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MADRAS RECORD OFFICE.

Government of Madras.

Revision DEPARTMENT.

G.O. No.	<u>142</u>	☒ Press ☐ Mis.
Dated	<u>28-3-1879.</u>	

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

FINANCIAL DEPARTMENT.

8th March 1879, No. 436.

Pensions.

Read the following papers :—

79. From A. C. TUPP, Esq., Officiating Accountant-General, to the Secretary to Government, Pension Department, dated Fort St. George, 7th February 1879, No. 543.

Department.

I have the honor to ask for further instructions with regard to the payment of arrears of pension due to the heirs of deceased pensioners with reference to G.Os., of 4th April and 2nd December 1872, Nos. 185 and 812, and G.O., No. 237 of 8th April 1877.

2. In my predecessor's letter, No. 449, of 30th October 1872, he solicited orders on the subject saying that, as the arrears were often of small amount, it was a great hardship on the heirs to make them take out a certificate of heirship as directed by the High Court, and suggested that some such rule as that laid down in G.O., No. 101, of 4th April 1867, that certificates should be signed by persons drawing Rupees 100 per annum, or in Section 86-b of the Civil Pension Code, might be made applicable to arrears of pension due to heirs.

3. The Government Order on this letter (No. 812 of 2nd December 1872) laid down the rule that the disbursing officer should satisfy himself that parties claiming arrears of deceased pensioners have a *prima facie* title to be regarded as the representatives of the latter, and that no more than this was meant by G.O., No. 185, of 4th April 1872.

4. The matter then dropped till the 18th April 1877, when Mr. Probyn reported the case (Mrs. Mary Talbot) referred to him by Government, that this office had arrears not exceeding Rupees 10 to reputed heirs of pensioners in cases when (1) it was known in the office that applicants were entitled to it, or (2) the application was accompanied by a certificate to that effect from some known officer.

5. Mr. Probyn stated that he considered this practice unsatisfactory, and suggested that some standing rule should be passed after reference to the Advocate-General. In answer to this, the Government merely referred him to the previous orders of 4th April and 2nd December 1872.

6. The question has, therefore, never been really settled, and it has now arisen on a case of one Chengamala Ammal. The practice since the last Government Order of 8th May 1877 appears to have been (in accordance with an order endorsed on by Mr. Probyn) that all such claims (irrespective of amount) were to be paid when the circumstances were known to any one in this office, (2) when applications were accompanied by certificate of heirship from any known person with a proviso that they should not be paid without legal proof in cases where there was any doubt.

7. When Chengamala's case came up, I noted on it that there might be many cases going on without the knowledge of this office, so that it might be unsafe to pay the first claimant, and that the certificate being really in the nature of an affidavit it required a stamp of 1 rupee under Section 14, Schedule II of Act XVIII of 1869, unless it was considered that the affidavit would be exempted under Clause 12, and 15 of Act XVIII of 1869 (re-enacted in Clause 1 (c), Schedule II of Act I of 1879).

8. On this representation Mr. Probyn modified the Standing Order, making it require either a verbal assurance of identity and heirship, or else a properly stamped certificate; but he stated that he considered this settlement unsatisfactory.

9. I then represented that the Government of India had the power of exempting any class of documents from the operation of the Stamp Act under Section 16, Act XVIII of 1869, and that the Board of Revenue could do so in particular cases for the Madras Presidency under Section 42 on application, though it was doubtful whether they could pass a general rule.

10. On this it was considered by both Mr. Probyn and myself that it was unsatisfactory to leave the question as it was, and that it was advisable to refer the whole matter to Government for a decision on the following points:—

