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W.P. No. 31795 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. 31795 of 2016

and

W.M.P. Nos. 27582 of 2016 and 25118 of 2017

K.Jayalakshmi

... Petitioner

-VS-

1. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore District.

2. The Deputy Director,
Local Fund Audit,
Coimbatore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the entire records which culminated in issuing the proceedings bearing reference No. Mu. Mu. No. 2997/2016/MC1 dated 17.08.2016 on the filed of the First Respondent, quash the same.



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For Petitioner : Mr. P.Ganesan

For Respondents : Mr. K.Mahesh (for R1)

Mr. P.Balathandayutham,
Special Government Pleader (for R2)

ORDER

Heard Mr. P.Ganesan, Learned Counsel for the Petitioner, Mr. K.Mahesh, Learned Counsel for the First Respondent and Mr. P.Balathandayutham, Learned Special Government Pleader appearing 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 Coimbatore City Municipal Corporation, has challenged the Proceedings in Mu. Mu. No. 2997/2016/MC1 dated 17.08.2016 passed by the First Respondent in which she has been informed that the excess payment would be recovered from her salary in 50 monthly installments.

3. This Court at the time of admission on 14.09.2016 had granted an order of interim stay of recovery alone, which continues to be in force as on date.



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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 either in the impugned order or in the Counter-Affidavits filed by the First and Second Respondents 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



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order passed by the First 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 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 her under written acknowledgment and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.



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In fine, the Writ Petition is ordered on the aforesaid terms. Consequently,

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 Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore District.
2. The Deputy Director,
Local Fund Audit,
Coimbatore District.

Copy to

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



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P.D. AUDIKESAVALU, J.

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