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MADRAS RECORD OFFICE

Government of Madras

Revenue

DEPARTMENT

G.O. No.

920

~~B.P. No.~~

Press

Mis.

Dated

24th July

195

1874

Original

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

24th July 1874, No. 920.

Read the following paper:—

No. 197. *From J. GROSE, Esq., Secretary to the Board of Revenue, to the Secretary to Government, Revenue Department, dated Madras, 20th June 1874, No. 1515.*

I am directed to solicit instructions on three points connected with G.Os., dated 19th February 1873, No. 179, and 21st February 1874, No. 239, all of which are involved in the discussion of the papers now before the Board.

2. First, with regard to the power to sanction the prosecution of Tahsildars and Deputy Tahsildars possessing magisterial powers.

3. Under Section 9 of the Criminal Procedure Code, all Magistrates *shall* be appointed and *may* be removed by the Local Government. From paragraph 2 of G.O., dated 19th February 1873, it appears that Government interpret this section as meaning that Magistrates shall not be removable from office except by Government. In paragraph 3 they expressly declare that Tahsildars and Deputy Tahsildars shall not be removable without their sanction.

4. It follows that all Magistrates (including Taluk Sheristadars in that capacity) and all Tahsildars and Deputy Tahsildars fall within the scope of Section 466, Criminal Procedure Code, which refers to the prosecution of any Magistrate or "any public servant not removable from office without the sanction of Government."

5. Section 466 seems to give two powers, the first of which Government possess and may allow other authorities to possess also, and the second of which Government alone possess and cannot allow any other authority to possess.

6. The first is the power to sanction *the entertainment of a complaint* of an offence committed by officers not removable without the sanction of Government in their official capacity.

7. The second is the power of the second paragraph of the section, viz., to sanction *the prosecution* of such public servant for an act said to have been done in his official capacity.

8. These two powers seem to the Board to be powers to do the same thing, but it is possible that a distinction may be drawn between them. Apparently Government noticed the fact that there were two provisions in the section when G.O., dated 19th February 1873, No. 197, was passed, for both are mentioned in paragraph 1; but they thought they could delegate both powers to the Board, and did so.

9. As stated above, the Board doubt whether any public servant not removable from office without the sanction of Government can be prosecuted without express sanction obtained direct from Government. If they are right, a reference to Government will be necessary whenever it is desired to prosecute a Tahsildar or Deputy Tahsildar (in either of his capacities) or a Taluk Sheristadar in his magisterial capacity. This will cause a great deal of new correspondence, and the Board submit that the opinion of the law officers on the subject might be obtained.

10. Next, with regard to the "removal" of the same officers. From G.O., dated 21st February 1874, No. 239, it appears that a report to Government is necessary in

all cases not only of the dismissal of Tahsildars and Deputy Tahsildars, but also of their removal from one place to another in which their salary is less. Obviously such a report is equally necessary in the case of Taluk Sheristadars in their magisterial capacity.

11. The Board have papers before them which show that some Collectors believe they have no longer power to suspend Deputy Tahsildars or Taluk Sheristadars without reference to higher authority.

12. I am accordingly directed to request that Government will decide whether any reference to them is necessary in the following cases:—

- (1.) When the officers above mentioned are transferred to other stations where they occupy the same position without loss of salary.
- (2.) When they are suspended from office temporarily.
- (3.) When Deputy Tahsildars or Taluk Sheristadars are dismissed.

13. Finally, the Board wish to be informed whether Taluk Sheristadars should be placed in the position given to Tahsildars and Deputy Tahsildars by G.O., dated 19th February 1873, No. 197. As they are in an inferior position, there is not the same reason for giving them equal protection against prosecutions, &c.; but the arguments used by Government with regard to Deputy Tahsildars apply with equal force to Taluk Sheristadars.

No. 198.

ORDER THEREON, 24th July 1874, No. 920.

Miscellaneous.

