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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU *File* DEPARTMENT

G.O. No.	1384-1385	Press.
R.P. No.		Mis.
Dated	28-7-1881	12/13

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Not to be folded or roughly handled

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GOVERNMENT OF MADRAS.

FINANCIAL DEPARTMENT.

28th July 1881, No. 1384.

Allowances—High Court Judges.

Read the following paper :—

From H. F. CLOGSTOUN, Esq., Officiating Accountant-General, to the Officiating Chief Secretary to Government, dated Fort St. George, 20th July 1881, No. 2769 [Current No. 1874].

Gazetted Audit Department.

With reference to the Government of India, Financial Department Resolution, No. 1496, dated the 5th July 1881, which has been communicated to Government, I have the honor to inquire whether Government agree with me in thinking that the pay of the Hon. T. Muttuswami Aiyar should be fixed at Rs. 2,400 a-month from the 21st May last, the date from which the pay of Native Judges of High Courts was reduced, as his appointment is only *sub. pro tem.* and the status of an officer appointed *sub. pro tem.* is that of an Acting Officer (*vide* Section 4 of the Pay and Acting Allowance Code).

2. Should Government consider that the Hon. Muttuswami Aiyar should be allowed to retain the former pay of the post, viz., Rs. 3,750 a-month, I shall feel obliged if Government will report the case to the Government of India, as in the face of the Government of India Resolution referred to, I should not feel justified in passing more than Rs. 2,400 unless specially authorized to do so.

ORDER THEREON, 28th July 1881, No. 1384.

It is observed that upwards of three years ago, the Secretary of State in his telegraphic message of 3rd May 1878, approved the proposal contained in the letter of this Government, dated 19th March, No. 10, of same year, for the appointment temporarily of a Fifth Judge to the High Court of Madras. The appointment was actually gazetted on 12th July following, at the close of the annual recess. An application has subsequently been made by the Chief Justice, supported by this Government, that the appointment should be formally confirmed by Her Majesty, but, pending further experience of the necessity of a Fifth Judge, the Secretary of State in his Judicial Despatch, No. 1, dated 24th March last, thinks it expedient "to consider the office as being on a temporary footing."

2. In the circumstances, therefore, of Mr. Justice Muttuswami Aiyar's case, the Governor in Council is clearly of opinion that it does not fall within the ruling quoted by the Accountant-General. Pending the receipt of instructions from the Government of India, the Accountant-General will therefore continue to pass pay to Mr. Justice Muttuswami Aiyar at the same rate as heretofore.

3. Ordered that the following letter be despatched to the Government of India :—

[Here enter No. 1385, dated 28th July 1881.]

(True Extract.)

Offg. Chief Secretary.

To the Accountant-General.

Exd. W. H. French.

Gobt. of (1881) Madras.
FINANCIAL.

To
THE ACCOUNTANT-GENERAL.

Dated July, 28th.

Issued

Recd.

G.O., 28th July 1881, No. 1384.

JULY.

Allowances—High Court Judges.—The Accountant-General to continue to pass pay to Mr. Justice Muttuswami Aiyar at the same rate as heretofore, pending the receipt of instructions from the Government of India.

1384-85
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FINANCIAL DEPARTMENT.

Allowances—High Court Judges.

No. 1385.

FROM

THE CHIEF SECRETARY TO THE GOVERNMENT OF
FORT ST. GEORGE,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF FINANCE AND COMMERCE.

SIR,

I am directed to forward copy of Proceedings of this Government, No. 1384, of this day, in regard to the retrenchment which the Accountant-General proposes to make in the pay of the Hon. Mr. Muttuswami Aiyar, Temporary Judge of the High Court of Judicature, Madras. For the reasons stated in the order, the Governor in

Resolution in Department of Finance and Commerce, dated 21st May 1881, No. 698.
Letter to Government of Bombay, dated 5th July 1881, No. 1496.

