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தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

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7 sheets

1348

LAW OFFICERS OF GOVERNMENT:—THEIR DUTIES AND REMUNERATION.

SUMMARY.

1. *Advocate-General*.—Is the principal law officer and legal adviser of Government, and is appointed by the Crown. His duties are—

(1) to conduct and defend—
(a) all civil suits on the Original Side of the High Court in which Government is a party;

(b) any such suit in which a Government officer is concerned in his official capacity and in which he is directed by Government to appear;

(c) suits of a public nature (paragraph 6, Advocate-General's opinion, 27th July 1858);

(d) suits for divorce brought by British soldiers in India when legal assistance is deemed necessary;

G.O., 18th October 1878, No. 2114, Judicial.
G.O., 4th March 1882, No. 1032, Military.

(2) to advise Government and Heads of Departments whenever required;

(3) to advise when consulted by the Government Solicitor or Government Pleader;

(4) to advise on legislation pending before the local Government and on Bills of the Government of India sent to him for opinion; and

(5) as an *ex-officio* member of the Legislative Council, to attend Meetings of the Council and serve on Select Committees.

The duty formerly devolving upon him of conducting the prosecution before the High Court in all cases of murder and other grave crimes was withdrawn by marginally noted orders, and the Advocate-General has now no criminal work unless cases of exceptional importance are specially deputed to him by Government.

The following special powers are vested in him by Acts of the Legislature:—

(i) to withdraw from prosecutions in the High Court;

(ii) to exhibit informations to the High Court against persons subject to its jurisdiction;

(iii) to institute or permit the institution of suits relating to any charitable trust;

(iv) to apply to the High Court for order of inquiry as to whether any person alleged to be insane is or is not of unsound mind and incapable of managing his affairs;

(v) to apply to the High Court for a rule calling upon any petitioner to show cause why the question of the breach of the special condition on which a patent has been granted should not be tried;

(vi) to take proceedings to recover defalcations by Official Trustee;

(vii) to take proceedings against defaulting Administrator-General.

(viii) to file information for Crown debts.

The salary of the office of Advocate-General is Rs. 1,800 per mensem. He is also allowed fees in the following cases:—

Salary and Fees.

G.O., 16th June 1887, No. 1291.
G.O., 6th September 1887, No. 2032.
G.O., 5th December 1887, No. 2757.

(a) in all suits in which he is instructed to appear for Government on the Original Side of the High Court and in which the Government are allowed costs and the same are recovered;

(b) in all cases on the Appellate Side of the High Court in which Government is a party and he is required to advise the Government Pleader, he is entitled to a fee for advice and conference.

An allowance of Rs. 143 per mensem is also sanctioned for a joint establishment for himself and the Government Pleader.

2. *Government Pleader.*—Is regarded as the Assistant to the Advocate-General, especially for mofussil business, and in cases of difficulty may apply to that officer for advice. His duties are—

(1) to conduct and defend all civil suits on the Appellate Side of the High Court in which Government are concerned;

(2) to advise Government, the Board of Revenue, and Heads of Departments and District Officers, in cases of difficulty, in regard to the institution, defence and conduct of public suits instituted before the subordinate courts; and, in suits of more than ordinary importance, to revise and settle the pleadings;

(3) when specially deputed by Government, to proceed to the mofussil and conduct such suits personally.

Criminal. His criminal duties are —

(1) to appear for the Crown in all cases referred to the High Court for confirmation of a capital sentence when instructed to do so by the High Court or (in cases of appeal by the prisoner) by the District Magistrate;

(2) in regard to other criminal appeals before the High Court, to appear in support of the conviction when directed to do so by Government, or by the District Magistrate, or when the High Court desire to hear Counsel for the prosecution;

NOTE.—In all important cases Government consider that the District Magistrate should instruct the Government Pleader to appear.—G.O., 16th September 1885, No. 2466.

