Archives I - 10,006—16-8 77.

(1) Number of pages 108

(2) Date of repair 2/87

(3) Initials of the Referencer Cavd

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

P.W.D DEPARTMENT

G.O. No. 1033-1034 — Press.
B.P. No. 1035 Mis.

Dated 22-4-1881 197 .

ot to be folded or roughly handled

All communications should be addressed to the Secretary.

No. 249 G.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

GENERAL.

1033-50

To,

The Secretary to the Government of Madras,
Public Works Department.

Fort William 21st February 1881.

Sir,

I am directed to acknowledge your letter No. 164 W dated 20th January asking for more precise instructions as to the salaries to be passed to officers who retired under the Resolution of 31st July 1879, and are now employed under Local Fund Boards.

2 The Governor General in Council desires me to say that the amount of salary attaching to the Offices is not under the control of the Government of India. The Government of India only desires that

the

P.W.C. No. 1212

the instructions conveyed in Public Works — "
Department letter No. 1281 G dated 21st June 1880
may be carried out.

Re 28 July 1880

3 As already stated in para: 6 of Public
Works Department letter No. 1531 G dated 20th
August 1880, the pensions and gratuities —
granted under the Resolution were special
to effect a special object, and the rules of
the Civil Pension Code regarding the re-
employment of pensioners are inapplicable
to these cases.

4 The case of Mr. Harington does not
appear to call for special orders. So far as
can be discovered from the records of this
office, he was not entitled to pension in
1879. as he had not served 30 years, nor was
he 55 years old. But in any case the
Ordinary pension rules would not have
given him a gratuity of Rs. 11.400.

C.D. Ls. 1644. 20.1.81. I have the honor to be,
sir,
Your most Obedt. servant,

W.W. Lampson

R.C. 31.7.

Pub Dept.
No 27 of 10 May 81

To
The Right Honble
The Secy. of State
for India

My Lord Marquis

WPA 15 Jan/81

We have the
honor to forward for
Your Lordship's con-
sideration the papers
detailed in the margin
having reference to the
position of certain
Ex-Servants of the State
who having been re-
duced from our Public
Works Department —
have subsequently
accepted employment
under the Local Funds
Boards

J. K. 14/4/81

Pro: Fin: Dept No 921 of 14th May/79
G of I Fin: Resolution No 2079 of 31 July/79
Letter from G of I No 1283 E.S. of 8th Aug/79
Pro. No 2428 W of 25th Sept/79
" 2865 of 13 Nov/79
Fin: 2418 of 16 Dec/79
To G of India No 249 W of 2nd Feb/80
From — do — 401 G of 9th — do
Do. — do 734 G of 19 March/80
To — do — 1095 B.W of 5th May/80
From do 1281 G of 21st June/80
Pro: No. 1642 A.W. of 13 July/80
To G of I No 1642 B.W of — do
From do 1351 G of 20th Aug/80
To — do — 2430 W of 21st Oct/80
From do 2202 G of 20th Dec/80
To — do 164 W of 20th Jan/81
From do 249 G of 21st Feb/81
Pro. No 1033 W of 22nd April/81
Local Funds act 10 of 1871.

Boards constituted by Madras Act IV of 1871.

2. This Act, as your Lordship is aware was passed with the object of increasing the funds available for the construction, repair, and maintenance of roads in this Presidency and for raising funds by means of local rates for the diffusion of education and for other objects of public utility calculated to promote the health and convenience of the inhabitants of places not included within the limits of any Municipality.

3. The funds required

for these purposes are raised, as provided in the Act, by local rates, and are not derived from the general revenues of the country.

4. By the provisions of the Act, the administration of the funds raised under it is vested in Boards nominated for the purpose, one half of whose members must by law be non-Official.

5. These Boards have this power, subject only to a general financial control on the part of Government, as regards the numbers of Officers necessary to assist in the execution of the Act, and the salaries

to be paid to them, while the appointment and dismissal of such officers rests absolutely with the Presidents of the Boards with whose action in this respect the Government have no power to interfere.

6 Employment under these Boards has never been looked upon as employment under Government in the sense contemplated by the Civil Pension Code, and the correctness of this view is confirmed by the fact that the framework of the Local Fund Act corresponds very

closely with that of the Municipal Act (III of 1871) and that employment under the Boards constituted by the latter Act has been declared by the Government of India not to be employment under Government. In both cases alike it was desired by this Government to develope the administration of their own affairs by the people themselves and to teach them to provide for local needs from resources locally raised. In neither case does service under the Boards

constitute service for pension from Government.

7. The chief item of the expenditure of the Local Fund Boards is that upon means of communications, and other public works and until within the last eighteen months the greater part of this expenditure had been supervised by the Provincial Public Works establishment, the Boards concerned paying to Government a certain fixed per centage on the expenditure on account of the professional supervision thus provided.

8. Some portion of the work in certain districts had always been carried out by the Boards' themselves, who engaged the necessary establishment for its execution, but this work was mostly of a petty character, and the establishment employed was of the "subordinate" class, so that it had not been necessary for the Boards to employ any superior engineering establishment on their own account.

9. Lately however the employment of such establishment became necessary.

constitute service for pension from Government.

7. The chief item of the expenditure of the Local Fund Boards is that upon means of communications, and other public works, and until within the last eighteen months the greater part of this expenditure had been supervised by the Provincial Public Works establishment, the Boards concerned paying to Government a certain fixed percentage on the expenditure on account of the professional supervision thus provided.

8. Some portion of the work in certain districts had always been carried out by the Boards themselves, who engaged the necessary establishment for its execution, but this work was mostly of a petty character, and the establishment employed was of the "subordinate" class, so that it had not been necessary for the Boards to employ any superior engineering establishment on their own account.

9. Lately however the employment of such establishment became necessary

and the question now
submitted has reference
to the position of
this establishment.

10. Your Lordship
is aware that during
1879 extreme financial
pressure existed in
India and that strenuous
efforts were made to
reduce expenditure.
In July of that year
an urgent request
was made by the
Govt. of India for the
surrender of a certain
portion of the assign-
ment to this Govt.
for Provincial Ser-
vices and this re-
quest was promptly
complied with to
the extent of several
lakhs of rupees,

(W. C. 22) Under Secy. to the Govt of India.

the greater part of which
had as a matter of
necessity to be taken
from the allotment
for Public Works.

