(1) பக்கங்களின் எண்ணிக்கை 116.

(2) புதுக்கித் திருப்பிய நாள் 16.10.90

(3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம்

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

PWD துறை

55

அரசாணை எண். 3180
மு. கோப்புத் தாள் எண்.

அச்சகம்
பலவகை

நாள் : 26-11-1991 198 .

மடிக்கவோ கண்டபடி கையாளவோ கூடாது

8 Sheets

ஆவண. கா-1—18,006—15-6-87.

3180/1

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—again the following papers:—

G.O., dated 7th June 1881, No. 781, Public.

ABSTRACT.—Directing that Government servants having recourse to the Insolvent Court be suspended and that during such suspension their pay shall follow the rule for other cases of suspension as contained in section 53 of the Pay and Acting Allowance Code (5th Edition).

G.O., dated 17th November 1885, No. 2679, Public.

ABSTRACT.—Passing orders on the summary of Government orders issued on the subject of insolvency of Government servants.

Letter—dated 11th December 1890, No. 865, Public.

Read—the following paper:—

From F. ROWLANDSON, Esq., Official Assignee, Madras, to the Chief Secretary to Government, dated Madras, 26th November 1890.

I have the honour to respectfully invite the attention of His Excellency the Governor in Council, for such action as he may be pleased to adopt, to the great hardship worked by the practice now in force to persons employed in the Government offices who are compelled to file their petitions in the Court for the Relief of Insolvent Debtors in Madras.

2. This practice is that, upon the filing of such a petition, the insolvent is, as a matter of course, suspended, and not reinstated until the matter of his insolvency has been disposed of by the Commissioner, and what is known as a "personal discharge" has been granted to him by the Court. Upon this being done, the insolvent has to procure an extract of the proceedings of the Court to satisfy the Government that nothing has transpired there which will disqualify him for restoration to his appointment. After this has been obtained, and when the Government is pleased to restore the discharged insolvent, it is the practice to do so "*without arrears of pay.*"

3. The result of this practice is that, for a period of several months, the insolvent is left absolutely without any means of support. Everything of which he is possessed at the time of applying to the Court passes to the Assignee for his creditors, and at the same time his income ceases. The unavoidable result is that he returns to his appointment with the nucleus of a fresh load of debt upon him, which he has of necessity incurred pending the disposal of his petition by the Court and his reinstatement by Government.

4. The order for personal discharge is almost invariably accompanied by a direction, which is often a condition, that the insolvent shall pay for the benefit of his scheduled creditors such monthly sum as the Court thinks fit to allocate from his pay. Thus in a recent case an insolvent drawing Rs. 240 as pay and Rs. 60 allowance was granted his discharge and directed to pay Rs. 40 a month for his

scheduled creditors. He had been some four months under suspension, and when reinstated was given no arrears of pay. He had been obliged to contract fresh debts for the support of himself and his family, and as soon as he was reinstated his new creditors obtained decrees against him, and attached half his pay. Thus crippled he made default in payment of the Rs. 40 allocated by the Insolvent Court, and was brought before it again by the Assignee for disobedience of the order. The facts set out above were elicited in his examination, and it also appeared that the amount of his fresh debts was approximately the same as the amount of arrears of pay which it was open to Government apparently to have allowed to him.

5. The case though not by any means an exceptional one was a typical one, and the Honourable the Chief Justice, who was sitting as Commissioner in Insolvency, expressed an opinion that if the matter were represented to His Excellency the Governor in Council, the practice of giving no arrears of pay in the class of cases indicated might possibly be altered.

6. I would venture, in conclusion, to point out that by the procedure of the Insolvent Court, each creditor of an insolvent has ample opportunities of bringing to the notice of the Commissioner any misconduct on the part of the insolvent, and that where a discharge is granted in the face of opposition by creditors, it is competent to the Court to mark its sense of the insolvent's behaviour by imposing a heavy allocation—a course which has, on some occasions, been adopted.

