

# MADRAS RECORD OFFICE.

Government of Madras.

*Indiv* DEPARTMENT.

|                     |                         |
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| G.O. No. 1524       | Press<br><del>Mis</del> |
| 15-16               |                         |
| Dated 18-11-19-1857 |                         |

Not to be folded or roughly handled

*Fort St. George, Judicial Consultation, 24th November 1857.*

No. 15. Read the following letter from R. C. LEWIN, Esq., Acting Subordinate Judge of Bellary; to E. MALTBY, Esq., Acting Chief Secretary to Government, Fort St. George, dated 13th October 1857, No. 438.

SIR,

I have the honor to acknowledge the receipt of Extract of Minutes of Consultation, under date the 5th Instant, directing the Court of Sudder Udalt to issue instructions for the recovery from me of that portion of the pay of Vencatramiah, Sheristadar of the Subordinate Court of Salem, which he would have drawn had he been absent on leave during the period of his temporary exclusion from office.

2. I am a good deal surprised at this communication, and have to request, that you will be good enough to lay this letter before the Right Honorable the Governor in Council, with my request, that he will be pleased to re-consider his decision, and cancel his proceedings of the 5th Instant.

3. In dismissing Vencatramiah, I only exercised the power which was vested by Pension Rules, dated 17th September 1855, in every head of an office of removing a man that was considered worn out and incompetent, and I must confess myself unable to appreciate the justice of making me responsible for his pay, merely because the Judges of the Sudder Udalt, (who had no personal knowledge or experience of the man, as the Acting Session Judge who confirmed my order, had, in his capacity of Subordinate Judge, and consequently were not so well situated as I was for judging of his qualifications) thought fit to declare, that his dismissal was unjust, and that too, on his own representations, and without calling upon me for detailed information of my reasons for forming the conclusion I had arrived at, and without affording me an opportunity of commenting on his statements.

4. Even admitting that the Right Honorable the Governor in Council has the power of fining officers for errors of judgment in the discharge of their duty, I beg with all due deference to remark, that it seems to me that the principles of justice imperatively require, that his Lordship should first make himself acquainted with the case, and also should afford the officer whose proceedings are being considered, an opportunity of defending himself. In my case, I regret to say, neither has been done. His Lordship assumed the correctness of the opinion of the Judges of the Sudder Udalt, which, as I have above shown, was formed on imperfect information; and no intimation was given me that my proceedings were under the consideration of Government.

5. But I am not prepared to admit that I am thus liable to fine, no instance has, so far as I am aware, occurred, of Government thus assessing damages for the benefit of a man said to be aggrieved. Act XVIII of 1850, provides, that no officer shall be liable to be sued for damages for any act done in good faith, and I cannot believe, that it will be seriously maintained that whilst thus protecting their officers from fine, even after a full, fair and open trial, for errors that they may have committed, that the Government silently reserved to themselves the right of assessing damages without any trial at all.

6. Something I might say as to the impossibility likely to be experienced of conducting business efficiently in public offices in the Provinces, if officers are to be held thus liable for acts done conscientiously in the discharge of their duty, but I do not consider this the place for discussing that subject. I confine myself to respectfully remonstrating with the Right Honorable the Governor in Council on the hardship of being illegally fined for an act done in good faith, in the discharge of my duty, and request, that he will re-consider and cancel Extract of Minutes of Consultation, dated 5th October 1857.

(Signed) R. C. LEWIN,  
*Acting Subordinate Judge.*

No. 16. ORDER THEREON, No. 1504; dated 19th November 1857.

1. In this letter, Mr. Lewin applies to Government to relieve him from their order of 5th October, No. 1273, under which he was called upon to pay to Vencatramiah, Sheristadar of the Subordinate Court at Salem, half his salary for the time during which he was placed out of office by a hasty and improper act of Mr. Lewin.

*Items for judicial let, have been*

*Fort St. George, Judicial Consultation, 24th November 1857.*

2. The principal difficulty which Government experience on this occasion arises from the objectionable tone of Mr. Lewin's letter. He is entirely in error in assuming that the Court of Sudr Udalut acted without information in the case, and has laid himself open to severe rebuke for arguing on such an assumption and for his unfounded and indecorous remarks in para. 4. Mr. Lewin's reasons for dismissing Vencatramiah were of course recorded, so that further explanation from him was unnecessary, and the Sudr Udalut had also before them the opinion of the Acting Civil Judge, and a report from the Officer now presiding over the Subordinate Court as to the manner in which Vencatramiah has performed his duty since his restoration.

3. The Government have also to observe that Act XVIII of 1850, to which Mr. Lewin refers, has no application to the present case. That Act was passed to protect Officers from Civil actions for Judicial acts done bonâ fide in the discharge of their duty; but on this occasion Mr. Lewin was performing no Judicial duty and of his own accord removed for incompetency a servant of the Court who has proved himself able to fill his office in a satisfactory manner.

4. The Government therefore feel strong disapproval of Mr. Lewin's proceedings, first, in hastily dismissing the Sheristadar, and secondly, in addressing them in a highly unbecoming manner, but although Mr. Lewin's conduct thus calls for no lenient consideration, the Government are led to alter their order from finding that the Acting Civil Judge, on an appeal being made to him by the Sheristadar, thought himself precluded from interfering by the order of the Government of India, which vested in Heads of offices, to a certain degree, authority to decide on the efficiency of their subordinate servants.

5. The Acting Civil Judge, it is observed, strained the intention of that order, and ought to have brought the subject before the Sudr Udalut for decision, as he disapproved the Sheristadar's removal and yet felt unable to do him justice. But by his not doing so, Mr. Lewin is to a certain degree relieved from the consequences of his act, and the Government therefore abstain on this ground from enforcing their late order. As the Sudr Udalut consider that the Sheristadar ought not to lose his salary, that portion of it which he would have drawn if absent on leave is to be paid to him, and charged for among the contingent expenses of the Court.

