

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1016	Press
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Dated	26-6-1907	

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
26th June 1867.*

No. 249. Read the following Despatch from the Right Honorable the Secretary of State for India, to His Excellency the Right Honorable the Governor General of India in Council; dated India Office, London, 16th April 1867, No. 17.

The Despatch of your Excellency in Council, dated 5th February (No. 44) 1867, in the Financial Department, submitting a recommendation that the scale of pensions recently sanctioned for the Recorders in Burmah, be made applicable to the incumbents of certain specified legal appointments in India, has been considered by me in Council.

2. The reasons set forth in the Resolution of the Government of India, which accompanies your Despatch, appear to me fully to justify the measure proposed by your Excellency in Council, and I have therefore to intimate that the arrangements detailed in the Resolution have my sanction.

No. 1078.

Copy, with copy of the Resolution of the Government of India, dated the 14th January 1867, forwarded to the Government of Madras, with reference to its communication noted on the margin.

No. 1619, dated 13th October 1866.

HOME DEPARTMENT,
SIMLA,
6th June 1867.

(By Order, &c.)

(Signed) A. P. HOWELL,
Under Secy. to the Govt. of India.

Read again the following papers regarding the pension to be granted to the Recorders of Rangoon and Moulmein, dated 14th January 1867, No. 368.

Judicial Proceedings, August 1866,
Nos. 71 to 74.

1. From Chief Commissioner of British Burmah, No. 192, dated 7th June 1866, and enclosure.
2. Resolution to Financial Department, No. 3238, dated 31st July 1866.
3. Office Memorandum from Financial Department, No. 1980, dated 17th August 1866.

4. The Secretary of State's Judicial Despatch to the Government of India, No. 53, dated 16th November 1866, and the endorsement thereon :—

(i).—To Financial Department, No. 52, dated 4th January 1867.

(ii).—To Chief Commissioner of British Burmah, No. 53, dated 4th January 1867.

Read a Circular letter addressed, under date the 23rd August 1866, to the Governments of Fort Saint George, Bombay, Bengal, the North-Western Provinces, and the Punjab, calling for Lists of Appointments held by Barristers under those Governments.

Read the replies to the above Circular, viz. :—

1. From the Government of the Punjab, No. 1829, dated 1st September 1866.
2. " " of Bengal, No. 1944T, dated 4th "
3. " " of the North-Western Provinces, No. 305A, dated 11th October 1866, and No. 323A, dated 19th November 1866.
4. " " of Bombay, No. 3245, dated 13th October 1866.
5. " " of Fort Saint George, No. 1619, dated 13th October 1866.

Read a General Return, prepared in this office from the Returns furnished by the Local Governments and from other sources, showing the several Government appointments held by Barristers.

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RESOLUTION.

The Circular of the 23rd August 1866 was addressed to the several Local Governments, with the view of ascertaining the number of Members of the Bar employed in the Indian Public Service, and of considering their claims to a retiring pension. The Returns procured afford information on the following points:—

- I.—The salary and allowances drawn by each incumbent.
- II.—Whether the private practice of his profession is allowed to each incumbent.
- III.—Whether the appointment is reserved by law to Barristers.

2. The General Return, prepared from the Returns furnished by the Local Governments, of Barristers employed in the Public Service embraces a good many names, but it may, for the purpose of the present question, be greatly reduced—

First, the names of all persons, who, though receiving salaries from the Government, are allowed to practice, may be struck out; for the salary in such case is of the nature of a retaining fee.

Next, all functionaries who are not paid by salary, but by varying fees or profits, may be omitted. The only two Officers who are paid wholly by fees are the Administrator General and the Official Assignee. Their employment is of the nature of an ordinary business; and it does not appear that, in their cases, a claim could properly be admitted to pension from the General Revenues.

There might also be removed from the list all Members of the Bar (with one exception) occupying offices not reserved by law to Barristers. If a Barrister takes such an office, there is no reason why, in the great majority of cases, he should not depend for his pension on the rules applicable to the office—the Uncovenanted Rules, or the Educational Rules, as the case may be. It is doubtful whether Barristers on the establishment of the High Courts are entitled to pension at all; but, at all events, they hold offices to which the Chief Justice might appoint a Solicitor, or a Layman, and they can advance no claim to any but the Uncovenanted pension.

