

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

21st October 1880, No. 2,429 W.

General.
Establishment.

Read the following paper:—

No. 92. From the Government of India, dated 20th August 1880, No. 1,531 G.

No. 93. ORDER THEREON, 21st October 1880, No. 2,429 W.

ORDERED that the following letter be sent.

(Here enter No. 2,430 W., dated 21st October 1880.)

(True Extract.)

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

Exd. S. T. Austin.
Spare Copies

GENERAL
ESTABLISHMENT.

Govt. of (1880) Madras.

PUBLIC WORKS.

Dated October, 21st.

Encl.

Recd.

Encl.

G. O., 21st October 1880, No. 2,439 W.

OCTOBER.

Nos. 82-83.

Pensions of Officers and Subordinates who after retirement from the Public Works Department under the reduction orders obtained appointments under the several Local Fund Boards.—The Government of India addressed on the subject of withholding the —.

PUBLIC WORKS DEPARTMENT.

General.
Establishment.

No. 2,430 W.

No. 94.

FROM

THE SECRETARY TO THE GOVERNMENT OF MADRAS,
Public Works Department,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
Public Works Department.

SIR,—In reply to your letter, No. 1,531 G., of the 20th August, on the subject of withholding the pensions of Officers and Subordinates who after retirement from this Department under the reduction orders of 1879 took service under the several Local Fund Boards, constituted by Act IV of 1871, I am desired to submit the following observations for the favorable consideration of His Excellency the Governor-General in Council.

2. My letter No. 2,277 W., dated 1st October 1880, submitting for sanction the normal scale of establishment for this Department, and other communications therein referred to, will have informed the Government of India of the circumstances under which the officers and subordinates transferred their services to Local Fund Boards, as also of the general constitution of these bodies and character of the work executed by them.

3. In dealing therefore with the subject of paragraph 2 of your letter under reply, it may suffice to request a reference to these communications as showing the constraint under which this Government felt themselves placed in carrying out loyally the demands made on them for reduction of establishments in the only way that lay in their power, with the result of for the first time giving that full and complete independence to the Local Fund Boards, which, though contemplated by the framers of the Act IV, had never till then been carried out in its entirety.

4. With reference to paragraphs 3 and 4 of your letter, I am to forward for the information of the Government of India a fairly complete list of all officers and subordinates employed by Local Fund Boards, whose cases are dependent on the decision that may now be arrived at, showing column 3, "Retiring Pension," to which claim is laid; column 4, "Pay given by Local Fund Boards;" column 6, "Deductions on account of decreased travelling allowances;" column 7, "Net value of present position;" column 8, "Previous pay drawn in Public Works Department at time of retirement."

5. The majority of the officers now draw as travelling allowance under the Local Fund Boards only 4 rupees per diem instead of Rs. 5 as formerly in this Department; it is therefore considered requisite that some fair deduction should be made on this account in estimating the net value of their present salaries as compared

with what it was before retirement. In one case, viz., that of Mr. J. O'Shaughnessy, who is both Municipal and Local Fund Engineer, the salary he now draws (Rs. 400) is consolidated, and includes travelling allowances. During the last six months of this officer's service in the Department his travelling allowance had averaged close on Rs. 180 per mensem, and as his present expenses on this account cannot be less than Rs. 120 per mensem a deduction to this amount is shown.

6. For the subordinates, though no deduction is given in the statement, a certain amount might reasonably be claimed as due in most of the cases to (1) loss of subdivision allowance of Rs. 30 per mensem, (2) difference of present and past travelling allowances, &c.

7. On the whole it will be observed that of the six retired officers who obtained the position of Engineers to Local Fund Boards only one, Captain Bailey (now dead), may be said to have drawn more than formerly including pension, and there may be special circumstances which a further inquiry may prove to reduce the excess even in his case.

8. Of the subordinates nine of all those who retired apparently draw less including pension than they did, while the majority draw much more; as above observed, however, adjustments in partial reduction of the apparent excesses might be applied.

9. It must also be borne in mind that with the exception of the first officer on the list, Mr. W. S. Harington, all whose names are shown in the statement were in a position to serve on for much higher pensions, and that one and all ~~they~~ must now lay by, by deductions from their salaries for any future provision they may wish to make, as no pensions are granted under the Local Fund Boards. Mr. Harington had served the full time for the pension which was awarded to him, but which is now withheld by order of Supreme Government, although his Local Fund pay is only Rs. 500 against Rs. 950 formerly drawn in the Government Public Works Department.

10. The general conclusion, therefore, seems to be that while the State has made a large and clear saving by the retirements in question, the present position of the officers who retired (even including the pensions) is decidedly worse than it was, and that although several of the subordinates may have gained in immediate pay, the prospects of most of them are certainly not improved. This will be clearer from the further remarks showing the precarious tenure of the appointments under Local Boards as empowered by the Act.

