



WEB COPY



W.P. No. 12377 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. 12377 of 2016

and

W.M.P. Nos. 10712 of 2016 and 1322 of 2017

K. Jayapalan

... Petitioner

-VS-

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Pension Department,
Fort St. George,
Chennai – 600 009.
2. The Director,
Special Auditing,
Panagal Building,
Saidapet,
Chennai – 600 015.
3. The Sub Treasury Officer,
Tirupattur Taluk,
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 records pertaining to order bearing no. Na.Ka.No. 9/2016 dated 24.02.2016 of the Third Respondent and quash the same and consequently direct the Respondents to refund the amount so recovered.



W.P. No. 12377 of 2016

For Petitioner : Mr. T.R.Rajagajentran
For Respondents : Mr. Gokula Krishnan
Additional Government Pleader

ORDER

Heard Mr. T.R.Rajagajentran, Learned Counsel for the Petitioner and Mr. Gokula Krishnan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Proceedings in Na. Ka. No. 9/2016 dated 24.02.2016 passed by the Third Respondent in which the Petitioner has been informed that the sum of Rs. 1,52,872/- excessively paid to him would be recovered from his pension with a consequential direction to the Respondents to refund the amount so far recovered.

3. This Court at the time of admission on 01.04.2016 had passed the following self-explanatory order:-

“ The Petitioner, who was initially appointed as Secondary Grade Teacher on 02.10.1973, was subsequently promoted as Tamil Pandit on 24.01.1994 and retired from service on



W.P. No. 12377 of 2016

WEB COPY

31.05.2002 on attaining the age of superannuation in the Selection Grade Scale of Pay of Rs. 6,500-200,10,500. Now the grievance of the Petitioner is that without issuing notice or whatsoever, the impugned order has been passed seeking recovery of Rs. 1,75,553/- on the ground of excess payment. It appears that no notice is issued or enquiry is held.

In view of the same, there shall be an order of interim stay until further orders. Notice to the Respondents returnable in three weeks.”

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



W.P. No. 12377 of 2016

amount paid to Government Servants/Pensioners/Family Pensioners would have to be made.

5. There is nothing to show either in the impugned order or in the Counter-Affidavit dated 08.08.2016 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,



W.P. No. 12377 of 2016

uninhibited and uninfluenced by the earlier order passed in the matter, and the decision taken shall be communicated to the Petitioner under written acknowledgement.

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 the Court.

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

05.07.2022

5/5

skr

Index: Yes/No

Note: Issue order copy by 19.07.2022.



W.P. No. 12377 of 2016

To

WEB COPY

1. The Secretary to Government of Tamil Nadu,
Pension Department,
Fort St. George,
Chennai – 600 009.
2. The Director,
Special Auditing,
Panagal Building,
Saidapet,
Chennai – 600 015.
3. The Sub Treasury Officer,
Tirupattur Taluk,
Vellore District.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.
2. K.Jayapalan,
S/o. Kuppusamy,
No. 58/10, Ramakkapettai,
(Near) Thirumagal Theatre,
Tirupattur,
Vellore District – 635 601.



WEB COPY



W.P. No. 12377 of 2016

P.D. AUDIKESAVALU, J.

skr

W.P. No. 12377 of 2016

05.07.2022

5/5