

(1) Number of pages 35

(2) Date of repair 28.3.56

(3) Initials of the Referencer g.

MADRAS RECORD OFFICE

Government of Madras

judicial DEPARTMENT

G.O. No.
B.P. No.

431

Press
~~Mis.~~

Dated

28.2.

195-1893

Not to be folded or roughly handled

28TH FEBRUARY 1893, No. 431, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

Read—the following paper :—

G.O., dated 31st January 1893, No. 87, Mis., Revenue :—

Read—the following papers :—

Proceedings of the Board of Revenue (Land Revenue), dated 18th October 1892, No. 6662, Mis., submitting, for the orders of Government, letters from the Collectors of Kistna and Kurnool with Board's opinion on certain question raised therein regarding the appointment, &c., of village munsifs.

Proceedings, dated 15th December 1892, No. 8224, Mis., submitting, with remarks, for the orders of Government, letter from the Collector of Salem suggesting certain modifications in the rule prescribed by Government for the guidance of Collectors in the appointment of village munsifs under the Village Courts Act I of 1889.

Order—dated 31st January 1893, No. 87, Mis., Revenue.

The Government cannot agree with Mr. Arundel in considering that the instructions contained in G.O., dated the 9th March 1892, No. 241, are inconsistent with G.O., dated 4th January 1892, No. 10, or that they violate the provisions of sections 7 and 8 of the Village Courts Act. The rules framed for the working of Regulation VI of 1831 do not require that the office of the head of a village should be *conferred* on a female, a minor, an absentee or other disqualified person, but provide that whenever the heir to the said office labours under any disqualification, it should be merely registered in his or her name, a duly-qualified person being appointed to discharge the duties until a competent heir is available. Registration of hereditary right is not appointment, and is clearly distinguished from it in the very Government order which Mr. Arundel cites.

2. As regards the office of village munsif, there is nothing in the Village Courts Act debarring Government from making rules sanctioning temporary or acting appointments. The gumastah nominated to discharge the duties of the office of the head of a village can therefore be appointed to act as village munsif as long as he continues to discharge such duties, and it matters not, so far as the legality of the acting appointment is concerned, whether his tenure of office be long or short. In either case his appointment to the office of village munsif ceases by its own terms when the incapacity of the registered office-holder is determined. The same is the case when the head of a village is dismissed from his office. To remove all doubt on the point, a clause will be inserted in the rule issued under section 7 of the Village Courts Act providing that when the offices are to be conjoined, every appointment to the office of village munsif shall be expressly declared to be for such time only as the nominee shall be discharging the duties of the office of the head of a village. Orders to this effect will issue in the Judicial Department.

3. The Government has already negatived the Board's proposal to make the appointment of village head dependent on that of village munsif. Besides being outside the scope of the Village Courts Act, the proposed rule would clearly override the provisions of Regulation VI of 1831 in cases where the munsif is not the person having mirasi right to the office of the head of a village, and would therefore be *ultra vires* and illegal.

4. The rule contained in G.O., dated the 3rd May 1892, No. 840, Judicial, requires that, when the jurisdiction of the head of a village is not continuous with that of the village court, the Collector shall appoint a person other than the head of a village to be village munsif. The Government does not think that many cases of this kind will arise, and whenever the appointment of a separate munsif under the rule is found necessary, he should be paid a salary from the Village Service Fund, and proposals to this effect should be submitted to Government in the ordinary course.

(True Extract.)

(Signed) E. GIBSON,
Ag. Secretary to Govt.

To the Commissioners of Land Revenue,
Judicial Department.

ORDER—dated 28th February 1893, No. 431, Judicial.

In exercise of the powers conferred upon him by section 7 of Madras Act I of 1889 (The Madras Village Courts Act), and in supersession of the rule approved in G.O., dated 3rd May 1892, No. 840, Judicial, the Governor in Council is pleased to prescribe the following rule for the guidance of Collectors in the appointment of village munsif:—

RULE.

