

Copy of Punjab Government Circular letter No. 728-8GS-62/1501, dated 15th January, 1962 from the Chief Secretary to Government, Punjab to all Heads of Departments, etc., etc.

Subject :—Allegations against individual Government servants in the Press—Action to be taken in the case of Government servants involved in legal proceedings—provision for legal and financial assistance

I am directed to say that Government have for some time past been considering the question of adopting a suitable procedure in regard to the action to be taken in the case of allegations against individual Government Servants in the Press and to provide legal and financial assistance to the Government servant involved in legal proceedings and have decided as follows :—

2. When allegations are made in the Press or by individuals against a Government servant in respect of his conduct in the discharge of his public function a preliminary confidential enquiry by a senior officer may be ordered by Government, depending on the nature of the case.

3. If Such an enquiry leads to the conclusion that the allegations are based on ignorance, insufficient information or even malice it should be further considered whether, having regard to the nature and circumstances of the case, any action in a Court of Law is necessary to indicate the conduct of the Government servant concerned, for in some cases, more publication of the result of enquiry may not always carry conviction with the public. If it is decided to have resort to a Court of Law, it should also be considered whether Government should themselves initiate proceeding in a Court of Law against the party which made the allegations or whether the Government servant should be required to initiate such proceedings if on the other hand, it is considered as a result of the enquiry that there are reasonable grounds to doubt the propriety and correctness of the conduct of the Government servant, or if the enquiry is not conclusive Government may entrust the case to the Vigilance Department for investigation or order a full departmental enquiry under the Punjab Civil Services Rules, or require the officer to indicate his conduct by resorting to a Court of Law.

4. In case where Government decide to initiate Criminal Proceedings themselves the provisions of Section 198-B of the Criminal Procedure Code should be made use of. According to these provisions the complaint can be filed within six months of the date of the alleged offence, by the Public Prosecutor directly in a Court of Session with previous sanction of the Government and the case will thereafter be pursued by Government. Where the Government decide to institute civil proceedings the usual procedure for institution of civil proceedings by Government may be followed.

5. In cases where the Government servant is required to vindicate his conduct in a court of law Government will give financial assistance as laid down in this letter.

6. When a Government servant desires to institute proceedings suo motu to vindicate his conduct in the course of the discharge of his official duties, he will have to obtain the previous sanction of the Government as required in rule 23 of the Government servants Conduct Rules, 1955.

If Government decide to grant such sanction no question of reimbursement of any expenses to the Government servant will arise, but advances may be granted as laid down in the following paragraphs.

7. The appropriate authority for taking decisions in each case will be the administrative Department concerned who will consult the Finance Department and the Legal Remembrancer to Government Punjab where necessary.

8. (a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant.

Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him by the State in respect of matter arising out of the or connected with his official duties or his official position. Should, however, the proceedings, conclude in favour of the Government servant. Government will entertain in his claim for reimbursement of costs incurred by him or his defence, and if Government are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, they will consider whether the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence would be reimbursed.

(b) Proceedings in respect of matters connected with official duties or position of the Government servant.

Government will not give any assistance to a Government Servant or reimburse the expenditure

(c) Proceedings instituted by private party against a Government servant in respect of matters connected with his official duties or position.

(i) If the Government on consideration of the facts and circumstances of the case consider that it will be in the public interest that Government should themselves under take the defence of the Government servant in such proceedings and if the Government Servant agrees to such a course, the Government servant should be required to make statement in writing as in Annexure 'A' and there after Government should make arrangements for the conduct of the proceedings, as if the proceedings had been instituted against Government.

(ii) If the Government Servant proposes to conduct his defence in such proceedings himself the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case of the proceedings conclude in his favour in determining the amount or cost to be so reimbursed. Government will consider how far the court has vindicated the acts of the Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

To enable the Government servant to meet the expenses of his defence Government may sanction at their discretion an interest-free advance not exceeding Rs. 500 or the Government servant's substantive pay for three months whichever is greater after obtaining from the Government servant a bond in the form reproduced as Annexure B. The amount advanced would be subject to adjustment against the amount, if any, to be reimbursed as above.

(d) Proceedings instituted by a Government servant on his being required by Government to vindicate his official conduct.

A Government servant may be required to vindicate his conduct in a court of law in certain circumstances. The question whether costs incurred by the Government servant in such cases should be reimbursed by the Government, and if so, to what extent should be left over for consideration in the light of the result of the proceedings, Government may, however, sanction an interest-free advance, a suitable instalments of an amount to be determined by them in each case on the execution of a bond by the Government servant in the form reproduced in Annexure 'B'.

In determining the amount of costs to be reimbursed on the conclusion of the proceedings, the Government will consider to what extent the court vindicated the acts of Government servant in the proceedings. Conclusion of the proceedings in favour of the Government servant will not itself justify reimbursement but will be a strong consideration in favour of doing so.

(e) Proceedings instituted by a Government servant suo motu with previous sanction of Government to vindicate his conduct arising out of or connected with his official duties or position.

If a Government servant resorts to a Court of Law with the previous sanction of Government to vindicate his conduct arising out of or connected with his official duties or position though not required to do so by Government, he will not ordinarily be entitled to pay any assistance but Government may in deserving cases, sanction advances in the manner indicated in sub-para C (ii) above, but no part of the expenses incurred by the Government servant will be reimbursed to him, even if he succeeds in the proceedings.

Clause (d) of article 320 (3) of the Constitution required consultation with the Public Service Commission or any claim by a Government servant for the reimbursement of the costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty. In order cases consultation with the Public Service Commission is not obligatory but it will be open to Government to seek the Commission's advice, if considered necessary. The question whether a case falls under article 320(3)(d) OF THE Constitution so as to require consultation with the Commission may at time be difficult to determine. It may be stated generally that the consultation is obligatory in a case where a reasonable connection exist between the act of the Government servant and the discharge of his official duties, the act must bear such relation to the official duties that the Government servant could lay a reasonable but not a pretended or a fanciful claim that he did it in the course of the performance of his duties.

9. The recovery of advance will be made in not less than twelve and not more than twenty-four equal instalments, the exact number being determined by the sanctioning authority.

The advance will be debitable to the head "P—Loans and Advances by State Government Loans to Government Servants—M—Other Advances—Advances for legal proceedings" for expenditure connected with the interest-free advances to Government servants involved in legal proceedings.

10. These instructions are being issued with the concurrence of the Finance Department,—vide their U.O. No. 5447-FG1-(DS)-61, dated the 21st December, 1961. I am to request that these instruc-

ANNEXURE 'A'

(Here enter description of the proceedings)

The Government of Punjab having been pleased to undertake my defence in the above proceedings. I hereby agree to render such assistance to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in the decision adverse to me.

Dated :

Signature of the Government Servant.

ANNEXURE 'B'

By this Bond, I--- (here give the name and other particulars of the Government servant including post held by him) acknowledge myself bond to the Government of Punjab in the sum of Rs.--- (here enter a sum representing double the amount advanced) to the said Government.

Now the above written Bond is conditioned to be void in case the above bounder (Government servant), his personnel representatives or any person acting for and on behalf of the above bounden (Government servant) shall, on demand, pay to the said Government or its representatives or assigns or their attorney authorised to receive the same, the said sum of Rs.--- but in the event of the above bounden (Government servant) or his personal representatives or any person acting for and on his behalf failing to pay the said sum on demand, the above written Bond shall remain in full force and effect.

Dated this the--- day of --- 19 .

Signature of the Govt. Servant.

Witnesses :—

(Published in the Punjab Government Gazette, Legislative Supplement Ordinary, dated the 26th January, 1962)