

(1934) 09 MAD CK 0022
In the Madras High Court

Vedagiri Sastriar

APPELLANT

Vs

Jagathguru Sankarachariar Swamigal

RESPONDENT

Date of Decision : 21-09-1934

Acts Referred:

Citation : AIR 1935 Mad 128 : 155 Ind. Cas. 591 : (1935) 41 LW 40 : (1935) 68 MLJ 132

Hon'ble Judges : Horace Owen Compton Beasley, J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—This is an appeal from a judgment of Pakenham Walsh, J. in S.A. No. 396 of 1929. The

plaintiff is the appellant here and was a hereditary stanika office-holder of the temple of Sri Kamakshi Amman in Conjeeveram. The first defendant

in the suit is the trustee of the temple and the second defendant is his agent. The suit was for the recovery of emoluments due to the plaintiff from

31st December, 1918 to 11th February, 1919. The suit was filed on 10th January, 1924, more than three years and less than six years from the

date of the cause of action. One plea taken at the trial was that the suit was barred by limitation. The trial Court, the lower Appellate Court and

Pakenham Walsh, J. have upheld that plea. At the outset it must be stated that the emoluments sued for were received by the appellant in kind, that

is to say, so many measures of rice and also food offerings. These have been assessed in the plaint at Rs. 81-14-4. The question here is which

Article of the Limitation Act applies. Both the lower Courts and also the second Appellate Court have applied Article 102 following Baradwaja

Mudaliar v. Arunachala Gurukkal I.L.R.(1917) 41 Mad. 528, which is a direct decision upon this point. There the Court had to consider whether

Article 36 of the Limitation Act or Article 102 or Article 120, applied and it was held that the claim there which was exactly similar to the claim

here, fell under Article 102 and not under Article 36 or Article 120. In none of the cases cited by the appellant in support of his argument was

there any consideration as to whether Article 102 should be applied rather than Article 120. The earliest case is Subbier v. Ranga Aiyangar (1899)

9 M.L.J. 163. It was there held that a suit for the recovery of profits of a hereditary office by a hereditary stanikam holder in temples fell under

Article 120 and not, as contended, under Article 36. The applicability of Article 102 was not there considered and this case has been dissented

from in Baradwaja Mudaliar v. Arunachala Gurukkal I.L.R.(1917) 41 Mad. 528. In Venkatavaraga v. District Board of Tanjore I.L.R.(1892) 16

Mad. 305 the applicability of Article 102 was not considered and in any case on the facts of that case it does not appear to us to be much in point.

In Rathna Mudaliar v. Thiruvengkatachariar I.L.R.(1899) 22 Mad. 351 the question was whether the marriage fees payable to the archaka and

claimed by him fell within Article 144 or Article 120. The lower Courts held that Article 144, applied but the High Court applied Article 120 and

Article 102 was not considered. As Pakenham Walsh, J., in his judgment says, presumably the fees there would be payable by the persons who

were married. This, in our view, would be an important distinction because it could be contended with reason that the relationship of employer and

servant did not there exist. This question has been considered in two recent cases in this High Court. The first is Chinnaswamy Thathachariar v.

Srirangam Nallan (1927) 109 I.C. 771. It was in that case observed that:

An office in connection with such institutions must really be regarded as a bundle of duties liable to be performed by the same persons under a

particular designation and carrying with it certain emoluments.

2. And the applicability of Article 124 was considered in connection with a claim for the recovery of the emoluments attached to an office and it

was held that Article 124 did not apply. The Court, however, was of the opinion that there would be no limitation at all in such a suit. The second

case is S.A. No. 1523 of 1927. There, Jackson, J., in dealing with Chinnaswamy Thathachariar v. Srirangam Nallan (1927) 109 I.C. 771, whilst

agreeing that Article 124 would not apply to such a suit declined to accept the

view that there is no bar of limitation and was of the opinion that the Article applicable would be Article 120. The applicability of Article 102 was not discussed in either of those cases. So far as this High Court is concerned *Baradwaja Mudaliar v. Arunachala Gurukkal* I.L.R.(1917) 41 Mad. 528 is the only direct decision upon the point. A reference to Article 7, in a claim "for the wages of a household servant, artisan or labourer not provided for by this schedule" one year's period of limitation is given starting from the time when the wages accrued due. This article must be contrasted with Article 102, which deals with a claim "for wages not otherwise expressly provided for by this schedule." It is clear that Article 7, and Article 102 deal with two different classes of wage-earners. The former obviously deals with a lower class of wage-earner to that dealt with by Article 102 in respect of which a three years' period of limitation is given. In spite of the appellant's contention that emoluments such as these cannot correctly be described as "wages", in our opinion, the real test is whether those emoluments are payable by an employer to his servant, in other words, whether the relationship of employer and servant exists. If it does, then we think that what is payable can be described as wages. Upon this point also there is a direct decision by a Bench of this His Court, viz., *Seshadri Aiyangar v. Ranga Bhattar* I.L.R.(1911) 35 Mad. 631 : 21 M.L.J. 580, where Benson and Sundara Aiyar, JJ., say:

The position of an archaka, 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.

3. It was, however, contended by the appellant that in that case the Court was merely considering the position of an archaka with reference to the disciplinary powers of the trustees. It is no doubt true that the disciplinary powers of the trustees were there in question but it was essential that the position of the archaka should be established first of all before the right to suspend him by the trustees could be sustained. In our view, the decision in *Seshadri Aiyangar v. Ranga Bhattar* I.L.R.(1911) 35 Mad. 631 : 21 M.L.J. 580 is correct upon this point; and an archaka is, therefore, a servant of the temple trustees and if he receives perquisites or emoluments, he receives them as a servant and the word "wages" used in Article 102

seems to us to be a quite sufficiently correct description of what he receives. In our opinion, before the residuary Article 120 can be applied to a claim, it must be established clearly that it does not fall under any other Article. For the reasons we have given, the claim in this suit does not fall under Article 120, because, in our opinion, it is one to which Article 102 applies. This Letters Patent Appeal must, therefore, be dismissed with costs.