

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2020

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4205 of 2011 and
M.P.Nos.1 to 3 of 2011

P.Ambalavanan

... Petitioner

-vs-

1.The Member Secretary,
Sports Development Authority of Tamil Nadu,
116-A, E.V.R.Periyar High Road,
Chennai - 600 084.

2.The District Sports Officer,
Sports Development Authority of Tamil Nadu,
Salem Unit, Mahatma Gandhi Stadium,
Salem - 636 007.

3.The Enquiry Officer,
Regional Senior Manager,
Sports Development Authority of Tamil Nadu,
Madurai Region, Race Course Stadium,
Madurai - 625 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent made in his proceedings in Charge Memo dated 29.07.2005 in Na.Ka.No.6394/NeA Pa -1/2004 and quash the same.

For Petitioner : Mr.Silambanan, Senior Counsel

For M/s.Profexs Associates

For R1

: Mr.Tamil Priyan

O R D E R

The Writ Petition has been filed, seeking to quash the Charge Memo dated 29.07.2005 issued by the 1st respondent in Na.Ka.No.6394/NeA Pa-1/2004.

2. The case of the petitioner is that he, while working as Hockey Coach under the Sports Development Authority of Tamil Nadu, Salem Unit, was placed under suspension for his

unauthorized absence from duty. Though he availed leave on various dates after sending proper leave letters to the 2nd respondent, he was not allowed to join duty on 25.11.2004 by the 2nd respondent and subsequently, an enquiry under Section 17(b) of the Tamil Nadu Civil Services (D & A) Rules was initiated and a charge memo dated 01.02.2005 was issued in respect of allegation of unauthorized absence. It is further case of the petitioner that a fresh charge memo dated 29.07.2005 was issued to the petitioner on the same set of allegation levelled against him on earlier occasion, with an additional remarks that the petitioner had neither reported for duty nor submitted documents for claiming subsistence allowance, inspite of the fact that required documents were already sent for payment of subsistence allowance once again on 27.06.2005. It is also the case of the petitioner that the charge memo has been issued without reference to the explanation of the petitioner and the 2nd respondent and the 3rd respondent, without payment of subsistence allowance and copies of documents, had been delaying the matter for several years with ulterior motive.

3. Learned counsel for the 1st respondent, by referring to Paragraph No.14 of the counter affidavit dated 05.04.2013, contended that after a deliberate enquiry, the petitioner was dismissed from service with effect from 03.02.2011 vide Proc.No.6394/AO-1/2004 and therefore, nothing survives for adjudication in this Writ Petition.

4. At this juncture, learned Senior Counsel for the petitioner represented that the dismissal order dated 03.02.2011 has not been served on the petitioner and the respondents, without payment of subsistence allowance and without following the principles of natural justice, passed the order of dismissal behind the back of the petitioner, which is arbitrary in nature.

5. Heard the learned counsel for the petitioner and the learned counsel for R1 and perused the material documents available on record.

6. The main plea taken by the petitioner is that without paying subsistence allowance as adumbrated under the relevant provisions of the Act, the respondents insisted upon him to attend the enquiry. However, it is seen from the counter affidavit that the petitioner was already dismissed from service with effect from 03.02.2011. Learned counsel for the respondents stated that he is not aware whether subsistence allowance has been paid to the petitioner or not. The question whether the petitioner attended the enquiry or the subsistence allowance was paid to him, cannot be gone into in this petition in the absence of challenge to the order of dismissal and the petitioner has to challenge the punishment order.

7. Hence, this Writ Petition is disposed of, with liberty to the petitioner to challenge the dismissal order dated 03.02.2011, apart from questioning non payment of subsistence allowance and other grounds including the one raised in this Writ Petition. The Government shall forward a copy of the dismissal order dated 03.02.2011, referred to in Paragraph No.14 of the counter affidavit to the petitioner, within a period of 30 days from the date of receipt of a copy of this order and on receipt of the same, it is open to the petitioner to question the same, if so desired, in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Member Secretary,
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SAI(CO)
SP(30/11/2020)