When the local jurisdiction of the village court is continuous with a village, the Collector shall appoint to be village munsif the person discharging the duties of the office of head of the village. The appointment shall be declared to be made for such time only as such person shall be discharging such duties. When in consequence of grouping or subdivision of villages under Act I of 1889 the local jurisdictions are not continuous, the Collector shall appoint to be village munsif of each such village court a person other than a head of a village who resides within the jurisdiction of the village court and who possesses the educational qualifications prescribed by Government. The Collector shall in such case give preference to a member of a family in which the office of head of the village or headman within the jurisdiction of the village court is held by hereditary right.

(True Extract.)

C. A. GALTON,
Ag. Chief Secretary.

To the Revenue Department,
all Collectors.

Edw. A. Baill.

Gobt. of {1893} Madras.
JUDICIAL.

Issued

Read.

Encl.

G.O., 28th February 1893, No. 431.

FEBRUARY.

Village Munsifs.

Prescribing a rule in supersession of that approved of in G.O., dated 3rd May 1892, No. 840, for the guidance of Collectors in the appointment of —.

3RD MAY 1892, No. 840, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

G.O., dated 9th March 1892, No. 241, Revenue.

Read—the following Proceedings of the Board of Revenue (Land Revenue), dated 18th September 1891, Mis. No. 6751:—

THE FULL BOARD.

Resolution—dated 18th September 1891, Mis. No. 6751.

In connection with the manual for village officers which has been prepared with reference to G.O., dated 23rd July 1888, Mis. No. 4301, the Board finds it necessary to raise a preliminary point and obtain the orders of Government on it.

2. Under the law and orders now in force some duties, such as those specified in Regulations XI of 1816 and IV of 1821, and in the Criminal Procedure Code, Act X of 1882, have to be performed by village headmen; and some others, specified in Act I of 1889 and Regulations V and XII of 1816, by village munsifs. The question arises whether these offices are to be held by the same individual or not.

3. Under section 3 of Regulation IV of 1816, the village headman was the person who collected the revenue and had control over the village servants, and under section 2 of the same Regulation he was, by virtue of his office, also the munsif of the village. Under section 3 of Regulation XI of 1816, the heads of villages mentioned in the Regulation were those described in Regulation IV of 1816. Though this latter Regulation as also section 3 of Regulation X of 1816 have been repealed, still the references to "heads of villages" made in the unrepealed portion of the latter Regulation must, in the absence of any express enactment defining the expression, be construed only with reference to the definition referred to above.

4. Now, under section 6 of Madras Act I of 1889 (which has superseded Regulation IV of 1816), Government may group or divide villages for purposes of village courts, and under section 7 Collectors may appoint village munsifs subject to such rules as may be prescribed by Government from time to time. Under the latter section, Government, in its Order, No. 1201, Judicial, dated 2nd July 1891, has directed that the Collector should select persons possessing such qualification and educational attainments as may from time to time be prescribed by Government, preference being given, in districts where the office is hereditary, to (1) a member of the munsif's family and next to a member of the hereditary monegar's family. The Judge may afterwards dismiss him from the post of village munsif without reference to the Collector, so the man who has been dismissed from the post of village munsif may retain the post of monegar.

5. There is thus nothing in the law which makes it necessary for the munsif and the headman to be the same individual, and the orders are such that they may apparently be different individuals. Until a new order is issued, therefore, there may be in a small village a headman (monegar) doing Police duties and having criminal powers and a village munsif exercising civil powers. This state of things seems undesirable and opposed to public policy; and the Board therefore considers that

Govt. of (1892) Madras.
JUDICIAL.

Issued

Recd.

Encl.

G.O., 3rd May 1892, No. 840.

MAY.

Village Munsifs.

Prescribing a revised rule for the guidance of
Collectors in the appointment of ---

Proceedings of the Board of Revenue
(Land Revenue)

Dated 15th December 1892, No: 8224. Misc.

Read the following letter from F. A. Nicholson
Esq. Acting Collector of Salem, to the Secretary
to the Commissioners of Land Revenue, Madras,
dated 10th November 1892. Ref. No: 3617/1388.

