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Local & Munl. (1897) Department.

MISCELLANEOUS.

G.O., No. 2117 & 2118/M

DATED 28-9-97

INDEXED.

DESPATCHED

[Despatch Abstract.]

Leave allowances and pensionary Contribution

Addressing the Govt. of India on the question of payment of —— of Muhammad Safdar Husain Sahib, Revenue Officer of the Madras Munty. and

Requesting that, for reasons stated, the Civil Service Regulations may be so modified as to bring them into harmony with the provisions of the law regulating the service of officers of the Madras Munty. referred to in Section 37 of the City of Madras" Munl. Act I of 1884

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
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allowances & pensionary contribution of Muhammad Safdar Husain Sa

Revenue officer, Madras Mty.

& M.]
30-6-97.

LOCAL AND MUNICIPAL DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., No. dated 189 .
Again G.O., No. dated 189 .
Current No. 1797 M of 1897, dated 30th April 1897, from the Accountant - General
" " " 189 , " , "
" " " 189 , " , "

Please see fair copy within.
HOS
28/9

HM

Mis ORDER. No. 2117 M. mis. dt 28.9.97

The Government of India will be addressed.

Letter No. 2118 M. mis. dt 28.9.97

From
G. S. Forbes Esquire. I. C. S.
Secretary to the Government of Madras,
Local and Municipal Department

To
The Secretary to the Government of India,
Department of Finance and Commerce

Sir,

In March last, Muhammad Safdar Husain Sahib, a Deputy Collector on a salary of Rs 250, was appointed as Revenue Officer of the Madras Municipality and under section 37 of Act I of 1884, as amended by Act II of 1892, this Government fixed his salary at Rs 400, and ordered

To The Accountant General.
" President, Munl. Commr., Madras

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Despd. 2/10/97

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A.S.H.
26.9.97

the payment from municipal funds of the necessary contribution on account of his leave allowances and pension. The appointment involves the transfer of Muhammad Safdar Husain Sahib to foreign service of the first kind as defined in Article 802 of the Civil Service Regulations; and the Accountant General points out, that, as the person in question is not an officer of the special services mentioned in Article 806 (iii), contribution on his behalf can, under Article 809 (a) ii, be levied only on account of his pension, at one eighth of his assumed pay, viz: Rs 250 which he last drew when in Government service, and further that in ~~this~~ such case his pension will be calculated only on this amount. On the other hand section 37 of Act I of 1884, as amended by Act II of 1892, lays down that if the persons who are appointed to any of the offices specified therein, of whom the Revenue Officer is one, are officers of Government, the municipality shall pay contribution for leave allowances

and pension, which, according to the Accountant General, will in the present instance be calculated on the salary which Muhammad Safdar Husain Sahib may be drawing from the Municipality from time to time, as in the case of officers transferred to foreign service of the second kind. ~~See the~~ The Acct General admits that ~~opinion of this Government~~, a legislative enactment must be held to supersede any executive orders of the Government of India, such as are contained in the Civil Service Regulations and have not the force of law, and accordingly the contribution to be levied in the present case should be for both pension and leave allowances ~~[illegible]~~ in conformity with the ~~order~~ direction of this Government. ~~The Accountant General~~ But as this direction

~~[illegible]~~

x Vide art 823 W of C.S.R.

~~the fact that this [illegible]~~ is in conflict with the conditions prescribed by the Government of India, under which the services of its officers may be lent to the municipality, he requests that the case may be submitted to the Government of India for orders.

2. The conditions of service of an officer lent to a municipality however differ from those of the three officers of the Madras Municipality named in section 37 of the City of Madras Municipal Act I of 1884, inasmuch as ~~by law~~ the Government has by law taken power to appoint these three officers and to regulate their pay from time to time.

~~Paragraph 4 of~~ The resolution of the Government of India, Department of Finance and Commerce, (Pensions and Gratuities), dated th January 1889, No. 109, ~~which says~~ points out (para. 4) among the reasons for regulating the pensionable standard of salary

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that "it is not desirable that th
" contributions of officers in this class of service (foreig
" service of the first kind) or thei
" pensions or leave allowances sho
" be regulated by the salaries
" which they from time to time
" receive from their foreign, empl
" or, as these salaries are often re-
" gulated by considerations differe
" from those which apply in the
" ordinary services of the Govern-
" ment of India." These considerations ~~does not apply~~ should not, however, in the opinion of H.E. the President, be regarded as applicable to these ~~three~~ officers ~~[illegible]~~ in question since their appointment is entirely in the gift of Government and their salaries are regulated by Government. I am therefore directed to request that the Civil Service Regulations may be modified, so as to bring them into harmony with the provisions of the law governing the service of the officers ~~of the [illegible] municipality, above~~ referred to.

