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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

G.O. No.	<u>311-12</u>	Press.
B.P. No.		Mis.
Dated	<u>22-2-1868</u>	<u>197</u>

A2

Not to be folded or roughly handled

312

*Proceedings of the Madras Government, Judicial Department,
22nd February 1868.*

No. 285. Read the following letter from M. CROSS, Esq., Judge of the Court of Small Causes, Negapatam, to the Chief Secretary to Government, Fort Saint George; dated Negapatam, 4th February 1868.

The new rules for the transmission of Memorials to the Secretary of State for India permit a second Memorial to be submitted if new facts or circumstances are adduced which would afford grounds for a reconsideration of the case.

2. Under that permission, I respectfully hope that His Lordship in Council will allow me to address him again.

3. The Memorial I now do myself the honor to submit can scarcely be designated a second Memorial, it being, in truth, my first Memorial applying for the reconsideration of a most unexpected opinion expressed by the Secretary of State, that, as in my case, English Judges of Small Cause Courts are not entitled to the advantages conceded to Law Officers; that opinion having been given on a Memorial presented by me as a Law Officer (vide paragraph 4 of present Memorial), the expressed opinion of the Supreme and Madras Governments then supporting my position as such.

4. The precedents quoted in the present Memorial (vide paragraph 6), and the subsequent modifications of the Secretary of State's unexpected ruling on my former Memorial by the concessions since granted to other Judicial Officers similarly situated to myself (vide paragraphs 9 and 10), do, I most respectfully submit, really afford strong grounds for a reconsideration of my case.

5. In this hope, I respectfully solicit that His Lordship in Council will be pleased to cause the transmission of the enclosed Memorial to the Secretary of State, and that His Excellency will be further pleased to accord his support to my prayer.

To

THE RIGHT HONORABLE SIR STAFFORD-H. NORTHCOTE, BART, C. B., M. P.,
Secretary of State for India.
&c., &c., &c.

The Memorial of MAURICE CROSS, Esquire,
Judge of the Court of Small Causes, Negapatam.

RESPECTFULLY SHEWETH,

That your Memorialist entered the Judicial Branch of the Uncovenanted Service in 1858, being then 34 years of age, and having been 14 years in the country.

2. That your Memorialist entered the Service, as a Law Officer, under certain Rules for service and pension.

3. That those Rules declare your Memorialist entitled to a retiring allowance, if incapacitated for further service, after 15 years' service.

4. That, in 1865, your Memorialist, as a Law Officer, petitioned the Secretary of State for India to be permitted the option of taking leave under the Old Rules, on the ground that your Memorialist had entered the Service under those rules, and also for the reason that they were more favorable to your Memorialist in the matter of allowances during the second and third years of absence.

*Proceedings of the Madras Government, Judicial Department,
22nd February 1868.*

5. That in his reply to your Memorialist's Petition, the Secretary of State remarked in paragraphs 3 and 4, as follows :

No. 32. Read the following letter from E. H. LUSHINGTON, Esq., Secretary to the Government of India, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Simla, 29th June 1865, No. 1034.

In reply to your letter, No. 249, dated 17th May 1865, submitting, for orders, an application from Mr. M. Cross, Judge of the Court of Small Causes at Negapatam, to be allowed the option of taking leave under the old Uncovenanted Service Rules, I am directed to forward the accompanying copy of a letter to the address of the Government of Bengal, No. 1839, dated 31st March 1865, and to remark that the decision contained therein seems to apply to Mr. Cross' case.

From E. H. LUSHINGTON, Esq., Secretary to the Government of India, to the Secretary to the Government of Bengal; dated Fort William, 31st March 1865, No. 1839.

