

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.1647/2017 & WMP.Nos.1622 & 1623/2017

M.Mallaiyan

... Petitioner

Vs

The Assistant Treasury Officer,
Sub-Treasury,
Palakodu,
Dharmapuri District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.1110/2016/A dated 18.11.2016 and the consequential impugned order in his proceedings Na.Ka.No.1110/2016A dated 24.11.2016 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioner : Mr.B.Saravanan

For Respondent : Mr.P.Chinnadurai, GA

ORDER

By consent, the writ petition is taken up for final disposal. Mr.P.Chinnadurai, learned Government Advocate accepts notice on behalf of the sole respondent.

2 The petitioner was originally appointed as a Secondary Grade Teacher on 21.07.1962 and got promotion to the post of Assistant Headmaster in the Government Boys Higher Secondary School, Maranda Alli, Dharmapuri District and he retired on attaining the age of superannuation on 30.06.1996. The petitioner would aver that after his retirement from service, the service benefits payable to him have been settled and pension was also paid to him and it was revised in the year 2010, with effect from 01.01.2006 with monetary benefits payable with effect from 01.01.2007 and however, to the shock and

surprise of the petitioner, the respondent has issued a notice dated 18.11.2016 stating among other things, a sum of Rs.3,47,551/- has been paid by way of excess amount towards pension and it was followed by the impugned proceedings dated 24.11.2016, calling upon the petitioner to pay a sum of Rs.3,60,208/- in 33 equal instalments @ Rs.4435/- per month, commencing from November 2016 and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that in pursuant to the impugned order passed by the respondent, recovery is being effected and would further submit that the said order is in gross violation of the principles of natural justice and therefore, prays for interference.

4 Per contra, Mr.P.Chinnadurai, learned Government Advocate appearing for the respondent would submit that the respondent has issued notice dated 18.11.2016, informing the decision to recover excess amount and it was followed by the impugned proceedings dated 24.11.2016 and as such, it is not open to the petitioner to make a complaint as to the non-compliance of the principles of natural justice and prays for dismissal of this writ petition.

5 This Court paid its best attention to the rival submission and also perused the materials placed before it.

6 Admittedly, before passing the impugned proceedings, the respondent has not put the petitioner on notice and it is a well settled position of law that the order of recovery of the alleged excessively paid pension amount visits the petitioner with grave civil consequences and in all fairness, the respondent ought to have put the petitioner on notice before passing the impugned proceedings ; but the said official has failed to do so.

7 In the light of the above facts and circumstances, the impugned proceedings of the respondent dated 24.11.2016 shall be construed as a show cause notice and the petitioner is at liberty to submit his response / explanation within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to consider the said explanation/response on merits and in accordance with law, after taking note of the judgment rendered

by the Hon'ble Supreme Court of India reported in State of Punjab and others V. Rafiq Masih reported in 2015 [4] SCC 334 and pass orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner and till such time, shall defer all further proceedings pursuant to the notice dated 18.11.2016 and the impugned proceedings dated 24.11.2016 respectively.

8 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP
To

The Assistant Treasury Officer,
Sub-Treasury,
Palakodu,
Dharmapuri District.

+lcc to M/S.B.Saravanan, Advocate Sr.4328
+lcc to the Government Pleader Sr.4912

सत्यमेव जयते

W.P.No.1647/2017

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srg 30/01/2017

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