service, at the instance of the Home Government from whom they were received, in supersession of and substitution for the former Rules.

5. From these extracts it will be seen, that the three Deeds (each of which in turn superseded the former of older date,) while they expressly provide that any person dismissed from the Service shall be incompetent to continue a subscriber to, or to *derive any benefit* from the Funds constituted under them—still also *provide for the refund to such person of all his subscriptions without interest.*

6. Of the Fund of 1814, the Charity branch alone survives—the annuity Fund constituted under the Rules of 1825 having superseded that part of the former Fund which went to provide Annuities to subscribers. Those Rules were drafted by the Managers of the New Fund in accordance with the Regulations proposed by the Committee of Bengal Civil Servants as modified and communicated to the Civil Service of this Presidency by the Home Government, and as will be seen, in addition to the forfeiture of all benefits from the Fund, they *expressly provided that no such refund as is now claimed should be made.*

7. These Rules continued to be the basis of the Fund until 1853 when, as before stated, at the express instance of the Home Government, the present Rules drafted by them in modification of the original Rules, were adopted by the Service.

8. The Clause of the new Rules relating to such cases as Mr. Prendergast's, while providing for the forfeiture of all right to any benefit from the Fund, *contains no prohibition of, or provision for a refund of subscriptions.*

9. It can scarcely be doubted, that this omission was intentionally made to allow of such applications as the present being taken into consideration, and treated on their *Clause 112 to 135.* merits; but it may perhaps be held in a legal point of view, that the Rules of 1853, under which the Annuity Fund of 1825 is now conducted, are in substitution for those latter Clauses of the Deed of 1814, under which until 1825, Annuities to members of the Service were granted, and that when, (as happens in the present instance,) the provisions of the new Rules are insufficient to meet any particular case, we must fall back on the earlier Clauses of that Deed to supply their deficiencies. If such a ruling should be held good, the provisions of *Clause 36* of the Deed of 1814 would apply to subscriptions to the Civil Service Annuity Fund of 1825, as well as to those paid to the Civil Fund of 1814, of which the Charity branch still survives, and the refund sought must be made without interest in the former case as well as in the latter.

10. On this point the Managers desire to receive the instructions of Government.

11. The amount at Mr. Prendergast's credit in the books of the *Annuity Fund* is Rupees 29,252-8-5 exclusive of all interest.

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30th June 1860.*

Extract from the Deeds of 1787, 1800 and 1814, and from the Annuity Fund Rules of 1825, and 1853.

Deed of 1787, as cited in the Deed of 1800.—39th Final Amended Resolutions.

And whereas it was further declared and determined, that no person under suspension from the said Service of the said *United Company*, should be eligible to the said Fund, or allowed to become a subscriber thereto, but that in the event of such person having been under a temporary suspension from, and should afterwards be re-admitted to the said Service, then and in such case it might be competent to such Civil Servant, to become, and he should be allowed and admitted to become a subscriber to the said Fund, on paying up the arrears of subscription with interest thereupon, at and after the rate of eight per centum per annum, but that nevertheless if any such Civil Servant of the *United Company* aforesaid, should be finally dismissed from the said Service, that then such person should be held and considered as wholly and absolutely ineligible and incompetent to remain and be continued on the list of the subscribers to the said Fund, and, whatever sum or sums he may theretofore have subscribed to the said Fund, should and shall be forthwith returned to him, but without any interest being allowed thereon.

Deed of 1800.

Article XXVII, Clause 2.—Provided nevertheless and it is hereby expressly declared, agreed and understood that, if any such *Convenanted Civil Servant of the said United Company* shall be finally dismissed from the said Service, that then and in such case such person, so dismissed, shall be wholly and absolutely ineligible, unfit and incompetent to remain, and be continued as a subscriber to the said Fund, and all such sum and sums of money as he shall or may theretofore have subscribed or paid to and for the benefit of the said Fund, shall be forthwith thereafter returned and paid to such person, but without any interest whatever thereon.

Deed of 1814, of which the Charity Branch alone survives.

Clause 36.—That if any of the parties to these presents shall hereafter be dismissed from the Service of the said *United Company*, it is hereby agreed that he shall, from and after such dismissal, to all intents and purposes, cease to be a party to these presents. And he, and his wife and children shall also cease to have or be entitled to any right and benefits to which he, she and they would otherwise have been entitled from the said Fund. Nevertheless it is further agreed, that the amount of the sums that such party may actually have subscribed to the said Fund, shall be returned to him, or to his Executors, Administrators, or Assigns, but without any interest thereon, or on any part thereof.