His Excellency the Governor in Council observes that the distinction between the first and second clauses of Section 466 of Act X of 1872 has already been indicated in G.O., 3rd July 1874, No. 1220, Judicial Department. An offence committed by a public servant *in his capacity as such public servant* comes under the first clause and falls within the jurisdiction of the Board with reference to G.O., 19th February 1873, No. 197. The prosecution of such an officer for an act done *in the discharge of his duty* must, as provided in the second clause, be sanctioned by Government, and this power cannot be delegated as was pointed out in the concluding sentence of paragraph 1, G.O., 17th February 1873.

2. The Governor in Council does not think that the section intends to make any difference between the *entertainment of a complaint* and the *prosecution*. Both terms are used in Clause 1 to mean one and the same thing, and the Board can sanction such prosecution in cases which fall within their jurisdiction.

3. In regard to the two first cases referred to in paragraph 12 of the Board's Proceedings, it is not the wish of Government that any reference to them should be made when transfers or suspensions are ordered. The word "removal" in Section 9 is a technical term implying dismissal from the bench, and does not include such administrative measures as those indicated above.

From the way in which the third case is put, it might appear that the Board wished to withdraw from Deputy Tahsildars the protection afforded them in their general capacity by G.O., 19th February 1873, No. 197. Their dismissal without the sanction of Government would place them in the same position as they were before that order was passed. The Governor in Council is not prepared to authorise any alteration as regards these officers.

4. It is not the intention of Government that Taluk Sheristadars should receive the protection in their Revenue capacity which it was the object of Government to give to Tahsildars and Deputy Tahsildars when passing G.O., 19th February 1873, No. 197.

5. But Taluk Sheristadars in their magisterial capacity are entitled to the same protection as other Sub-Magistrates (G.O., 3rd October 1873, No. 1586, Judicial Department).

6. When such officers are dismissed for reasons unconnected with their magisterial duties, a report should be made to Government in order that the sanction to their employment as Magistrates may be revoked. It seems clear that the appointment of Magistrate can only be cancelled by the authority which made it (Section 9, Criminal Procedure Code).

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

Exd. J. Wright.

C No. 2087.

From Secy. to the B^d of Revenue. Dated 20th June 1874.

FOR ORDERS.

Sect 9 of the Comm. Proc. Code
says "All ... Magistrates
shall be appointed & may
be removed by the Local Govt."
This seems to be in clause
transfers. (but not temporary
transfers) he can do the trans-
fer involves removal & entails ap.

- prohibition.

Section 466 refers to two descriptions of acts done - one, an offence by a public servant & the other an act done in the course of duty as judge. The Complaints of the former may be entertained with the sanction of just. or of some authority in the power delegated of giving sanctions - ~~if~~ the latter

cannot be entertained without the sanction of just.

I presume the entertainment of a Complaint means trial from first to last.

I have no objection to a reference of the Complaint just.

L. D. S. 29. 6.

From the Secretary to the Board of Revenue
of 20th June 1874 to 2087

"Appointment & Removal"
in Section 9 are technical
terms in Law. The latter
means dismissal from
the bench and does
not include mere
transfer or administrative
measures such as suspension
reduction &c. The 2^d point
raised by the Board shows
I think he answered
in this sense.

As to the 1st point
Section 66 provides
(i) for the delegation by
Government of the power
to authorize preliminary
inquiry on complaint
against such public
(ii) for the authorization
of

C 27th June 1874 R 7th July

of such preliminary
inquiry by the accused's
Superior Authority unless
expressly interdicted from
so doing by Government.

The Government has
practically, I think, limited
the powers of all Superior
Officers under 2^d Clause
and delegated the powers
in question to the Board.

The actual prosecution
can only be authorized
by Government or, I conceive,
the submission of the case
or recommendation of
the authorities making
the preliminary inquiry.

As regards the 3^d point
I would not increase
labor by including such
"Casuals" as the Labor
Sheriff and in the
category of Government-protected

6
Seruants. The Magistrate
can be left to deal with
him under the 2^d provision
of the 1st clause of sect. 466.

It scarcely seems
needful to refer to the
Advocate General

2/7 Mol

The Board seek definite advice
from you on the following points.