11. At the same time
the most rigid econo-
my and curtailment
of expenditure upon
Public Works executed
from Imperial funds
was enjoined upon
this Government by
the Government of
India and an exten-
sive reduction in
the Public Works
establishment was
dictated to us by
repeated instructions

12. For some years
past many of the
Local Fund Boards

and the grie
submitted h
to the positi
this establis

10. Your Lo
is aware tha
1879 extreme
pressure ex
India and
efforts were
reduce expe
In July of th
an urgent
was made
Govt. of Ind
surrender of
portion of
ment to the
Gov Province
vices and
quest was
complied
the extent
lakhs of

had shown discon-
tent with the existing
arrangements by which
the greater part of their
Public Works expendi-
ture was supervised
by the Government
Public Works estab-
lishment, on the
double ground that
it was unduly ex-
pensive, and that
the Boards had not
the same control
over the Officers of
the P. W. Dept. that
they would have
over Engineers ap-
pointed and paid
by themselves as
contemplated by
the law. Difference
of opinion might

and did exist as to
the soundness of these
complaints, but it was
admitted on all hands
that the intention of
the framers of Sect
IV of 1871 would not
be fully carried out
until the Boards
were so far emanci-
pated from State
control as to be left
to execute their Pub-
lic Works without
the intervention of
Government.

13. The large reduction
of Public Works estab-
lishment rendered
necessary by the
circumstances detailed
above, compelled the
abandonment of a

considerable proportion of the work which the Department had been accustomed to execute for the Local Fund Boards. Each Board was therefore informed of the maximum amount of work which could be done for it in future, and that while it must make its own arrangements for the execution of work not included in that maximum, that which was so included might be left to the P.W. Dept. or undertaken by the Board at the discretion of the latter.

This discretion was necessary inasmuch as that portion which the P.W. Dept. could retain would have included in all cases the more important and easily supervised works, and it would obviously have been unjust to prevent the Boards from assuming charge of these while compelling them to undertake outlying and petty works, expensive and difficult of supervision. Eventually the charge of all their own works was undertaken by twenty nine Boards out of the thirty two in the Presidency.

The exceptions are
Vizagapatam (partial)
Kurnool
Trichinopoly } (entire)

14. In order to encourage the voluntary retirement of Public Works Officers whose services were no longer required the Govt of India in their Resolution No: 2079 of the 31st July 1879, offered pensions slightly in excess of those claimable under ordinary rules and bounties depending upon length of service up to a maximum of twelve months pay to all Officers and subordinates who might retire before a certain date, but it was at the

same time plainly intimated that reduction of strength and cost was imperative and that if this could not be attained by voluntary retirement, it would be necessary to resort to compulsory measures.

15. No conditions whatever as regards future employment were attached to the offer thus made, which was accepted in the Madras Presidency by fifteen Officers and 99 subordinates.

16. The Local Fund Boards, who found themselves during 1879 and 1880 called

upon, under the circumstances above detailed, to organise the establishments required for the execution of their own works and who are free by law to choose their own agents from any quarter, offered employment to many of those thus released from the Govt. Establishments, and this offer was accepted by about forty ex-Public Works Officers and subordinates of various ranks. In other cases the necessary agency was obtained from ex-Railway Engineers and similar sources.

1033 F 1/10

by these persons in no case passed directly from the employment of Government to that of the Boards nor could we interfere in any way in connection with their appointments. Indeed our Chief Engineer who had at first interested himself greatly in communicating between Presidents of Boards and those seeking employment, found himself subsequently compelled to decline action in the matter in view of the provisions of the law for the engagement, &c, of Local

Fund Boards establishments by their Presidents absolutely.

18. No doubt existed in our mind that the employment in question was extra-Governmental, and in no way barred by the provisions of the Pension Code, and the Officers who accepted it did so in the full confidence that they would be able to draw their pensions in addition to the salaries offered by the Boards. The voluntary acceptance of the Govt of India

offers was many generally influenced by this consideration.

19 This our original view is stated in our Secretary's letter to the Govt of India No: 249 W of 20 Feb/80; in their reply to which (No: 734 G of 19 March/80) the Govt. of India request that no "Local "Board carrying out "Government works "from Government "money may be "permitted to engage "staff so long as the "Govt. of Madras in "the P.W. Dept. can "place men at their "disposal from the "ranks of that Department.

The remark was apparently induced by a suggestion which had been made, but which never became operative; that, in the reduced position of the Govt. P. W. Dept, Revenue Officers entrusted with the maintenance of minor Irrigation works might, if necessary, obtain occasional professional assistance from Local Fund Engineers on payment.

20. The Government of India added that if Officers who had been pensioned under Resolution No 2077 of 31st July 1879 were employed by Local Boards they must surrender their pensions, and in a subsequent letter No 1281 G of 21st June 1880, they reaffirmed this direction with the further instruction that a deduction of 6 per cent annually on the honoraria received by any such Officer was to be made from his Local Fund salary.

21. In reply to this latter letter it was explained (in our letter No 1642 B W of 13th July 1880) that the Government of India were in error as to the disbursement of Government money by Local Fund Boards, and a reconsideration of the ~~decision as to~~ prohibition against employment by such Boards with retention of pension ~~being incurred~~ was earnestly requested on the ground both of

Justice and Expediency.

It was stated that the enforcement of the instructions of the Govt. of India would involve a direct breach of faith with the pensioners, who had been led to understand that no such penalty was entailed by such employment.

22. The Government of India's reply to this letter is dated 20th August 1880 (No 1531 R) and in it, while partially admitting the misapprehension into which they had fallen as to the nature of the funds entrusted to the Local Fund Boards for Execution, they rule that "funds raised under Act IV of 1871 are public funds, and

and the servants of the Boards public servants.

23. At the same time they "decline to discuss the question of whether any section of the Civil Pension Code was applicable to the cases of the Officers in question, and state that "in the absence of any "comprehensive statement "of facts", they see no option but to request that the former instructions may be carried out.

24. Another effort to obtain a reconsideration of the orders in question was made in our letter No 2430 W of 31st Oct 1880 to paras 12-21, of which we desire to invite Your Lordships earnest attention

25.

