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21-2-07
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ORDINARY, MS.

Public DEPARTMENT.
G.O., DATED 12-4-93.
No. 300

Subsidiary
printed

When given for copying.

[Despatch Abstract.]

Recording pro. Pen.
-sim dept. cancelling
para 3 of go 219 of 1893
directly that the resolu-
tion of the appointment
of Malayalam Prashad
to govt by Mr. Ganthuruli
be cancelled -

BACK PAPER, No.

FURTHER PAPER, No.

2882 No 61 of 18 94
8-2-94

READ AGAIN ORDER OF GOVERNMENT, DATED
18, No. , MISCELLANEOUS.

ENCLOSURES

CURRENT No.

STATEMENT WITH DITTO.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL (not paged).

A A }

115

Government {1893} of Madras. PUBLIC

MISCELLANEOUS.

Recd.

Regd.

} 1893.

Enclosures

Spare copies

G.O., No. 300, 12th April 1893.

APRIL.

Combination of appointments.

Recording proceedings, Pension department, cancelling paragraph 3 of G.O., No. 219, dated 7th March 1893, directing that the retention of the appointment of Malayalam Translator to Government by Mr. Garthwaite be cancelled.

N.B.—

A = Copy in full.

B = Not to be copied.

P = Copy abstract only.

Q = Copy heading only.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—the following paper :—

G.O., No. 219, Pension, dated 7th March 1893.

ABSTRACT.—Granting a superannuation pension of Rs. 160-3-7 *per mensem* to M.R.Ry. J. M. Velu Pillai, late First Assistant, Teachers' College, Saidapet; declining to allow him to hold the non-pensionable post of Special Assistant to the Director of Public Instruction in addition to the pension now sanctioned; and stating that necessary orders to cancel the retention of the appointment of Malayalam Translator to Government by Mr. Garthwaite will be issued in the Public department.

Order—No. 304, Pension, dated 5th April 1893.

On reconsideration His Excellency the Governor in Council resolves to cancel paragraph 3 of the Government Order read above.

(True Extract.)

R. H. CAMPBELL,
Ag. Under Secretary to Govt.

To the Accountant-General.
" Chief Secretary to Government (with papers returned.)
" Director of Public Instruction.

ORDER—No. 300, Public, dated 12th April 1893.

Recorded.

(True Extract.)

J. F. PRICE,
Chief Secretary.

NOTES CONNECTED WITH G.O., No. 300, PUBLIC, DATED
12TH APRIL 1893.

[SUBJECT.—Retention of Mr. Garthwaite in the post of Malayalam Translator.]

Paragraph 3 of G.O., dated 7th March 1893, No. 219, Pension department, directs that the necessary orders cancelling the retention of the post of Malayalam Translator by Mr. Garthwaite be issued in the Public department.

The original of the Government Order in question has been obtained. It was passed as "from orders" but it is respectfully submitted that the notes of Honourable Members contain no express direction similar to that contained in paragraph 3 of the Government Order.

It was not my intention. In Mr. Garthwaite's case, I think the maxim '*factum valet*' applies.

H. E. S. [TOKES].

Nor mine. Mr. Garthwaite's case was not under consideration at the time.

J. H. G. [ARSTIN].

No, but the phrase "Governor in Council" does not necessarily imply that His Excellency the Governor shall be a party to all orders in which it occurs.

H.E.S.

Certainly. Chief Secretary should not have counterinitialled the order.

H.E.S.

Granted that it was the intention of Honourable Members that such steps should be taken it is submitted that inasmuch as Mr. Garthwaite's appointment was made by the then Governor in Council it cannot be cancelled without the concurrence of the present Governor in Council, but the papers were not submitted to His Excellency in the Pension department.

Even had His Excellency approved the proposed course, it is submitted that it would have been more in accordance with custom to have worded the paragraph somewhat like this:—

"The question as to whether this principle must be held to apply to the case of Mr. Garthwaite in respect of his appointment as Malayalam Translator to Government will be considered in the Public Department, which will be furnished with the original notes recorded on the subject in this department."

All questions relating to the appointment of Translators to Government are dealt with in the Public Department. Mr. Garthwaite's appointment was made and gazetted in that department and if it has now to be cancelled it is submitted that the circumstances under which such a step may be thought necessary should be considered in the same department particularly as such a course would involve the cancellation of a Government Order issued in that department.