Council holds that the marginally-noted communications from the Government of India are inapplicable to Mr. Muttuswami Aiyar's case. His was distinctly a provisional appointment, it being understood

that he would be permanently appointed if the necessity of a Fifth Judge were established. It would, this Government apprehend, be utterly opposed to all precedent to reduce, without any change of duties, the pay of a post which an incumbent has held on a substantive footing, for an uninterrupted period of upwards of three years.

I have the honor to be,

Sir,

Your most obedient servant,

OOTACAMUND,
28th July 1881.

Offg. Chief Secretary.

Exd. W. H. French.

1881.
FINANCIAL DEPARTMENT

From
The Chief Secy. to the Govt. of
Fort St. George,
To
The Secy. to the Govt. of India,
Dept. of Finance and Commerce.

Dated 28th July 1881.

Issued

Recd.

No. 1385.

Enclosure.

Allowances—High Court Judges.—Forwarding
with observations, copy of Proceedings of Govern-
ment in regard to the retrenchment which the
Accountant-General proposes to make in the pay
of the Hon. Mr. Muttuswami Aiyar, Temporary
Judge of the High Court, Madras.

Garrett & Co. DEPARTMENT.

No. 2769

CURRENT No. 1074

Fort Saint George,
Accountant-General's Office,
20 July 1881.

From

H. Flogston Esq.
OFF. ACCOUNTANT-GENERAL

TO THE GOVERNMENT OF MADRAS,

To

THE Chief Secretary to Government
Judicial Department
Ootacamund.

SIR,

With reference to the Government of India
Financial Department Resolution No. 1496 dated the
5th July 1881 which has been communicated to
Government, I have the honor to enquire whether
Government agree with me in thinking that
the pay of the Honorable J. Muttuswami
Aiyar should be fixed at Rs. 2400 a month from
the 21st May last the date from which the pay
of Native Judges of High Courts was reduced,
as his appointment is only sub. pro. tem and the
status of an Officer appointed sub. pro. tem is that
of an Acting Officer vide Section 4 of the Pay and
Acting Allowance Code.

2. Should Government consider that
the Honorable Muttuswami Aiyar should
be allowed to retain the former pay of the
post viz Rs. 3750 a month I shall feel obliged
if Government will report the case to the
Government of India as in the face of the
Government of India Resolution referred to
I should not feel justified in passing
(more)

more than Rs. 2400 unless specially authorised
to do so. -

I have the honor to be,
Sir,
Your most obedient servant

It [unclear]
Off. Accounts General.

To C.

1384-85
H

2/10 A-1042-3-A-6-88

Phil. Department
(High Court
Judges)
From
The Accountant Genl
Madras
To
The Chief Secretary
to Government
Judl. Dept.
Ordy.

So 1304 + 1305

No. 2769
Dated 20th
Recd 22nd July 81

CURRENT No. 1874
No.

Requests that Orders of
the Court of India
may be obtained if
the Court should consider
that the old rate of
pay should be passed
to the Honble Mr.
Justice Muthuswami
Aiyar.

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Financia DEPARTMENT.

No. 1874.

1384-85
5

From

The Accountant General, Madras,
20th July 1881, No. 2769,
requesting that orders
of Govt. of India may
be obtained if Government
consider that the old rate
of pay should be passed to
Hon. Mr. Justice, Muthuswami Aiyar.

FOR ORDERS.

His judgment
was discussed in Council.
2. It is submitted
that the Resolution of the
Government of India,
No. 698, plainly applies
only to Native District
Judges appointed after
the 21st May 81, the date
of the Resolution.

Mr Justice Muthuswami
Aiyar is a Temporary
not Official
Judge.

