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W.P. No. 41457 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

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

W.P. No. 41457 of 2016

and

W.M.P. Nos. 35438 of 2016 and 6126 of 2017

B.B.Gopinatha Rao

... Petitioner

-VS-

1. The Assistant Treasury Officer
Sub Treasury
Palacode
Dharmapuri District.

2. The Accountant General
Teynampet
Chennai – 600 018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the First Respondent dated 18.11.2016 in Na. Ka. No. 1110/2016/A and quash the same.

For Petitioner : Mr. V.Paul Paneer Selvam

For Respondents : Mr. P.Balathandayutham,
Special Government Pleader (for R1)

Mrs. Hema Muralikrishnan (for R2)



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ORDER

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Heard Mr. V.Paul Paneer Selvam, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First Respondent and Mrs. Hema Muralikrishnan, Learned Counsel for the Second Respondent 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. 1110/2016/A dated 18.11.2016 passed by the First Respondent in which the Petitioner has been informed that the sum of Rs. 3,37,313/- excessively paid to him would be recovered from his pension.

3. This Court at the time of admission on 01.04.2016 had passed the following self-explanatory order:-

“ Learned Counsel appearing for the Petitioner submitted that the Petitioner is receiving pension in PPO No.A451428, through the Respondents, which was sanctioned by the Director of Local Audit. Earlier, there was reduction in pension and hence, questioning the same, the Petitioner filed a Writ Petition



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before this Court in W.P. No. 36657 of 2005 and the same was ordered in his favour on 23.09.2012. Now, within four years, another order was passed to recover the pension amount.

2. *Considering the said submission, there shall be an order of interim stay for a period of four weeks. Notice returnable in four weeks. Private notice is also permitted. ”*

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.



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5. There is nothing to show either in the impugned order or in the

Counter-Affidavit dated 31.01.2017 filed by the First 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. Further, it has not been properly explained in the impugned order as to how the excess payment had occurred and the period during which it had been made, particularly when this Court by an earlier order dated 23.09.2012 in W.P. No. 36657 of 2005 has interfered with the action taken for recovery and directed refund of the deductions made. 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 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 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)



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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.

05.07.2022

Maya

Index: Yes/No

Note: Issue order copy by 19.07.2022.



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To

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1. The Assistant Treasury Officer
Sub Treasury
Palacode
Dharmapuri District.
2. The Accountant General
Teynampet
Chennai – 600 018.

Copy to

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



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P.D. AUDIKESAVALU, J.

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