



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 10312 of 2013

A.Vincent

... Petitioner

-vs-

1.The Assistant Director of Town Panchayath,
The District Collector,
Nagercoil, Kanyakumari District.

2.The Executive Officer,
Kallukottam Town Panchayath,
Kallukottam,
K.K. District (Kanyakumari)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the Second Respondent in his proceedings in Na. Ka. No. A1/117/2013 dated 29.05.2013 to quash the same and consequently direct the Respondent that the Petitioner is eligible for time scale of pay from 01.01.1993 itself and restore all the benefits which the Petitioner was getting.

For Petitioner : No appearance

For Respondent 1 : Mr. D. Gandhiraj
Learned Counsel appearing on behalf of
Government of Tamil Nadu

For 2nd Respondent : No Appearance

ORDER

(through video conference)

There is no representation for the Petitioner when the matter is called today.

2. Heard Mr. D. Gandhiraj, Learned Counsel representing the First Respondent and perused the materials placed on record apart from the pleadings of the parties.

3. The Writ Petition challenges the proceedings in Na. Ka. No. A1/117/2013 dated 29.05.2013 passed by the Second Respondent in which a sum of Rs.5,93,638/- wrongfully paid to the Petitioner has been directed to be recovered from him apart from denying certain other monetary benefits.

4. It is the contention of the Petitioner in the affidavit filed in support of the Writ Petition that no notice has been issued to him calling for explanation before passing the impugned order.



5. It is trite law that any administrative action which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken. It is not the case of the Respondents that before passing the impugned order, any show cause notice had been issued to the Petitioner calling for an explanation from him with supporting materials relied in that regard. Such incurable flaw in decision making by the Respondents which is in violation of the principles of natural justice vitiates the impugned orders which have to be set aside on that sole ground leaving it open to the concerned authorities to appropriately deal with the matter following due process. The Government of Tamil Nadu in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, after referring to the principles laid down by the Hon'ble Supreme Court of India in **State of Punjab -vs- Rafiq Masih (Whitewasher)** [(2015) 4 SCC 334], has issued detailed instructions providing the manner in which excess amount made to Government Servants/Pensioners/Family Pensioners have to be made. In response to the query made by this Court, the Learned Counsel representing the First Respondent, on instructions, states that no such show cause notice had been issued to the Petitioner before passing the impugned order and he has filed a memo dated 25.06.2021, which is placed on record.

6. In that view of the matter, the impugned order dated 29.05.2013 passed by the Second Respondent is set aside. The concerned authorities shall issue show cause notice to the Petitioner and after affording full opportunity of personal hearing to him and considering each of the objections that may be raised by him, a reasoned order shall be passed on merits and in accordance with law following the procedure laid down in the instructions in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 issued by the Government of Tamil Nadu, uninhibited and uninfluenced by the impugned order and the decision taken shall be communicated to the Petitioner under written acknowledgement.

In the result, the Writ Petition is ordered in the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Assistant Director of Town Panchayath,
The District Collector,
Nagercoil, Kanyakumari District.

2.The Executive Officer,
Kallukottam Town Panchayath,
Kallukottam,
K.K. District (Kanyakumari)

+1 CC to M/s.SPL GP (SR-20455[F] dated 28/06/2021)

W.P. (MD) No. 10312 of 2013

25.06.2021

CN(09.07.2021) 3P 4C