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MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 252	Press / Mis.
45-46.	
Dated 19-5-	1868.

45-46 7/8

Not to be folded or roughly handled

MEMORANDUM.

Questions have arisen from time to time regarding the eligibility to pension of persons employed

1. By Municipalities.

2. In Establishments which are paid from Local Funds and also of Government servants who are permitted to take the foregoing employments.

2. The decisions on these subjects are numerous, but not inconsistent, when the governing principles of the decisions are regarded.

3. The two fundamental principles are that pensions

1. Shall be restricted to service under Government or in Establishments which are controlled by Government, in such a manner that the officers employed in it are Government servants.

2. Shall be paid from the same source from which the salaries of the applicants for pension may have been defrayed.

4. In accordance with the first of these principles, service under Municipalities has held in the following decisions not to confer any claim to pension from the General Revenues:—

I.—The Court of Directors in a letter No. 36, dated 21st July 1852, negatived an application for pension by an Uncovenanted Officer who had held different offices under Government for a period of 32 years, but whose salary, in the last six years of his service, had been paid from the Municipal Fund of Singapore. A gratuity of 12 months' pay was given in consideration of the applicant's summary dismissal, upon a ground which did not affect his moral character.

II.—In a letter No. 98, dated 3rd December 1856, the Court of Directors negatived, as quite inadmissible, an application for pension by the House Assessor of the Town of Calcutta, his appointment having been held under the Municipal Commissioners, and his salary been charged upon the Municipal Funds.

III.—An Assistant Resident Councillor and Commissioner of Police at Singapore, whose salary for some years had been paid from Municipal Funds, was exempted, in the Secretary of State's Despatch, No. 106, dated 16th May 1864, from the letter of the foregoing decisions, on the grounds that the appointments which he held (except for a short period in one year), though paid by the Municipality for some years, had been conferred upon him by Government, that the pay of these appointments had since become chargeable to the revenues of the Government of India, and that from 1855 he had been employed and paid by Government.

In 1865, the Government of India recommended to the Secretary of State for India, with reference to the employment of Military Officers in the Office of Municipal Commissioner,

Financial Proceedings, Nos. 146 to 150, August 1865.

"that the time passed by Officers in Municipal employ may "be allowed to reckon as service towards pension, but that "no such employment be permitted, save when Officers can "be spared from Military duty, with the sanction of Gov- "ernment and the Commander-in-Chief of the Presidency "to which they belong, and that they be considered liable "to return to duty whenever their services are required." The Secretary of State for India regretted in a letter, dated 30th June 1865, that he was not able to allow the recommendation, adding—"there can be no objection to an Officer "taking employment, of the nature referred to, during leave "taken under the regulations of the service; but I cannot "sanction the recognition of the time passed in such employ- "ment as qualifying towards pension under those regulations."

About the same time the Government of Bombay represented to the Government of India that they had appointed Major Thacker, an Officer of the Bombay Staff Corps, to be Controller of Municipal Accounts; that owing to the large debt due by the Municipality to Government, it was desirable that a Government Officer should fill the appointment, the Municipality paying his salary,—and that accordingly the Officer selected by the Government of Bombay might be allowed to count his service in the appointment "as service in India for all "purposes, pension included, in the same manner as if it "had been in any Office of the Account Department under "the Government of India." The application was twice negatived by the Government of India with reference to the decision of the Secretary of State, dated 30th June 1865, but simultaneously with its rejection for the second time, a further application from the Government of Bombay that Major Walker, Inspector-in-Chief of the Cotton Frauds Department, who was paid from a Local Fund, might be allowed to count his service towards pension, on the condition of his suffering a deduction of $3\frac{1}{3}$ per cent. from his salary, was granted without enforcing any deduction from his salary. In explanation of this distinction between the two Officers, it was pointed out that the Secretary of State's decision of 30th June 1865, was passed on the case of a Military Officer, whose appointment was "unconnected with "the administration under His Excellency in Council," on which account Major Thacker, whose case was similar, could hold his appointment "only during leave taken under the "regulations of the service, that is, during any furlough to "which he may be entitled;" whereas Major Walker was differently circumstanced, "inasmuch as his appointment in "the Cotton Frauds Department is directly and exclusively "under the administration of the Government of Bombay. All "that had to be determined with regard to him was, whether "his employment in the Cotton Frauds Department was ad- "missible or not; and, that having been determined in his "favor, he is entitled, in virtue of his Military Commission and "Covenant, to count his service in that Department towards "Military pension without being required to submit to any "deduction from his salary."

