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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

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

W.P. No. 17062 of 2019  
and  
W.M.P. No. 16620 of 2019

H.Salim

... Petitioner

-vs-

1. The Assistant Director of Town Panchayats,  
Ooty Region, Otacamand,  
Nilgiris District.
2. The Executive Officer,  
Devershola Town Panchayat,  
Otacamand, Nilgiris 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 records of the Second Respondent in its Na. Ka. No. 144/2019/A2 dated 15.04.2019 and quash the same.

For Petitioner : Mr. S.Mahesh

For Respondents : Mrs. C.Sangamithirai  
Special Government Pleader

O R D E R

Heard Mr. S.Mahesh, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is in the services of the Devershola Town Panchayat, has challenged the Proceedings in Na. Ka. No. 144/2019/A2 dated 15.04.2019 passed by the Second Respondent in which he has been informed that the excess payment of Rs. 3,83,086/- made to him would be recovered from his salary in 60 monthly installments of Rs. 6,385/- each from April 2019 onwards.



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3. This Court at the time of admission on 19.06.2019 had granted an order of interim stay of recovery alone and the said order was made absolute on 13.11.2019 till the disposal of the Writ Petition.

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 that either in the impugned order or in the Counter-Affidavit 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 31.07.2022, any amount so far recovered from the Petitioner pursuant to the impugned order, which has 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 this Court.



In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-  
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Director of Town Panchayats,  
Ooty Region, Otacamand,  
Nilgiris District.
2. The Executive Officer,  
Devershola Town Panchayat,  
Otacamand, Nilgiris District.

Copy to

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

+1cc to M/s.V.Vijay Shankar, Advocate, S.R.No.24841

+1cc to the Government Pleader, S.R.No.24922

W.P. No. 17062 of 2019

SSN(CO)  
SU(11/05/2022)