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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

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

W.P.NO.41214 OF 2016

AND

W.M.P.NOS.35178 OF 2016 AND 27618 OF 2017

R.Damodaran

... Petitioner

.Vs.

1. The Government of Tamil Nadu,
Rep. by Secretary,
Higher Education,
Chennai - 9.
2. The Treasury Officer,
Chidambaram,
Cuddalore District.
3. The Principal,
Periyar Government Arts College,
Cuddalore.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the proceedings No.Na.Ka.452 of 2016 dated 06.06.2016 issued by the Second Respondent, quash the same and direct the Second Respondent to continue to pay the revised pension to the Petitioner.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

O R D E R

Heard Mr.R.Subramanian, Learned Counsel for the Petitioner and Mr.P.Balathandayutham, 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 No.Na.Ka.452/2016 dated 06.06.2016 passed by the Second Respondent in which the Petitioner has been informed that the sum of Rs. 15,50,618/- excessively paid to him would be recovered from his pension with a consequential direction to the Second Respondent to continue to pay the revised pension to the Petitioner.

3. This Court at the time of admission on 24.11.2016 had passed the following self-explanatory order:-

"3. In the meantime, there shall be an order of interim injunction restraining the Second Respondent from recovering any amount from the pension of the Petitioners. So far as the future payment of pension is concerned, it is made clear that the Petitioners are eligible to get only the actually eligible revised 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 either in the impugned order or in the Counter-Affidavit dated 18.07.2017 filed by the Second 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 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 Second 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 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(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Secretary to Government of Tamil Nadu,
Higher Education,
Chennai - 9.
2. The Treasury Officer,
Chidambaram,
Cuddalore District.
3. The Principal,
Periyar Government Arts College,
Cuddalore.



Copy To:-

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

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+1cc to Mr.R.Subramanian, Advocate, S.R.No.32315
+1cc to the Government Pleader, S.R.No.32569

W.P.NO.41214 OF 2016

PL (CO)
PBS/14/06/2022