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W.P. No. 20543 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. 20543 of 2016
and
W.M.P. No. 17645 of 2016**

G.Arumugam

... Petitioner

-VS-

1. The Director of Treasury and Accounts,
Panagal Building,
Saidapet,
Chennai – 600 015.
2. The Director of Pension,
D.M.S. Compound,
Chennai – 600 006.
3. Assistant Treasury Officer,
Mayiladuthurai,
Nagapattinam District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for records made in the impugned order of the Third Respondent in Na.Ka.No. 508/2016/A3 dated 23.05.2016 and quash the same.

For Petitioner : Mr. R.Sreedharan

For Respondents : Mr. V.Jeevagiridharan,
Additional Government Pleader



W.P. No. 20543 of 2016

WEB COPY

ORDER

Heard Mr. R.Sreedharan, Learned Counsel for the Petitioner and Mr. V.Jeevagiridharan, 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. 50/2016/A3 dated 23.05.2016 passed by the Third Respondent in which the Petitioner has been informed that the sum of Rs. 3,04,328/- excessively paid to him would be recovered from his pension.

3. This Court at the time of admission on 17.06.2016 had passed the following self-explanatory order:-

“2. There shall be an order of interim stay of recovery alone, in respect of the excess payment made for the pension of the Petitioner, for a period of three weeks. As far as the future payment of pension is concerned, it is made clear that the Petitioner is eligible to get only the actually eligible revised



W.P. No. 20543 of 2016

WEB COPY

pension amount and not the excess pension amount, which was previously paid.”

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 in the impugned order 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 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



W.P. No. 20543 of 2016

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.

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.



W.P. No. 20543 of 2016

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Consequently, the connected Miscellaneous Petition is closed. No costs.

05.07.2022

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Index: Yes/No

Note: Issue order copy by 19.07.2022.

To

1. The Director of Treasury and Accounts,
Panagal Building,
Saidapet,
Chennai – 600 015.
2. The Director of Pension,
D.M.S. Compound,
Chennai – 600 006.
3. Assistant Treasury Officer,
Mayiladuthurai,
Nagapattinam District.

Copy to

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



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W.P. No. 20543 of 2016

P.D. AUDIKESAVALU, J.

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W.P. No. 20543 of 2016

05.07.2022