I am directed to acknowledge the receipt of Mr. Junior Secretary Bayley's letter, No. 1091, dated 17th March 1865, with its enclosed copy of a letter from Mr. W. S. Atkinson, Director of Public Instruction, representing the injurious bearing upon his case of the Resolution of the Home Department, No. 794, dated 25th January 1865, and, in reply, I am instructed to state that the reduction of periods of leave from service qualifying for pension, which is complained of by Mr. Atkinson, forms a part of the new Pension Rules, and not of the new Leave Rules, to which latter only the Educational Officers are subject, while, as regards pension, the Rules of 1831 and 1855 still apply to them.

(A true Copy.)
(Signed) J. E. COOKE,
Asst. Secy. to the Govt. of India.

6. That your Memorialist was quite unprepared for such an expression of opinion from the Secretary of State respecting your Memorialist's position as "Law Officer," considering that your Memorialist was not only regarded by the Madras and Supreme Governments as such, but that your Memorialist's immediate predecessor in the Madras Court of Small Causes, Mr. Rose, and likewise Mr. Fullerton, another Judge of the same Court, were pensioned by the Madras Government as "Law Officers," said pensions being finally sanctioned by the Home Government.

7. That the Secretary of State's ruling upon your Memorialist's petition, inconsistent as your Memorialist most humbly and respectfully submits it is with the cases of Messrs. Rose and Fullerton, tells with grievous hardship against your Memorialist, since it exacts from him an extended service of five years; an extension which your Memorialist from ill health, considering the age at which he entered the Service, coupled with a protracted residence, may be incapacitated from serving.

3. "It appears from the papers which accompany your letter, that Mr. Cross is regarded by you as one of Law Officers to whom the Old Rules were applicable, and that opinion received some confirmation from the letter from the Secretary to the Government of India, dated the 29th June last, No. 1034.

4. "I must, however, observe that neither Magistrates of Police nor Judges of Small Cause Courts were entitled to the advantages conceded to "Law Officers" and "Native Judges" under the Old Rules."

*Proceedings of the Madras Government, Judicial Department,
22nd February 1868.*

8. That your Memorialist would here beg to place in juxta-position, for clearer comprehension, your Memorialist's position under the old and new rules.

Old Rules.		New Rules.
Law Officer.	General Service.	
Service required 15 Less. Years. Sick leave..... 2 Special do. twice, six months each. 1 3 Actual service 12 for a pension of £500 per annum.	Service required..... 20 Less. Years. Sick leave..... 2 Special do. thrice, six months each. 1½ 3½ Actual service 16½ for a pension of £500 per annum.	Service required, 15 years, plus any leave that may be availed of, for a pen- sion of £300 per annum, or 25 years, plus any leave that may be availed of, for a pension of £500 per annum.

9. That hardship, your Memorialist respectfully submits, is the more apparent when contrasted with the concession recently granted to Native Judges—a concession granted by the Secretary of State, on the recommendation of the Supreme Government, as shown in the Secretary of State's Despatch, No. 174, dated 13th July 1866, from which your Memorialist craves permission to quote for more easy reference.

2. "In regard to certain present incumbents you observe that they entered the Service in the belief that they would be entitled to pensions under the Old Rules, viz.,
"to a pension equal to one-third salary after 15 years' service, and equal to one-half after 22 years' service, when certified to be unfit for further duty."

4. "So far as relates to any Native Judges now in the Service who can be considered entitled to benefits granted by the Old Rules to Officers of that class, I am willing that they shall still be considered eligible to the pensions allowed by those Rules."

10. That hardship, your Memorialist further respectfully submits, is also the more apparent from the concession recently granted to First Judges of Presidency Small Cause Courts and other Judicial Officers, in regard to increased pensions and reduced terms of service; the Supreme Government's remarks relative to the claims of those Officers for equitable consideration, your Memorialist again craves permission to quote for more easy reference.

5. "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."

11. That your Memorialist, with reference to those concessions, submits most respectfully and most earnestly that his case is one possessing an equally equitable claim to consideration, inasmuch as he entered the Service under the Old Rules; that, before his transfer to his present appointment, he acted for nearly two years as First Judge of the Madras Court of Small Causes, in which appointment he has reason to believe he would have been confirmed had he been a Barrister; and that he is of the same class as the English Judicial Officers named in the Supreme Government's Despatch above quoted.