Letter—to the Secretary to the Government of $\frac{\text{Bengal}}{\text{Bombay}}$, General Departments, dated Fort St. George, 11th December 1890, No. 865, Public.

I am directed to inquire whether it is the practice in the $\frac{\text{Bengal}}{\text{Bombay}}$ Presidency to invariably suspend every public servant who applies for the benefit of the Insolvent Act and to grant him only subsistence allowance during his suspension. I am also to ask whether, on reinstatement after passing through the Insolvent Court, a Government servant is ever granted arrears of pay for the period during which he was under suspension.

(Signed) J. F. PRICE,
Chief Secretary.

READ—also the following paper:—

From the Acting Chief Secretary to the Government of Bombay, General Department, to the Chief Secretary to the Government of Fort St. George, dated Bombay Castle, 24th January 1891, No. 335.

I am directed to acknowledge the receipt of your letter, No. 865, Public, dated the 11th ultimo, inquiring whether it is the practice in the Bombay Presidency to invariably suspend every public servant who applies for the benefit of the Insolvent Debtors' Act and to grant him only subsistence allowance during his suspension, and whether, on reinstatement after passing through the Insolvent Court, a Government servant is ever granted arrears of pay for the period during which he was under suspension.

2. In reply, I am to state that it is not the practice in this Presidency to invariably suspend every public servant who applies for the benefit of the Insolvent Debtors' Act, though there is nothing to prevent heads of offices from so doing, if they consider such action advisable. Instances have occurred in which heads of offices have so suspended their subordinates, and in which the latter on being reinstated have been permitted, with the sanction of Government, to draw full pay for the period of their suspension. The existing practice is not to pass orders regarding the retention or dismissal of a public servant applying for the benefit of the Insolvent Debtors' Act until his case has been heard by the Insolvent Court, when a report stating the decision passed is made to Government. On receipt of the report, Government decides whether the insolvent should or should not be dismissed from its service.

From H. LUSON, Esq., Officiating Under-Secretary to the Government of Bengal, Judicial, Political and Appointment Departments, to the Chief Secretary to the Government of Madras, dated Calcutta, 17th February 1891, No. 763 J.

I am directed to acknowledge the receipt of your letter, No. 865 (Public), dated the 11th December last, in which you inquire whether in Bengal a public servant applying for the benefit of the Insolvent Act is invariably suspended and granted only subsistence allowance during his suspension, and whether on reinstatement after passing through the Insolvent Court a Government servant is ever granted arrears of pay for the period during which he was under suspension.

2. In reply, I am to refer you to Mr. H. A. Cockerell's demi-official letter of the 14th May 1881, to the address of Mr. R. Davidson, on the subject, and, in forwarding a copy of that communication, to say that officers in Bengal applying for the benefit of the Insolvent Act are not invariably suspended and that there are instances in which such officers have been allowed full pay for the period during which their cases were pending in the Insolvency Court. I am to add that instances of Government servants becoming insolvents in Bengal are fortunately rare.

ENCLOSURE.

Demi-official letter from H. A. COCKERELL, Esq., to R. DAVIDSON, Esq., C.S.I., Chief Secretary to the Government of Madras, dated Bengal Secretariat, 14th May 1881.

In reply to your demi-official letter of the 21st ultimo, I have to say that there is no rule, such as that mentioned by you, in existence in Bengal, but that very stringent orders, a copy of which I enclose, have been issued by this Government on the subject of Government servants having recourse to the Insolvent Court. Under these orders, the case of each officer is separately considered and decided on its own merits. When an officer who takes the benefit of the Insolvent Act is not dismissed from his appointment, he is ordinarily either deprived of all pay or granted merely a subsistence allowance during the period of his suspension. Occasionally, however, he is permitted to count the time as leave, should there be any leave due to him.

No. 1579, dated the 9th March 1869.

ORDER—dated 25th April 1891, No. 331, Public.