25. With this letter was forwarded a list showing the names of Officers who had retired from the P. W. Dept and accepted employment under Local Fund Boards with, in each case, the salary drawn previous to retirement, rate of pension, and Local Fund salary.

26. Leaving out of consideration Column 6 of this list (Deduction for difference of travelling expenses), it will be seen that out of six ex-Officers and thirty-two ex-subordinates, one Ex-Officer (since dead) and seventeen ex-subordinates draw salaries from the Boards equal to or greater than those they formerly received in the Public Works Department, that the Local Fund salaries of three ex-Officers and six ex-subordinates are less than, but their salaries and pensions together are, equal to or greater than their former salaries; and that in the remaining cases the salaries and pensions together are less than the salaries formerly received.

27. It must be borne in mind that the prospects of promotion for ex-Officers especially are far less in the service of the Local Fund Boards than they were in the Government P. W. Dept, and that no further pension is assured by service under Local Boards.

This

this point must be taken into consideration in any equitable comparison of salaries.

28. In their reply (No 2202-F of 20th Decr 1880), the Government of India decline to make any modifications of their previous orders, and explain at somewhat greater length than before the grounds of their decision that Local Fund (& expenditure is state ex-penditure).

29. Further discussion of the main point appeared useless, and in our letter No 164 W of 20th Jany 1881, we merely repeated instructions as to the salaries to be drawn by Officers in receipt of Local Fund salaries for more than their former salaries

salaries in the P & T Dept, pointing out that if Local Fund employment was held to be Government employment, the Officers in question were clearly entitled under the ordinary rules of the service, to draw so much of their pensions as would, added to their Local Fund salaries, equal what they formerly received.

30 The reply of the Govt. of India (No 749-F of 21st February) is a distinct refusal to consider the question, and a declaration that the rules of the Civil Pension Code regarding the re-employment of pensioners are inapplicable to the cases in question.

31. It will be seen that the prime point of difference

difference between our
view and that of the Govt.
of India is whether employ-
ment under the Boards
constituted under Act IV
of 1871 is or is not State
employment in the sense
contemplated by the Civil
Pension Code. We are of
opinion, as the grounds
stated in the correspondence
and at the beginning of
this despatch, that it is
not so, and that the
claim of a retired Officer
to his pension is in no way
affected by his acceptance
of employment under one
of these Boards, employ-
ment under which gives
per se no claim to any
pension or gratuity under
the Government Pension
Code any more than does
employment under Munici-
pal Boards.

32. It will be observed that the Govt. of India in their letter No 2202 of 20th December 1880 do not refer to the argument drawn from the analogy between Local Fund and Municipal Boards, employment under the latter which is admitted to be non-governmental, or to that drawn from the opinion of the Advocate General referred to in para 16 of our letter No 2430 W of 20 Oct/80.

33. The view of the Govt. of India is also, we venture to think, inconsistent with their own ruling in letter No 734 S of 19th March 1880, that Officers employed under Local Fund Boards shall pay to the Imperial Treasury "the usual

(pensionary) contribution"
of 20 per cent upon their
salaries, a condition never
before, to our knowledge
attached to employment
under Government.

34. In the event of your
Lordship accepting the
view of the Government of
India that employment
under Local Fund Boards
is state employment, there
remains the further question
raised in our letter No 164
of 20th Jany 01, whether the
Officers concerned are en-
titled to draw their salaries
and pensions together up
to the limit of their salaries
previous to removal from
the P. W. Dept.

35. Upon this point there
appears to us no room for
doubt, and we confess
ourselves unable to under-
stand the decision con-
tained in the Govt of India's
letter No 249 S of 21st Feby 01.
It is undoubtedly true that
the retirements under the
original Resolution of 31st
July 1879 were special and
for a special object, and
it was open to the Govt of
India to attach any con-
ditions they pleased to
the offers contained in that
Resolution; but as a fact
no such condition as the
one implied in their present
decision was attached.
No hint was given that
officers accepting the pen-
sions and bonuses then
offered would be debarred
from re-employment under
the same conditions as
other pensioners, and re
greatly

greatly doubt whether the question would ever have been raised in the case of an Officer re-employed under ordinary circumstances in the immediate service of Government.

36. In their letter No 401 of 9th July 1880, the Govt of India distinctly state that the Resolution of the 3rd July 1879 "was not intended to "deprive an Officer of any "privilege he may be en- "titled to under the ordinary "rules of the Civil Pension "Code", and it appears to us difficult to recon- cile this ruling with that now promulgated by the Govt of India.

37. Although we should greatly regret, on grounds both of Justice and Expediency a decision adverse to our opinion

opinion as to the nature of employment under Local Fund Boards, we admit that the point is at least one on which dif- ference of opinion may exist is admissible.

38. We are unable how- -ever to make the same admission with regard to the right of the Officers con- -cerned to draw their pen- -sions so long as the latter added to their salaries do not exceed the salaries formerly received by them from Government, and we feel it incumbent on us to say that we should consider a refusal to these Officers in the face of the ruling contained in the latest India letter quoted in para 36

Mr Karrington

in para 36, of the privileges conferred by the Civil Pension Code upon all other pensioners as a breach of faith.

39. The above remarks have reference only to the pensions of the Officers concerned; it will however be seen from the Government of India's letter No 1281 F of 18, 21st June 1880, that the "Local Fund salaries of these Officers are to be reduced by an amount equivalent to 6 per cent upon the bonuses received by them under the original Resolution, if such bonuses have been already paid; if they have not been paid they are to be withheld.

40. Whatever may be thought of the justice of withholding the pensions such withholding is at least within the competence of Government to carry out, the recovery of any percentage upon the bonuses paid is apparently not so. A pension is not recoverable by legal process, and the Officers concerned have no means of compelling Government to pay a pension which the latter desire to withhold, but the salaries payable by the Local Fund Boards are so recoverable, the Boards not being protected against legal proceedings.

41 40. Even if the Boards concerned consented to become the Agents for the recovery of demands against their servants, it is certain that any attempt on their parts

fails to effect such re-
covery would be met
by an action at law, to
which no defence would
be possible. As a fact
injunctions to this effect
have been served on Pre-
sidents in some cases
already.

