



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 12670 of 2021

and

W.M.P. (MD) No. 9876 and 9877 of 2021

S.Palanichamy

... Petitioner

-vs-

The Commissioner,
Dindigul Corporation,
Dindigul.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order Na.Ka.No.7126/2019/B2 dated 10.03.2021 passed by the respondent and quash the same as illegal consequently direct the respondent to disburse the deducted family pension benefits and retirement benefits to the petitioner and consequently direct the respondent to refund the deducted pension amount from March 2021 to till date within the time stipulated by this Court.

For Petitioner : Mr. T.Thirumurugan

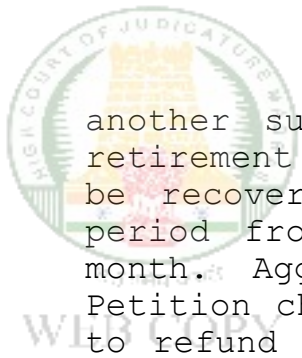
For Respondent : Mr. J.Lawrence, Standing Counsel

O R D E R

(through video conference)

Heard Mr. T.Thirumurugan, Learned Counsel for the Petitioner and Mr. J.Lawrence, Learned Standing Counsel, who takes notice for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The wife of the Petitioner, viz., Mariyayi, who worked as Sanitary Worker in services of the Respondent, retired from services on 31.07.2019 and died thereafter on 04.10.2019. The Respondent by proceedings in Na. Ka. No. 7126/2019/B2 dated 10.03.2021 informed the Petitioner that the sum of Rs.4,50,244/- has to be recovered from the retirement benefits and pension of the deceased wife of the Petitioner. It has been further informed that a sum of Rs.2,07,506/- has been adjusted from family pension amount and



another sum of Rs.1,44,377/- has been adjusted from the pending retirement benefits and the balance amount of Rs.1,32,361/- has to be recovered from the family pension of the Petitioner for the period from March 2021 to May 2023 by deducting Rs.5,000/- per month. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said order and for consequential direction to refund the deducted amount recovered from the terminal benefits of the deceased wife of the Petitioner and the family pension of the Petitioner.

3. The main contention of the Petitioner is that no show cause notice had been issued calling for any explanation from the Petitioner before passing the impugned order for recovery of excess payment said to have been made. 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. 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 any excess amount paid to Government Servants/Pensioners/Family Pensioners would have to be made.

4. In response to the query made by this Court, Learned Counsel for the Respondent, on instructions, states that no records are available to prove that any opportunity of persona hearing had been afforded or show cause notice had been issued to the Petitioner before passing the impugned order. Such incurable flaw in decision making by the Respondent is in violation of the principles of natural justice and would vitiate the impugned order. In that view of the matter, the impugned order dated 10.03.2021 passed by the Respondent is set aside leaving it open to the concerned authorities to appropriately deal with the matter following due process. The concerned authorities shall issue show cause notice to the Petitioner along with working-sheet of the calculation for the excess payment claimed to have been made to the deceased wife of the Petitioner and after affording full opportunity of personal hearing to the Petitioner 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 earlier order passed in the matter, and the decision taken shall be communicated to him under written acknowledgement. If the Respondent ultimately comes to the conclusion that the Petitioner is entitled to receive any part of the recovered amount, the same shall be paid to him immediately.



In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected miscellaneous petitions are closed. No costs.

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// True Copy //

Sd/-

Assistant Registrar (AD II)

/ /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

The Commissioner,
Dindigul Corporation,
Dindigul.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-24234[F] dated 28/07/2021)

+1 CC to M/s.T.THIRUMURUGAN, Advocate(SR-24267[F] dated 29/07/2021)

W.P. (MD) No.12670 of 2021
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MGJ(18.08.2021) 3P 4C