(3) to present appeals against orders of acquittal when directed to do so by the Government;

G.O., 26th July 1877, No. 1752.
G.O., 27th March 1886, No. 820.
Section 417, C.P.C.

(4) at the request of District Magistrates, to appear in all difficult and important cases referred by them or Sessions Judges to the High Court under Section 438 of the Criminal Procedure Code.

Letter to India, 22nd July 1874, No. 1342.
G.O., 4th December 1877, No. 2855.

(5) when specially deputed by Government, in the Judicial Department, to proceed up-country and appear for the Crown in criminal cases.

G.O., 11th February 1889, No. 251, J. D.

He has also been appointed *ex-officio* Public Prosecutor throughout the Presidency of Madras, outside the limits of the town of Madras.

G.O., 27th March 1886, No. 820.
Section 492, C.P.C.

The salary of the Government Pleader is Rs. 350 per mensem. In addition to this he is allowed a fee of Rs. 30 for appearance before the High Court in each criminal case, and Rs. 175 per diem and actual travelling expenses when directed to appear on behalf of Government in mofussil courts. No fee is claimable as a rule for Sundays and holidays. He is also entitled to the regulation fee in civil suits in which he appears, and, as already stated, he and the Advocate-General share a joint establishment.*

Salary.
G.O., 6th September 1887, No. 2032.

Fees.
G.O., 17th December 1869, No. 2004.
G.O., 1st April 1873, No. 522.
G.O., 6th May 1873, No. 707.
G.O., 20th November 1872, No. 1593, R.D.
G.O., 28th September 1888, No. 2073, J.D.

G.O., 6th April 1889, No. 628.

* Cost, Rs. 143 per mensem.

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3. *Government Solicitor*.—Is the standing Solicitor of Government, the Advocate-General and Government Pleader being the standing Counsel, and is bound to undertake all the duties of Solicitor to client. His chief duties are—

Duties—Civil.

Circular Memo., 21st January 1882, No. 62.
G.O., 16th June 1887, No. 1291.
G.O., 6th September 1887, No. 2032.

(1) to advise Government and Heads of Departments in matters on which the opinion of the Advocate-General is not required;

(2) to obtain that officer's opinion when required;

(3) to act as the channel of communication between the Advocate-General and Government;

(4) to receive process in civil suits instituted before the Original Side of the High Court in which Government is a party;

NOTE.—Under Section 419, Civil P. C. the Government Pleader in any Court is the agent of Government for receiving processes.

(5) to instruct the Advocate-General in such suits and in suits falling under heads (b), (c) and (d), Section (1), of the Advocate-General's duties;

(6) to conduct and defend suits before the Presidency Court of Small Causes on behalf of Government;

(7) to prepare and revise tenders conveyances, leases, security and indemnity bonds, contracts, &c., for the several departments of Government;

(8) to conduct inquiries into applications by parties to sue *in forma pauperis*;

(9) to conduct the case on behalf of Government in all inquiries held at the Presidency Town under the Indian Merchant Shipping Act;

(10) to call upon parties to file balance sheets and other documents required under the Indian Companies Act and to prosecute in cases of default;

(11) to appear in appeals preferred against municipal assessment on Government buildings and in cases referred to the Court by the Collector of Madras under Section 15, Act X of 1870; and

G.O., 19th September 1884, No. 419, Marine.

G.O., 28th August 1862, No. 1395.
G.O., 18th September 1862, No. 1537.

G.O., 12th December 1872, No. 1631.
G.O., 31st December 1872, No. 1706.
G.O., 6th September 1887, No. 2032.

(12) to advise Government on Bills of the Government of India or Local Government sent to him for his opinion.

Criminal. The Government Solicitor's Criminal duties are—

(1) to furnish the Crown Prosecutor with a brief in cases in which that officer has to appear before the Presidency Magistrates;

(2) when consulted by Heads of Departments as to the advisability of criminal prosecutions, to examine and review the evidence, to advise that the prosecution be abandoned if there is clearly no case; to lay the papers before Counsel if there is doubt in the matter, and finally to instruct Counsel if a prosecution be determined on.