Int. reply
It is observed that up
wards of three years ago,
the Secy of State in his
telegraphic message of
3rd May 78, approved the
proposals contained in the
letter of Mr. Govt. d/19th
March, No 10 of same year,
for the app't temporarily
of a Fifth Judge to the H. Ct.
of Madras. The app't was
actually gazetted on 12th July
1878 following, at the
close of the annual recess.
An application has subse-
quently been made by the Chief
Justice, supported by two Govt.
that the app't should be formally
confirmed by Her Majesty, but
pending further consideration of
the necessity of a Fifth Judge, the
S. of S. in his judgment despatch
No I d/24th March last, con-
sidered the office as being an
"temporary for time".

Thamara
23/7

2. In the circumstances, however of Mr. Justice Muthuswami Aiyar's case, he is clearly of opinion that it does not fall within the ruling quoted by the App. 3. ordered that the following order

W.C.

The original App. was
made temporary -

In Para 5 Judicial
Despatch dated 7th July 80
to Secy of State, his impression
was recommended -

In Judicial Despatch from
the Secy of State dated 24th

March 81 No 981 the recommendation
was declined and the Hon.
J. M. Agarwal who
is described as "at present
officiating" as 5th judge of the
High Court, was decided to
be considered "as being on
a temporary footing as 5th judge".

In the Proceedings of Secy of
India Finance Dept dated
21st May 81 No 698 a Resolution
was passed fixing the pay
of Native Quasi Judges appointed.

be despatched to be
S. of S.

(just a short covering letter)
by July 20/10

The Secy. in his
letter of 20 July.
makes no reference to
the S. of S. letter of 5th

June 81. Summary
I take more all.

Mr. Justice Mukherjee
says case than the
Resol. of 21. May 81
S. of S. No 698. Mr. Justice
does not in any
opinion cover the
case of an app. made
3 years ago.

The applicability
of the later instructions
turns in any opinion

* After that date No. 2400
in Museum - and the
Secy of India in their Finance
letter No 1094 dated 5th July 81
to the Secy of Home Dept, directed
that Rule 2 Section 2 of the
Pay & Agt. Allowance Code
was to be applied in regarding
the Salaries of officiating
Native Judges of the High Court
with effect from the 21st May 81
being the day from which
"the pay of Native Judges
of such Courts has been reduced"
& they also decided that
the pay of an officiating judge
(as Mr. Agarwal had been
designated in the Secy of State
Despatch dated 24th May 81 No 931)
being the full pay of the
appointment, a Native Judge
officiating on the 21st May 81
should from that date draw
a reduced salary of Rs 2000
in Museum.

1384-85
on the meaning of
the term "officiating".
After looking into the
cases - in S. of S. letters
there is no precise
definition of the term -
I come to the conclusion
that it is not any salary
and in the sense of
an officer filling a
post the retention of
S. is in no way
dependent on the
availability or
otherwise of another
officer for the duty.
In the great majority
of cases it is a
"temporary" or
"absolute" -
In other it
is used in the case
of a junior temporary
doing duty & S. of S.
superior will be
app. as soon.

The Act General for Usages
 stated in his letter read the
 Consider the Resolution
 in question applicable to the
 case of the Hon. J. M. Leger
 as his app't. is only sub provision
 and the status of an officer
 appointed sub provision, is under
 Sec. 4 of the Reg. by: Attorneys
 Code that of an Acting
 Officer; and in the Dec. of
 States telegram dated 10th
 July/78 he is directed to be
 appointed "Acting Judge".
 I must say that under
 these circumstances I think
 the Act General kind of the
 case, & think that for the
 21st May/81 the Hon. J. M. Leger
 is only entitled to the sub
 rule of pay

825.781

80 (Tent) 1384 & 1385/81

C 13.7.81

A 27.7.81

High Court

As available -
 The Hon. of these
 cases will cover the

FOR ORDERS.

case of Mr Justice M. J.
 who holds in a substantial
 character a post the
 permanent maintenance of
 it is secured for future
 consideration.

