

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :04.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 9512 OF 2014
and
M.P.No.1 of 2014

K.Ragunathan

.. Petitioner

- Vs -

1.The State of Tamilnadu,
rep. By its Secretary,
Sports Development Department,
Fort St. George, Chennai-9.

2.The Member Secretary,
Sports Development Authority of Tamil Nadu,
Nehru Park, 116, Poonamalle High Road,
Chennai -84.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, calling for the entire records of the 2nd respondent relating to the Proc.No.12957/AO-1/2012 dated 01.03.2014 and to quash the same.

For Petitioner : Mr.L.Chandrakumar for
M/S.I Abrar MD Abdullah.

For Respondents: Mr.S.Thangavel, Spl.G.P for R1
: M/S.I Sathish for R2

ORDER

The present writ petition is filed challenging the impugned order passed by the second respondent in Proc.No.12957/AO-1/2012 dated 01.03.2014.

2.The case of the petitioner is that he joined the services of the 1st respondent Sports Development Department as a Hockey Coach in the year 1987 at Cuddalore District and thereafter, on promotion he was appointed as District Sports officer, Dharmapuri District on 08.12.2010. While in service, he had conducted block level sports meet called as Panchayat Yuva Krida aur Khel Abiyan (PYKKA) competition in eight blocks of Dharmapuri district for the year 2011-12, which was held on

24.12.2011. In respect of conducting the sports event, certain irregularities were alleged and certain complaints were made. Based on the complaints an enquiry was conducted by the Senior Regional Manager, Coimbatore Region who sent a report to the 2nd respondent on 17.12.2012. In this regard, an Enquiry Officer was appointed and enquiry officer after holding due enquiry submitted a report on 04.07.2013 to the 2nd respondent. Based on the said report, the petitioner was suspended from service on 09.07.2013. The grievance of the petitioner is that now the impugned order has been passed by the Principal Secretary appointing yet another officer as Enquiry Officer to hold enquiry afresh into the very same charges. Challenging the same the present writ petition is filed.

3.Mr.L.Chandrakumar, learned counsel appearing for petitioner submitted that though the petitioner has been placed under suspension from 09.07.2013 for certain allegations, and the second respondent has appointed one N.Charles Manohar, Regional Senior Manager, Sports and Youth Welfare, Chennai as the enquiry officer. The said enquiry officer has conducted an enquiry on 28.11.2013 and 29.11.2013. At the time of enquiry all the seven complainants were examined by the enquiry officer. Apart from the petitioner and two others, one marker were also examined and written statements were taken from them. The enquiry officer submitted his report holding the charges not proved against the petitioner. However, not agreeing with the report filed by the earlier enquiry officer, has appointed one A.Santhan, Regional Senior Manager, Sports and Youth Welfare, Trichy Region as the inquiry officer to inquire into the charges framed against the petitioner, which action of the 2nd respondent is arbitrary and unsustainable. He further submitted that without retaining the services of the petitioner, the respondent cannot proceed further in this matter. Accordingly, he prays for allowing the present writ petition.

4.On the above contention, this Court heard the learned Special Government Pleader appearing for the respondents, who did not dispute the facts made by the learned counsel for the petitioner.

5. The pivotal contention in the present case is that the disciplinary authority, without agreeing with the report submitted by the enquiry officer, has once again, ordered for re-enquiry by appointing a fresh enquiry officer, which is per se impermissible and unsustainable. It is the contention of the petitioner that the disciplinary authority should give his findings for not agreeing with the enquiry and without giving the said findings, appointing a fresh enquiry officer to enquire into the charges once over is unsustainable.

6. On the earlier occasion, this Court granted an interim order of stay in favour of the petitioner, pursuant to the charge memo issued and placing the petitioner on suspension on the basis of the preliminary report of the enquiry. In this regard, the action that is to be taken on the submission of the inquiry report is provided in Regulation-7 which reads as follows:

" 7. Action on the inquiry report: (1) The Disciplinary Authority, if it is not itself the Inquiry Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) The disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything imposing in regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

7. A bare reading of clause (i) of the above regulations shows that if the disciplinary authority, if not the inquiry officer, not agreeable with the findings of the enquiry officer, shall remit the matter to the enquiry officer for further enquiry, whereas clause (ii) prescribes that where the disciplinary authority is not in agreement with the findings of the enquiry officer, shall record his own findings for differing with the findings of the enquiry officer. On furnishing of the charge sheet full opportunity is required to be given to the delinquent officer to prove his innocence. Clause (iii) and

clause (iv) relates to penalty and exoneration of the delinquent.