In Board's Proceedings No. 33
dated 29th June 1892, I find G.O. No. 840
Judicial dated 3rd May 1892, prescribing
a new Rule under section 7 I of 1889 (Madras
Village Courts Act). In that Rule which
is to be entered in Standing Order
No. the following sentence runs:

"When in consequence of grouping
or subdivision of villages under Act
I of 1889 the local jurisdictions are
not continuous, the Collector shall
appoint

appoint to be village or chief of each village. Count a person other than the head of a village. who resides

within the jurisdiction of the village Count and who possesses the Educational qualifications prescribed by Government."

2. This precludes a Collector from appointing one of the heads of the villages constituting the group. For instance, a taluk head quarters may consist of 3 or more villages with several village heads, each at present having civil jurisdiction. If these are grouped under the Act, the Collector cannot, under this Rule, appoint any one of the heads of these villages as village head of the group, although one of them perhaps each one may be a man of considerable education and influence and

and account to civil work. I think the entry of the words "other than the head of a village" is a clerical error, especially as the Rule goes on to order the preferential selection of a member of a family in which village headship is hereditary. I cannot see why village heads should be excluded even from consideration for selection, simply because their village limits are not contemporaneous with those of a group. A parallel difficulty occurs with reference to sub-division.

3. I respectfully submit that the words "other than the head of a village" should be omitted from the second sentence of the Rule, and that the third sentence should run something as follows:

"Candidates being duly qualified, the Collector shall ordinarily give preference

in the following order:

(a) To one of the heads of the villages
constituting the group.

(b) To a member of a family in
which the office of the head of the
village or headman is held, within
the jurisdiction of the village court
by hereditary right.

(c) To a Resident within the
jurisdiction of the village court.

(a) For one subdivision the
existing village-muneeff, if any,
of the original village.

(b) If there is no existing village
muneeff, then as in (b) & (c).

Sub voce "groups."

(c) For the other subdivision or
subdivisions as in (b) & (c)
Sub voce "groups."

Resolution

Resolution.

Submitted for the orders of
Government in continuation of Board's
Proceedings dated 18th October 1892 No. 6662
Muz:

2. The Collector's suggestion is to the
effect that as a rule the headman should
be muneeff everywhere not merely in cases
where their jurisdictions are continuous.
This seems to the Board to be right in prin-
ciple and has been provided for in the
draft bill for the amendment of Regulation
VI of 1831 which is being separately submitted.

(True copy & Extract)

(sd) W. S. Meyer.

Ag. Secretary.

To the Secy. & Govt. P.D.
Copy to the Comm. of India.

(True copy)

W. S. Meyer
Ag. Secretary to Government.

Proceedings of the Board of Revenue
(Land Revenue)

Dated 18th October 1892

No. 6662. Misc.

Read the following letter from A. T. Arundel Esquire
Collector of Kistna, dated Machilipatnam 19th
May 1892, No. 432 to the Secretary to the
Commissioners of Land Revenue, Madras.

With reference to G.O. No. 840 dated 3rd May
1892, I have the honor to draw attention to
para: 2 of Revenue G.O. No. 241 dated 9th March
1892 and respectfully to observe that some
of the instructions therein contained appear
to me to be of doubtful legality.

2. The last sentence runs "The qualifications
prescribed for the office of Village Munsiff
and head of the village are the same and
the orders recently issued as to registration,
discharge of duty by Deputy, &c. should
apply

Apply to both alike. It is opposed
to what I venture to affirm is the legal
view laid down by Government in G.O. No. 10
Revenue dated 6th January 1872 para: 7, in
which, speaking of the succession of families
and other incapacitated persons, Govern-
ment observes, "These instructions do not
affect the post of Village Munsiff, which is
now governed by Chapter I of 1889
and the rules framed under Section 7 thereof.
3. The instructions in the more recent G.O.
apparently issued in certain cases, a
direct violation of Act I of 1889. For
instance, under the existing rules
for the working of Regulation VI of 1831
it is provided that any hereditary
village office may be conferred on and
registered in the name of a next heir
who