Financial Proceedings, Nos. 146 to 150, August 1865.

In a letter to the Secretary of State for India, dated 27th January 1866, the Government of Bombay demurred to the distinction that Major Walker's appointment was, but Major Thacker's appointment under the Municipality of Bombay was not directly and exclusively under the administration of the Government of Bombay. This distinction (it was urged) did not in any way affect the financial aspect of the question, which would be met by a suitable deduction from Major Thacker's salary, on account of which he might be allowed to reckon towards pension his service in the Municipal appointment, which it was urged was of a *quasi* Government character.

The Secretaty of State in a despatch to the Government of Bombay, dated 17th April 1866, No. 45, replied that "the views expressed by the Government of India are in accordance with those communicated in the Financial Despatch, dated the 16th December 1864, No. 302, and in the Military Despatches, dated the 30th June and 15th December 1865, Nos. 215 and 351, and Her Majesty's Government see no reason to interfere with the decisions which have been passed in regard to the cases of Majors Walker and Thacker. Officers of the Army should not be employed in other than situations under Government, though there may be, as stated in para. 3 of the Military Despatch No. 215, no objection to an Officer taking employment of the nature referred to during leave taken under the regulations of the service.

V.—In Financial Resolution No. 966, dated 18th July 1864, it was ruled, with respect to Municipal Police Forces in the interior of the three Presidencies, that where the Police of a town is wholly supported by, and under the control of, a Municipality, no pension can be allowed to the force, from either Imperial Revenues or a Police Superannuation Fund; but that wherever the Government is so much interested in the efficiency of Municipal Police as to undertake its organization and control, in connexion with and auxiliary to the Constabulary, the responsibility connected with both the pay and pensions of such Municipal Police must rest with Government and the Police Superannuation Fund; the Police Cess going to relieve the Government as far as it may be.

5. The foregoing decisions are adverse to the reckoning of service towards pension in appointments under Municipalities in which the Officers are not under the direct and exclusive control of Government. But mere subordination, more or less, to Government control does not in itself bring an appointment within the category of those which qualify for pension *exclusively from the General Revenue*, it being another fundamental principle that pensions should be paid from the same source from which the salaries of the applicants for pension are defrayed.

6. In accordance with this latter principle, the following decisions have been passed:—

I.—When education was being introduced into the Bombay Presidency, numerous Vernacular schools and several English schools were established by Government, on the understanding that one-half of the pay of the teachers would be paid by Government and that the other half, with the remaining charges, would be defrayed by popular contributions. The Government of Bombay recommended that in the cases in which

Consn. No. 58, 5th Jan. 1856.
" " 38, 25th April "

the Government pays half of the salary, pension computed on the full salary be granted, nevertheless, by the State, the school masters being Government servants employed in Government schools, the expense of which is partially defrayed by popular contributions. The Court of Directors in a Despatch No. 84, dated 17th September 1856, paras. 6 to 8, ruled that "we cannot adopt this principle with due regard to "financial considerations.

In cases in which the masters and assistant masters of schools "receive salaries of Rs. 10 per month and upwards, "partly paid by Government, and partly by local contribution, "the pension from the State on retirement must be computed "only on the Government share of the salary, according to the "length of service. If the Local Funds applicable to the schools "should admit of the grant, an additional pension might be "given from that source."

In the same correspondence the Government of Bombay recommended that masters of schools in Kattywar, which were under the control of the Director of Public Instruction, should be allowed pension from the General Revenues, notwithstanding that their salaries were paid from the Infanticide Fund and by a contribution from the Native Chiefs. The Court of Directors replied in the despatch above quoted, that "it does not appear "that the Government pay any portion of the salaries, and in "this case, therefore, the school masters would not be entitled "to receive pensions from the State, but they might from the "old Infanticide Fund, from which the schools in question "are supported."

stone Institution, which is regarded by Government as an institution not differing substantially from a public establishment maintained by the State, but which is supported partly by Trust Funds. The pension of the masters, it was held, should be borne by Government and the Trust Funds, in the proportion of their respective contributions towards the expenses of the school.