12. That your Memorialist feels assured, when the Secretary of State replied to your Memorialist's petition, the Secretary of State never could have foreseen with what grievous hardship his decision on that petition would press on an Officer situated as your Memorialist is, and while your Memorialist would respectfully urge the hardship of the retrospective application of New Rules to Old Officers in cases where they affect such Officers injuriously, as in your Memorialist's case, your Memorialist feels that the peculiar hardship of his present position only requires to be represented to ensure a modification of the decision which presses so hardly on your Memorialist;

*Proceedings of the Madras Government, Judicial Department,
22nd February 1868*

and your Memorialist would respectfully request that he may be declared entitled to the advantages both as requested by the Madras and Supreme Governments as applicable under the Old Rules to his position as a Law Officer, and conceded to his predecessors as "Law Officers" of His Majesty in India.

And your Memorialist, as in duty bound, will ever pray, &c., &c.
Madras, 21st February 1868.

(Signed) M. CROSS.

No. 281.

ORDER THEREON, 22nd February 1868, No. 311.

Order that the Memorial received with this letter be submitted to the Government of India, in accordance with paragraph 3 of the Rules for the submission of Memorials, &c., dated 15th August 1867.

(Signed) R. S. ELLIS,
Chief Secretary.

No. 287. To the Secretary to the Government of India, Financial Department, dated Fort Saint George, 22nd February 1868, No. 312.

In conformity with paragraph 3 of the Rules for the submission of Memorials, &c., dated 15th August 1867, I am directed to forward for the favorable consideration of His Excellency the Governor General in Council, and for transmission to the Right Honorable the Secretary of State, a Memorial from Mr. Maurice Cross, Judge of the Court of Small Causes, Negapatam, praying for a reconsideration of the decision of the Secretary of State, that Mr. Cross was not entitled to the advantages conceded to "Law Officers" and "Native Judges" under the Old Uncovenanted Service Rules.

Despatch, dated 3rd December 1865, No. 94.

2. Mr. Cross points out that Messrs. Rose and Fullerton, Judges of the Small Cause Court, Madras, were pensioned as "Law Officers"; that the New Rules, as contrasted with the Old Rules, affect him prejudicially; that a concession has been recently made by the Secretary of State in behalf of Native Judges, granting them the benefits of the Old Rules; and that the First Judges of the Presidency Small Cause Courts have been allowed increased pensions with reduced terms of service.

3. Under these circumstances, Mr. Cross prays for a reconsideration of his case, and to be admitted to the benefits of the Old Uncovenanted Civil Service Pension Rules as a "Law Officer."

4. The Governor in Council considers that the prayer of Mr. Cross' Memorial is entitled to the favorable consideration of the Right Honorable the Secretary of State.

(Signed) R. S. ELLIS,
Chief Secretary.

TO

THE RIGHT HONORABLE,

SIR STAFFORD HENRY NORTHCOTE BART. C.B. M. P.

SECRETARY OF STATE FOR INDIA,

&c. &c. &c.

The Memorial of MAURICE CROSS,

Esquire, Judge of the Court of

Small Causes, Negapatam.

RESPECTFULLY SHEWETH,

1. That your Memorialist entered the Judicial Branch of the Uncovenanted Service in 1838, being then 34 years of age, and having been 14 years in the Country.

2. That your Memorialist entered the Service, as a Law Officer, under certain Rules for Service and Pension.

3. That those Rules declare your Memorialist entitled to a retiring allowance, if incapacitated for further Service, after 15 years Service.

4. That in 1865, your Memorialist, as a Law Officer, petitioned the Secretary of State for India to be permitted the option of taking leave under the Old Rules on the ground that your Memorialist had entered the Service under those Rules, and also, for the reason, that they were more favorable to your Memorialist in the matter of allowances during the second and third years of absence.

