
(1935) 03 MAD CK 0018
In the Madras High Court

V. Venkateswara Aiyar

APPELLANT

Vs

Sri Meenakshi Sundareswarar Devasthanam

RESPONDENT

Date of Decision : 26-03-1935

Acts Referred:

Public Health Act — Section 189

Citation : 157 Ind. Cas. 873 : (1935) 42 LW 622 : (1935) 69 MLJ 206

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This Revision Petition arises out of a suit against the Madura Devasthanam, for damages for wrongful dismissal. The

plaintiff was employed under the Devasthanam in various capacities between November 1926 and November 1928, till on 2nd November, 1928

he was dismissed from service by the Trustee of the Devasthanam. The Devasthanam pleaded that the dismissal was for just and proper cause. The

lower Court has however not dealt with this question but held that even if the dismissal was improper, the plaintiff had no cause of action, because,

in its view, he held office only at the pleasure of the Trustee and could therefore be dismissed without any notice, even apart from justifying cause

for dismissal. Objection is taken in the Revision Petition to this view of the lower Court.

2. The affairs of the Devasthanam are managed under a scheme framed in O.S. No. 4 of 1922 (District Court, Madura). There is a trustee who acts

under the control of a Committee. One of the clauses in that scheme (Clause 24) provides that the trustee shall have full and exclusive control over

all the servants and officials of the Devasthanam. "He shall have power to fine, suspend, reduce or remove any servant or official of the

Devastanam"". Special provision is however made in respect of charges against certain officials and mirasi servants. Referring to the provision in the

Religious Endowments Act which provides that schemes framed by the Court prior to the passing of the Act shall be deemed to be schemes

settled under the Act, the Court below has held that the relationship between the trustees and any person appointed by him as clerk of the

Devastanam is covered by the Statute"". It is difficult to understand the precise import of this remark. The above provision was made in the

Religious Endowments Act only with a view to apply even to pre-existing schemes, the provisions of the Act relating to modification of schemes

etc. It will be a very strange interpretation of that provision to read into it an implication that every servant in a temple governed by a scheme

becomes a statutory officer or that his office is lone created by statute. The context in the judgment of the District Munsif suggests that he must

have made the above remark as a step towards his next argument, based upon Chellam Aiyar v. The Corporation of Madras (1917) 6 L.W. 284

that a person holding office under such a scheme holds office only ""at pleasure"" and is therefore liable to summary dismissal without notice or

without cause assigned. The conception of office ""at pleasure"" is associated with public offices under the Crown. It is unnecessary to examine

whether this conception of the tenure was developed on grounds of public interest cf. Dunn v. The Queen (1896) 1 Q.B. 116 or as a well

understood incident of public service. Shanton v. Smith (1895) A.C. 229. Chellam Aiyar v. The Corporation of Madras (1917) 6 L.W. 284

related to an employee of the Corporation of Madras. It is not clear whether the learned Judges intended to rest their decision on the "ground that

he was a public officer or on the ground that the statute which, in their opinion, created the office or authorised the appointment intended only to

create or direct an appointment to be held at pleasure. Of the two cases which they cite hi this connection, Smyth v. Latham (1833) 9 Bing. 690 :

131 E.R. 773 proceeded on the construction of the statute under which the Paymaster of Exchequer Bills was appointed. It is obvious that the

Judgment of the"" Exchequer Chamber dealt with the case as one relating to a public office, though their conclusion was also based on a detailed

analysis of the scheme and policy of the Act. The other case, Notley v. London County Councils (1925) 3 K.B. 580 related to an office under a

Local Authority and the judgment is not based upon the principle of "public office" but upon the terms of the Metropolis Buildings Act, 1844,

which referring to the very office" of District Surveyor then in question enacted that the office was to be held at the pleasure ""of the Justices. It

would appear that similar provision is made even in other statutes in England, in respect of employees under Local Authorities cf. Section 189 of

the Public Health Act, discussed in *Brown v. Dagenham Urban District Council* (1929) 1 K.B. 737.

3. It seems to me too much in the present case to say that a clerk in the Devasthanam either holds a public office or an office whose tenure is

defined by statute. It is argued that apart from the considerations adverted to the decision in *Chellam Aiyar v. Corporation of Madras* (1917) 6

L.W. 284 must be understood as laying down as a matter of grammatical construction that words similar to those found in Clause (24) of the

Madura Devasthanam Scheme give the appointing authority power to appoint officers only on condition of their holding office at pleasure and that a

condition to this effect must be imported into the contract of appointment. I do not think this is a fair reading of the scheme. Its provisions were

intended to define the respective spheres and authority of the Committee, the Trustee, the Superintendent, the Treasurer, etc., and it cannot be

assumed that it was also meant to define the incidents of contracts of employment which the temple authorities may enter into. It is true that Clause

(24) itself makes certain special provisions about the dismissal of mirasi servants, the temple Superintendent, Treasurer and Shroff. That was

apparently because it was considered necessary in those cases to impose further limitations on the power of dismissal than the ordinary law will

impose. For instance, in the case of a mirasi servant, there can be no question of dismissal even after notice. He can be dismissed only for just

cause, and after due enquiry. It is not right to assume that the power of dismissal referred to in Clause (24) is a power of summary dismissal that is

even without notice cf. *African Association, Ltd. Allen, In remand Green v. Wright* (1876) L.R. 1 C.P.D. 591.

4. A long course of decisions in England has established that if no custom or stipulation as to notice exists and if the contract of service is not one

which can be regarded as a yearly hiring, the service is terminable only by reasonable notice, except where the servant is dismissed for just cause

see the cases cited in *Kamini v. Rebati* (1920) 33 C.L.J. 336 ; 20 Halsbury, "Master and Servant" para. 187. Reference may also be made to

Bimalacharan Batabyal v. Trustees for the Indian Museum ILR (1929) 57 Cal. 231 as showing that even where a body is created by statute

(trustees of the Indian Museum), the relations between that body and its employees will ordinarily be only those of private service. I am therefore

unable to agree in the view that the plaintiff was liable to be dismissed without notice and without just cause.

5. The decree of the Court below must be set aside and the case sent back for trial of the question of justifying cause for dismissal and if that be

found against the defendant for the award of such damages to the plaintiff as the Court may find reasonable. Costs to abide.