8. In the case on hand, enquiry officer was initially appointed, who had submitted a report, holding that the charges against the delinquent stood not proved. However, the disciplinary authority, if not agreeable with the said findings of the enquiry officer, ought to have either taken action under clause (i) by relegating the matter back to the same enquiry officer for further enquiry or under clause (ii) recorded his findings for not agreeing with the enquiry officer on the basis of evidence on record. However, without resorting to either clause (i) or clause (ii) of the Regulation 7, as noted above, the disciplinary authority has ordered for fresh enquiry by appointing a different enquiry officer, which is not provided for in Regulation 7. That being the case, the procedure adopted by the disciplinary authority is impermissible and unsustainable. The disciplinary authority cannot deviate from the provisions contained in Regulation 7 as no power is vested with the disciplinary authority to deviate from the procedure prescribed. Such being the case, this Court is not in agreement with the impugned order appointing a different enquiry authority and is of the opinion that the same deserves to be set aside and the matter remanded back to the disciplinary authority to act in accordance with the provisions contained in Regulation 7.

9. In view of the reasons aforesaid, the order passed by the second respondent in Proc.No.12957/AO-1/2012 dated 01.03.2014, is hereby set-aside and the matter is remand back to the 2nd respondent for following the procedure contemplated in Regulation 7 noted above, and the 2nd respondent is directed to pass appropriate orders in tune with the clauses contained in Regulation 7 based on the initial enquiry report submitted by the enquiry officer within a period of twelve weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. However there shall be no order as to costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs

To

1.The Secretary,State of Tamilnadu,
Sports Development Department,
Fort St. George, Chennai-9.

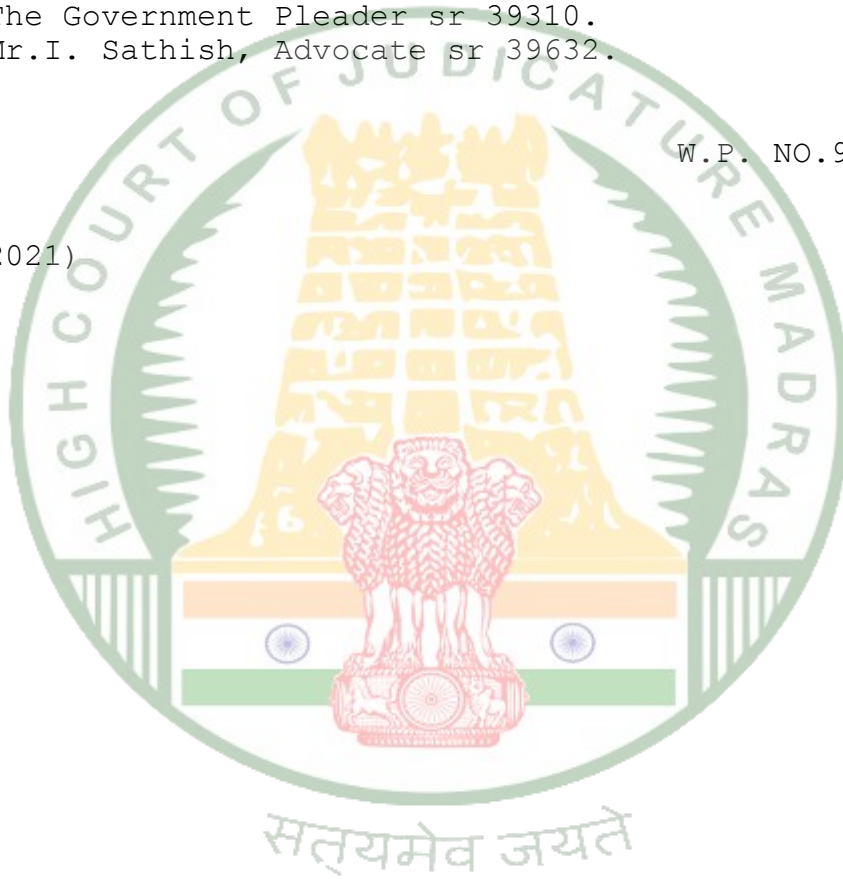
2.The Member Secretary,
Sports Dvelopment Authority of Tamil Nadu,
Nehru Park, 116, Poonamalle High Road,
Chennai -84.

+1 CC to The Government Pleader sr 39310.

+1 CC to Mr.I. Sathish, Advocate sr 39632.

W.P. NO.9512 OF 2014

SSI (CO)
SP(09/02/2021)



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