I. As to procedure.

Whether in respect reference to and
sanction by you is necessary in each
particular case. That the day will
even appear deal of correspondence
looking to the times after (min) the
Case the same procedure occurs
doubtful: and it is difficult to see that
necessary to read the Board's letter
Old Adm. passed, & all but of course

N^o 920.

PROCEEDINGS of the MADRAS GOVERNMENT.

of 24 July 74.

Read the following letter
from the Secretary to the Board
of Revenue

Soliciting instructions on
certain points connected with
the prosecution and removal of
Tahsildars and Deputy Tahsil-
dars in their Magisterial
capacity.

H. E. 20 June 1874, N^o

His Excellency the Governor
in Council observes that the
distinction between the first
and second clauses of Section
466 of Act X of 1872 has
already been indicated in
G. O. 3rd July 1874, N^o 1220,
Judicial Dept. An offence
committed by a public
servant in his capacity
as such public servant
comes under the first
clause and falls within
the

It is to be desired a removal.
Upon this point the order should
be negative. In the negative.
The proper answer must (I think) be
in the negative. For the reason
no order, & included to give under,
requiring reference to for in the
of the 3 cases specified -
A "final" position has also been
in negative.

1/7

17/7

18/7

the jurisdiction of the Board
with reference to G. O. 19. Febry.
1873, No. 197. The prosecution
of such an officer for an act
done in the discharge of his
duty must, as provided
in the second clause, be
sanctioned by Govt., and
this power cannot be dele-
gated as was pointed out
in the concluding sentence
of paragraph 1 G. O. 17.
February 1873.

2. The Governor in
Council does not think
that the section intends to
make any difference between
the entertainment of a com-
plaint and the prosecution.
Both terms are used in
clause 1 to mean one and
the same thing, and the
Board

9
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3. In regard to the two
first cases referred to in
paragraph 12 of the Board's
Proceedings, it is not the wish
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to them should be made
when transfers or suspensions
are ordered. The word
'removal' in section 9 is a
technical term, implying
dismissal from the bench,
and does not include such
administrative measures
as those indicated above.

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Board wish to withdraw
from Deputy Tahildars
the

Handy reference
to the meaning
of this.

the protection afforded them
in their general capacity
by G. O. 19 February 1873,
N. 197. Their dismissal
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same position as they were
before that order was passed.
The Governor in Council
is not prepared to authorize
any alteration as regards
these officers.

4. It is not the intention
of Govt. that Taluk Sheristadars
should receive the
protection in their Revenue
capacity which it was the
object of Govt. to give to
Tahsildars and Deputy
Tahsildars when passing
G. O. 19 February 1873,
N. 197.

5. But Taluk Sheristadars

in their Magisterial capacity
are entitled to the same pro-
tection as other Sub-Magistrates
(G. O. 3rd October 1873, N. 158
Judicial Dept.).

6. When such officers are
dismissed for reasons uncon-
nected with their Magisterial
duties a report should be
made to Govt. in order that
the sanction to their employ-
ment as Magistrates may
be revoked. It seems
clear that the appointment
of Magistrate can only be
cancelled by the authority
which made it (Section
Crim. Pro. Code)

To Mr. Secretary
Judicial Dept. } 2/4/81
CPL

3

45

90

Regarding prosecution
of John Alden & Deputy
Shaelings in their
Departmental capacity

8-12-

✓

5-11-14 ✓ c. 12-440/84

16-3-89 ✓

5072
15-11-84

21-4-91 ✓

16-8-08 ✓

27-4-18 ✓

24/20 RP ✓

14-5-14 ✓

Prescription and Remorse of Tahiti, Deputy-
Tahiti, and Tahiti, Sheridans, Deputies
certain sections of Act X. of 1872 and passing
orders on certain points connected with the



Nos. 197-198.

Original
Govt. of 1874 Madras.
REVENUE.

THE BOARD OF REVENUE,

Secy, Secy, Secy

Dated July 24th.

Recd.

Encl.

G. O. 24th July 1874. No. 920.