11. To this it may be added that retirement from the Department was practically in nearly all cases made compulsory; officers having been given to understand that if by a certain date they did not tender their acceptance of the conditions offered by the Government their retirement would be enforced. I am to request special consideration of this point, for it can scarcely be argued that any persons compulsorily retired from State service could have been debarred from accepting any means of improving their circumstances, or that the terms of Government of India Resolution No. 2,620—2,642 E.G., of 21st November 1879, which dealt solely with voluntary retirements, could be held applicable in such cases.

12. As regards the observation contained in paragraph 5 of your present communication, that the Local Fund Boards are in no sense in the position of private individuals, I am to submit for consideration that they are as much so as Municipal Boards, for although, as pointed out, the Government under Section 24 of the Act have power to regulate the number and the rates of salaries of Local Fund servants for purposes of general restraint, they have no power to appoint or dismiss a single individual. They cannot make the Boards employ any retired Public Works Officer, nor impose on them more expense than they themselves deem to be necessary. Not only are the Boards practically independent of Government, but they are in great measure composed of non-officials.

13. The Presidents of the several Boards have not only this complete power of appointment of all servants under the Act, but, what is even of still greater importance, of absolute power of dismissal without any appeal lying to Government. As

a fact numerous cases of all classes have often occurred of the exercise of this power on the part of Presidents, and the Government, though appealed to, have found themselves barred by law from interference.

14. Viewed in this light, therefore, it is thought that in this respect the Boards have all the independence of private individuals, and it is submitted that this fact has a material bearing on the cases of all the officers and subordinates now under consideration.

15. In reference, moreover, to the expression to which the Government of India apparently take exception, that "a direct breach of faith" would be involved were the pensions now stopped, I am to remark that no restriction was placed on the acceptance of pension by officers who were compulsorily retired, and that both on the part of the individuals who retired, as also on that of this Government, no doubt was at the time entertained that all persons so circumstanced, and who accepted service under Local Fund Boards, would do so under precisely the same conditions as if they had taken service under Municipalities; although, therefore, no guarantee was either demanded or given that pensions could not be stopped, such was distinctly understood and accepted by both parties as an element of retirement.

16. This Government saw no necessity at the time to take any legal opinion regarding the precise bearing of the Act in this respect, and now that the Supreme Government has called in question the validity of the inferences drawn, it would clearly be improper for them to take any action in this direction, but as will be observed from the annexed Proceedings of Government in the Judicial Department, (G.O., of 21st May 1880, No. 1,209,) the Advocate-General has given his opinion that Presidents of Local Fund Boards are not officers of Government within the meaning of Section 88 of the Indian Registration Act 1877; in addition to which Section 46, Rule 11, of the Civil Pension Code, distinctly classes Local Fund Officers under Foreign Services.

17. I am also directed to solicit attention to the following general considerations which influenced the Government in regard to this point. Section No. 37 of the Madras Municipal Act No. V of 1878 reserves to Government, 1st, the right of appointing by name the Engineer of the Municipality; and 2nd, of assigning to him a large and increasing salary without any reference to the President or the Municipal Commission; again, by Section 38 the Government can protect him against any arbitrary dismissal by the Municipal authorities. Yet an officer so appointed, salaried, and protected by Government under the Act, would under the rules in force be enabled to retain the pension to which he had become entitled by his previous service in any Government Department.

18. As compared with this full exercise of power by Government in the case of the Madras Municipality, the powers conferred on Presidents of the Local Fund Boards clearly places these bodies (Section 24 of the Act) in a very much more independent position; under these circumstances it never occurred to this Government to suppose that where so much greater freedom of action was guaranteed under the Local Fund Act any doubt could be entertained regarding the claims of the retiring officers to retain their pension; and they are still induced to hope that on a full reconsideration of the matter the Government of India may be disposed to take the same view and rescind the order conveyed in your letter under reply.

19. I am to add that it is feared the only effect of adhering to the present decision will be to deprive the persons concerned of their Local Fund employment, while the State, which must on this occurring still pay the pensions, can gain nothing. Pressing appeals, which from the point of view of this Government are well founded, have already reached them; and others which are no doubt now suspended in the belief that the case is under submission to the Supreme Government are certain to pour in if the claims be again negatived, and this, in the opinion of His Grace the Governor in Council, it would under the circumstances be well to avoid.

20. Briefly the position is viewed by this Government as follows:—

The District Local Fund Boards under Act IV of 1871 being bodies corporate by law composed in great measure of non-officials, and vested by law with absolute

power of appointing and dismissing their own servants, are in a position analogous to that of Municipal Boards under Act III of 1871, or of Highway and other County Boards at home administering County Funds. The Government are powerless to dictate to them whom they shall employ in the execution of their works, and certainly could in no case be justified in imposing on them more expense for this purpose than the Board themselves deem necessary.