42. We trust therefore
that your Lordship will
relieve us from the duty
of attempting to enforce
claims, which we do not
feel to be just, and
which would in all
probability lead to legal
proceedings in which we
should be defeated.

43. We need scarcely
impress on your Lordship
the extreme hardship en-
-tailed by the decision of
the Government of India
on these by-servants of the
State

O 164.

State, who find them-
-selves debarred from
attempting to improve their
and sensibly reduced cir-
-cumstances by taking
employment, which is open
alike to the outside
public and even, from the
the Govt of India point of
view, to ordinary pensioners
under the provisions of the
Pension Code.

44. 43. With a separate de-
-spatch we are forwarding
to your Lordship through
the Government of India,
memorials from individuals
affected by the Government
of India ruling.

I have the honour to be
with the greatest respect
My Lord
Your Lordship's most obedient
humble servants

Secretary of State for India
in Council

Recd this Govt of India
with Collection of Os
& copy of P.T. Act IX of 71
10/5

2/14

Hon. W. Kendall
H.S. Hon Secretary

Government of Madras

Revenue Department

No. 119 dated 7th February 1880

Revenue 1433/27

Read again

Proceedings of Government, Revenue Department, dated 18th December 1879, No 828.

Read also the following papers:

To the Government of India, Finance and Commerce Department, dated 13th January 1880, No 25.

From A.B. Sampson Esqre, under Secretary to the Government of India, Public Works Department, to the Acting Secretary to the Government of Fort Saint George, dated Fort William, 9th February 1880, No 401-G.

In reply to your letter, No 25 (Revenue), dated 13th January, to the address of the Secretary to the Government of India in the Department of Finance and Commerce, I am directed to state that Resolution in that Department No 2079, dated 31st July 1879, was not intended to deprive an officer of any privileges he may be entitled to under the ordinary rules of the Civil Pension Code. As Mr. W. L. Harington fulfils the two conditions of Section 7 (a) of that Code, the Government of Madras is at liberty to make Rs. 5,000 a year the maximum limit of his pension.

2. The Harington's pension papers are

herewith returned.

Order thereon, 19th February 1880, No 119.

Communicated to the Accountant General, Examiner of Public Works Accounts, and ~~to the Public Works Department~~

2. Mr Harington is accordingly admitted to the difference between the maximum rate of pension, Rs 5000, specified in Section 72 (a) of the Civil Pension Code (4th Edition), and that granted to him by G.O of 18th December 1879, No 828.

(True Extract)

(Signed) Lionel S Campbell

Under Secy. to Govt.

~~PUBLIC WORKS DEPARTMENT.~~

~~PROCEEDINGS OF THE MADRAS GOVERNMENT.~~

~~UNDER date the~~

Read the following :—

List

Pros: Fml Department No 921 dated 14th May 1879. Complete with order pd
P. W. Deptt No 1470 W dated 28 May 1879.
Pros: Fml Deptt No 1581 dated 19 August 1879. Complete.
Pros: P. W. Deptt No 3269 W dated 18th December 1879 Complete
Pros: P.W.D. No 1428 W d/25 Septr/79 Complete
Do " 2865 W. d/13 Novr/79 — do
Pros: Fml " 2410 d/16 Decr/79 — do
Pros: P.W.D " 248-9 W d/2 Feby 1880 — do
Pros: Pension " 119 d/19 Feby 1880 with order
in P. W. Deptt No 452 W d/27 Feby 1880
Pros: P. W. D No 1075-A-B-W d/5 May/80 Complete
— Do — " 1642-A-B-W. d/13 July/80 — do —
— Do — " 2429-30 W d/21 Octr/80 Complete.
Letter from Government of India.
— Do — No 163-4 W d/20 Jany/81 Complete.
— Do — 1033 W d/22 April 1881 — do —

No 2.57

Bank of Madras.

Madras 14th Jany 1881

J. O'Shaughnessy Esq.,
Ootacamund.

Dear Sir,

I beg to advise that your account is overdrawn to the extent of Rs: 30. 11. 2, by your cheque No. 75 for Rs: 42/8, in favor of the Secretary and Treasurer, Madras W. & O. Fund, and shall feel obliged by your adjusting the same at your early convenience.

Yours faithfully

A Duffield
Agency Treasurer

WP

Barrack
Madras

Portcarmuck 16th May 1849.

My dear Major Abbott

I shall be much obliged if you will kindly lay the enclosed letter before His Excellency the Governor in the hope that he will be pleased to give orders for the payment of £7 months Pension that is now due to me and thereby save me from the pain and disgrace which is now threatening me.

I served the Government 27 years through Lieut-d Colo- in our Army through Malabar and Canara. I have been Commended by the Secretary of State - by successive

Governors. Members of Council
Chief Engineers. Circular by
Sir Richd. Temple. For successful
and distinguished [illegible]
[illegible] Service [illegible]
dangerous to health and [illegible]
dangerous to life [illegible]
performed [illegible]
thought at what [illegible]
in the least manner possible
without [illegible]. What effect
it would have on me in any
way personally, and I cannot
believe that this great Empire
which preaches and enforces
justice & humanity all over
the world - will longer repudiate

its responsibilities. Not written
agreements with [illegible]
men like myself, refused many
lucrative offers of new Appointments
ment. on the supposition that although
their emoluments were comparatively
small, they were sure & certain and
that in case of misfortune or ill
health there would be the Pension
Contract for - to save ones family
from want & real distress. I have
been put to great inconvenience &
loss by my Pension having been withheld
so long, and now I am threatened
with absolute ruin, because I
have never been able to make any
other provision for my wife and
Children - Time what they would

J. W. P.
1033 33/3

[illegible] been dwelt upon, but the
[illegible] am sticking to hope that Govt of India have up
[illegible] letter of 25th Oct. 1878 to the present declined
[illegible] induce Govt to [illegible]

Government House.
Ootacamund
22nd January 1870

My dear Colonel Morley

I am directed by
The Governor in Council
to forward herewith
for the information of
Government of India
a letter from the Chairman
of the Madras Irrigation
Company, dated the 20th
instant, with its enclosure
from the Secretary to the
Company, on the subject
of the Company's proposal
to construct a reservoir
at Poondi, and to request
that you will be so good
as to bring the matter
to the notice of the
Government of India.

