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W.P. No. 31168 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM

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

W.P. No. 31168 of 2016

and

W.M.P. Nos. 27016 and 27017 of 2016

S. Murugesan

... Petitioner

-VS-

1. The Director of Municipal Administration,
Chepauk,
Chennai – 5.

2. The Commissioner,
Sivakasi Municipality,
Sivakasi,
Virudhunagar District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records in pursuant to the impugned letter issued by the First Respondent in Proceedings Rc. Lr. No. 45529/F3/2010 dated 21.05.2015 and the consequential impugned common order of recovery issued by the Second Respondent in Proceedings Na. Ka. No. 5779/2015/C1 dated 22.07.2016 and quash these orders.



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For Petitioner : Mr. R.Prem Narayanan
For Respondents : Mr. P.Balathandayutham,
Special Government Pleader
(for R1)
Mr. J.Lawrance (for R2)

ORDER

Heard Mr. R.Prem Narayanan, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First Respondent and Mr. J.Lawrance, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is in the services of the Sivakasi Municipality, has challenged the Proceedings in Rc. Lr. No. 45529/F3/2010 dated 21.05.2015 passed by the First Respondent and the Proceedings in Na. Ka. No. 5779/2015/C1 dated 22.07.2016 passed by the Second Respondent in which he has been informed that the excess payment of Rs. 1,84,546/- made to him would be recovered from his salary in 20 monthly installments.



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3. This Court at the time of admission on 07.09.2016 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 in the impugned orders 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 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



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justice and would vitiate the impugned orders. In that view of the matter, the

impugned orders passed by the First and Second Respondents are 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 orders, which have been set aside, shall be refunded to him under written acknowledgment and report of compliance in that regard shall be filed before the Registrar (Judicial) of the Court.



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the connected Miscellaneous Petitions are closed. No costs.

04.07.2022

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Index: Yes/No

Note: Issue order copy by 18.07.2022.

To

1. The Director of Municipal Administration,
Chepauk,
Chennai – 5.
2. The Commissioner,
Sivakasi Municipality,
Sivakasi,
Virudhunagar District.

Copy to

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



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P.D. AUDIKESAVALU, J.

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