An equitable division of charge between the General Revenues and Port Funds has been authorised in the case of a Master Attendant and other officials payable from a Port Fund, excepting that the whole charge is borne by the fund when the service was rendered wholly on establishments chargeable to it.

Finl. Pro., Nos. 80 to 83, June 1865.
" " " 29 & 30, June 1867.

In a Despatch No. 57, dated 16th April 1863, the Secretary of State declined to allow pension "under the "rules applicable to members of the "Uncovenanted Service," *i. e.*, from the General Revenues to clerks employed on the accounts of the Police Superannuation Fund, on the ground that "the clerks referred to do not appear "to be strictly servants of Government, and their salaries are de- "frayed from the fund and not by the Government; I see no "reason for making their cases excep- "tions to the rule under which clerks "similarly employed by the other Funds* "noted by you are ineligible to the benefits of the Pension "Rules." In a subsequent decision the Government of India allowed these clerks to subscribe for a pension to be paid from the Police Superannuation Funds.

Financial Proceedings, Nos. 36 to 38, January 1863.

* Municipal Funds.
District Local Funds.
Military and Medical Service Funds.

Financial Proceedings, Nos. 47 to 49, July 1863.

VI.—The Government of Bombay proposed that service on the Establishments employed under the Cotton Frauds Act should count for pension under the Uncoyenanted Service Pension Rules, that is, from the General Revenues. The Government of India objected, on the ground that the Cotton Frauds Act is not a general but a Local Act based on a Local Fund, the income of which is connected with the operation of the Act. The Secretary of State for India negatived the proposition in a Despatch No. 302, dated 16th December 1864, observing that "if it were admitted that servants appointed under Local Acts, "whose salaries are paid from fees levied under the provisions "of those Acts, were to be granted superannuation pensions out "of the General Revenue, the charge to the State for those "pensions would be largely and indefinitely increased. The "correct principle in regard to superannuation appears to be "that pensions should be granted out of the same funds from "which the salaries have been paid."

7. In the foregoing decisions, the principles established are, that persons employed on the Establishments of Local Funds should not be pensioned from the General Revenues, but from the source from which their salaries are defrayed; and that if employed on Establishments which are maintained partly from the General Revenues, and partly from a Local Fund, their pension from the General Revenue should be limited in the same proportion.

8. These principles have been approved or affirmed by the Home Authorities. In 1861 the Government of India authorized the employment of Engineers of the Imperial Public Works Department as Divisional Engineers for the control of works under Road and Ferry Fund Committees, without prejudice to their prospects of promotion and furlough, and on the understanding that they should be considered as temporarily transferred to the Divisional Service. In a Proceedings, 1st and 3rd Sept. 1862. Financial Resolution, dated 4th September 1862, it was ruled that the time spent by Government servants of the Public Works Department in superintending, by order of Government, local works under Road and Ferry Fund Committees, shall count towards pension. The charge of a portion of the pension to Local Funds was not stipulated for, and the decision was not reported to the Secretary of State. On a further enquiry, whether persons, who are wholly employed on Local Funds works, and have no connection with the Public Works Department, should be considered to have any claims for pension from Government, it was ruled that they are not entitled to pension from the Imperial Revenue, and if the Local Government propose that such persons should be pensioned out of Local Funds, the Government would be prepared to take the matter into consideration.

In April 1863 a portion of the charge for the Punjab Secretariat, equal to the pay of the Assistant Secretary and Office Establishment employed in the Local Fund Branch of the Secretariat, was made payable from funds chargeable to Local Funds. The Establishment having been previously charged to Imperial Revenue and eligible to pension, it was urged that they should not lose their title to pension, and it was explained that there was no intention to keep the Establishment permanently distinct from that for imperial public works, eventually there would be one Establishment paid partly from different sources. The recommendation was allowed.

E. H. LUSHINGTON,

Secretary to the Government of India.

Assistant Secretary to the Government of India.

Historical Precis of the several rulings of Secretary of State, Court of Directors, and Government of India, on pensions for services paid out of Local Funds.

Extract Financial Resolution, No. 2197, *dated the* 24 *April* 1868.