It is submitted that the papers may now be circulated to His Excellency the Governor and Honourable Members for definite orders on Mr. Garthwaite's case, with the following remarks.

Mr. Garthwaite was retired in consequence of the reorganisation of the Educational service—*vide* paragraph 16 of Mr. Grigg's letter in G.O., No. 542, Public, dated 29th September 1887. He was not 55 at the time the proposal was made, but had attained that age before he left the service. His retirement was not on account of old age or inefficiency but in order to permit of the reorganisation of the Educational department, which involved the reduction of four Inspectorships, being carried out.

The papers in G.O., No. 169, Pension, dated 11th February 1889, show that Mr. Garthwaite was at first recommended for a "retiring" pension, but on the ground that he had not completed 30 years' service he was granted a "superannuation" pension in that Government Order under sections 110, 115 and 113 (b).

Now section 110 says "a superannuation pension is granted to an officer entitled or compelled by rule to retire at a particular age"

Clause I of that section explains that "an officer who has attained the age of 55 years may be required to retire unless the Local Government considers him efficient and permits him to remain in the service". The fact of Mr. Grigg's

* *Vide* the Director of Public Instruction's entry in the application for pension: "Mr. Garthwaite was required to retire under the reorganisation scheme of the Inspectorate."

ment was abolished†—and it is therefore submitted

† He was retired from the date of the introduction of the reorganisation, which abolished the appointment he was holding, viz. 20th December 1888 (*vide* G.O., 625, Educational, 2nd November 1888, and G.O., 159, Pension, 11th February 1889).

having first recommended Mr. Garthwaite for a retiring pension proves that his services were not dispensed with on account of inefficiency.* As a matter of fact Mr. Garthwaite's appointment instead of a superannuation pension he should have been granted a compensation pension under section 104 of the Civil Pension Code. The whole of that section points to this conclusion. He had completed 25 years' service and the amount would have been the same—*vide* section 113.

When the establishments of Translators to Government were revised in 1889 and a successor to Mr. Dumergue as Malayalam Translator was wanted, Sir Henry Stokes wrote "as regards the persons to be appointed the best are in my opinion for . . . Malayalam Mr Garthwaite". The Hon'ble Mr. Garstin noted "I agree to Mr. Garthwaite" and His Excellency Lord Connemara concurring, a demi-official was despatched offering him the appointment. This is with G.O., No. 444, Public, dated 22nd May 1889.

From the note for orders in the Government Order above quoted it appears that the Under and Chief Secretaries and all the Members of Government were under the impression that Mr. Garthwaite had been granted a *retiring* pension for section 186 of the Civil Pension Code was referred to. G.O., No. 534, Public, dated 19th June 1889, was passed in accordance with those notes, but the corresponding article (576) of the new Civil Service Regulations was quoted instead of section 186 of the Civil Pension Code.

Had Mr. Garthwaite been granted a compensation pension, as it is submitted would have been the correct course, such a Government Order would not have been necessary.*

* *Vide* article 569 (a).

It is submitted that it would seem that the second mistake providentially rectified the first one.

Article 575, Civil Service Regulations, lays down that an officer who has obtained a superannuation pension is excluded from re-employment in the general service. This term "General service" is not defined, but it appears from the context that it is there used in contradistinction to service

† *Vide* also article 420.

Revenues. Under article 421 † service paid from General Revenues qualifies for pension, but the local allowance of a Translator to Government carries no claim to pension, and it is submitted that it is therefore open to question whether

I don't agree.

H.E.S.

Further, the essence of employment in the general service of Government is that an officer's whole time shall be at the disposal of the State. But the Translatorships to Government are usually held by officers in the general service in addition to their regular duties, thus clearly demonstrating that an officer's whole time is not needed for them. So when an officer has

I don't think so.

H.E.S.

If so he ought not to be pensioned but should be transferred to the lighter office. This is sometimes done.

H.E.S.

If the rule in article 575 is held to apply to appointments such as Translators to Government this is Mr. Garthwaite's case for such a G.O. as 534, 19th June 1889, can be passed only "on strong public grounds"—*vide* section 186, Civil Pension Code, or article 576, Civil Service Regulations.

It is submitted the Government may find itself thereby deprived of the services of individuals who are best qualified to carry out efficiently the peculiar duties of such appointments.

In conclusion, attention is respectfully invited to article 577, Civil Service Regulations, and particularly to 577 (ii).

