

(1911) 04 MAD CK 0035
In the Madras High Court

K. Seshadri Aiyangar and Others

APPELLANT

Vs

Ranga Bhattar

RESPONDENT

Date of Decision : 07-04-1911

Acts Referred:

Citation : (1912) ILR (Mad) 631

Hon'ble Judges : Sundara Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. The plaintiff in this suit was an archaka in the great Vishnu temple of Srirangam. He instituted the suit against the managers of the temple for the cancellation of an order of suspension passed against him by the managers and to recover damages alleged to have been sustained by him and the value of perquisites which he would have earned if the suspension had not taken place. The only question for decision in this second appeal is whether the suspension which is found to have been otherwise justifiable in the circumstances was illegal on the ground that no notice was given to the plaintiff to show cause against it before the order was passed. The District Judge held it to be illegal on the authority of certain observations contained in Seshadri Ayyangar v. Nataraja Ayyar ILR (1898) Mad. 179, It may be stated that at the enquiry held after the suspension the plaintiff was found by the managers to be guilty of the offences complained of against him and he was suspended from office for a term by way of punishment. These offences were that he committed theft and concealed property belonging to the idol, while engaged in the performance of his duties as archaka. We are of opinion that the decision of the District Judge is not correct and that the order of suspension cannot be held to be invalid on the mere ground of absence of notice. According to the view taken by this Court a hereditary archaka like the plaintiff could be dismissed by the trustee but only for good reasons which are liable to examination by a Court of Justice, See Kristnasamy Tatachary v. Gomatum Rungachary (1868) 4 Mad. H.C.R. 63 and with regard to the dismissal of a trustee "Seshadri Ayyangar v. Nataraja Ayyar ILR (1898) Mad. 179, where the earlier cases are cited and examined. A different rule has do

doubt been recently laid down in the Bombay High Court in *Bhavani Shanhar v. Timmanna* ILR (1906) Bom. 508 by JENKINS, C.J., and Batty, J., where these learned Judges held that the bond fide dismissal of a maktesar by a devasthanam committee could not be reviewed by a civil Court. As the correctness of the decision in *Kristnasamy Tatacharry v. Gomatum Rungacharry* (1868) 4 Mad. H.C.R. 63 has not been impugned before us, we accept it as sound for the purposes of this case. The plaintiff is entitled to hold the office during his lifetime and on his death his heirs are entitled to succeed him. The order of suspension we have to deal with, is one not passed as a punishment on the plaintiff for an offence " of which he was found guilty but an ad interim order preventing him from performing his office pending the investigation of the charges of misconduct made against him. The suspension complained of in *Seshadri Ayyangar v. Nataraja Ayyar* ILR (1898) Mad. 179 was also a similar order. That case was, however, in other respects very different from the present one. The temple committee who passed the order in that case was a statutory body whose powers had to be determined by the interpretation of the provisions of Act XX of 1863. The question was whether the right of superintendence vested in them by that Act included the right to suspend a trustee. There is certainly authority for the position that a statutory power of dismissal which, according to the decisions, a temple committee possesses does not necessarily include the right to suspend as a punitive measure. [See American Cyclopaedia of Law and Procedure, article "Officers," vol. 29, page 1405 and *Barton v. Taylor* (1896) L.R. 11 A.C. 197 The decision of the majority of the Judges in that case proceeded largely on the ground that the result of a suspension might be to create a temporary vacancy in the office of trustee without provision for any one in whom the management of the temple could vest for the time being. The trustee was not a servant of the committee which possessed only the power of supervision over him, conferred on it by statute. The position of an archaka on the other hand, though he may have a hereditary tenure in the office, is, in our opinion, essentially that of a servant The trustee is the representative of the temple and the archaka must be subject to his disciplinary authority. It cannot be said that his position in relation to the trustee is similar to the position of the trustee in relation to the committee. We may observe that *Collins, C. J.*, in holding that the power of suspension is the same as the power of dismissal did not apparently have regard to the difference, which in our opinion is important, between punitive suspension and suspension pending enquiry which is incidental to the exercise by the trustee of his right to enquire into a charge of misconduct against the archaka and to dismiss him in cases where serious misconduct is proved. *Seshadri Ayyangar v. Nataraja Ayyar* ILR (1898) Mad. 179 cannot, therefore, be taken to govern this case. What then is the rule applicable to the case of a hereditary servant in a case like the present? In our opinion the sounder view is that no notice is required for an ad interim suspension pending enquiry into a complaint against a servant entitled to hold office during good behaviour or for life. The nature of the office may be such that instant suspension from the functions of the office would be necessary in the interests of the institution and