*ANNUITY BRANCH.
Old Rules of 1825.*

Rule 18.—Any subscriber who may be dismissed from the Honorable Company's Service, shall forfeit all right to benefit by the Institution, and be entitled to no re-fund of payments which he may have made.

New Rules of 1853.

Rule 14.—Any subscriber who may be dismissed from the Honorable Company's Service, shall forfeit all right to any benefit from the Civil Service Annuity Fund.

From G. L. PRENDERGAST, Esq., late of the Madras Civil Service, to W. HUDLESTON, Esq., Secretary to the Madras Civil Fund, dated London, 16th April 1860.

My name having been removed from the Roll of the Civil Service and my claim to Pension being thereby forfeited, may I beg of you, in my present calamity, to bring, in my behalf, to the compassionate attention of the Trustees of the Civil Fund, my most earnest request that they will have the goodness to return to me, through my Agents Messrs. Arbuthnot and Co., the amount of the subscriptions at my credit in both branches, Charity and Annuity.

*Proceedings of the Madras Government, Financial Department,
30th June 1860.*

I can assure the Trustees that, however appearances may be against me, I am innocent of the imputed offence for which I have been so cruelly sentenced to the heaviest cumulative punishment.

(True Copies.)

(Signed) W. HUDLESTON,
Secy. Civil Fund.

No. 90.

ORDER THEREON, 30th June 1860, No. 321.

Ordered that the foregoing letter and its enclosures be referred to the Advocate General for his opinion on Mr. Pendergast's application for the refund of the amount of his subscriptions to the Annuity Fund.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

23
London,
24 Bowdler Street,
Pitzgane Square,
16th April 1860.

So,

W. Huddleston Esq.
Secretary to the Madras Civil Serv.

Sir:

My name having been removed from the Roll of the Civil Service and my claim to Pension being thereby forfeited, may I beg of you, in my present calamity, to bring, in my behalf, to the compassionate attention of the Trustees of the Civil Fund, my most earnest request that they will have the goodness to return to me, through my Agents Messrs. Arbuthnot and Co., the amount of the Subscriptions at my credit in both branches Charity and Annuity.

I can assure the Trustees that, however appearances may be against me, I am innocent of the imputed offence for which I have been so cruelly sentenced to the heaviest cumulative punishment.

I am,

Sir,

your obedient servant.
(Signed) G. L. Pendergast,
late of the Madras Civil Service.

My assent is to the case of Messrs. Arbuthnot & Co.

(True copy)

L. Pendergast.
Secretary Civil Serv.

Ed. J. B. A.

It is the duty of the
Government to protect the
rights of the people.

Memorandum -

This must be settled by legal
advice -

Shall the opinion be taken of
our Law Officers here - or
shall it be referred to our
Secretary of State and be
left to him and it to his legal
advice -

The former seems to me the
more obvious course - I do

would be more to the advantage
of Mr Pendergast himself -

If the opinion of the Advocate
found him to be favorable to him
that is that the justice - but
if unfavorable - he would
then have an appeal to the
Law Officer at home &
the chance of what then may
might be -

If the matter were referred
to the Law Officer at home
in the first instance, this

5
Opinion whatever it might
be would be final

25th JP

P.L.C.

Should submit
it for the Ex-Mun
your Adversale
General
vdc

Lib 5 July 61

Transmitted to Sup 27
24 Aug 21 of 1860.
Reflected to 30 Nov 2
No 79 of 1860.

225 June
1870

89 790

Post Office
June 1860 Dept

From the Secretary to
the Civil Service.

2/23 2
No 25 June 1860.

No 296.
In 2 1/4
No 333.

Submits for the con-
sideration and order of
Court, copy of an applica-
tion from Mr. R. S. Brown,
deceased, (lately removed
from the service of Govt)
for the refund of his
subscriptions to the
annuity fund of 1825.

With an Order

for the refund of the
annuity fund of 1825.

Dist

Order thereon. 30 June 1860. No 321.

Ordered that the
proposing letter and its encls.
be referred to the Secy.
of the General for his opinion
on Mr. Brown's application.
for the refund of the
annuity fund's subscription
to the annuity fund of 1825.

JP

To the Genl. Secy. of the
Treasury. Supd. of the
Genl. Secy. of the
Treasury.