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W.P. No. 12134 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 12134 of 2016

and

W.M.P. Nos. 10494 and 35808 of 2016

M.Narayanasamy

... Petitioner

-VS-

1. The Secretary to Government,
Treasury,
Secretariat, Chennai.
2. The Director of Treasury,
Chepauk,
Chennai – 600 005.
3. The Assistant Director of Treasury,
Sub Treasury,
Gudiyattam,
Vellore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the file PaVe121/16/c dated 08.02.2016 from the file of the Third Respondent and quash the same and direct the Third Respondent to remit the pension amount of Rs. 23,194.



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For Petitioner : Mrs. R.T.Sundari
For Respondents : Mr. P.Balathandayutham,
Special Government Pleader

ORDER

Heard Mrs. R.T.Sundari, Learned Counsel for the Petitioner and Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the proceedings no. PaVe121/16/C dated 08.02.2016 passed by the Third Respondent in which it has been informed that the sum of Rs. 1,49,832/- excessively paid to him would be recovered from his monthly pension in twelve monthly installments of Rs. 11,570/- each with a consequential direction to the Respondents to continue to pay the pension amount that he has been receiving till date.

3. This Court at the time of admission on 31.03.2016 had passed the following self-explanatory order:-



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“2. *The Petitioner has retired from service very long back i.e. on 31.05.1995 and the impugned order or recovery has been passed on 08.02.2016, without even issuing notice, whatsoever, calling for his explanation. Therefore, it has to be stayed.*

3. *Accordingly, there shall be an order of interim stay of the operation of the recovery order passed by the Third Respondent in Pa.Vel21/16/C dated 08.02.2016.”*

4. 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.



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5. There is nothing to show either in the impugned order or in the Counter-Affidavit dated 17.10.2016 filed by the Third Respondent that before directing to effect recovery of the excess payment claimed to have been made, 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 is in violation of the principles of natural justice and would vitiate the impugned order. In that view of the matter, the impugned order passed by the Third Respondent is set aside leaving it open to the concerned authorities to appropriately deal with the matter following due process. It shall be incumbent upon the concerned authorities to issue show cause notice to the Petitioner along with working-sheet of the calculation for the excess payment claimed to have been made to him 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 earlier order passed in the matter, and the decision taken shall be communicated to the Petitioner under written acknowledgement.



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6. In the event of the concerned authorities failing to initiate fresh such proceedings within 30.09.2022, any amount so far recovered from the Petitioner pursuant to the impugned order, which has been set aside, shall be refunded to the Petitioner under written acknowledgment and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.

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

05.07.2022

skr

Index: Yes/No

Note: Issue order copy by 19.07.2022.

To

1. The Secretary to Government,
Treasury,
Secretariat, Chennai.
2. The Director of Treasury,
Chepauk,
Chennai – 600 005.



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3. The Assistant Director of Treasury,
Sub Treasury,
Gudiyattam,
Vellore District.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

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