



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

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

W.P. No. 7277 of 2017

and

W.M.P. Nos. 7932 and 7933 of 2017

Dr. R.Devarajan

...Petitioner

-vs-

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Higher Education, Secretariat,
Chennai - 600 009.
2. The Assistant Treasury Officer,
Sub Treasury,
Pollachi.
3. The Secretary,
NGM College,
Pollachi.

...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings Na.Ka.No. 831/ 2017/A4 dated 01.03.2017 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. B.Ravi for Mr. R.Subramanian

For Respondents : Mr. V.Jeevagiridharan
Additional Government Pleader
(for R1 and R2)

O R D E R

Heard Mr. B.Ravi, Learned Counsel appearing for the Petitioner, Mr. V.Jeevagiridharan, Learned Additional Government Pleader appearing for the First and Second 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. 831/2017/A4 dated 01.03.2017 passed by the Second Respondent in which the Petitioner has been informed that the sum of Rs. 10,95,813/- 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 27.03.2017 had passed the following self-explanatory order:-

" It is seen that the Petitioner has retired from service on 27.05.1986. Therefore, in view of the huge delay of 30 years and in the light of the recent judgment of the Hon'ble Apex Court in State of Punjab -vs- Rafiq Masih (White Washer) reported in 2015 (5) CTC 455, the order of recovery cannot be issued.

Hence, the order of recover is hereby stayed."

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 in the impugned order 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

skr

To

1. The Secretary to Government of Tamil Nadu,
Higher Education, Secretariat,
Chennai - 600 009.
2. The Assistant Treasury Officer,
Sub Treasury,
Pollachi.
3. The Secretary,
NGM College,
Pollachi.

Copy to

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

+1cc to Mr.R.Subramanian, Advocate SR. No. 38919
+1cc to State Government Pleader SR. No. 39000

W.P. No. 7277 of 2017