On consideration of the foregoing correspondence, His Excellency the Governor in Council is pleased, in supersession of all previous orders, to rule that the question whether Government servants taking the benefit of the Insolvent Act shall be suspended, pending adjudication under the Act, will, in future, be left for decision to the discretion of Heads of Departments.

2. The cases of all gazetted officers taking the benefit of the Act, together with the action taken by the Head of the Department in each case, will be always reported for the information of Government.

3. Each case will, as now, be finally disposed of by Government on the receipt of the report prescribed in paragraph 3 of G.O., dated 17th November 1885, No. 2679.

(True Extract.)

C. A. GALTON,
for *Chief Secretary.*

To the Official Assignee.
" Departments of the Secretariat.
" all Heads of Departments under the Chief Secretary.

Exd. P. L. Pereira.

3(8)/2

GENERAL.
ESTABLISHMENT.

Govt. of {1891} Madras.

PUBLIC WORKS.

Dated May, 29th.

Recd. *Encl.*

G.O., 29th May 1891, No. 1472 W.

MAY.

Insolvents

Authorising the Chief Engineer to decide in the Public Works Department the question whether Government servants taking the benefit of the Insolvent Act shall be suspended pending adjudication under the Act.

(C. No. 1201/8)

KEEP-WITH CURRENT No.

dated 189 .

GOVT. OF MADRAS. } 189 . { P. W. DEPT.

EXAMINER, P. W. ACCOUNTS.

Madras, 19 November 189

OFFICE NOTE No. 7192.

To

W.

May I ask a reference to the letter from the Official Assignee Madras to the Chief Secretary to Government dated 28th.November 1890 which culminated in G.O.No.331 Public Department dated 25th. April 1891 in which it was ruled that the question.whether Government servants taking the benefit of the Insolvent Act shall be suspended pending adjudication under the Act,will in future be left for decision to the discretion of Heads of Departments(copy enclosed for ready reference).

2. The Official Assignee's representation was made on the case of Mr. Boyton,an Accountant in this office who had been compelled by circumstances beyond his control to resort to the Insolvent Court in September 1887.

3. The Judge in dealing with the case(vide extract from notes of proceedings of the Honorable the Commissioners note book dated 21st.November 1887) re-

Encl 1472 W & 29.5.91

1000—3-2-91.

was stated :-

" The Examiner should have reported what arrangement was made for the performance of Mr.Boyton's work during his suspension, and whether any extra charge was thereby incurred to the State".

6. I do not find that any answer was made to these remarks, but the facts are that no one was appointed in place of Mr.Boyton(see also para 9), and that his entire salary less subsistence allowance was saved to Government during the full period of his suspension. This saving amounted to Rs.967-3-9. I venture to think that if these facts had been known to Government, a favourable reply would have been accorded to Major Christie's recommendations.

7. A couple of days after I assumed charge of this office, I received a memorandum from Government(No.445 D.of 24th.June 1891) in which I was asked to report the amount of attachments on Mr.Boyton's salary since his insolvency and the amount of his then debts. Having had no knowledge at the time, of Mr.Boyton or the circumstances of his case, I confined my reply(see this office No. 3862 dated 2nd.July 1891) to the points raised; but after nearly 4 months' experience in this office & of Mr.Boyton's work, and his character, I can unhesitatingly ~~assure~~ say that he is personally deserving of the utmost

1910 W&M 11.7.91

consideration at the hands of Government, and I am confident that if Government was aware how severely the orders have operated in his case, they would be disposed to deal liberally with him.

788/6

8. It was proved to the satisfaction of the Court that Mr.Boyton's debts had arisen from circumstances beyond his control, and that there was no charge of bad faith, on which grounds he was discharged on condition that he paid Rs.40 a month for distribution among his creditors; it was on the harshness of the rules on his particular case that the Honorable the Chief Justice who was sitting as Commissioner in the Insolvent Court expressed the opinion "that if the matter was represented to His Excellency the Governor in Council the practice of giving no arrears of pay in the class of cases indicated might possibly be altered"(see para 5 of enclosure); and it was upon Mr. Boyton's case that the Official Assignee's representations were made -- representations which have resulted in the alteration of the previous orders on the subject.