I am also directed to
state that the Madras
Government have not
yet had an opportunity
of considering the
proposal, but that
they are disposed to
think that the
Company's request
for the grant of
the land required
for the reservoir
should be complied
with, subject to
the usual reservation
of the rights of
Government in
respect of mines
and minerals.

Yours sincerely
W. Grey

I am to say that the withholding of sanction is acting very hardly in this case. Possibly there are other Officers similarly situated.

His Excellency would be glad to know

I am to say that the withholding of sanction is acting very hardly in this case. Possibly there are other Officers similarly situated.

His Excellency would be glad to know from you whether any further delay is likely to take place in getting an early settlement of the question.

I have &c.

(Signed) J. Wilson Price

Offg Secy.

To The Notary.

I am to say that the Govt of India have rec'd a letter of 25th Oct. last from the Secretary to the present declined the inducements held out by Lower Burma

J. W. P.

103/3

Read letter from Mr. J. O'Shaughnessy dated 16th January 1881.

It will be seen from the accompanying file that several other appeals from officers similarly circumstanced have been received, and that this Govt. are unable to afford them any relief. Remonstrances in the strongest possible terms have been addressed to the Govt. of India and the peculiar hardship inflicted on individuals has been dwelt upon, but the Govt. of India have up to the present declined

These are hard cases but I do not see that Govt can do anything more with regard to them

I am asking Lopes that no letter of 25th Oct. 80 will induce Govt to do so

to reconsider their orders.

2. The latest letter in the file is No. 2202 G dated 20th December 1880 from the Govt. of India. This has been replied to by my No. 164 W dated 20th Jany. 1881.

3. Pending the final orders of the Govt. of India no relief can as stated above be afforded by this Govt.

4. The accompanying letter No. 69 G dated 19th January 1881 has just been received in this connection from the Govt. of India, in which they dispose of the appeal of Mr. Sarsick one of the officers

similarly

If the S.S.O.S. is out by or else opposed to the Secretary's orders I think the case is the best selected & the order the most arbitrary one I ever knew

28/1

similarly situated.

23/3/81

A.W. Lenbey Col. A.G.

Secy: to Govt. P.W.D.

Jany/81.

Read

PUBLIC WORKS DEPARTMENT.

FOR ORDERS

FOR ORDERS.

P. W. D.

To

The Right Honourable
The Secretary of State
for India.

My Lord Marquis,

We have the honor to forward for your Lordship's consideration the papers detailed in the margin, having reference to the position of certain ~~Executive~~ Engineers of this State who having ~~retired~~ been selected from our Public Works Department have subsequently accepted employment under the Local Fund Boards constituted by Madras Act IV of 1871.

2. This act, as your Lordship is aware was passed with the object of increasing the funds available for

~~Rep: No 248 pw dy 22 Feby 80~~
~~" " 1095 B.B.W dy 5 May 80~~
~~" " 1642 B.W dy 13 July 80~~
~~" " 1643 B.W dy 20 June 80~~
~~Pl. Tinl Dept. No 2418 dy 16 Nov 1879~~
~~Letter from Govt No 1283 B.B.W. dy 8 Aug 1879~~
Govt Tinl Resolution No: 2079 - 31st July 1879.
Letter from Govt No: 401 G. - 9th Feby: 1880.
To Govt No: 2865 dy 13th Nov 1879
Govt No: 249 W. - 2nd Feby 1880
from do No: 734 G. - 19 March 1880
To do No: 1095 B.W. 5th May 1880
from do No: 1281 G. - 21st June 1880
Repo: No: 1642 B.W. - 13th July 1880
To Govt No: 1642 B.W. 13 July 1880
from do No: 1357 G. - 20 August 1880
To do No: 2430 W - 21st Oct 1880
from do No: 2202 G. 20th Dec 1880
To do No 164 W. 20 Jany: 1881
from do No 249 G. 21st Feby 1881
Repo: Nos
Local Fund Act IV of 1871.

the ~~Executive~~ Engineers ~~&~~ Subordinates ~~&~~ their ~~Establishments~~ ~~&~~ ~~Contingencies~~ ~~&~~ ~~Tools~~ ~~&~~ ~~Plant~~ ~~&~~ ~~Buildings~~ ~~&~~ ~~Roads~~ ~~&~~ ~~Bridges~~ ~~&~~ ~~Ferries~~ ~~&~~ ~~Tolls~~ ~~&~~ ~~Pounds~~ ~~&~~ ~~Pounds~~ ~~&~~ ~~Pounds

for the construction, repair and maintenance of roads in this Presidency and for raising funds by means of local rates for the diffusion of education and for other objects of public utility calculated to promote the health and convenience of the inhabitants of places not included within the limits of any Municipality.

3. The funds required for these purposes are raised, as provided in the Act, by local rates, and are not derived from the general revenues of the country.

4. By the provisions of the Act, the administration of the funds raised under it is vested in Boards nominated for the purpose, one half of whose members must by law be non-official.

R.C. 21
C. 202.

Such

These

5. Such Boards have this power, subject only to a general financial control on the part of Government, ~~of proceeding~~ the numbers of officers necessary to assist in the execution of the Act, and the salaries to be paid to them, while the appointment and dismissal of such officers rests absolutely with the Presidents of the Boards, with whose action in this respect the Government have no power to interfere.

6. Employment under these Boards has never been looked upon as employment under Govt: in the sense contemplated by the Civil Pension Code, and the correctness of this view is confirmed by the fact that the framework of the Local Fund Act corresponds very closely with that

that of the Municipal Act (III of 1871) and that employment under the Boards constituted by the latter act has been declared by the Govt. of India not to be employment under Govt.

7. The chief item of the expenditure of the Local Fund Boards is that upon communications and other public works and until within the last eighteen months the greater part of this expenditure had been supervised by the Provincial Public Works establishment, the Boards concerned paying to Govt. a certain fixed percentage on the expenditure on account of the professional supervision thus provided.

8. Some portion of the work in certain districts had always been carried out by the Boards themselves, who have engaged the necessary establishment for its execution, but this work has been mostly of a petty character, and the establishment employed has been of the "subordinate" class, so that it has not been necessary for the Boards to employ any superior engineering establishment on their own account.