21. The State has effected large economy by transferring many of their Public Works establishment to the pension list, and these pensioners can afford to give the Local Fund Boards superior service for comparatively small pay. But if the Boards are precluded from retaining them in their service with their pensions, the only result will be to drive the Boards to other sources of supply, such, for instance as the Railway establishment afford. The State can derive no possible benefit from this result, while their former servants will be grievous sufferers. It cannot be the wish of Government to compel their former servants to serve new masters for less pay than they formerly received from the State, and at the same time to deprive them of the pensions they were awarded on discharge from State service.

I have the honor to be,

Sir,

Your most obedient servant,

(Signed) R. H. SANKEY, Colonel, R.E.,
Secretary to Govt., P.W.D.

FORT ST. GEORGE,
21st October 1880.

Exd. S. T. Austin.
Spare Copies

GENERAL
ESTABLISHMENT.

Govt. of (1880) Madras
PUBLIC WORKS.

THE SECRETARY TO THE
GOVERNMENT OF INDIA.

Dated October, 21st.

Encl.

Recd.

Encl.

G. O., 21st October 1880, No. 2,436 W.

OCTOBER.

No. 94.

Submitting for favorable consideration certain observations on the subject of withholding the pensions of Officers and Subordinates who after retirement from the Public Works Department under the reduction orders took service under the Local Fund Boards.

STATEMENT showing net value of Salaries of present Local Fund Salaries, &c., to the Officers and Subordinates of the Public Works Department who retired and were appointed Executive Engineers, &c., to Local Fund Boards.

Name.	Local Fund Circle in which Employed.	PRESENT RECEIPTS.			Deduct for difference of Travelling Allowances.	Net Present Salary.	Public Works Salary before Retirement.	Now DRAW	
		Pension.	Salary.	Total.				Less.	More.
1	2	3	4	5	6	7	8	9	10
<i>Engineer Establishment.</i>									
Mr. W. S. Harington	Madura	Rs. 417	Rs. 500	Rs. 917	Rs. 20	Rs. 897	Rs. 950	Rs. 53	Rs. 130
Captain H. Bailey	Calicut and Tellicherry.	150	700	850	20	830	700	..	..
Mr. J. O'Shaughnessy	Nilgiris	314	400	714	120	594	650	56	..
.. R. E. Norfor	South Arcot	167	500	667	20	647	650	3	..
.. F. Brickwell..	Masulipatam	96	500	596	30	566	550	..	16
.. M. R. Norris	Guntur	134	350	484	30	454	550	96	..
<i>Upper Subordinate Establishment.</i>									
Conductor C. Seton	Vizagapatam	63	400	463	..	463	300	..	163
Mr. W. F. Donaghue	Chingleput	78	350	428	..	428	250	..	178
.. B. Stephens	Coimbatore	57	300	357	..	357	200	..	157
.. F. Watkins	Tinnevely	55	150	205	..	205	200	..	5
.. J. E. Prout	Guntur	28	300	328	..	328	150	..	178
.. J. O'Leary	Gooty	40	150	190	..	190	150	..	40
Munisawmy Moodelliar	Nellore	50	60	110	..	110	100	..	10
A. Vardarajooloo Moodelliar	Bellary	48	45	93	..	93	100	7	..
A. M. Vardarajooloo Naidu.	Penukonda	29	45	74	..	74	100	26	..
Mr. R. W. Thorpe	Tinnevely	35	150	185	..	185	100	..	85
M. N. Adykalam Pillay	Coimbatore	42	120	162	..	162	100	..	62
T. O. Manivalu Pillay	Do.	23	80	103	..	103	100	..	3
Mr. J. A. C. Lobo	Canara	39	50	89	..	89	100	11	..
.. R. Francis	Calicut	45	60	105	..	105	100	..	5
C. Krishnaya Puntula	Nuzvid Estate, Court of Wards.	10	100	110	..	110	80	..	30
Syed Mahomed Shurfoodeen	Penukonda	20	125	145	..	145	80	..	65
T. Kanagaroya Moodelliar.	South Arcot	14	60	74	..	74	80	6	..
Mr. W. P. Evans	Canara	5	120	125	..	125	80	..	45
.. B. C. Dumphy	Calicut and Tellicherry.	16	200	216	..	216	80	..	136
.. J. R. Gorman	Calicut	12	200	212	..	212	80	..	132
.. P. Nery	Canara	10	50	60	..	60	80	20	..
S. Moothiah Pillay	Chatrapur	4	100	104	..	104	60	..	44
Mr. G. Dwyer	Nellore	1	125	126	..	126	60	..	66
V. Bushiem Iyengar	Do.	5	50	55	..	55	60	5	..
C. W. Chinnappa Pillay	Cuddapah	4	70	74	..	74	60	..	14
B. Andhappen	Gooty	21	30	51	..	51	60	9	..
Balasoondra Moodelliar	Chittoor	8	60	68	..	68	60	..	8
C. Murugasu Moodelliar	South Arcot	17	100	117	..	117	60	..	57
C. Veerasawmy Naidu	Do.	11	50	61	..	61	60	..	1
M. Chinnasawmy Pillay	Madura	18	50	68	..	68	60	..	8
S. Soondri Sastri	Do.	1	50	51	..	51	60	9	..
T. Armugum Pillay	Dindigul	3	50	53	..	53	60	7	..

