



WEB COPY



W.P. No. 8021 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. 8021 of 2016

and

W.M.P. Nos. 7126 and 7127 of 2016

1. P. Jegan

2. T.Mutharasu

3. M.Senthil Kumar

... Petitioners

-VS-

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

2. The Commissioner,
Gudalur Municipality,
Gudalur,
Theni 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 quash the same.

For Petitioners

:

Mr. R.Prem Narayan



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For Respondents : Mr. P.Balathandayutham,
Special Government Pleader
(for R1)
Mr. K.Kathiresan (for R2)

ORDER

Heard Mr. R.Prem Narayan, Learned Counsel for the Petitioners, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First Respondent and Mr. K.Kathiresan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners, who are in the services of the Gudalur Municipality, challenge the Proceedings in Rc. Lr. No. 45529/F3/2010 dated 21.05.2015 passed by the First Respondent in this Writ Petition. It has also been brought to notice that the Second Respondent has in proceedings in Na. Ka. No. 1420/2014/C1 dated 17.02.2016 informed the Petitioners that the excess payment of Rs. 1,96,476/-, Rs. 1,33,631/- and Rs. 1,33,631/- made to them would be recovered from their salary in 49, 27 and 27 monthly installments respectively.



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3. This Court at the time of admission on 03.03.2016 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 that either in the impugned order or in the Counter-Affidavit dated 21.08.2018 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 Petitioners calling for an explanation from them



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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 orders. In that view of the matter, the impugned order dated 21.05.2015 passed by the First Respondent and the consequential order dated 17.02.2016 passed by the Second Respondent 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 Petitioners along with working-sheet of the calculation for the excess payment claimed to have been made to them and after affording full opportunity of personal hearing to them and considering each of the objections that may be raised by them, 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 Petitioners 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 Petitioners pursuant to the aforesaid orders, which have been set aside, shall be



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refunded to them 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.

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,
Gudalur Municipality,
Gudalur,
Theni District.

Copy to

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



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P.D. AUDIKESAVALU, J.

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