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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. 1723 of 2017

and

W.M.P. Nos. 14070 of 2017 and 4014 of 2022

J. Ayyadurai (died)

1. A.Santha

2. A.Jeevagarajan

... Petitioners

(Petitioners are impleaded vide order dated 24.03.2022
in W.M.P. No. 4014 of 2022)

-vs-

1. The Accountant General (Principal),
Accountant General Office.
Audit Section,
Anna Salai, Teynampet,
Chennai - 600 018.

2. The Director of Treasuries,
Panagal Maaligai,
Saidapet, Chennai - 600 015.

3. The District Treasury Officer,
Tiruvannamalai.

4. The Assistant Treasury Officer,
Sub Treasury, Vandavasi.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, declaring the action of the Respondents in downwardly revising the pension of the Petitioner from Rs. 11,100/- to Rs. 10,640/- and ordering recovery of the excess amount as illegal and consequently direct the Respondents to restore the original pension amount of Rs. 11,100/- and pay all the arrears with interest at the rate of 12% per annum till date of disbursement.

For Petitioners: Mr. R.Saravanan for
Mr. T.Saikrishnan

For Respondents: Mr. Mahesh
for Mr. V.Vijayshankar (for R1)
:
Ms. C.Sangamithirai
Special Government Pleader
(for R2 to R4)



O R D E R

Heard Mr. R.Saravanan, Learned Counsel for the Petitioners, Mr. Mahesh, Learned Counsel appearing for the First Respondent and Ms. C.Sangamithirai, Learned Special Government Pleader, appearing for Second to Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Original Petitioner, who is a pensioner, is aggrieved by the reduction of his pension from Rs. 11,100 to Rs. 10,650/-. On an enquiry made by the Original Petitioner with the Third Respondent, it was informed to him that an excess payment to the extent of Rs. 65,000/- had been made to him and the same would be recovered from his monthly pension in monthly installments of Rs. 5,000/-. The grievance sought to be ventilated by the Original 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 Original Petitioner to explain his position has been granted. According to Learned Counsel for the Petitioners, no order of recovery has also been served on the Original Petitioner.

3. Since the Original Petitioner died on 20.02.2020 after the filing of the Writ Petition, his wife and son, viz., A.Santha and A.Jeevagarajan respectively, have been substituted as the Petitioners in the Writ Petition in his place by order dated 24.03.2022 in W.M.P. No. 4014 of 2022 passed by the Court.

4. This Court at the time of admission on 24.01.2017 had passed the the following self-explanatory order:-

" Notice of motion returnable by 10.03.2017. Private notice is also permitted. Mr. V.Vijayashankar, Learned Counsel appeared for First Respondent and Mr. P.Sanjay Gandhi, Learned Additional Government Pleader appeared for Second and Third Respondents and accepted notice.

The order of re-fixation and recovery of allegedly excessively paid pension, without putting the Petitioners on notice by the First Respondent is per se in violation of principles and natural justice and hence the Petitioners seek for ad-interim injunction.

On going through the materials, it is clear that the order of re-fixation and recovery has been done without affording any opportunity whatsoever to the Petitioners and if it is given effect to the Petitioners who are about 80 years, they are not only bound to suffer financial hardship but will



also be put to grave hardship and difficulty. The balance of convenience, as on today lie in their favour. Therefore, ad-interim injunction is granted till 10.03.2017. Call on 10.03.2017.

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In the meanwhile, the Learned Counsel for Petitioner to serve papers on the Learned Counsel for the First Respondent."

5. 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.

6. 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 Original 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 Petitioners along with working-sheet of the calculation for the excess payment claimed to have been made to the Original Petitioner 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.

7. In the event of the concerned authorities failing to initiate fresh such proceedings within 30.09.2022, any amount so far recovered from the Original Petitioner pursuant to the impugned order, which has been set aside, shall be refunded to the Petitioners 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 (CS-VIII)

//True Copy//

Sub Assistant Registrar

skr

To

1. The Accountant General (Principal),
Accountant General Office.
Audit Section,
Anna Salai,
Teynampet,
Chennai - 600 018.
2. The Director of Treasuries,
Panagal Maaligai,
Saidapet,
Chennai - 600 015.
3. The District Treasury Officer,
Tiruvannamalai.
4. The Assistant Treasury Officer,
Sub Treasury,
Vandavasi.

Copy to

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

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No. 20523
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No. 20160
+1cc to the Government Pleader, S.R.No. 20368

W.P. No. 1723 of 2017

JPL(CO)
GN(13/06/2022)