21st October 1880.

Major, R.E.,
Under Secy. to Govt., P.W.D.

All communications
should be addressed
to the Secretary.

No. 2202 G.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

GENERAL.

To,

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

Fort William, 20th December 1880.

Sir,

I am directed to acknowledge your letter N^o. 2430 W dated 21st October last, asking for a reconsideration of previous orders regarding the terms on which officers pensioned under Resolution N^o. 2079 dated 31st July 1879, should be employed by Local Fund Boards in Madras.

2 It does not appear necessary to discuss in detail all the points brought forward in your letter, but I am desired to make the following brief remarks on

some

some of them.

3 An Officer's travelling allowance cannot be regarded as part of his emoluments.

4 Having regard to the salaries given by the Local Boards, it does not appear likely that they will have, in many cases, to look for other persons to replace the pensioners, if the orders of the Govt of India are maintained.

5 The fact that an officer's expectations have been disappointed, cannot be admitted as a ground for a charge of breach of faith on the part of Govt. In those cases in which the retirement was compulsory any breach of faith is impossible.

6 The main point which I am directed to notice is the assumption by the Madras Government that expenditure from Local Funds is not State expenditure.

There

There can be no sort of doubt that it is just, as much ^{State} expenditure as that from Imperial or Provincial Assignments, as the money is raised, amongst other means, by taxes placed on

(1) the annual rent value of all occupied land.

(2) on houses.

The difference is in the control, which in this case is exercised by Local Boards of which the collectors are ex officio Presidents. The question whether the President, as such, is or is not an officer of Government is irrelevant to the question at issue. He and the Board control or permit the expenditure of money which is State property, though it is not part of the general revenues. It is therefore quite incorrect to say that the State has effected a great saving by placing the officers in question on the pension

List

list, if they are paid salaries, in addition
to their pensions and gratuities, for
supervising the expenditure of the same
State money only under a different control.

I am to request that the
instructions conveyed in Public Works
Depart^t letter No 1281 & dated 21st June 1880.
may be observed.

I have the honor to be,

Sir,

Your most obed^t servant,

Wm. Hunter Major Genl R.E.

Secretary to the Gov^t of India.

C.B. No. 1058-2 M. 5-5-80.

" " 1642-44. 10-7-80.

" " 1642-44. 10-7-80.

" " 2276-44. 1-10-80.

" " 2277 W.

" " 2429 } W. 21.10.80.

" " 2430 }

Letter from the Government of India, No.
2202 G, dated 20th December 1880.

FOR ORDERS.

W. Hunter

Col. R.E.
Secretary to Gov^t
P.W.D.

I am sorry to hear that
that G.I. claims. The
"Reduced" pension in
question cannot be
G.I. in the public service
entitled to it.

If L.F. Service } January 1881
is public service. as
G.I. entered there under
the Pension Code prior
to 1880 not computed?
pension on reduction of the table

FOR ORDERS.

are entitled to draw
 their pensions together with
 salary on re-employment?
 if the aggregate does
 not exceed former
 pay. his S. give all
 the Officers employed
 L.F. S.D. believe this
 pensions in addn. to
 his L.F. pay.

ask G.D. whether
 they approve of this conclusion -

Also ask separately
 especially about the
 case in W. Mainford
 case. Who had earned
his pension under the rules
& could have got it
on applicⁿ. in respect
of the G.D. of July 79.

The Bonus was distinctly
 offered as an
 N.C. 761 R. 201
 C. 7.1 S.D. 1111 inducement to retire
 9/1/77

Thru a letter from
 G.D. in 1879
 addressed to the
 Hon. Mr. L. (amplified)

B-21/8

No. 163 B.

PUBLIC WORKS DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Under date the 20th Jan'y/81.

Read the following:—

From
 The Gov^t of India (N.O. No. 2202 G of 20th Dec/80)

Order thereon 20 Jan'y 1881

Ordered that

the following letter
 be sent.

P. 113
PA

WPK

N.O. No. 164 B of 20th Jan'y/81.

Signed C. K. ...

Secretary to Govt.

+

no 1095-A W

no 1042-A-B W

no 2276, + 2277 W

n 2429-30 W

163 W 720 Jan 1/81

215 + 216

B5

A4