5. That in his reply to your Memorialist's Petition, the Secretary of State remarked in paragraphs 3 and 4, as follows:

No. 32. Read the following letter from E. H. LUSHINGTON, Esq., Secretary to the Government of India, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Simla, 29th June 1865, No. 1034.

In reply to your letter, No. 249, dated 17th May 1865, submitting, for orders, an application from Mr. M. Cross, Judge of the Court of Small Causes at Negapatam, to be allowed the option of taking leave under the old Uncovenanted Service Rules, I am directed to forward the accompanying copy of a letter to the address of the Government of Bengal, No. 1832, dated 31st March 1865, and to remark that the decision contained therein seems to apply to Mr. Cross' case.

From E. H. LUSHINGTON, Esq. Secretary to the Government of India, to the Secretary to the Government of Bengal; dated Fort William, 31st March 1865, No. 1839.

I am directed to acknowledge the receipt of Mr. Junior Secretary Bayley's letter No. 1091, dated 17th March 1865, with its enclosed copy of a letter from Mr. W. S. Atkinson, Director of Public Instruction, representing the injurious bearing upon his case of the Resolution of the Home Department, No. 794, dated 25th January 1865, and in reply I am instructed to state that the reduction of periods of leave from service qualifying for pension, which is complained of by Mr. Atkinson, forms a part of the new Pension Rules, and not of the new leave Rules, to which latter only the Educational officers are subjects, while, as regards pension, the Rules of 1831 and 1855 still apply to them.

(A true Copy.)

(Signed) J. E. COOKE,
Asst. Secy. to the Govt. of India.

3. "It appears from the papers" "which accompany your letter, that" "Mr. Cross is regarded by you as" "one of Law Officers to whom the" "Old Rules were applicable, and" "that opinion received some confirmation from the letter from the" "Secretary to the Government of" "India, dated the 29th June last," "No. 1,034."

4. "I must, however, observe" "that neither Magistrates of Police" "nor Judges of Small Cause Courts" "were entitled to the advantages" "conceded to 'Law Officers' and" "'Native Judges' under the Old" "Rules."

6. That your Memorialist was quite unprepared for such an expression of opinion from the Secretary of State respecting your Memorialist's position as "Law Officer," considering that your Memorialist was not only regarded by the Madras and Supreme Governments as such, but, that your Memorialist's immediate predecessor in the Madras Court of Small Causes, Mr.

Maurice Cross

Rose, and likewise Mr. Fullerton, another Judge of the same Court, were pensioned by the Madras Government as "Law Officers," said pensions being finally sanctioned by the Home Government.

7. That the Secretary of State's ruling upon your Memorialist's petition, inconsistent as your Memorialist most humbly and respectfully submits it is with the cases of Messrs. Rose and Fullerton, tells with grievous hardship against your Memorialist, since it exacts from him an extended Service of five years; an extension which your Memorialist from ill health considering the age at which he entered the Service, coupled with a protracted residence, may be incapacitated from serving.

8. That your Memorialist would here beg to place in juxtaposition, for clearer comprehension, your Memorialist's position under the Old and New Rules.

OLD RULES.		NEW RULES.	
LAW OFFICER.	GENERAL SERVICE.		
Service required - - - Years. 15 Less. - - - Years. 2 Sick Leave - - - 2 Special do., twice, 6 months, each - 1 Actual Service, 12 for a pension of £300 per annum.	Service required - - - Years. 20 Less. - - - Years. 2 Sick Leave - - - 2 Special do., thrice, 6 months, each - 1 1/2 Actual Service, 16 1/2 for a pension of £600 per annum.	Service required, 15 years, plus any leave that may be availed of, for a pension of £300 per annum. or 25 years, plus any leave that may be availed of, for a pension of £500 per annum.	