The Dec. of 21 May
 expressly refers to future
 app't. - it is so
 utterly opposed to all
 precedent & advice without
 any change of duties
 the pay of a post the
 incumbent has held
 for several years on a
 Superior footing, that I
 can scarcely conceive
 the G. B. intending to apply
 the Dec. in Mr Justice M. J.
 case - (H. 26/7/81)

Financial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

1384-85
 7

Read the following letter from

the Accountant General,
 Madras, d. 20 July 1881,
 N. 2769.

Order thereon, 28 July 1881.
 No 1384.

It is observed
 that upwards of three
 years ago, the Secretary
 of State in his telegra-
 phic message of 3rd
 May 1878, approved the
 proposal contained in
 the letter of this Government
 d. 19 March, N. 10,
 of same year, for the
 appointment temporarily
 of a Fifth Judge to the
 High Court of Madras.
 The

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The appointment was actually gazetted on 12th July following, at the close of the annual recess. An application has subsequently been made by the Chief Justice, supported by this Government, that the appointment should be formally confirmed by Her Majesty, but, pending further experience of the necessity of a Fifth Judge, the Secretary of State in his Judicial Despatch N^o 1 D 24th March last, ~~considered~~ ^{that} it expedient "to consider the office as being on a temporary footing".

2. In the circumstances therefore of M^{rs}

By reading the receipt of instructions from the Govt. of India, the Acc^t. Genl. will continue to pay to Mr Justice following letter be despatched to the Govt. of India.

M^{rs} Justice Buttenshaw
Ajaz's case, the Governor in Council is clearly of opinion that it does not fall within the Ruling quoted by the Accountant General. 3. Ordered that the following letter be despatched to the Government of India.

1384-85
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To the Accountant Genl^l of India
The Secy. to the Govt. of India, Dept. of Justice

L.C. Despatch to Prof^o 10/8/81

Sir,
I am directed to forward copy of Proceedings of this Court N^o 1384 of this day in regard to the returnment which the

Accountant General
proposes to make
in the pay of the
Hon. Mr. Muttuswami
Aiyar, Temporary Judge
of the High Court of
Judicature, Madras.

For the reasons stated
in the order the Governor
in Council holds that
the marginal communi-
cations from the Govt.
of India are inapplicable
to Mr. Muttuswami
Aiyar's case.

Moreover, it would
be Government apprehension,
be utterly opposed to all precedent to
reduce, without any
change of duties, the
pay of a post which
incumbent has held.

Q. Secy in Dept. of Finance
& Commerce, 1/21st May/81,
No. 698.
Letter to Govt.
of Bombay, D.S.
July 181, N. 1496.

His was distinctly a
provisional appt.,
it being understood
that he was to be permanent
off. if the necessity
of a 5th judge were
established. It wd,

on a permanent footing if
the

for several years past
in a superior footing
an uninterrupted
period 9/11
upwards of three
years -

R

Not recommended
28 July 181.

Oct 28-7-81

307

1384-85
9

27/7/81

Gobt. of {188 } Madras.

To

Dated

Recd.

188 , No.

Nos.

1384-85
10

Financial DEPARTMENT.

High Court
Native Judge

Under Disposal Docket.

PAPERS to be read in Proceedings:—

X No. 1874 of '81.
No. of
No. of

See J. F. Carmichael

Note

It is suggested that
the pencil addition
for para 2 of the
order be made.

per 2/11/11

Respectfully
in m/s.

28/7

1384-85
11

Recd 1/10

Govt. of 1884 Madras.

Fine

DISPOSED OF

28 JUL 81

BY G.O. No 1384 & 1385

(11)

Allowances—

High Court Judges. The
Accountant Genl to continue
to pay to Mr Justice Hunter
Swamin Aiyar, ~~Judge of the High Ct~~, at the same
rate as heretofore, pending
the receipt of orders from
the Govt of India.

Letter Book.

Forwarded, with
observations, copies of those of Govt
in regard to the retrenchment
which the Acctt Genl proposes
to make in the pay of the
Hon. Mr. Hunter Swamin Aiyar,
Judge of the High
Ct, Madras.