- (1.) Is a written certificate of heirship necessary.
- (2.) If so, must it be stamped as an affidavit under Section 14, Schedule II, Act XVIII of 1869, or is it exempted under Clause 12, Section 15; with regard to the exemption it is necessary to remark that though it clearly meets the case of pensioners who make an affidavit for the purpose of proving their own identity or of others who do so for them, it is not at all clear that it includes affidavits made in order to enable heirs of deceased pensioners to receive arrears of pensions which would have been payable to deceased had he lived; the words are "to enable any person to receive any pension," and as the payment is not a pension to the person who receives it after the death of a pensioner, but merely a part of the latter's property which comes to the heir like any other portion by right of inheritance, I am inclined to think that the exemption does not apply to arrears of pension due to others than the pensioner himself.
- (3.) If it must be stamped, how can the hardship on receivers of small sums be best alleviated, whether by asking the Government of India to abolish the duty on affidavits relating to arrears of pensions under a certain small sum say Rupees 20, or by leaving the person to get the Board to remove the penalty in each case, or can the Board pass a general order abrogating the penalty.
- (4.) If a written certificate is not necessary, how are Heads of Departments and the Accountant-General to satisfy themselves that the person is really the only heir and that disputes are not going on of which they know nothing. The effect of payment to the wrong person would very possibly be, in some cases, to render Government responsible for the amount to the real heir.

11. I have therefore the honor to refer these questions to Government for decision, and to respectfully request that I may receive detailed instructions as the cases occur every day, and both Mr. Probyn and myself feel that the present practice of the office is uncertain, inaccurate, and likely to lead some day to unpleasant complications.

Transferred to the Financial Department for disposal.

FORT ST. GEORGE,
19th February 1879.

(Signed) J. H. GARSTIN,
Secretary to Government.

No. 463.

Referred to the Advocate-General for his opinion on Clauses 1, 2, and 3 of paragraph 10 of this letter.

FORT ST. GEORGE,
24th February 1879.

(Signed) C. G. MASTER,
Acting Chief Secretary.

No. 79-A. From E. BARCLAY, Esq., Government Solicitor, to the Acting Chief Secretary to Government, dated Madras, 26th February 1879, No. 118, forwarding the following Opinion of the Advocate-General:—

OPINION.

With reference to the questions raised in the 10th paragraph of the letter of the Accountant-General to the Secretary to Government, Pension Department, dated the 7th February 1879, No. 543, relating to the payment of arrears of pensions to the legal representatives of deceased pensioners, which has been referred to me, I have read the papers sent to me with the Order of Government, dated the 24th February 1879, No. 463. It seems to me that the correspondence shows that it would be a hardship to require in every case that the applicant should produce letters of administration or a certificate under Act XXVII of 1860: but I think it is reasonable to require proof by affidavit that the applicant is entitled to receive the payment asked for. I do not think such affidavits require to be stamped. Schedule II of Act I of 1879, which comes into force on the 1st April next, exempts from Stamp duty affidavits or declarations in writing when made for the sole purpose of enabling any person to receive any pension or charitable allowance. I think the exemption is not confined to payments of pension made to the pensioner or by his order, but may include claims for arrears of pension payable to his representatives after his death. What the representatives get is the amount of the pension not paid to the pensioner himself, or an agent duly authorised to receive it in his life-time; and I think the case is covered by the exemption. The claim is to the unpaid pension, and if the claimant is entitled to make the claim but is required to produce an affidavit in order to enable the claimant to receive the money, the affidavit need not be stamped.

MADRAS,
25th February 1879.

(Signed) P. O'SULLIVAN,
Advocate-General.

No. 80. ORDER THEREON, 8th March 1879, No. 436.

The Officiating Accountant-General will be guided by the Advocate-General's opinion in disposing of applications for the payment of arrears of pension of deceased pensioners.

(True Extract.)

Glennister
Acting Chief Secretary.

To the Officiating Accountant-General.
" Pension Department.
" Board of Revenue.
" Revenue Department.

Exd. T. O'Connor.

Jan 1879. W. H. H.

Obt. of (1879) EXHIBITS.

FINANCIAL.

To

THE OFFG. ACCOUNTANT-GENERAL,

Ac.

Ac.

Ac.

K. 297

Dated March, 8th,

21

Janet

Recd. — " —

End.

G.O., 8th March 1879, No. 436.

MARCH.
Nos. 79-80.

Pension.—The Accountant-General directed to be guided by the Advocate-General's opinion in disposing of applications for the payment of arrears of pension of deceased pensioners.

Write order 1/42

Wait

Order drawn 28 March 1879 No 142

Received.

26.3.79