

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.43399/2016 & W.M.P.No.37258 of 2016

M.Rathinam

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Petitioner

Vs.

1.The Additional Director General of Police and
Inspector General of Prison,
Tamil Nadu Prison Department,
Egmore, Chennai - 8.

2.The Superintendent of Prison,
Central Prison-I,
Puzhal, Chennai.

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Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of order, call for the records from the 2nd respondent pertaining to the proceedings No.10381/Ki.Si.Vu/2015-2 dated 04.06.2016 and quash the same.

For Petitioner : Mr.M.R.Senthil Kumar
For Respondents : Mr.K.Dhananjayan,Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal.

Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents.

2 The petitioner was initially appointed as Grade-II Warder in the Tamil Nadu Prison Service on 29.10.1983 and got his promotion as Grade-I Warder on 24.11.2005 and retired on superannuation on 30.06.2016. According to the petitioner, based on the proceedings of the 2nd respondent dated 22.10.2013, his grade pay was fixed at Rs.2800/- and accordingly, he earned his salary. However, to his shock and surprise, on 04.06.2016, he was issued with the impugned recovery order by the 2nd respondent, stating among other things that he has been mistakenly receiving additional salary during his service and therefore, he was called upon to remit the same to the Government Treasury and inform the same to the Superintendent of Sub Jail, Tiruvallur and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner has drawn the attention of this Court to the impugned order passed by the 2nd respondent dated 04.06.2016 and would submit that one Mr.Sairam, Grade-I Constable [retired] had submitted a representation praying for fixation of pay on par with the petitioner and while considering his request, it came to the knowledge of the 2nd respondent that the petitioner has been paid salary excessively and therefore, the impugned

proceedings came to be passed without putting the petitioner on notice and therefore, prays for interference.

4 Per contra, the learned Special Government Pleader appearing for the respondents would submit that the 2nd respondent, taking into consideration, the overall facts and circumstances, has rightly ordered recovery and as such, the petitioner is not entitled to retain excess salary and he has to remit the same to the Government Treasury.

5 This Court has carefully considered the rival submissions and also perused the materials placed before it.

6 A perusal of the impugned order of the 2nd respondent dated 04.06.2016 would disclose that before passing the order of refixation and recovery, the petitioner has not been put on notice. In the considered opinion of the Court, the order of refixation and recovery, visits the petitioner with civil consequences and as such, he should have been put on notice before passing the impugned order and admittedly, it has not been done so and hence, on the sole ground, the impugned order warrants interference.

7 In the result, the writ petition is partly allowed and the impugned order passed by the 2nd respondent dated 04.06.2016 is set aside and the matter is once again remanded to the 2nd respondent for fresh consideration and the said official is directed to issue a how cause notice to the petitioner spelling out reasons for refixation and recovery within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the petitioner is at liberty to submit his explanation within a further period of four weeks thereafter and the 2nd respondent, on receipt of the reply/response from the petitioner, is directed to consider the same on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

16.12.2016

Index : Yes / No

Internet : Yes / No

AP

To

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M.SATHYANARAYANAN, J.,

AP

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