I have &c.

Despd. 2/10/97

V.R.

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[illegible] + pensionary Contribution of Muhammad Safdar Husain Sahib Revenue Officer Madras Municipality.

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Current No. 1797M

Hay N

For Orders

In G.O. No.421 M, dated 8th March 1897, Muhammad Safdar Husain Sahib was appointed Revenue Officer of the Madras Municipality on a salary of Rs 400 per mensem, and, under section 37 of Act I of 1884 as amended by Act II of 1892, the payment from Municipal funds of the necessary contribution on account of his leave allowances and pension was ordered.

2. According to Article 802 of the Civil Service Regulations, " When an officer of Government is allowed to take "service under an employer who is not under the orders of Government and is allowed while in such service to maintain "his claim to pension and leave in the "same way as if he were still in the service of Government," he is in foreign service of the first kind, and officers lent to a native state or to a municipality are given as examples of officers in such service. The service of Muhammad Safdar Husain Sahib under the Madras Municipality is accordingly " foreign service of the first kind." Article 806 of these regulations prescribes the conditions which should be complied with when an officer of Government is transferred to foreign service of this kind, one of them being that " the officer transferred either

the reasons for regulating the pensionable standard of salary

" either has ten years' qualifying service
"(for pension) under Government or belongs
" to one of the following services:- The
" Indian Civil Service; the Army; the "Commis-
" sion" of any non-Regulation Province; the
" graded Political Department; the superior
" service of the Public Works (including
" Railway Revenue and Account Branches),
" Telegraph, Survey or Forest Department;
" the graded Educational service; the Indian
" Marine." (Vide clause iii); and article
809 (a) lays down that " from every officer
" transferred in the manner specified in
" Article 806, who does not wholly resign
" the service of the British Government, or
" who is not, for recorded special and public
" reasons, exempted from the operation of the
" rules in this chapter (chapterxxxvi)* a con-
" tribution is levied as follows:-
" (i) in the case of officers of the special
" services mentioned in rule 806(iii) on account
" of leave allowances (excepting privilege
" leave) and pension --- one fourth of the
" assumed pay ÷ ÷ ÷ ÷ ÷ ÷ ÷ ÷ ÷ ÷
" (ii) in the case of others on account of
" pension only --- one-eighth of the assumed
pay ÷ ÷ ÷ ÷ ÷ ÷

* This has been inserted by the office.

The Accountant General points out that " Muham-
" mad Safdar Husain Sahib not being an officer
" of the special services mentioned in article
" 806 (iii), contribution on his behalf can,
" under article 809 (a)(ii) be levied on ac-
" count of pension only at one-eighth of his
" assumed pay, "Viz Rs 250", (the pay he last
drew while in Government service) and that
in this case his pension will be calculated
only on this amount. On the other hand, section

Note
The portion enclosed in brackets has been inserted by the office

37 of Act I of 1884, as amended by Act II of 1892, lays down that " if the persons (who are appointed to any of the offices specified therein, of whom the Revenue officer is one) are officers of Government, the Municipality shall pay contribution for leave allowances and pension", which according to the Accountant-General "will be calculated on the salary which Muhammad Sufdar Husain Sahib may be drawing from the Municipality from time to time", as in the case of officers transferred to foreign service of the second kind.

Vide art 823(b) of C.S.R

There is no provision in the Civil Service Regulations for the levy of contribution for leave allowances and pension of officers transferred to foreign service of the first kind, unless they belong to the special services specified in article 806. The Accountant-General, however, admits that "a legislative enactment must
" be held to supersede any executive orders
" of the Government of India such as are
" contained in the Civil Service Regula-
" tions and have not the force of law and
" that accordingly the contribution to be
" levied in the present case should be for
" both pension and leave allowances, as
" ruled by Government in the order under
" reference (G.O.No.421 M*, dated 8th March
1897)"."But as the ruling seems to ~~be in~~
" conflict with the conditions prescribed
" by the Government of India under which
" the services of its officers may be lent
to the municipality" he requests "that
" the case may be submitted to the Govern-
" ment of India for orders".

* This has been inserted by the office.

