

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.17276 of 2011
and M.P.No.1 of 2011

D. Padmanaban .. Petitioner

Vs.

1. The Member Secretary,
Sports Development Authority of Tamil Nadu,
Nehru Park, Chennai - 84.

2. The Accounts Officer,
Sports Development Authority of Tamil Nadu,
Nehru Park, Chennai - 84.

3. The District Collector,
Cuddalore District,
Cuddalore.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in PROC No.10580/AO-1/2004 dated 14.06.2011 and quash the same.

For Petitioner .. Mr.N. Suresh

For Respondents .. Mr.I. Sathish for R1 & R2

Mr.T.M. Pappiah
Spl.Govt. Pleader for R3

ORDER

Challenging the order of the first respondent dated 14.06.2011, the petitioner has come up with the present writ petition.

2.The petitioner is no more in service, having attained the age of superannuation on 29.01.2016. He retired as District Sports Officer under the control of the first respondent. While working as District Sports Officer, Cuddalore, white washing was done at Anna Stadium, Cuddalore on 30.06.2004 and two persons involved in the work of whitewashing fell down and injured in the process. One of the persons approached the Deputy Commissioner of Labour -II, Chennai, in W.C.No.387 of 2004. The learned Deputy Commissioner, after considering the plea of the injured workman, had awarded a compensation of Rs.3,71,952/-. The said award was also appealed against before this Court and the same was also dismissed.

3.While matter stood thus, vide proceedings of the first respondent dated 14.06.2011, the amount which was awarded to the injured workman was sought to be recovered from the petitioner for having failed to discharge his duties while defending the claim before the learned Deputy Commissioner. The award amount viz., Rs.3,71,952/- was sought to be recovered in 53 monthly instalments. While admitting the writ petition, this Court has passed the order of stay and therefore, no recovery has taken place so far.

4.The case of respondents 1 and 2 is that the petitioner, being a District Sports Officer, was not diligent enough to defend the claim before the Deputy Commissioner, who awarded the compensation of Rs.3,71,952/-.

5.Learned counsel appearing for the petitioner would submit that while passing the impugned order, no notice was given and no opportunity was offered to the petitioner. Even otherwise for defending his position, vis-a-vis claim by the injured workman before the Deputy Commissioner of Labour, the petitioner ensured counter affidavit was filed. When the matter was listed for hearing, the petitioner's mother died on 14.02.2006 and in the said circumstances, the petitioner could not be present before the Deputy Commissioner. However, he would draw the attention of this Court to the various documents and the letters exchanged between the Government Pleader and the Administration stating that the petitioner had indeed taken efforts to re-open the case and for adjudication of the claim on merits after hearing him. However, the learned Deputy Commissioner, without passing any

orders on the re-open petition, has passed the award on 19.04.2006. In such circumstances, the petitioner cannot be blamed for any loss as he was diligent enough to take steps to file counter affidavit before the learned Deputy Commissioner and also for the circumstances beyond his control, he could not be present for hearing and the same was also rectified by him by filing an application for reopening the case. In the said circumstances, the impugned order passed against the petitioner, without giving him any semblance of opportunity to defend his position vis-a-vis the award passed by the Deputy Commissioner cannot be countenanced in law.

6. Upon notice, Mr. I. Sathish, learned counsel entered appearance on behalf of respondents 1 and 2 and he vehemently opposes the grant of any relief to the petitioner. Mr. T. M. Pappiah, learned Special Government Pleader appears for the third respondent.

7. According to the learned counsel for respondents 1 and 2, the petitioner being a District Sports Officer, did not take any effective steps for defending the claim and due to his laxity, compensation was awarded. Therefore, the petitioner was rightly fastened with the liability of payment of the award as he alone was responsible for the award being passed in favour of the injured workman.

8. This Court has given its anxious consideration to the rival pleadings and the submissions of the parties. There is some force in the contention of the learned counsel for the petitioner that the petitioner was not given any opportunity at all before issuing the impugned proceedings. Moreover, the learned counsel for the petitioner has drawn the Court's attention to the documents, which did establish the fact that the petitioner was diligent enough to take whatever steps that were possible in the circumstances of the case. Moreover, the very basic principle of natural justice demands an opportunity has to be afforded to the petitioner before such a huge sum is to be recovered from the petitioner. Moreover, the petitioner, during the pendency of the writ petition has attained the age of superannuation and retired from service on 29.01.2016. Therefore, the amount which is sought to be recovered will cause irreparable hardship and suffering to the petitioner and his family. From the circumstances of the case, it has to be seen that the first respondent has passed the impugned proceedings without affording any opportunity to the petitioner and also it has to be seen that the petitioner alone cannot be held responsible for the award of compensation. In the said circumstances, the impugned proceedings cannot be countenanced in law and on facts and therefore, the same is set aside.

9.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary,
Sports Development Authority of Tamil Nadu,
Nehur Park,
Chennai - 84
2. The Accounts Officer,
Sports Development Authority of Tamil Nadu,
Nehru Park,
Chennai - 84
3. The District Collector,
Cuddalore District,
Cuddalore

+1cc to M/s.I.Sathish, Advocate, S.R.No.52871

+1cc to M/s.N.Suresh, Advocate, S.R.No.52911

+1cc to the Government Pleader, S.R.No.53329

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RJ(CO)
CU(23/08/2017)