to hold that the officer could not be suspended without notice and without explanation received from him might be seriously detrimental to the interests of the temple. In the present case, for instance, the charge against the plaintiff was that he was actually found removing coins strewed over the deity and concealing other property which was within the precincts of the shrine. Would it be reasonable to hold that a person regarding whom there were good grounds of suspicion of such conduct should be permitted to continue to officiate within the shrine and give him chances of repeating his offence until a formal enquiry into his conduct could be completed? We are of opinion that such a view would seriously jeopardise the interests of the institution. The suspension must be regarded as incidental to the right possessed by the trustee of enquiring into and punishing the archaka for any offence committed by him and may be fairly taken to come within the purview of his disciplinary jurisdiction over the servants of the temple. We have little doubt that temple trustees have generally exercised this right without question. In the American Cyclopaedia of Law and Procedure, vol. 29, page 1405, it is observed: "But where the power of removal is limited to cause, the power to suspend, made use of as a disciplinary power pending charges, is regarded as included within the power of removal. Power to suspend may be exercised without notice to the person suspended, and the suspension, when made in the exercise of a legal power to suspend, is irreviewable by the Courts, and takes effect from the time that the order of suspension is issued and served."--See also Dillon on "Municipal Corporations," vol. I, page 332, Section 247 We do not mean to lay down that in every case where the right to dismiss exists, the right of suspension must necessarily be incidental to it; but such might possibly not be the case where the right depends upon the construction of a statute as for example where the right of Government to deal with a Municipal Councillor for misconduct was in question--*Vijayi Ragaoa v. Secretary of State for India* ILR (1884) Mad. 466 . The right may not exist also where the question depends upon the construction of the rules of a Corporation or a quasi-Corporation like a club. But in the case of servants subject to the discipline of a trustee we think these analogies should not be applied.

2. We are also of opinion that even if the right view should be that notice before suspension is essential in such a case, the Court should not set aside the order where after enquiry it has been found that it was proper and justifiable in the circumstances. This view is supported by the decision in *The King v. The Mayor, etc., of London* (1787) 8 T.R. 209 where the Court of King's Bench in England refused to grant a mandamus against the Common Council of London to restore a clerk entitled to a life tenure in his office on the ground of want of notice before suspension. See also "Halsbury's Laws of England," vol. 8, page 330 (paragraph 743). Where an order against an officer by his superiors or by a corporate body is not liable to be reviewed by the Courts, it will no doubt be set aside on the ground of want of notice on a principle similar to that applicable to the decision of an arbitrator. But where the person affected by such an order has the right to appeal to the Courts against it and to have the propriety of the order

examined by it and the Court; has found the order justified it will be useless to set aside the order as it could be passed again immediately after giving notice. The Courts will not order a restoration where they can see there is good ground for removal and that the order to restore would be without practical and useful effect--Dillon on Municipal Corporations., Section 254. Such a case would be similar to an order passed irregularly by an inferior Court, which the superior Court finds to be a proper order notwithstanding the irregularity. In *Vijaya Ragavi v. Secretary of State for India* ILR (1884) Mad. 466 it was held that the dismissal of a municipal councillor for misconduct would not be set aside by the Court merely on the ground of want of notice, if the misconduct itself is proved before it. See *Vijaya Ragava v. Secretary of State for India* ILR (1884) Mad. 466 Mr. Ramachandra Ayyar contends that his client is entitled to the profits of his office during the time that he was under suspension without notice. This proposition is, in our opinion, quite untenable as the suspension was found to be proper at the subsequent enquiry. The correct rule in such cases is, we think, that laid down at page 1406 of vol. 29, *American Cyclopaedia*, and in *Dillon on Municipal Corporations*, Section 247, although if the order is set aside as improper he might be entitled to recover the profits. In the result we reverse the decision of the lower Appellate Court and restore that of the District Munsif with costs both here and in the lower Appellate Court.