9. Lately however the employment of such establishment has become necessary, and the question now submitted has reference to the position of this establishment.

10. Your Lordships are aware that during 1879 financial pressure existed in India and

and that strenuous efforts were made to reduce expenditure. In July of that year an urgent request was made by the Govt: of India for the surrender of a certain portion of the assignment to this Govt for Provincial services. This request was promptly complied with to the extent of [illegible] lacs, Rupees, which as a matter of necessity had to be taken [illegible] from the allotment for Public Works.

11 At the same time the most rigid economy and curtailment of expenditure upon Public Works executed from Imperial Funds was enjoined upon this Govt, and an [illegible] reduction in the Public Works establishment [illegible] by the Govt of India

[illegible] repeated instructions

[illegible]

[illegible]

[illegible]

until the Boards were so far emancipated from State control as to be left to execute their public works without the intervention of Government.

13. The large reduction of Public Works establishment rendered necessary by the circumstances detailed above (appeared to offer a favorable opportunity for carrying out a change of system, and the Local Fund Boards were offered the option of undertaking their own works or (subject to certain limits laid down) of leaving them to be executed as formerly by the P. W. Dept.

The offer was accepted by every Board in the Presidency with but two exceptions.

14. In order to encourage the

I don't find the papers in the packet. Please show them. The draft comes but how? I can't find it in the original letter. Did I ask for draft? Ah! I see. I did not ask for it but he could not do this work for them in future

[illegible]

the voluntary retirement of Public Works officers whose services were no longer required, the Govt: of India in their Resolution № 2079 of the 31st July 1879, offered pensions slightly in excess of those claimable under ordinary rules, and bonuses depending upon length of service, up to a maximum of twelve months pay, to all officers and subordinates who might retire before a certain date.

15. No conditions whatever as regards future employment were attached to the offer thus made, which was accepted in the Madras Presidency by fifteen officers and 79 subordinates.

16 The Local Fund Boards who found themselves during 1879 and 1880 called upon

I withdrew at the same time plainly intimated that I thought the cost was imprudent & that if the course of the attained by voluntary retirement it was unnecessary & I should not work & compulsory measures

yes

under the circumstances detailed (in para 13 of this despatch)
above

upon to organise the establishments required for the execution of their own works, offered employment to many of them and this offer was accepted by about forty officers and subordinates of various ranks. In other cases the

17. These persons in no case passed directly from the employment of Govt. to that of the Boards, nor did we interfere in any way in connection with their appointments. Indeed our Chief Engineer who had at first interested himself greatly in communicating between Presidents of Boards and seeking employment, formed himself subsequently compelled except to decline action in the matter;

and whose services by law & choice this Govt. could not dispense

necessary agency was obtained from Railway Engineering & similar sources.

provisions of the Code of Engagement of P.W.D. Establishments by the Secretary of State.

power given by law to the Presidents rendered it impossible for him to advise qualified officers to accept employment which they must hold at the pleasure of a single official.

18 No doubt existed in our mind that the employment in question was extra-Governmental, and the officers who accepted it, did so in the full confidence that they would be able to draw their pensions in addition to the salaries offered by the Boards. No voluntary exemption

19 This original view of our is stated in our Secretary's letter to the Govt: of India, No 219 W of 2nd February 1880, in their reply (No 734 G of 19th March 1880) the Govt: of India request that no "Local Board carrying out Govt: works from Govt: Money

money may be permitted to engage staff so long as the Govt: of Madras in the P.W. Dept. can place men at their disposal from the ranks of that Dept."

20. They add that if officers who have been pensioned under resolution N° 2079 of 31st July 1879 are employed they must surrender their pensions.

The remark was apparently incited by a suggestion that Local Fund Officers should become pensioners. Such a course would be entirely inconsistent with the principles on which the pensions of Govt: officers are granted.

In a subsequent letter No. 1281 Ry of 21st June 1880 they Govt: of India re-affirmed this position with the further instruction that a deduction of 6 per cent annually on the gratuity received by any such officer was to be made from his salary.

21 In reply to this latter letter it was explained (in our letter No. 1642 RW) of 13th July 1880, that the Govt: of India were in error as to the disbursement of Govt: money by Local Fund Boards, and a reconsideration of the ~~previous~~ decision was earnestly requested on the ground both of justice and expediency, and it was stated that the enforcement of the instructions of the Govt: of India would involve a direct breach of faith with the pensioners.

22 The Govt: of India's reply to this letter is dated 20 August 1880 (No 1531 Ry) and in it they, while partially admitting the misapprehension into which they had fallen as to the nature of the funds entrusted to the Local Fund Boards for execution, rule that funds raised under Act IV of 1871 are public funds, and

I was employed by Local Boards till retention of pension being known

but I understand that which penalty was entailed struck unplgt.

and the servants of the Boards public servants.

23. At the same time they "decline to discuss" the question of whether any section of the Civil Pension Code was applicable to the cases of the officers in question, and state that "in the absence of any comprehensive statement of facts" they see no option but to request that the former instructions may be carried out.

24 Another ~~Short~~ ~~complaint~~ obtaining a reconsideration of the orders in question was made in our letter No. 2430 W of 21st October 1880, to paras 12-21 of which we desire to invite (illegible) Lordship's earnest attention.

25. With this letter we forwarded a list showing

showing the names of officers who had retired from the P. W. Dept. and accepted employment under Local Fund Boards, showing with in each case the salary drawn previous to retirement, rate of pension, and Local Fund Salary.

26. Leaving out of consideration column 6 (Deduction for difference of travelling allowances) it will be seen that out of six ~~Engineer~~ ~~officers~~ and thirty two subordinates ~~officers~~ (one dead) and seventeen subordinates draw salaries from the Boards equal to or greater than those they formerly received in the P. W. Dept; ~~Short~~ the Local Fund salaries of three officers and six subordinates are less than, but their salaries and pensions

pensions together are equal to, or greater than their former salaries; and that in the remaining cases the salaries and pensions together are less than the salaries formerly received.

27. It must be borne in mind that the prospects of promotion for officers especially are far less ~~much greater~~ in the ~~public~~ service ~~than that~~ of the Local Fund Boards ~~and~~ this point must be taken into consideration in any equitable comparison of salaries.