3. The only functionaries, therefore, whose claims to a better pension than they would receive as Uncovenanted Servants, the Governor General in Council would recommend to the favorable consideration of the Secretary of State, are—

- I.—Barrister Judges of the Chief Court of the Punjab.
- II.—Recorders in Burmah.
- III.—First Judges of Presidency Town Small Cause Courts.
- IV.—Assistant Secretary in the Legislative Department of the Government of India.

4. The case of the Burmah Recorders may be considered as disposed of in principle by the recent Despatch of the Secretary of State, which authorises the grant of the following scale of pensions to those Officers:—

After 12 years' service...	... £ 750 per annum.
" 9 "	(on medical certificate) ... 500
" 7 "	(ditto) ... 300

5. As regards the other Judicial Officers named, it is palpable that the Uncovenanted Rules do not apply satisfactorily to their case. The only result of bringing them under these rules would be to inflict a serious injury on the public by tempting some of the most important Judicial functionaries in the country to remain in it long after they have become incapable or worn out. Besides, all these functionaries have an equitable claim to consideration, on the ground that, until a very recent Despatch from the Secretary of State, it was generally supposed that they were included under "Law Officers," and that Law Officers were entitled to special pensions.

6. The case of the Assistant Secretary in the Legislative Department appears to require separate consideration. The office is one which, by a necessity as strong as law, must be held by a Barrister. This was fully recognised so long as the old Legislative Council existed; but when the Act of 1861 was passed, the Despatches of the Home Government, directing the consequent changes, seemed to contemplate the discharge of the duties by a Covenanted Officer of the Home Department. But it was felt that this was impossible, and that the incumbent must be a Barris-

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ter—and a Barrister versed in the special art of drafting. It must be remembered that the services of the Assistant Secretary are rendered not only to the Government, but to the Additional Members of Council, who, indeed, during the Session, almost wholly monopolise his time.

7. The Home Government eventually permitted the office to be held by an Assistant Secretary instead of an Under Secretary—the plain object being to admit of the employment of a Barrister under other conditions than those of the Civil Service Act.

8. On looking back on the history of the office, it will be seen that it is virtually out of the question to treat the Assistant Secretary merely as an Uncovenanted Servant. The incumbents have been Sir Walter Morgan, Mr. Macleod Wylie, Mr. Macpherson, and Mr. Boulnois. Sir Walter Morgan is now Chief Justice of the North-Western Provinces. Mr. Wylie, Mr. Macpherson, and Mr. Boulnois were all 1st Judges of the Small Cause Court before they entered the Legislative Department. Mr. Macpherson is now a Judge of the High Court at Calcutta; Mr. Boulnois is a Judge of the Chief Court of the Punjab; Mr. Wylie was specially and very handsomely pensioned.

9. It may be said that a time will come when the stream of legislation will greatly slacken. If it does, it may be possible to confine the services of the Assistant Secretary to the Session, and to permit him to practise, in which case he will fall into an unpensioned class. This period in the case of the present incumbent will be retarded by the great and important work he has undertaken of unofficially digesting the written law of India.

10. The Governor General in Council would accordingly request the Secretary of State to extend, to all the Officers named in the 3rd paragraph of this Resolution, the scale of pension he has just sanctioned for the Recorders of Rangoon and Moulmein, and to allow service in any one of the offices to count for pension in the others.

ORDERED that a copy of this Resolution, together with a copy of the General Return of Barristers in Government employ, of the Circular of the 23rd August 1866, and of the replies of the Local Governments thereto, be forwarded to the Financial Department, whence the Secretary of State will be addressed as proposed in the last paragraph of this Resolution.

No. 250. ORDER THEREON, 26th June 1867, No. 1016.

Resolved that the foregoing papers be communicated to the Pension and Legislative Departments, and to the First Judge of the Court of Small Causes at Madras.

(True Extract).

Acting Chief Secretary.

To the Pension Department.

- " Legislative Department.
- " First Judge of the Court of Small Causes, Madras.
- " Accountant General.
- " Examiner of Claims.

Exd. J. Tulloch.

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20 June 1867 No. 1010

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- to the Pension Department
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- " - First judge of the Court
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- " - Accountant General
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