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3. The conditions of service of an officer lent to a municipality, however, differ from those of the three officers of the Madras Municipality named in section 37 of the City of Madras Municipal Act I of 1884, as by law the Government has taken power to appoint these three officers and to regulate their pay from time to time. Paragraph 4 of the Resolution of the Government of India printed in G.O.No.611 L, dated 14th March 1889 says, "It is not "desirable that the contributions of officers "in this class of service (Foreign Service "of the First kind) or their pensions or "leave allowances should be regulated by "the salaries which they from time to time "receive from their foreign employer, as these "salaries are often regulated by considerations "different from those which apply in the "ordinary services of the Government of India". So far as the three officers above referred to are concerned, their appointment is entirely in the gift of Government and their salaries are regulated by Government. It is therefore submitted that the Government of India may be addressed to modify the Civil Service Regulations so as to bring them in harmony with the provisions of the law governing the officers of the Madras Municipality.

Page 3 of the fo. (Flag O)

× This has been inserted by the office

P.R.
28/6/97

Draft accordingly

W.O.

Please see draft below for approval

1/7/97

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26.9.97

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Ans.

Local & Munl. (1897) Department.

CURRENT No. 1797 M

From The Acctt General Madras

Order

No. 9.A.E / 27.C

Dated 30th April 1897

Received 1 MAY 1897

Registered 1.5.97.

Enclosures nil

Spare copies.

SUBJECT.

Requesting that the case of Mr. Sofdar Hussain Sahib, the Revenue officer of the Madras Municipality regarding the payment of contribution on account of leave allowances and pension may be submitted to the Govt. of India for orders for reasons stated.

BACK PAPERS.

G.O.	No.	Department.	Date.
Go	421	Ml	8-3-97
"	675-76	Ml	20-4-95
"	411	M	30-3-94
"	1197	M	9-7-92
"	611	Pl	14-3-89

FURTHER PAPERS.

G.O.	No.	Department.	Date.

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Pension DEPARTMENT.

FORT ST. GEORGE,
Accountant-General's Office,
30th April 1897.

No. IAE/27C

LOCAL & MUNICIPAL DEPT.
CURRENT No. 1797 M

From

W. A. Michael Esquire,
Offg: ACCOUNTANT-GENERAL TO THE
GOVERNMENT OF MADRAS,

To

THE Secretary to Government,
Local and Municipal Department.

SIR,

With reference to Government Order No 421, M, Mis, dated the 8 of March 1897, appointing Muhammad Safdar Hussain sahib as Revenue Officer of the Madras Municipality on a salary of Rs 400 per mensem and directing that the contribution on account of leave allowances and pension should be paid from Municipal Funds, I have the honour to point out that Muhammad Safdar Husain Sahib not being an officer of the special services mentioned in article 806 iii, contribution on his behalf can under article 809 (a) ii of the civil service Regulations, be levied on account of pension only, at one-eighth of his assumed

pay

pay. Section 37 of the City of Madras Municipal Act No. I of 1884, as amended by Act II of 1892 lays down, however, that if the person who is appointed as Revenue Officer of the Madras Municipality be an officer of Government, the Municipality shall pay contribution for leave allowances and pension and the question therefore arises whether the present case should be governed by the rules contained in the Civil Service Regulations or by the provisions of Section 37 of the Act quoted above. In the former case, the Municipality would be required to pay to Government contribution on account of pension only, which being calculated at one eighth of Rs 250, the pay drawn by Muhammad Safdar Husain Sahib when in Government Employ, will be Rs 31-4- per mensem, and his pension will be calculated on Rs 250. Whereas in the latter case the contribution on account of both pension and leave allowances would be Rs 80-- per mensem and the Government will be liable for his absentee allowances and pension calculated upon the salary which he may be drawing from the Municipality from time

to

836

Art 809(a)(ii)
of C.S.R
& 808 (b)(i)

This will be the case
under Art 823(b) of C S R,
but this art applies
only to transfers made
to Foreign Service of
the second kind.

to time.

I am aware that a legislative enactment must be held to supersede~~d~~ any executive orders of the Government of India such as are contained in the Civil Service Regulations, and have not the force of law and that accordingly the contribution to be levied in the present case should be for both pension and leave allowances as ruled by Government in the order under reference. But as the ruling seems to conflict with the conditions prescribed by the Government of India, under which the services of its officers may be lent to the Municipality I request that the case may be submitted to the Government of India for orders.

Pending receipt of orders I propose to defer the levy of any contribution from the Municipality.

I have the honour to be,
Sir,
Your most obedt. servt.,
W Michael
Offg: Accountant General.

When given for copying ____
When copied ____
When examined ____
When signed Oct 7
} 189 .

READ AGAIN G.O., No. 189 . DATED							
CURRENT No.							
ENCLOSURES TO C. No.							
ORDER OF GOVERNMENT	A	A	A	A	A	A	A
LETTER OF GOVERNMENT							
STATEMENT WITH DITTO							
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.							

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