28 In their reply (no 2202 L of 20 Decr: 1880) the Govt: of India decline any modification of their previous orders, and explain at somewhat greater length than before the grounds of their decision that Local Fund

than they were in the Govt: P.W.D. & that for the position is assumed by Govt: service under Govt: 30.

Fund expenditure is State expenditure.

29. Further discussion of the main point appeared useless, and in our letter No. 164 W of 20 Jany: 1881 we merely requested instructions as to the salaries to be drawn by officers whose Local Fund salaries were less than their former salaries in the P. W. Dept., pointing out that if Local Fund employment was held to be Govt: employment, the officers in question were clearly entitled under the ordinary rules of the service, to draw so much of their pensions as would, added to their ~~Local Fund~~ salaries, ~~make up~~ Govt what they formerly received.

30. The reply of the Govt:

Govt: of India (No 2499 of 21st February) is a distinct refusal to consider the question, and a statement that the rules of the Civil Pension Code regarding the re-employment of pensioners are inapplicable to such cases.

31. It will be seen that the prime point of difference between our view and that of the Govt: of India is whether employment under the Boards constituted under Act IV of 1871 is or is not State employment in the sense contemplated by the Civil Pension Code. We are of opinion, on the grounds stated in the correspondence and at the beginning of this despatch, that it is not so, and that the claim of a retired officer to his pension is in no way affected by his acceptance of employment under one of these Boards, Employment

32. It will be observed that the Govt: of India in their letter No. 2202 of 20 December 1880 do not attempt to meet the argument drawn from the analogy between Local Fund and Municipal Boards, employment under the latter of which is admitted to be non-governmental.

33. The view of the Govt: of India is also inconsistent with their own ruling in letter No. 734 J of 19 March 1880, that officers employed under Local Fund Boards shall pay to the Imperial Treasury (Provincial) the usual contribution" of 20 per cent upon their salaries, a condition never before, to our knowledge attached to employment under Government.

&c

34. In the event of your Lordships accepting the view of the Govt: of India that employment under Local Fund Boards is State employment, there remains the further question, raised in our letter No: 164 W of 20 Jany: 1887, whether the officers concerned are entitled to draw their salaries and pensions together up to the limit of their salaries previous to ~~Removal~~ retirement from the L.F.D.

35. Upon this point there appears no room for doubt and we confess ourselves entirely unable to understand the decision contained in the Govt: of India's letter No: 249 G of 21st February 1887. It is undoubtedly true that the retirements under the original resolution of 31st July 1879 were special and and for a special object, and it was open to the Govt: of India to attach any conditions they pleased to the offers contained in that Resolution, but as a fact no such condition as the one implied in their present decision was attached. Not the slightest hint was given that officers accepting the pensions and bonuses then offered would be debarred from re-employment under the same conditions as other pensioners, and we greatly doubt whether the question would ever have been raised in the case of an officer reemployed under ordinary circumstances in the immediate service of Government.

36 In their letter No: 479 9th July: 1880 the Govt of India distinctly state that the resolution of the 31st July: 1879 "was not intended to deprive an officer of any privilege he may be entitled to under the ordinary rules of the Civil Pension Code and it is considered by us difficult ~~impossible~~ to reconcile this ruling with that now promulgated by the Govt: of India.

37 Although we should greatly

greatly regret, on grounds both of justice and expediency a decision adverse to our opinion as to the nature of employment under Local Fund Boards, we admit that the point is at least one on which difference of opinion is admissible.

38. We are unable however to make the same admission with regard to the right of the officers concerned to draw their pensions solong as the latter added to their salaries do not exceed the salaries formerly received by them from Government, and we feel it incumbent on us to say that we should consider a refusal to these officers of the privileges conferred by the Civil Pension Code upon all other pensioners as a breach of

in the case of the rules contained in the Govt of India's letter quoted in para 35.

faith.

39. The above remarks have reference only to the pensions of the officers concerned; it will however be seen from the Govt. of India's letter No. 1287 dy of 21st June 1880, that the salaries of these officers are to be reduced by an amount equivalent to six per cent upon the bonuses received by them under the original resolution, if such bonuses have been already paid; if they have not been paid they are to be withheld.

40. Whatever may be thought of the justice of withholding the pensions, such withholding is at least within the competency of Government to carry out; the recovery of

of any percentage upon the bonuses paid apparently, but is not so. A pension is not recoverable by legal process, and the officers concerned have no means of compelling Government to pay a pension which the latter desire to withhold, but the salaries payable by the Local Fund Boards are so recoverable, — the Boards not being protected against legal proceedings.

40. Even if the Boards concerned consented to become the agents for the recovery of demands against their servants, it is certain that any attempt on their part to effect such recovery would strictly be met by an action at law, to which no defence would be possible. As a fact - injunctions to this effect have been served on Presidents in some cases already

41. We trust therefore that your Lordship will relieve us from the duty of attempting to enforce claims which we do not believe to be just, and which in all probability would certainly lead to legal proceedings in which we should certainly be defeated.

42. We must earnestly impress upon Your Lordship the pressing hardship entailed by the decision of the G.I. in these Dy. Counties of the State Servant Members debarred from attempting to improve their authority & suitably reduced circumstances by taking employment is open alike to the outside public & to ordinary pensioners under the provisions of the Pension Code.

30/3

30/3/81

and even from the G.I. point of view

Dy. C.E.

GOVT. OF MADRAS. } 47 188 .

SECRETARY.

Chepauk, 11th April 18

~~[illegible]~~ NOTE.

To

The Hon'ble Mr. Brodrick

Revised Draft despatch to Secy of State regarding Local Fund Pensioners -

Para 5 -

The Para as now worded is in accordance with the H. Mr.'s alteration of the original draft, & it is thought that no revision is necessary -

It is not quite clear what the "proviso" here referred to is -

The last sentence of

See no

(the) proviso is that of advancing Rs 1-8 per month to [illegible] 17 - It is mentioned immediately before - Does this make

Board in the past
since the duty of
fixing the numbers and
salaries of officials, though
own proceedings require
the sanction of Government,
and the original draft
was meant to express this -
the "power" therein being
to the extent of fixing these
numbers and salaries -
The original draft had
the words "the power"
instead of "this power" and
"fixing" instead of "as regards"
If the clause is to stand in
present sense it is suggested
to "perform these duties"
"perform the duties above specified"
would be better than
"use this power" —

I. alter the draft
[illegible]

W.H.