PARA. 2.—The rulings of the Home Authorities and the Government of India respecting the pensionary claims of persons employed under Municipalities or in Establishments maintained from Local Funds, are stated in the accompanying Memorandum. There is no objection under those rulings, to the pensioning of persons in otherwise eligible grades who may be employed in Establishments controlled by Government and paid from Local Funds, provided that the pensions be paid from the same source from which those persons received their salaries.

3. This proviso makes it indispensable that the income of the Local Funds which incur this liability for pension should be derived from taxation like the cesses on land revenue, for education, roads, &c., or from other permanent sources, like those of the Bengal Amalgamated District Roads Fund, and not from charitable donations, or voluntary and revocable contributions like some of the contributions for schools, which are comprehended in Local Funds under a loose acceptation of the term.

4. In the same view it is indispensable that the Local Funds should, as to the sources of their income, be under the control of Government, although Municipal Committees may, as in the interior of the Bombay Presidency, be employed to administer the funds.

5. The eligibility for pension from the source from which salary is paid of persons employed on establishments maintained from such Local Funds as fulfil these two conditions, is recognized by the rulings in the accompanying Memorandum, and it may be provided for in such a way as to facilitate transfers of persons from establishments paid from Local Funds to those maintained from the General Revenues, and *vice versâ*.

6. The Governor General in Council is accordingly pleased to rule—

I.—That persons employed in Establishments that are maintained from Local Funds which fulfil the two indispensable conditions above stated, shall be eligible to pension under the Uncovenanted Service Pension Rules, on the understanding that when the service has been rendered wholly on those Establishments, the pension shall be charged to those Funds.

II.—That where a person has served partly in the Establishments appertaining to the Local Funds above described and partly in Establishments paid from the general revenue, the pension shall be charged to the Local Fund and to the general revenue in the proportion of the total receipts of the applicant from those sources, during the whole course of his service.

III.—That the pension or portion of pension which may be payable from a Local Fund under the two preceding rules shall be the first charge on the Fund, so that provision to meet it shall be reserved before other expenditure of the year is defrayed from the Fund.

IV.—That the pension, if payable partly from the general revenues, shall, during the course of the year, be disbursed wholly from those revenues, which will be recouped at the end of the year by the proper contribution from the Local Fund from the sum to be reserved for the purpose under Rule III.

V.—That where the strength and pay of an Establishment are fixed with the sanction of the Government of India, pension for service on such an Establishment shall be charged to the general revenues, although a portion of the cost be defrayed by a contribution from a Local Fund, unless a debit of a part of the pension to the Local Fund be ordered in regulating the Fund's contribution.

7. The Engineer Officers employed under Municipal Committees in the interior of the Bombay Presidency may be graded with the Imperial Public Works Department, on the understanding that their pay will be disbursed wholly from Local Funds, that their pensions will be adjusted under these rules, and that the income of the Local Funds will be secured by the levy of the anna cess, for which permission to legislate has been accorded by the Secretary of State.

ORDERED, that a copy of this Resolution and of the Memorandum annexed to it be sent to the Home and Public Works Departments with the papers received from those Departments, also that an extract of the 2nd and following paragraphs of the Resolution and a copy of the Memorandum be sent to the Local Governments and Administrations, to the Comptroller General of Accounts, and the several Provincial Officers of Account.

Secretary to the Government of India.

Financial Bds Dept
Bor. of Inq

GOVERNMENT OF INDIA.

FINANCIAL DEPARTMENT.

Pensions and Gratuities.

To Extract Financial Resn

No. 2197.

Dated, Fort William, the 24 *April* 1868.

Received — 5 May

1 Enc + 3 SC of this + Enc

No 217.

admitting to pension
under certain restrictions
& conditions, those who
services are rendered in
post-s paid from
Local Funds

O. S. G. P.—No. 2953 C. F.—15-4-68.—100.

With enquiries

19 May 1868 R. 252-12

Ordered that a copy of the
forgoing Financial Resolution
of the Govt. of India, and of
the Memorandum received
with it, be furnished to the
Revenue, Public, and
Public Works Departments.

To Rs Revenue Department
- " - Public — Do
- " - Public Works Department
Judicial

despd 24/5

12/2/68
17-10-68
18-10-68
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Orig.

Jan.y 1868. Department.

No. 252

PROCEEDINGS OF GOVERNMENT.

J Educ No 109 - 8/70

Dated 19th May 1868

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