



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

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

W.P. No. 4571 of 2018

and

W.M.P. Nos. 5626 of 2018 and 2492 of 2019

Y.Revathy

... Petitioner

-vs-

1. The Government of Tamil Nadu
Represented by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
 2. The Director of Elementary Education,
Chennai - 600 006.
 3. The District Elementary Education Officer,
Kancheepuram.
 4. The Additional Assistant Elementary Education Officer,
Kadayampatti,
Salem District.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, issued for a Writ of Certiorarified Mandamus, to call for the records of the Fourth Respondent relating to order in Pro. Na. Ka. No. 53/A2/2018 dated 09.01.2018 and to quash the same insofar as it relates to the Petitioner and to issue consequential directions to the Respondents to grant the pay fixed prior to the impugned order and to refund the recovered amount if any, to the Petitioner.

For Petitioners : Mr. M.Ravi

For Respondents : Mrs. C.Sangamithirai
Special Government Pleader

O R D E R

Heard Mr. M.Ravi, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special 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. 53/A2/2018 dated 09.01.2018 passed by the Fourth Respondent in which the Petitioner has been informed that the salary under the Seventh Pay Commissioner would be determined only after the remittance of the excessive payment said to have been made to her towards incentive increments for higher qualification and a consequential direction is sought for grant of the pay fixed prior to the impugned order and to refund the recovered amount, if any, to her.

3. This Court at the time of admission on 02.03.2018 had granted an order of interim stay of recovery alone, which continues to be in force as on date.

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.

5. There is nothing to show that either in the impugned order or in the Counter-Affidavit filed by the Third Respondent that before the excess payment claimed to have been made was effected, any show cause notice had been issued to the Petitioner calling for an explanation from her 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 Fourth 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 her and after affording full opportunity of personal hearing to her and considering each of the objections that may be raised by her, 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.

6. In the event of the concerned authorities failing to initiate fresh such proceedings within 31.07.2022, any amount so far recovered from the Petitioner pursuant to the impugned order, which has been set aside, shall be refunded to her 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.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya/skr

To

1. The Secretary to Government
The Government of Tamil Nadu
School Education Department,
Secretariat, Chennai - 600 009.
2. The Director of Elementary Education,
Chennai - 600 006.
3. The District Elementary Education Officer,
Kancheepuram.
4. The Additional Assistant Elementary,
Educational Officer,
Thiruporur - 603 110,
Kancheepuram District.

Copy to

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

+1cc to the Government Pleader, S.R.No.20367

W.P. No. 4571 of 2018

KJ(CO)
SB(11/05/2022)