

Professional and Clerical Divisions of the Public Service. In respect of these divisions salaries are determined by the Commissioner alone, and Parliament merely votes the money necessary to fulfil the statutory contracts so made by the Commissioner. In respect, however, of the Administrative Division and the General Division the law is otherwise. In the Administrative Division the Commissioner has no voice in fixing salaries, and these depend solely on the estimates, in accordance with the former practice. In respect of the General Division it is provided by section 22 of the Act that the salaries are to be such as are determined by the Commissioner and provided in the annual estimates. In this case, therefore, the determination of the Commissioner is of no effect save so far as the salary so determined is approved by the House in passing the estimates. The function of the House is not merely to supply money for the payment of such salaries, but also to determine what these salaries are to be. The salary so voted by the House cannot be greater than that determined by the Commissioner, but it may be less. A similar provision is made in section 20 with respect to those officers of the Professional Division whose salaries exceed £700 a year. The reason for the distinction so made by the Act is that in respect of the Clerical and Professional Divisions the powers of the Commissioner are limited by the scheduled scale of salaries, whereas there is no scheduled scale for the General Division, and the power of the Commissioner to fix such salaries is therefore made subject to the consent of Parliament.

The foregoing considerations, however, in no way affect the question as to the legality or regularity of the course taken by the Government in respect of the estimates not before the Committee of Supply. In my opinion there is nothing in the Public Service Act, 1912, which in any way affects the established practice of the House with respect to the preparation, presentation, or passing of the estimates. The Public Service Commissioner has nothing to do with the estimates. The purpose of passing estimates is to authorize the expenditure of public money by the Executive Government. It is by this means that the Government obtains the supplies necessary to enable it to fulfil its legal obligations and to perform its functions. Save in special classes of cases, these estimates in no way determine what the legal obligations or liabilities of the Government are, or affect the rights of private persons to receive payment of public moneys. There is no reason why the Government should in its estimates ask at one and the same time for the whole of the supply which may be necessary during the entire financial year. The established practice in the past has been to insert in the main estimates merely the salaries as paid during the previous financial year, leaving all increases to be voted on the supplementary estimates. There is nothing in the Public Service Act to prevent the continuance of this practice. In the present instance, indeed, the adoption of this course is not merely lawful but practically necessary, for the classification of the Public Service by the Commissioner is not yet complete. It is as yet merely provisional, for every portion of it is subject to appeal to the Board of Appeal and may be altered by that Board. Until these appeals have all been disposed of, it is impossible for the Government or for the House to know what the statutory salaries of officers of the Public Service are, and it would seem very probable that this state of things will continue until after the passing of the Appropriation Act for the present year. The only duty of the Government, therefore, is to take care that in the main and supplementary estimates combined such supplies are obtained as will be sufficient to enable payment to be made in full of whatever salaries may be ultimately fixed in the final classification of the Public Service. In the meantime, and pending the passing of the Appropriation Act, the statutory salaries as fixed in the classification list will be paid in full out of imprest supply in the ordinary course.

The suggestion that the Public Service Act, 1912, requires the estimates for the present year to be based on and conformed to the salaries as fixed under that Act involves the inadmissible conclusion that the introduction and consideration of the estimates and the passing of the Appropriation Act must be delayed until the Board of Appeal has finished its work and finally determined all the salaries in the Public Service, an event which might not happen until after the close of the session or even the end of the financial year.

An additional reason for the adoption of the present course is that the statutory salaries commence only on the 20th August, the date of the publication of the Commissioner's classification. Salaries for that portion of the present financial year which elapsed before the 20th August must be voted on the estimates in the ordinary manner, and the Public Service Act, 1912, has no application. It is true that in the memorandum attached by the Commissioner to the classification list he indicates that these salaries will take effect as from the beginning of the present financial year, but I am not aware of any authority for so making the classification retrospective in its operation. If this is intended, a clause to that effect should be inserted in the Appropriation Act.

I may add that there is no legal necessity for the details of the statutory salaries of the Clerical and Professional Divisions to appear in the estimates at all. In future years, therefore, when the classification of these divisions is complete, it will be lawful either to vote an aggregate amount to meet these salaries or to continue the present practice of voting each salary individually. In the present year, however, the latter is the only practicable course.

I have to advise accordingly that the course taken by the Government in the present case is in accordance with law.

JOHN W. SALMOND, Solicitor-General.

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