9. That hardship, your Memorialist respectfully submits, is the more apparent when contrasted with the concession recently granted to Native Judges, a concession granted by the Secretary of State, on the recommendation of the Supreme Government, as shown in the Secretary of State's despatch No. 174 dated 13th July 1866, from which your Memorialist craves permission to quote for more easy reference.

2. "In regard to certain present incumbents you observe that they entered" "the Service in the belief that they would be entitled to pensions under the" "Old Rules, viz. to a pension equal to one third Salary after 15 years Ser." "vice, and equal to one half after 22 years Service, when certified to be un-" "fit for further duty."

4. "So far as relates to any Native Judges now in the Service, who can" "be considered entitled to benefits granted by the Old Rules to Officers of" "that Class, I am willing that they shall still be considered eligible to the" "pensions allowed by those Rules."

10. That hardship, your Memorialist further respectfully submits, is also the more apparent from the concession recently granted, to First Judges of Presidency Small Cause Courts and other Judicial Officers, in regard to increased pensions and reduced terms of Service, the Supreme Government's remarks relative to the claims of those Officers for equitable consideration, your Memorialist again craves permission to quote for more easy reference.

5. "Besides all these functionaries have an equitable claim to considera-" "tion 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."

11. That your Memorialist, with reference to those concessions, submits most respectfully and most earnestly that his case is one possessing an equally equitable claim to consideration,

Francis B. P.

inasmuch as he entered the Service under the Old Rules,—that before his transfer to his present appointment, he acted for nearly two years as First Judge of the Madras Court of Small Causes, in which appointment he has reason to believe he would have been confirmed had he been a Barrister,—and that he is of the same Class as the English Judicial Officers named in the Supreme Government's despatch above quoted.

12. That your Memorialist feels assured when the Secretary of State replied to your Memorialist's Petition, the Secretary of State never could have foreseen with what grievous hardship his decision on that Petition, would press on an Officer, situated as your Memorialist is, and while your Memorialist would respectfully urge the hardship of the retrospective application of New Rules to old Officers in cases where they affect such Officers injuriously, as in your Memorialist's case, your Memorialist feels that the peculiar hardship of his present position only requires to be represented to ensure a modification of the decision which presses so hardly on your Memorialist; and your Memorialist would most respectfully request, that he may be declared entitled to the advantages hitherto regarded by the Madras and Supreme Governments as applicable, under the Old Rules, to Officers in your Memorialist's position, and conceded to his predecessors as "Law Officers" of Her Majesty in India.

And your Memorialist, as in duty bound, will ever pray, &c., &c.

Francis B. P.

Agastam 4 February 1868.

311 & 312

MEMORIAL

OF

MAURICE CROSS, ESQ.,
Judge of the Supreme Court of South Carolina.

—
Praying that the advantages granted
to his predecessors as Lord Officers, may
be conceded to him, he having entered the
service under the Rules conferring those
advantages.

Rev.
Hon.
Genl.

10/10/24
10/29/24
Maurice Cross, Esq.

1868. Department.

No. 312

To
The Secretary to the
Government of India
Home Department.

Sept 200-1152
1611-2506

Dated 20th Feb. 1868.

Forwarding for favorable consideration and
in transmission to the Secy.
of State, a Memorial from
Mr. M. Croft, Judge of the Court
of Small Causes, Negapatam,
praying for a reconsideration
of the subject of his ad-
mission to the benefit of
the Old B.C.S. Pension Rule
as a "Law Officer."

2852-87.

Negapatam, 4th February 1868

From

Maurice Croft Esquire

Judge of the Court of Small Causes
Negapatam

To

The Honble R. J. Ellis C. B.