The salary of the office is Rs. 1,100 per mensem. The

Salary. Government Solicitor is also allowed to retain any costs which he may recover in Government suits in which he may succeed, as well as the fees for preparing deeds or bonds of indemnity granted to Government by third parties, the cost of preparing which properly falls upon, and is paid by, such third parties.

4. *Crown Prosecutor*.—Is Public Prosecutor for the Town of Madras. His duties are—

(1) to conduct the prosecution in all cases before the Presidency Magistrates in which the prosecution is instituted or carried on by, or under the orders, or with the sanction of, the Government, the Government Solicitor furnishing him with the necessary brief in every such case;

(2) to conduct the prosecution in all cases committed for trial at the Sessions of the High Court;

(3) when directed by Government, to present appeals to the High Court under Section 417 of the Code of Criminal Procedure from orders of Presidency Magistrates directing the acquittal, dismissal, or discharge of accused persons;

(4) to appear before the High Court in support of the prosecution in appeals preferred by persons convicted by the Presidency Magistrates when the prosecution was conducted by himself as Crown Prosecutor, and when the persons so convicted may appeal by Counsel and the High Court may think it expedient that the conviction should be supported by Counsel;

(5) if so instructed by the Presidency Magistrate, to appear before the High Court upon the hearing of applications for the transfer to itself of cases from the Courts of Presidency Magistrates.

The salary of the Crown Prosecutor is Rs. 500 per mensem. He is allowed, in addition, a fee of Rs. 30 for every case in which he appears before the High Court in appeal in support of the convictions passed by Presidency Magistrates or in the case of appeals from acquittal or of applications for transfer to the High Court.

5. *Clerk of the Crown*.—His duties are to receive and, if necessary, add to and amend indictments against prisoners committed to stand their trial at the High Court Sessions and to conduct the other preliminaries connected with the prosecution of the cases committed; to make and furnish copies of all depositions, exhibits, &c., required by parties to Sessions cases, whether for the prosecution or the defence; to draw up warrants and sentences passed on prisoners during the Sessions; to issue subpoenas for all witnesses on behalf of prisoners in jail; to prepare and maintain jury lists; to summon jurors; to attend court to read the charges; to record pleas and verdicts; and to swear in juries and witnesses.

The salary of the Clerk of the Crown is Rs. 300 per mensem, and he has an establishment, costing Rs. 85 monthly, which is also available to the Crown Prosecutor.

6. District Government Pleaders and Public Prosecutors.

By G.O., 18th May 1886, No. 1309, the office of Government Pleader in mofussil districts, which was abolished on the repeal of Regulation XIV of 1816, was revived, and a Government Pleader appointed in each district, the same person being made Public Prosecutor under Section 492 of the Criminal Procedure Code. The appointment is made by Government on the nomination of the Collector after consultation with the District Judge, and for a term of three years.

The duties of the Government Pleader are to advise Government in civil cases and to conduct all its miscellaneous legal business; as agent of the Government to receive process in civil suits against the Secretary of State; to appear for Government in all civil cases in which it is interested, including cases in which the Collector appears as Agent to the Court of Wards; to defend suits against Public Officers when so instructed; to protect the interests of Government in applications by parties to sue *in forma pauperis*; to apply for inquiry into lunacy of person possessed of property in the mofussil.

The duties of the Public Prosecutor are to conduct the prosecution in every trial before the Court of Session, and in other than Sessions cases when the case

is of such importance as to require professional aid; to receive notices of appeal to Sessions Courts; to appear in appeals against convictions of first-class Magistrates; and generally to appear whenever so required by the District Magistrate.