"A superannuated pensioner may be re-employed in non-pensionable service on the subordinate establishment of a State Railway." This indicates that the principle of article 575 is not that a man is totally unfitted for any further employment because he has been granted a superannuation pension but rather that the rule in regard to age having been once applied for the purpose of pensioning him he cannot hold another pensionable appointment.

H.E.S.

A subordinate on a State Railway has frequently very responsible duties, and deficiency in his physical or mental condition might lead to a mistake which would involve the State in considerable loss.

I have heard that the Accountant-General has stopped his pay.

H.E.S.

It should be added that no objection has been taken by the Account Department to Mr. Garthwaite's holding the Translatorship.

F. D. BIRD—17-3-93.

The Hon'ble Sir H. E. Stokes, K.C.S.I.—

„ Mr. G. H. Garstin, C.S.I.—

His Excellency the Governor—

The Pension department was quite justified in taking exception to Mr. Garthwaite's continuing to hold the appointment of Translator when he had been granted a superannuation pension and its declaration that his retention of this appointment is inadmissible is, I think, quite in accordance with rule, but the draft order should have been circulated to His Excellency.

H.E.S.

I regret that when I affixed my counterinitials I omitted to notice that the order was not marked for His Excellency. The notes of the Honourable Member dated the 3rd March agreeing in the view stated by the Under Secretary were I think sufficient authority for the 3rd paragraph of the order. Most of the argument in the foregoing note seems to me to be quite beside the question which Government has to decide, namely whether Mr. Garthwaite's retention of the post of Malayalam Translator is permissible or not with reference to the Civil Service Regulations. His fitness for the post, the fact that the Accountant-General did not object and that Mr. Garthwaite might have got a compensation pension seem to me to have no bearing on the question. As a matter of fact Mr. Garthwaite draws a superannuation pension and is subject to all the restrictions imposed by the Civil Service Regulations on pensioners of that class. He is distinctly barred by article 575 from holding any appointment under Government and its being a non-pensionable one does not make any difference I think. The Accountant-General agrees in this view—*vide* his letter dated 10th February 1893.

C. A. GALTON—18-2-93.

I think that had the rules been correctly understood at the time Mr. Garthwaite's appointment should not have been allowed. But there were special circumstances in his case and he might have had a compensation pension though in fact he was admitted to a superannuation one.

J.H.G.

Yes.

J.H.G.

But however this may be, *factum valet* and he ought not to be disturbed. Paragraph 3 of the Pension department order should be cancelled.

Mr. Garthwaite was 60 years of age on 7th January 1893, and it is a question how long he should be permitted to retain the appointment of Translator. I think he might be given two years more.

H. E. S[TOOKES]—23-3-93.

Very well.

J. H. G[ARSTIN]—24-3-93.

I have no objection to Mr. Garthwaite continuing to hold the Malayalam Translatorship for another two years—if there is no account objection. But if the Accountant-General refuses to pass him his pay, I do not see what we can do. He is evidently drawing it now—and has been ever since his appointment—in direct contravention of the Civil Service Regulations. Cannot we now convert his superannuation pension into a compensation pension?

W[ENLOCK]—27-3-93.

[In council.]

Cancel Pension department order regarding Mr. Garthwaite's removal and leave the matter alone until the Accountant-General raises the question of Mr. Garthwaite's retention of the post of Malayalam Translator.

C.A.G.—28-3-93.

Office-note from the Chief Secretary, to the Secretary to Government, Revenue Department, No. 610, dated 29th March 1893.

It was decided in Council yesterday that paragraph 3 of the Government Order quoted above should be cancelled. Will you kindly take the requisite action accordingly? I send the file for your perusal. Please return it after removing the original Government Orders belonging to the Pension department.

[G.O., No. 300, Public, dated 12th April 1893.]

Pr
PROCEEDINGS OF THE MADRAS GOVERNMENT

READ the following papers:—

From the Director of Public Instruction dated 2nd November 1892, No. 14585

Certificate and Report from the Accountant-General, dated 3rd December 1892,
Official Memorandum to — do — do — dated 12th January 1893 No. 2.
Letter from the Accountant-General dated 10th February 1893, No. A.D.J. 393
No. 945
47

ORDER THEREON, 7th March 1893, No. 219.