9. Mr.Boyton has an excellent record, and is exceptionally good at his work: On this ground therefore, coupled with the terms of the discharge that was awarded to him in the Insolvent Court, I beg most earnestly that Government may be moved to sanction the payment to him of the balance of full

salary during the period of his suspension from 2Ist.September I887 to 25th. January I888. As stated in para 6,this amount was saved to Government,so that there will be no violation of the principle laid down in the last clause of para 4 of G.O.Public Department No.338 dated 3Ist.March I888,where it was laid down that -

1102 W & 12.4.11

> " It must be taken as a fixed rule that in no case will the Government consent to bear extra charge on account of arrangements brought about by the improvidence of their servants".

I0. I anticipate the objection that this would be allowing a suspended officer to draw full pay for a period during which he had done no work,by inviting attention to Civil Service Regulations article 2I5(b) in which it is distinctly laid down that

> " if an officer ... suspended during enquiry into his alleged misconduct is after enquiry , or upon reconsideration or appeal,reinstated,then the revising or appellate authority may grant to the officer for the period of absence from duty,(i) if the officer is honorably acquitted,full salary",

and I would add that cases have not been unknown either in the P.W.D. or other Government departments where officers have under this rule been passed full salary for periods during which they had not done a day's work. The equity of this rule is apparent, as the suspended officer is in the first place deprived of work under Government and is moreover debarred from taking up employment elsewhere while under suspension. I confidently submit that, as far as the words are applicable to the case of a bankrupt,Mr.Boyton received an "honorable acquittal"from the Insolvent Court,and that he is therefore deserving of the concession which the Government of India intended ~~shall~~ should be granted in such cases,and which has been granted to other insolvents(see para I2).

3180/7

II. I admit that there is a difference between the case of an officer suspended for "alleged misconduct" and an officer suspended for resorting to the Insolvent Court,unless recourse to such a Court be considered,in itself,an act of misconduct. In the former case, the fact of reinstatement with arrears of full pay,implies that the suspension was unjust and that therefore full pay was admissible for the period during which no work was done. This argument is absent in the case of an insolvent's suspension,but I would submit that in G.O.No.33I Public dated 25th.April I89I Government have admitted the principle that suspension following recourse to insolvency is unfair to an insolvent in that it deprives him of the means of support and plunges him into fresh debts,

1472 W & 29.5.91

him immense relief as it will enable him to compound the greater portion of his liabilities which will thus be reduced to an amount which he will be able to clear off entirely in a short time. Failing this, he will again be driven into bankruptcy, a course which he is most anxious to avoid even if his appointment be guaranteed to him.

16. My only apology for reviving this case is that I feel sure that Government has not hitherto been fully acquainted with the facts connected with it, or the hardship that has been inflicted on one of the few good accountants in the Province.

Offg.C.

F. W. CURRENT No. 12/23

Encls: 2
Rec'd. 20:11:91

For orders.

23.11
There is nothing new in this letter but the Letter of 5th July last

His Excellency the Governor in Council sees no reason to modify G.O. 1910 W. dy 11 July 1891, which must be enforced.

No. 1578 W 24-6-81
" 1891 W 25-7-82
" 1898 W 7-7-83
" 1294 W 3-6-85
" 2686 W 11-11-85
" 2864 W 1-12-85
" 2459 W 23-5-86
" 2561 B 23-8-86
" 993 C 5-5-82
" 1430 W 7-6-82
" 4523 C 8-12-87
" 214 W 19-1-88
" 582 W 18-2-88
" 4779 C 20-12-87
" 346 W 30-1-88
" 1102 W 12-4-88
" 1472 W 29-5-91
" 4458 24-6-91
" 1910 W 11-7-91