who holds a different village office elsewhere
or holds an appointment in the Government Service.
But Section 7 of Act I of 1889 provides
that no person not residing within the village
"shall be eligible for the office of Village Munsiff."
Again it cannot, I submit, be legal
for Government to order the post to be conferred
on a female or a minor or other incapacitated
person, when the Collector has power under
Section 8 to remove the individual for the
same incapacity.
4. The Civil Courts are not barred from
Cognizance of suits regarding the office of
Village Munsiff, and they too, I submit, certainly
hold that the rules framed under Section 7 of
the Act must not be in conflict with
the provisions of Section 8. The Governor-in-
Council may make rules for the appoint-
ment of Village Munsiff but the Act itself
prescribes

provision the grounds on which the village
Munsiff may be suspended or removed.
A Village Munsiff for instance who as head-
man is merely a fumastah for a minor
cannot be ousted he ~~cause~~ the minor
comes of age and assumes the post of
head man from the fumastah. This could
not be regarded as a just and sufficient
Cause" under Section 8; the Courts would
therefore regard it as "unjust and
insufficient" and would give damages
against Government to the person aggrieved
by the order.

5. For this reason, I venture to urge
that the resolution proposed by the Board
is the true one, viz: that every village Munsiff
should be declared to be ex-officio headman
(Munsiff) and that dismission from the
former

former post should involve a dismission
from the office of headman (Munsiff) also. This
proposal was disapproved by Government which
has laid down that Collectors shall appoint
the head of the village i.e. the headman who
holds the office hereditarily or is the headman
designated by the Collector as head of the
village, to be village Munsiff. For the reasons
already given I venture to think this position
untenable. It involves the appointment
to the office of village Munsiff of absentees
and of incapacitated persons and is therefore
illegal.

6. The difficulty cannot, I think, be
eluded by rules framed under section 7
These rules to begin with must not conflict
with the law as laid down in sections 7 and 8.
Non-residents, females and minors are thus
in any case excluded, and the office of
village Munsiff cannot be assigned to them and
discharged by Deputy or fumastah. It may

we said that as Government must have
power under the Act to provide for
temporary vacancies owing to suspension,
leave &c. to the whole period of non-
residence or incapacity in the next heir
may be regarded as temporary and
the officer he left vacant, while a
village Munsiff may be appointed to
act during the life-time or non-residence
or minority of the next heir. But it
is hardly to be contended that Act I of 1889
which provides how village Munsiffs shall
be appointed can be amended into
providing that they shall not be appointed
for a period which in the case of a minor
heir might last for 20 years, and
in the case of a non-resident or female
heir

may last for a greater or half of
a Century. This would be evading the ^{clear} ~~obscure~~
provisions of the law to meet a difficulty
caused by a special interpretation ^(a different law - Reg. VI of 1881) ~~which interpretation~~ could,
if Government pleased, be altered tomorrow.
7. But even the proposal of the Board is
also open to a legal objection though it
is of less weight. Suppose for instance
that a headman who is also village
Munsiff is guilty of persistent neglect
in the collection of revenue and is on
that account suspended or dismissed.
Can he on this ground be also dismissed
from his appointment of village Munsiff
which is conferred on him by a
different Act and by a different object.
His judicial work may be excellent
and only his revenue work bad,
indeed the demands of the former
might

might be urged as the cause of the inferiority
of the latter. I question whether a suit for
damages would not lie in the case of a
village Munsiff suspended or dismissed
because of his incapacity or neglect of duty
in cases that fall within which Act I of 1889 has
nothing to do. The order might, however, be
regarded as "just and sufficient" on the
ground that the offices of village Munsiff
and headman are combined whenever possible
so as to attach a salary to the former office,
and that removal from the latter office must
therefore involve removal from the former.

The position, however, is doubtful at the best.

8. The solution of the present "impasse"
lies in legislation alone, but meanwhile
a temporary solution of the difficulty is
required. The Board's proposal quoted

above

above (para. 5) will suffice, but if the
foregoing arguments are valid it would
follow of necessity that as concerns the
post of headman the rules requiring the
appointment of absentees and incapacities
must be cancelled. The only other
solution that suggests itself is that the
village Munsiff's appointment should be
independent of all the other village
appointments and that he do no work
without pay - a condition that negates
the suggestion.

9. In my letter no. 4231 dated 17th May, I
have given reasons for holding that the
interpretation of the word "hereditary"
in Regulation VI of 1831 as meaning
"hereditary by primogeniture" is wrong
and I will not repeat them here.