Under Articles 502 and 515 (a) of the Civil Service Regulations
2nd (1st Edition), the Right Honorable the Governor in Council is pleased to grant to
M.R.R. Joseph Moses Velu Pillai, late 1st Assistant, Teachers'
College, Saidapet, a Superannuation pension —

— of Rupees (16- 3- 7) One hundred and sixty, annas

three and piees seven per mensem payable at Madras from

1st September 1892 — in consideration of
his qualifying Superior service of thirty three years, eleven
months, and eleven days.

2. His Excellency the Governor in Council is of opinion that the retention
of the non-pensionable appointment of Special Assistant to the Director
of Public Instruction by M.R.R. Velu Pillai after his retirement on a
Superannuation pension from his post in the Teachers' College is barred
by articles 511 and 575 of the Civil Service Regulations; and is unable
therefore to allow him to hold the non-pensionable post in addition to the
pension now sanctioned.

Current No. 711

Public DEPARTMENT.

From Pension Department

No. 219

Dated 7th }
 Received 8th } March 1853
 Repd 9th }
 Enclosures

SUBJECT.

Sanctioning a pension of Rs 100-3-7.
 per mensem to Mr. J. M. Velu
 Pillai late First Asst Teacher
 College & regarding his retention
 of the app^t of Special Asst to the
 D. P. I. &c

I have no objection to Mr. Garthwaite
 continuing to hold the Malayalam Translatorship
 for another two years - if there is no technical
 objection. But if the Sec^y General refuses to
 pass him his pay, I do not see what we can
 do. He is evidently drawing it now - & has
 ever since his appointment - in direct
 'outravention of the C. S. R. Cannot
 we now convert his superannuation pension
 into a compensation pension?

W
 27 Mar.

It was not my intention. In
 Mr. Garthwaite's case, I think the
 maxim 'factum valet' applies.

Not mine. W
 Mr. Garthwaite's case
 has not been considered at the
 time. JH

Now but the phrase
 'G. in L.' does not necessarily
 imply that H.E. the Gov^t shall
 be a party to all orders in which
 it occurs. W

This was a case of
 "a" "a" "a"

Note - can't write G.O. No. 500 Pub. L. 10712-4-93

Paragraph 5 of G.O. No. 10712-4-93.

Mr. Garthwaite's appointment to the
 necessary orders cancelling the retention
 of the post of Malayalam Translator by
 Mr. Garthwaite be issued in the Public
 Department.

The original of the G.O. in
 question has been obtained. It was passed
 as 'Ex. orders' but it is respect-
 fully admitted that the notes of Hon.
 Members contain no express direction
 similar to that contained in paragraph
 3 of the G.O.

Granted that it was the inten-
 tion of Hon. Members that such steps
 should be taken it is admitted that in-
 cases such as Mr. Garthwaite's appointment
 was made by the then Governor-in-Council
 it cannot be cancelled without the ap-
 proval of the present Governor-in-Council
 but the papers were not submitted to
 His Excellency in the Pension Dept.

Even had His Excellency approved
 the proposed course it is submitted that
 it would have been more in accordance
 with

* vide the D. O. No. entry) in the application for pension "Mr. Garthwaite was required to retire under the reorganisation scheme of the Inspectorate."

② He was returned from the date of the introduction of the reorganization - which abolished the office of the legislator - viz: 20.12.88; vide G.O. 626 Educ of 2.11.88 & G.O. 169 Gen. dt 11.2.89.

* vide art: 569(a).

Birthrights have been granted a White Card
 Division 227 Section 108 of the C.P. CODE
 was amended by P.O. dated 10-1-59, No.
 was 1043300.
 5045 to be reference with these notes, but
 the corresponding Article - 1045 of the
 C.S.P. was not included in Sec.
 1045 of the C.P. CODE.

700, 800, 900, 1000, 1100, 1200, 1300, 1400, 1500, 1600, 1700, 1800, 1900, 2000, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900, 4000, 4100, 4200, 4300, 4400, 4500, 4600, 4700, 4800, 4900, 5000, 5100, 5200, 5300, 5400, 5500, 5600, 5700, 5800, 5900, 6000, 6100, 6200, 6300, 6400, 6500, 6600, 6700, 6800, 6900, 7000, 7100, 7200, 7300, 7400, 7500, 7600, 7700, 7800, 7900, 8000, 8100, 8200, 8300, 8400, 8500, 8600, 8700, 8800, 8900, 9000, 9100, 9200, 9300, 9400, 9500, 9600, 9700, 9800, 9900, 10000.

It is admitted that it would mean that the second trial be initially postponed the first one.

