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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM

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

W.P. No. 4941 of 2017

and

W.M.P. No. 5171 of 2017

M.K. Muthu

... Petitioner

-vs-

1. The Chief Manager,
Indian Bank,
Centralised Pension Processing Centre,
4th Floor, 66, Rajaji Salai,
Chennai - 600 001.

2. The Manager,
The Indian Bank,
Tiruvallur Bazaar Branch (1502),
Tiruvallur District.

3. The Director,
Combat Vehicles (Research & Development) Establishment,
Ministry of Defence,
Avadi, Chennai - 600 054.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, to direct the First Respondent to withdraw the instructions given to the Second Respondent for recovering the amount from the Petitioner's pension and consequently direct the Respondents to refund the amount recovered from the month of June 2016 till date.

For Petitioner : Mr. D.Ravindranathan

For Respondents: Mr. V.Kalyanaraman
or M/s.Aiyar and Dolia (for R1 & R2)

: No Appearance (for R3)

O R D E R

Heard Mr. D.Ravindranathan, Learned Counsel for the Petitioner and Mr. V.Kalyanaraman, Learned Counsel appearing for the First and Second Respondents and perused the materials



placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a pensioner, is aggrieved by the reduction of his pension from Rs. 16,241/- to Rs. 6,181/-. On an enquiry made by the Petitioner with the First Respondent, it was informed to him that an excess payment to the extent of Rs. 4,25,078/- had been made to him and the same would be recovered from his monthly pension in 83 monthly installments of Rs. 5,001/- each. The grievance sought to be ventilated by the Petitioner in this Writ Petition is that such recovery has been effected in violation of the principles of natural justice and no prior notice has been issued and no enquiry affording an opportunity of personal hearing to the Petitioner to explain his position has been granted. According to Learned Counsel for the Petitioner, no order of recovery has also been served on the Petitioner.

3. This Court at the time of admission on 28.02.2017 had granted an order of ad-interim injunction forbearing the First and Second Respondents from recovering a sum of Rs. 5,000/- per month from the monthly pension of the Petitioner, which continues to be in force as on date.

5. Learned Counsel appearing for the First and Second Respondents has brought to notice that in response to the legal notice issued by the Petitioner alleging about the reduction in pension, a reply dated 10.01.2017 had been sent by the Second Respondent to the Petitioner stating as follows:-

" Anent the above, we inform that while verifying the date in the Pension Master, we observed that as per the PPO, instead of arriving his basic pension by 2/3rd method (due to DP merger), the full amount was taken as basic pension. As such, Mr. M.K. Muthu is eligible for basic pension of Rs. 5,858/- pm w.e.f 01.01.2006 but he was paid with the basic pension of Rs. 7,834/- pm w.e.f 01.01.2006. The same was rectified at out end.

We have arrived at the Paid and Payable Statement w.e.f 01.01.2006 upto 31.07.2016 and inform that Mr. M. K.Muthu was paid with excess pension of Rs.4,25,078/-. We have already started the recovery of the excess pension paid w.e.f 01.06.2016 @ Rs. 5,000/- pm hence Mr. M. K.Muthu is receiving reduced pension from June 2016.

We also inform that as per the Undertaking Letter, Mr. M.K.Muthu has agreed to refund or make good any amount to which he is not entitled or any amount which



may be credited to his account excess of the amount to which he is or would be entitled.

As Mr. M. K.Muthu was paid with excess pension, we are in order recovering the same in monthly instalments."

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6. 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.

7. There is nothing to show 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 concerned authorities shall 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.

5. 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.



9. 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(CO)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Chief Manager,
Indian Bank,
Centralised Pension Processing Centre,
4th Floor, 66, Rajaji Salai,
Chennai - 600 001.
2. The Manager,
The Indian Bank,
Tiruvallur Bazaar Branch (1502),
Tiruvallur District.
3. The Director,
Combat Vehicles (Research & Development) Establishment,
Ministry of Defence,
Avadi, Chennai - 600 054.

Copy to

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

+1cc to Mr. D.Ravindranathan, Advocate, S.R.No.20277
+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.20239

W.P. No. 4941 of 2017

EV(CO)
CT 11/05/2022