If they are accepted by Government as sound they would allow the arrangement proposed by the Board to be carried out by executive order pending a settlement of the whole question by legislation.

10. There is one more point to which I beg leave to draw attention. In the new rule under section 7, Act I of 1889, it is provided that in consequence of grouping or sub-division of villages under Act I of 1889 the local jurisdictions are not discontinuous, the Collector shall appoint to be village Munsiff of each village Court a person other than the head of a village who resides within the jurisdiction of the village Court and who possesses the educational qualifications prescribed by

by Government." The result of this limitation will be that in all such villages the village Munsiff will be an unpaid officer who will be tempted to make improper gains out of the administration of justice. It would, I think, be far better to allow the Collector to select one of the paid headmen whose local authority extends as headman to more ^{than} or less than the local jurisdiction of the village Court, and make him the village Munsiff. He will at any rate be a paid official with pecuniary interests aiding him towards the upright discharge of his duties.

Read also the following letter from C. Kough Esquire, Collector of Kurnool dated 22nd August 1892, No: 6004 to the Secretary to the Commissioners of Land Revenue

Referring to Board's Proceedings
of 29th June 1892, No: 330 I have the
honor to enquire how the running of a
Village Court constituted by grouping or
sub-division of village is to be paid.

Resolution:

The two letters read above
were submitted for the orders of
Government.

2. The difficulties raised by the Collector
of Kistna, should the Board consider
be set at rest by legislation and this
can be done when Regulation VI of 1831
is revised. The Board is about to report
separately on the subject.

3. Meanwhile some temporary solution
of the difficulty is necessary and
the Board thinks that for the reasons
set-

set forth by the Collector of Kistna, the
appointment of village headman ~~for~~ or
Moujar should be made dependent on that
of Village Panniff as proposed in para 5 of
B.P. 675th Div instead of the reverse policy
18-1-91
being adopted as directed in G.O. $\frac{840}{3-5-92}$
Judicial.

4. The Board also considers that
the suggestion contained in para 10 of the
Kistna Collector's letter is a good one and
recommends it for adoption when possible
in cases where there may be no available
surplus of village service fund for the
payment of an additional officer.
This answers the questions raised by the
Collector of Kistna.

(True copy & Extract)

(Sd/- F. Leary)

To the Secretary to Govt. D. to the P. H. 14874
1892 in orig. blue retained. (True Copy)
for as Secretary

(True copy)

Whitcomb
Acting Secretary to Government

Sh. to the following papers
G.O. 21-10-92, No. 187
Sh. to the following papers

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Copy attached.

Read Proceedings of the Board of

Revenue (Land Revenue) dated 18th October 1892 No. 6662 Ins, submitting for the orders of Government letters from the Collector of Kistna and Karwar with Board's opinion on certain questions raised therein regarding the appointment of village munsifs;

Copy attached

and also Proceedings dated 15th December 1892 No 8224 Ins, submitting with remarks for the orders of Government letter from the Collector of Salem suggesting certain modifications in the rules prescribed by Government for the guidance of Collectors in the appointment of village munsiffs under the Village Courts Act I of 1889.

Order thereon 31st January 1893 No 87 Ins.

The Government cannot agree with Mr. Arnold in considering that the instructions contained in G.O. dated the 9th March 1892, No 241, are inconsistent with G.O. dated the 4th January 1892 No 10, or that they violate the provisions of sections 7 and 8 of the Village Courts Act. The rules framed for the working of Regulation No. 1 of 1831, do not require that the office of the head of a village should be entrusted on a female, a minor, or

absentee or other disqualified person, but provide that whenever the heir to the said office labours under any disqualification, it should be merely registered in his or her name, a duly qualified person being appointed to discharge the duties until a competent heir is available. Registration of hereditary right is not appointment and is clearly distinguished from it in the very G. O. which has been quoted.