Article 375 C.F.R. 1935
and that an officer who has obtained a
re-employment contract in the armed forces
re-employment in the general service.
This term "general service" is not
defined but it appears from the *context*
~~which~~ ^{there} that it is the re-employment
contract to a soldier who has been in the
armed services before and after the war;
and, it is therefore clear that
armed services before and after the war
means ^{the} *article* 375 service and the
general services policies for pending
but the Local authorities of a transfer
to Government service his claim to
service, and it is admitted that a

* vide also article 420.

in the case of the question whether
Article 171 of the Constitution of India
applies to the appointment of a person
to a post in the service of the State.

I don't agree
Ues

It is not possible that an
employee of the State can be appointed
to a post in the service of the State
without being appointed to a post in the
service of the State. So
the appointment of a person to a post
in the service of the State is an appointment
to a post in the service of the State.
It is not possible that an employee of the
State can be appointed to a post in the
service of the State without being appointed
to a post in the service of the State.
So the appointment of a person to a post
in the service of the State is an appointment
to a post in the service of the State.

I don't think so
Ues

It is not possible that an
employee of the State can be appointed
to a post in the service of the State
without being appointed to a post in the
service of the State. So
the appointment of a person to a post
in the service of the State is an appointment
to a post in the service of the State.
It is not possible that an employee of the
State can be appointed to a post in the
service of the State without being appointed
to a post in the service of the State.
So the appointment of a person to a post
in the service of the State is an appointment
to a post in the service of the State.

After he is not to be pensioned
it should be transferred to his
lighter office. This is sometimes
done Ues

If the rule in Article 171 is
held to apply to appointments such as
it is submitted the Govt.
translation of the Constitution of India

This is Mr. Garte's view
case for such a P.D. as
534 19.6.29 can only be passed
only "on strong pub-
-lic grounds". vide
S. 186 C.P.C. or art.
576 C.S.R.

I don't think this is
in point as I believe the
whole of the State Railway
Service will eventually be
non pensionable. All new
appointments are so. India
wants some time ago to apply
this principle even to the
Engineers Office.
Ues

itself thereby admitted on the services
of individuals who are best qualified
to carry out the duties of the
offices of the State.

In the case of a person who
is appointed to a post in the
service of the State, the appointment
is made by the Government.
The appointment of a person to a post
in the service of the State is an appointment
to a post in the service of the State.

A person who is appointed to a post
in the service of the State is an employee
of the State. The appointment of a person
to a post in the service of the State is an
appointment to a post in the service of the
State. The appointment of a person to a post
in the service of the State is an appointment
to a post in the service of the State.
The appointment of a person to a post in the
service of the State is an appointment to a
post in the service of the State.

A subordinate on a State Rail-
way has a very responsible
duties, and deficiency in his physical
or mental condition might lead to a
mistake which would involve the State
in considerable loss.

I have heard that
the A.O. has stopped
his pay.
J.D.B.
17/3/93.

It should be added
that no objection has
been taken by the
Act. Dept. to Mr.
holding the Press
-work.

Pension Department.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read again *Go.* dated 27th March 1893, *vs* 219. READ the following paper *Office note*
From the *Chief Secretary to Government* dated 29th March 1893, No. 610.

Стор 5. April 1893. № 304

On reconsideration

His Excellency the Governor-in-Council resolves to cancel para 3 of the G.O. read above.

True Extract!

W. L. L. L. L.

Ag Under Secretary to Govt.

The Accountant General.

The Chief Secretary to Government.

The Director of Public Instruction.

CHIEF SECRETARY
16 APR 93

I think that, had the rules been correctly understood at the time Mr. Gauthwaite's appointment should not have been allowed. But there were special circumstances in his case & he might have had a compensating provision though in fact he was admitted to a superannuated one. But however this may be, *factum valet* & he ought not to be disturbed. ^{Para 30} The Russian High order should be cancelled.

Mr. Gauthwaite was 60 years of age on 7 Jan 1873, & it is a question whether he should be permitted to retain the office of Translator. I think he might be given two years more.

28 Mar 24/0/02

1827
Public

48.111
N
order 12 April 3 43 00.

Im

Pensau Dept.

Recorded.

3/11
3/11/93

Latid 5"
Read 6" } April 1893.
Ap 7"

No 304.

Cancelling para 3 of fo. 2198
7th March 1893 Rev.

WITH ORDER