Chief Secretary to Government
Fort Saint George

Sir

The new rules for the trans-
mission of Memorials to the Secretary
of State for India, permit a second
Memorial to be submitted, if new
facts or circumstances are adduced
which would afford grounds for a re-
consideration of the case -

2. Under that permission, I res-
pectfully hope that His Lordship
in Council, will allow me to address
him again -

3. The Memorial I now do myself
the

the honor to submit, can scarcely be designated a second Memorial, it being, in truth, my first Memorial applying for the reconsideration of a most unexpected opinion expressed by the Secretary of State that, as in my case, English Judges of Small Cause Courts are not entitled to the advantages conceded to Law officers; that opinion having been given on a Memorial presented by me as a Law officer (Vide paragraph 4 of present Memorial) the expressed opinion of the Supreme and Madras Governments then supporting my position as such.

3. The precedents quoted in the present Memorial (Vide paras 6) and the subsequent modifications of the Secretary of State's unexpected Ruling on my former Memorial by the Comptroller since granted to other judicial officers similarly situated to myself (Vide paras 9 & 10) do, I most respectfully

respectfully submit, really afford strong grounds for a reconsideration of my Case.

5. In this hope, I respectfully solicit that His Lordship in Council will be pleased to cause the transmission of the enclosed Memorial to the Secretary of State, and that His Excellency will be further pleased to accord his support to my prayer.

I have the honor to be, Sir

Your most obedient servant

Bramesh Chup.

Judge

232
Judicial Department.

No. 312.

To

The Secretary to the Government
of India,
Financial Department.

Sir,

In conformity
with paragraph 3 of
the Rules for the sub-
mission of Memorials
dated 15 August 1861,
I am directed to for-
ward for the favorable
consideration of His
Excellency the Governor
General in Council, and
for transmission to the
Right Honorable the
Secretary of State, a
Memorial from Mr.
Maurice Croft, Judge
of the Court of Small
Causes

WDL

22 February 1868 No. 311.

Ordered that the Memorial
received with this letter be
submitted to the Govt of India
in accordance with para. 3 of the
Rules for the submission of Mem-
orials &c. - 15 August 1861.

W. M. Croft Esq. Judge

25th Feb 1868

2852 285

Instruct a Revenue
to the effect of the
Memorial that it
is a case which is
in the hands of the
Court of Small
Causes.

1868
1.1.1868

12.2.5 - 3 February 1868

The Chief Secretary
to Government
1st of Feb.

Mr. Croft
of the Court of
Small Causes
Hyderabad

1868
31.1.1868

1868
31.1.1868

Cause, Megapalam,
praying for reconsideration of
appearing against the
decision of the Secretary
of State, that Mr. Croft
was not entitled to
the advantages conceded
to "Law Officers" and
"Native Judges" under the
Old Incovenanted Ser.
& vice Rules.

2. Mr. Croft points
out that Messrs. Rose
and Fullerton, Judges
of the Small Cause Court,
Madras, were pensioned
as "Law Officers": that
the New Rules as con-
sidered with the old
Rules affect him pre-
judicially, that a
conception has been
recently made by
the

Despatch dated 3rd Dec/65
N.C.

the Secretary of State
in behalf of Native
Judges, granting them
the benefits of the Old
Rules, and that the
First Judges of the
Presidency Small Cause
Courts, have been allowed
increased pensions with
reduced terms of service.
3. Under these cir-
cumstances Mr. Croft
prays for a re-considera-
tion of his case, and
to be admitted to the
benefits of the Old
Incovenanted Civil Service
Pension Rules as a
"Law Officer."

Is not an opinion
required? - I doubt.
Heck the Croft has
failed to show what he
deserves himself to be
entitled to - W.D.

I would add
"The Government
has considered that the
prayer of an (un) successful
is entitled to some favorable
consideration" - W.D.

does not ask for
 a pension at present
 only that he may
 be returned to the
 5 years term. Should he then
 be compelled by ill health to
 return. I think his request
 is reasonable. He is certainly
 as much entitled to be
 regarded as a Law Officer
 as any U.S. Attorney
 in the West.

L. H.

Fort St. George
 22 Feb. 1867

No.

The Secretary to the
 Government of

Department.

Dated

1867

1867

Department