IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.4901 of 2012
and W.P.No.1 of 2012

C.Kasi .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by the Secretary to Government,
Adi-Dravida Welfare Department,
Fort St.George, Chennai 600 009.
2.The Special Tahsildar (A.D.W),
Polur, Thiruvannamalai District.
3.The Account General (A & E),
Tamilnadu, Teynampet, Chennai-18.
4.The Assistant Treasury Officer,
Vaniambadi, Vellore District. ... Respondents

Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in proceedings No.Na.Ka.Pa.Ve.9/2011/A dated 17.11.2011 passed by the 4th respondent and quash the same as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice thereby direct the respondents not to recover any amount from the petitioners' pension.

For Petitioner	..	Mr.V.Thirupathi
For R1 & R2	...	Ms.M.E.Raniselvam Addl.Govt.Pleader
For R3	..	Mr.S.Balaji
For R4	..	No Appearance

O R D E R

Challenging the order of the 4th respondent viz., The Assistant Treasury Officer, Vaniambadi, Vellore District and for a consequential direction to the respondents not to recover any amount from the petitioner's pension, the present writ petition has been filed.

2. According to the petitioner, he was working as Head Master, Adi-Dravidar Welfare Elementary School, Pallathur,

Thiruvannamalai District. The petitioner was awarded Selection grade Scale of pay with effect from 01.12.1981 on completion of 10 years of service. Further, he was awarded Special Grade Scale of pay with effect from 01.12.1991 on completion of 20 years service. He was promoted as Head Master, Adi-Dravidar Welfare Elementary School and retired from service on 30.09.2004. The DCRG accrued because of extending the benefit of this revision has been sanctioned.

ii) It is the further case of the petitioner that based on the One Man Commission recommendation, the Government of Tamilnadu (Finance Pay Cell) Department issued another order in G.O.Ms.No.235 dated 01.06.2009 in and by which, the Government revised the pension and pensionary benefits. The Assistant Treasury Officer, Vaniambadi, the 4th respondent after calculating the revised pension and pensionary benefits with effect from 01.01.2007 till 31.05.2009 had sanctioned the benefits applying the above Government order and also deposited the same in the bank accounts. In this regard, the petitioner has not given any representation for the purpose of revised pension as per G.O.Ms.No.235 dated 01.06.2009. On the basis of the alleged audit objection, the 4th respondent conducted audit during October 2011 and has ordered to recover a sum of Rs.67,437/- from his pension in 10 equal monthly instalments which is alleged to have been excessively paid.

iii) The order of recovery issued by the 4th respondent without giving any prior notice issued to the petitioner calling for any objections. The 4th respondent has failed to consider the Government Order in G.O.Ms.No.235 (Finance (Pay Cell) Department dated 01.06.2009 is applicable to the case of the petitioner issued as per the recommendations of the one man commission regarding revision of pension and pensionary benefits. The benefit was given to the petitioner as per G.O.Ms.No.207 School Education Department dated 30.09.2008 issued pursuant to the order of this Court directing the state Government to settle the retirement benefits to the members of the Koottani as per G.O.Ms.No.185 , School Education Department dated 16.12.2002 and G.O.Ms.No.160, School Education Department dated 23.08.2005 without reference to G.O.Ms.No.38 School Education Department dated 05.03.2001 and the respondent cannot recover any amount which was not issued to the petitioner. Hence, the petitioner has come forward with the present writ petition.

3. Heard the learned counsel for the petitioner; the learned Special Government Pleader for the respondents 1 & 2 and the learned counsel appearing for the third respondent.

4. The learned counsel for the petitioner would submit that the fourth respondent without giving any notice called for the

explanation of the petitioner and fourth respondent has directly passed the impugned order stating that excess amount was made to the petitioner and to recover a sum of Rs.67,437/- from the petitioner's pension in ten equal monthly installments. Hence, the impugned order of the fourth respondent has violated the

principles of natural justice without giving any notice to the petitioner. Hence the impugned order is liable to be set aside.

5. Taking note of the fact that the 4th respondent has not given any opportunity to the petitioner, passed the impugned order and hence, it is made clear that there is violation of the principles of natural justice. Therefore, the petitioner has make out the case. Accepting the same, the impugned order is liable to be set aside.

6. In view of the above fact
a) the writ petition is allowed;
b) the impugned order passed by the fourth respondent in Na.Ka.No. Na.Ka.Pa.Ve.9/2011/A dated 17.11.2011 is hereby set aside and the matter is remanded back to the fourth respondent and he is directed to pass appropriate orders by giving personal opportunity to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

With the above observations, this writ petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

kkd

To

1.The Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009.

2.The Assistant Elementary Education Officer,
Alangayam, Vellore District.

3.The Account General (A & E),
Tamilnadu, Teynampet, Chennai 18.

4.The Assistant Treasury Officer,
Vaniambadi, Vellore District.

+ 1 cc to Mr.V.Thirupathi Advocate,SR.65201

+ 1 cc to M/s.S.Balaji, Advocate,SR.65216

+ 1 cc to The Govt.Pleader, SR.65666

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NR 06/10/2017