GOVT. OF MADRAS. } 188 .

SECRETARY.

Chepauk, 6th April

~~OFFICE~~ NOTE.

To

The Hon. H. Huddleston

Draft despatch to
Secretary of State reg.
pensions of L. F. officers

Para 10 -
The original order
No 2410 of 16th Dec.
(Financial Dept.)
put up - The date
July 1879 appears as
The exact manner
which the reductions
were distributed can

Return records for
materials & press?
Why the Govt. must
See it. [illegible]

Yes. [illegible]

Orly
R.C. R.L.
C.G.U. R.D.L.

[illegible] arrangement, but
I thought that the
[illegible] ration made in pursuance
of it met the case -

And 11- The resolution
dictating economy generally
was [illegible] 610 of 1st Aug 1879
(Financial Sept. S.O. No
921 of 1400 idem) but
it is thought that the
paper should not be printed here
as it would be neither this
year No 2079 of 31st
July, which refers rather
to details of the return
at scheme, but
to the Works Department
Ltr No 1203 E-G. of
6 August 1879 (enclosed
herewith) -

I have corrected
modified my draft
of this despatch
simply pointing
the fact that
nearly
half of the
Hire charges
Ors. Detailed
Returns of plant
in P.W. & [illegible]
indicating what
the amount of
in Detail [illegible]

(vide S.O. No 2420 of
25th Sept. 1879) was that
the P.W.D. priced the
8 local Road works
maximum which they
could retain - Subject
to this maximum the
option was given to the
Boards of returning the
work in their own hands
or leaving it to the
P.W.D. - Particulars
the following might
be substituted for Para
12 as drafted -

"

-----detailed above
compelled the abandonment of a considerable
portion of the work
which the Department
had been accustomed

to execute for the Local Port Boards - Each Board were therefore informed of the maximum amount of work which could be done for in future, and that while it must make its own arrangements for the execution of work not included in that maximum, that which was included might be left to the P.W.D. or undertaken by the Board at the discretion of the latter -

(It must be explained that) this discretion was necessary, inasmuch as in [illegible] this

P.W.D. could retain [illegible] included in all cases the more important and costly supervision works, and its own [illegible] would be urgent present force the Boards [illegible] assuming charge of [illegible] while compelling [illegible] to undertake only [illegible] and petty works, or and difficult of supervision -

The offer was cordially accepted, and the charge of all their own works was undertaken by twenty nine of the Local boards out of the Local twenty two in the Presidency -

It is a question whether

? Hawkshall
Not accepted
Mr

The BPW still do work for the L.F. Bds of Vizagapatam Jammalamadugu Tadpatri Gooty -

…ght not be demurable
… the end of the despatch
… make some allusion
… Sen Rio's memorial
…ich will be submitted
…ately - Attached
…ted memorial is
… opinion of one of
… leading members of
… Austin bar (Gen
… Hamilton) on a point
… connected with that
… despatch -
… found in the despatch -
… it is intended that
… Sonth Part" unfriendly next -
… State unfriendly next, and
… the
… I if it were,
… will be
… claim to still entitled
… the privileges granted
… the Limit Treaty holds;
… the Limit Treaty

is incontestable, and
cannot be legally en-
forced only because
the claim of Persons
& legal process is
specially barred by
statute -

Jno Penn

Esqrs

A Read

No. 1033 W dt 22d April/87 2 Extracts

Progs

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the ~~6 April 87~~

Read the following :—

~~From the R. E. Gordon~~	~~dy: 6 Nov 1886~~
~~do~~	~~26th do~~
~~the Supt of Govt Farm~~	~~No 2492 dy 26 Nov 1886~~
~~Encl: from the Final Dept~~	~~" 73 dy 13 Jany 1887.~~
~~do~~	~~" 748 do~~
~~From the Govt of India~~	~~" 69 dy 19th do~~
~~Encl: from the Final Dept~~	~~" 289 dy 12 Feby 1887.~~
~~do~~	~~388 dy 24th do~~
~~From Mr J. Brackwell~~	~~dy 14 Feby 1887.~~
From the Govt of India	No 2494 dy 21 Feby 1887.

Ordered that the Secretary of State be addressed through the Govt of India.

H. E. M

To ~~The Final Dept~~
~~Supt of Govt Farms~~
~~Secy of Board~~

No 1033, 1 Attd R

No 1034 W & 22nd April 81
~~In 924 W & 6 April 81~~

To

The Secretary to the G.O.I.
P. W. D.

Sir

With reference to the correspondence ending with your letter No. 249 E & P. dated 21st February 1881, I am directed to forward for transmission to the Secy of State for India a despatch from this Govt. relative to the retirement of officers of the P.W. Dept. who retired from the service under the terms of Resolution No. 2079 & 31st July 1879, & subsequently obtained employment under Local Fund Boards.

2. A Copy of the despatch has been forwarded direct to the India Office.

No 1035 W & 22nd April 81
~~In 926 W & 6 April 81~~

To The Under Secy of State for India
India Office

Sir,

I am directed to forward copy of a despatch, which has been forwarded through the Govt. of India, on the subject of the position of officers of the P. W. Dept. who retired from the service under the terms of Govt. of India Resolution No. 2079 & 31st July 1879, & subsequently obtained employment under Local Fund Boards.

Dated
10-5-81

30/3/81

dispd with 1 Collection of 2 do
10/5

5

Mrs W Wadsworth
2 R. Ibsen le Norvegien

Private Dinner

Hotel de Paris — Mon 4th
Thursday Breakfast 8 Points
Dinner 7 o'clock
Be punctual & write
Collection

K.C.M.4.

Govt. of (1881) Madras.

PUBLIC WORKS.

To

Dated

Rcvd.

Encl.

G. O., 22 April 1881. No. 1033 / 1034 W / 1035

Nos.

the subject of the proviso
Officers of the P. W. Dept. who
hired from the service
der the terms of Govt
solution No 2077 dated
of 1879 and subsequently
claimed employment under
and Fund Boards.

Dito

Dito

Dito

Dito