



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

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

W.P. NO. 20840 OF 2017

AND

W.M.P. NOS. 21697 AND 37986 OF 2017

S.Jayapal

... Petitioner

-vs-

1. The Superintendent of Prisons
Central Prison
Coimbatore - 641 018.

2. The Principal Accountant General (A&E)
Tamil Nadu, Chennai - 600 018.

... Respondents

Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent relating to order in Proc. No. 16767/Pol/2013 dated 02.05.2016 to quash the same and to consequently direct the Respondents herein to forthwith refund the amount recovered from the Petitioner till date to the Petitioner.

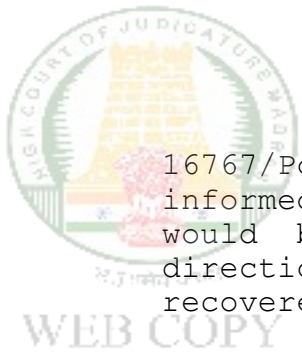
For Petitioner : Mr. M.Ravi

For Respondents : Mr. P.Balathandayutham
Special Government Pleader

O R D E R

Heard Mr. M.Ravi, Learned Counsel for the Petitioner, 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 in No.



16767/Po1/2013 dated 02.05.2016 in which the Petitioner has been informed that the sum of Rs. 57,638/- excessively paid to him would be recovered from his gratuity with a consequential direction to the Respondents to forthwith refund the amount recovered from the Petitioner till date to him.

3. This Court at the time of admission on 04.08.2017 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 either in the impugned order or in the Counter-Affidavit dated 12.09.2017 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. 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) 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



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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

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Superintendent of Prisons
Central Prison
Coimbatore - 641 018.
2. The Principal Accountant General (A&E)
Tamil Nadu, Chennai - 600 018.

Copy to

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

+1cc to the Government Pleader, S.R.No.39869

W.P. No. 20840 of 2017

MG(CO)
PM/07/07/2022