A Public Prosecutor should not accept the defence of any person in a criminal trial without first ascertaining whether the District Magistrate requires him to prosecute the case. If in an appeal it appears that the Public Prosecutor has defended the accused in the lower Court, some other counsel should be employed to support the prosecution.

There are three rates of salary or retaining fee paid to Government Pleaders—Rs. 50, Rs. 30, and Rs. 20, according as the district has been classed as first, second, or third in the statement attached to G.O., dated 18th May 1886, No. 1309, and shown below:—

Districts.	Monthly retaining fee or salary.
Tinnevely ..	Class 1, Rs. 50 per mensem.
Madura ..	
Malabar ..	
Tanjore ..	
Bellary ..	
Godavari ..	
Salem ..	Class 2, Rs. 30 per mensem.
North Arcot ..	
South Canara ..	
Ganjam ..	
Cuddapah ..	
South Arcot ..	
Vizagapatam ..	Class 3, Rs. 20 per mensem.
Trichinopoly ..	
Nellore ..	
Coimbatore ..	
Kurnool ..	
Chingleput ..	
Nilgiris ..	Class 3, Rs. 20 per mensem.
Kistna ..	
Anantapur ..	

In civil cases the Government Pleader is allowed the regulation fees subject to the following conditions, viz., the full fee when the case is decided in favor of Government, and half-fee when the decision is against them; and in exceptional cases, such higher rates as may be

sanctioned on the Collector's recommendation.

For criminal trials, the District Magistrate may award the Public Prosecutor any fee within a limit of Rs. 25 without special report to Government,

and may give any sum in excess of that amount and not exceeding a total fee of Rs. 50 if from the peculiar circumstances or nature of the case and from the trial having necessarily occupied more than one day, such enhancement of the fee is necessary. In both cases, the fee should be graduated at the discretion of the Magistrate according to the importance of the case, the work involved, and the number of days the trial lasted. If a higher fee than Rs. 50 is considered necessary, application must be made to Government for sanction before payment.

Mofussil Public Prosecutors and Government Pleaders are allowed a daily travelling allowance of two rupees, but

this requires special sanction when a special fee has been granted.

The following duties have been imposed on all law officers by the Government of India:—

To transact Government business of all kinds and in all departments, whether such departments are under the Supreme or any of the Local Governments; and

to assist the High Court, when required by the Honorable the Chief Justice, in cases of special importance or difficulty,

on occasions of inquiries made by the Court into the conduct of legal practitioners.

G.O., 10th April 1877,
No. 914.
G.O., 25th Jan. 1886,
No. 224.
G.O., 3rd September
1886, No. 2393.

G.O., 12th April 1888,
No. 324, F.D.
G.O., 17th November
1888, No. 852, F.D.

Letter to India, 7th Sep-
tember 1878, No. 1817.

G.O., 7th October 1885,
No. 2710.

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PRÉCIS
OF
STANDING ORDERS
RELATING TO THE
DUTIES AND REMUNERATION
OF THE
LAW OFFICERS OF GOVERNMENT.

2ND MAY 1889, No. 781, JUDICIAL.

GOVERNMENT OF MADRAS.
JUDICIAL DEPARTMENT.

13/48
READ—Précis of standing orders relating to the duties and remuneration of the Law officers of Government.

ORDER—dated 2nd May 1889, No. 781, Judicial.

Ordered that the foregoing Précis of standing orders relating to the duties and remuneration of the Law officers of Government be communicated to the several departments of the Secretariat for office use, but not as an authoritative statement of the rules in force.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To the Departments of the Secretariat.

7
Exd. A. Raitt.

Govt. of {1889} Madras.

JUDICIAL.

Issued

Recd.

Encl.

G.O., 2nd May 1889, No. 781.

No. 13487r 21st May/89

13487r
21-5-89

MAY.

Recorded
21/5/89 R.R.E.D.B.

Law Officers of Government.

Communicating to the several departments of the Secretariat, the Précis of standing orders relating to the duties and remuneration of the —.