(Signed) T. PYCROFT,  
Chief Secretary.

My dear Pycroft -  
I have thought it best  
to forward the alteration of  
the order on the assumption  
in P 4 & 5 of the new draft  
instead of on the principle  
of encouraging the free action  
& independence of the Judge.  
- Govt. can <sup>show</sup> act on this prin-  
ciple, but if it is attended  
to now, the question arises  
why was it not thought of  
when the first order was  
prepared

Yours sincerely  
The

Letter from Mr. R. C. Sewin, Actg. Sec.  
of Bellary - d. 13 Oct.  
No. 438

The Govt observe that Mr. R. C. Sewin is in error  
in supposing that the Court of Sadr Adawlat  
acted ~~in~~ <sup>without</sup> perfect information, ~~that~~ when  
recommending that he should be required  
to make good the salary which the Sheristah  
Kusotramach lost by his removal from  
office, and they cannot approve of Mr.  
Sewin acting on such an assumption.

Mr. Sewin's reasons for dismissing Kusotramach  
were of course recorded, so that further  
explanation from him was unnecessary,  
and the Sadr Adawlat had also before  
them the opinion of the Act Civil Judge  
& a report from the Officer now presiding  
over the Subordinate Court as to the man-  
ner in which Kusotramach has performed  
his duty since his restoration.

The Govt have also to observe that  
Act XVIII of 1850 to which Mr. Sewin refers  
was passed to protect Officers from civil  
actions for Judicial acts done bona fide

in the discharge of their duty & does not therefore apply to the present case. - On the ~~former~~ occasion under review Mr. Lewin was performing his judicial ~~duty~~ <sup>act</sup> but of his own accord removed for incompetency a servant of the Court who ~~the~~ <sup>for</sup> has proved himself able to discharge his duty in a satisfactory manner. - It is not equitable that by this hasty act the Sheristadar should lose his salary, nor ought the loss to fall on the Public Treasury. - Mr. Lewin has therefore been called upon to make good that portion of salary which the Sheristadar would have received <sup>he had been</sup> if absent on leave for the period of his deprivation of office & to this order the Govt. adhere

Yr

Remind  
Draft  
Extract Mins. of Court. Dated 19 November 1857.  
- Read letter from Mr. R. C. Lewin Acting Sub Judge of Bellary d. 13 Oct/57

1/ In this letter Mr. Lewin applies to Govt. to release him from their order of 5 Oct. No 1273, under which he was called upon to pay to Sanctamiah Sheristadar of the Sub Court at Salem half his salary for the time during which he was <sup>placed</sup> out of office by ~~the~~ <sup>his</sup> a hasty & improper act of Mr. Lewin.

2/- The principal difficulty which Govt. experience on this occasion arises from the questionable tone of Mr. Lewin's letter. - He is entirely in error in supposing that the Court of Sade Khaw. - but acted without information in the case, & has thus been obliged to open to debate for regarding as such an assumption & for his unbecoming & indecorous remarks in Para 4. Mr. Lewin's reasons for dismissing Sanctamiah were of course recorded so that further explanation from him was unnecessary, & the Sade Khaw. had

also before them the opinion of the  
Act Civil Judge & a report from the Officer now  
presiding over the Subordinate Court  
as to the manner in which Kucstrawish  
has performed his duty since his restor-  
ation -

3 - The Govt have also to observe  
that Act XVIII of 1850 to which Mr Sewin  
refers has no application to the present  
case. That Act was passed to protect  
Officers from civil actions for judicial  
acts done bona fide in the discharge  
of their duty, but on this occasion Mr  
Sewin was performing no judicial duty  
and of his own accord removed from his  
competency a servant of the Court who  
has proved himself able to fill his office  
in a satisfactory manner. -

The Govt therefore feel strong disapproval  
of Mr Sewin's proceedings, firstly in hastily dismissing  
the Sheristadar, & secondly in addressing  
them in a highly unbecoming manner,  
but although Mr Sewin's conduct thus  
calls for no lenient consideration, the

Dated 7 Sept 1855  
Communicated to  
Head of Office with  
S. No. 11 Oct 1855  
No 294

Govt are led to alter their order  
from regarding that the Act Civil  
Judge, on an appeal being made to  
him by the Sheristadar, thought himself  
precluded from interfering by the  
order of the Govt of India which vested  
in head of office, to a certain degree,  
the authority to decide on the efficiency  
of their subordinate servants.

5 - The Act Civil Judge, it is shown, strived  
the intention of that order & ought to have  
brought the subject before the Sad Adalat  
for decision as he disapproved the Sheri-  
tadar's removal & yet felt unable to do  
him justice. - But by his not doing  
so Mr Sewin is to a certain degree  
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from enforcing their late order. - As  
the Sad Adalat consider that the  
Sheristadar ought not to lose his salary  
that portion of it which he would have  
drawn if absent on leave is to be paid  
to him & charged for the contingent  
expenses of the Court.

To the Court of Sad Adalat  
" B. C. Sewin Esq. - Bikaner }  
Act General  
Civil Auditor

Sept 23<sup>rd</sup> 1855  
The

June 25<sup>th</sup> to Aug 23<sup>rd</sup> 1858  
At 22 of 1858 - Penna 21

C. No. 22-23

6/10/57

By the Court - 24<sup>th</sup> Nov  
Judicial. 1857 & 1858

28. 13074

Contract of 1858 of 1858

28/10/1858

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