2. As regards the office of Village Munsif, there is nothing in the Village Courts Act debarring Government from making rules sanctioning temporary or acting appointments. The Government nominated to discharge the duties of the office of the head of a village can therefore be appointed to act as village munsif as long as he continues to discharge such duties, and it matters not, so far as the legality of the acting appointment is concerned whether his term of office be long or short. In either case, his appointment to the office of village munsif ceases by its own terms when the incapacity of the registered office holder is determined. The same is the case when the head of a village is dismissed from his office. To remove all doubt on the point, a clause will be inserted in the rule framed under section 4 of the Village Courts Act providing that when the office is to be assigned, every appointment to the office of village munsif shall be expressly declared to be for such time only as the munsif shall be discharging the duties of the office of the head of a village. Orders to this effect

will issue in the Judicial Department.

3. The Government has already negatived the Board's proposal to make the appointment of village head dependent on that of village munsif. Besides being outside the scope of the Village Courts Act, the proposed rule would clearly override the provisions of Regulation VI of 1881 in cases where the munsif is not the person having mirasi right to the office of the head of a village, and would therefore be ultra vires and illegal.

4. The rule contained in G. O. dated the 3rd May 1897 No 840 Judicial requires that when the jurisdiction of the head of a village is not coterminous with that of the village court, the Collector shall appoint a person other than the head of a village to be village munsif. The Government does not think that many cases of this kind will arise, and whenever the appointment of a separate munsif under the rule is found necessary, he should be paid a salary from the village service fund and proposals to this effect should be submitted to Government in the ordinary course.

(True Extract)

W. H. B. S.
Ag. Secretary to Government.

The Commissioners of Land Revenue.

" Judicial Department
with Hon. Secretary to Govt.

Govt. of 1893 Madras.
REVENUE.

To

The Judicial

Resortment.

Dated

Recd.

Encl. 4

Ms. G.O., 3/2 Jan 1893, No. 37

SUBJECT.

Forming rules regarding
the appointment of Village

GO 211: 10.11.92 Mis
920: 17.5.92 Mis
840: 3.5.92
2388: 21.11.91
1512: 29.7.91 Mis
1301: 2.7.91 Mis
1181: 16.7.90
Rev 10: 4.1.92 SC



PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following paper:— C.N. 407

Order 20 Feb 93 N-431

In exercise of the powers conferred upon him by Sec. 7 of Madras Act I of 1889 (the Madras Villages Courts Act), and in pursuance of the rule approved in G.O. of 3 May 1892, N. 540, J. 1892, the G. in C. is pleased to prescribe the following rule for the guidance of Collectors in the appointment of village managers:—

The following rule will be substituted for that provided in G.O. of 23 May 1892 N. 540.

Rule under Sec. 7
Madras Act I of 1889

When the local jurisdiction of the village court becomes terminous with a village the Collector shall appoint to be village Munsiff the person discharging the duties of the office of head of the village. The appointment shall be declared to be made for such time only as such person shall be discharging such duties when in consequence of grouping or subdivision of village under Act I of

18 Dec.

16 Feb

17/2/93

~~When the local jurisdiction of the village court becomes terminous with a village the Collector shall appoint to be village Munsiff the person discharging the duties of the office of head of the village. The appointment shall be declared to be made for such time only as such person shall be discharging such duties when in consequence of grouping or subdivision of village under Act I of~~

The local jurisdictions are not continuous, the collector shall appoint to be village headman of each village court a person other than a head of a village who resides within the jurisdiction of the village court and who possesses the educational qualifications prescribed by Govt. The collector shall in such cases give preference to a member of a family in which the affairs of head of the village or headman within the jurisdiction of the village court is held by hereditary right.

(From order in 1912)

Note: This is the rule approved by the Govt. & the Hon. Mr. H.C. Stokes. The paper has been marked "Agreed" by the Hon. Mr. Justice & will be in force as soon as possible.

To the Revenue Dept. with the Hon. Mr. Justice & all Collectors.

Rule under Sec of the Madras Village Act

I think it would be included with advantage in the Act.
Accepted 17/2/95
18th

Recirc? to the Hon. Mr. H.C. Stokes with reference to the Hon. Mr. Justice's suggested amendment.

20th Feb
21st Feb

C 15/2
R 20/2

2720 4655/95
5181/024
20.

with the Hon. Mr. Justice & all Collectors.