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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. 34129 of 2017

and

W.M.P. Nos. 37883 and 37884 of 2017

S.Valarmathi

...Petitioner

-vs-

1. The Secretary to Government
School Education Department
Fort St. George, Chennai - 600 009.
2. The Director of School Education
DPI Buildings, College Road
Chennai - 600 006.
3. The Chief Education Officer
Krishnagiri District.
4. The District Education Officer
Krishnagiri District.
5. The Head Master
Government Girls Higher Secondary School
Hosur - 635 109
Krishnagiri District.

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records to the impugned order in Na.Ka. No. 137/2017 dated 24.11.2017 passed by the Fifth Respondent herein and quash the same as being illegal, arbitrary, unconstitutional and consequently, direct the Respondent Nos. 2 to 5 to disburse the petitioner's salary along with incentive increment for completion of higher qualification without any recovery for the post of Physical Education Director (Grade-I).

For Petitioner : Mrs. Nalini Chidambaram
Senior Counsel
For Mrs. C.Uma

For Respondents: Mrs.C.Sangamithirai (For R1 to R5)
Special Government Pleader



O R D E R

Heard Mrs. Nalini Chidambaram, Learned Senior Counsel appearing 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 was working as Physical Education Director Grade-I in the school of the Fifth Respondent, challenges the Proceedings in Na. Ka. No. 137/2017 dated 24.11.2017 passed by the Fifth Respondent in which she has been called upon to submit an undertaking for making deductions of the wrongful payment said to have been made to her towards incentive increment for higher qualification.

3. This Court at the time of admission on 29.12.2017 had granted an order of interim injunction restraining the Respondents from making any such deductions from her salary, 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 filed by the Third Respondent that before the wrongful payment claimed to have been made was effected, any show cause notice had been issued to the Petitioner calling for an explanation from her 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 Fifth 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 wrongful payment claimed to



have been made to her and after affording full opportunity of personal hearing to her and considering each of the objections that may be raised by her, 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 her 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.

-s/d-

Assistant Registrar

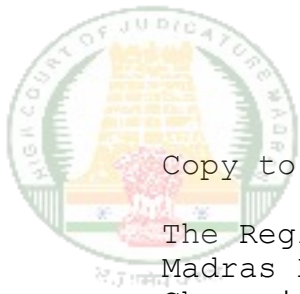
True Copy

Sub-Assistant Registrar

Maya

To

1. The Secretary to Government
School Education Department
Fort St. George, Chennai - 600 009.
2. The Director of School Education
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Government Girls Higher Secondary School
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Krishnagiri District.



Copy to

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

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+1cc to M/s.C.Uma, Counsel for the Petitioner, S.R.No.19731

+1cc to the Government Pleader, S.R.No.20365

W.P. No. 34129 of 2017

KJ(CO)
RN(11/05/2022)