



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.02.2022

CORAM

WEB COPY

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

W.P. No. 17393 of 2017
and
W.M.P. No. 18890 of 2017

P.Murugesan

... Petitioner

-vs-

1.The Director of Local Fund Audit,
Kuralagam, Chennai.

2.The Assistant Director of Local Fund Audit,
Tiruvannamalai District.

3.The Commissioner,
Vandavasi Municipality,
Tiruvannamalai District.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records connected with the proceedings issued in Ni.Mu. No. 35310/ Na.O.Sa(4) 2015 dated 19.01.2016 passed by the Second Respondent and quash the same and consequently, direct the Respondents to disburse the recovered amount to the Petitioner with interest.

For Petitioner : Mr. S.Ilamvaludhi

For Respondents : Mrs. C.Sangamithirai,
Special Government Pleader
(for R1 & R2)

Mr. Y.Venkatesan (for R3)

O R D E R

Heard Mr. S.Ilamvaludhi, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. Y.Venkatesan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Pipe Line Fitter Grade 11 in the Vandavasi Municipality, had retired from



service on 31.10.2014. Since his terminal benefits had not been paid despite his representation dated 04.05.2015, he had approached this Court by way of Writ Petition in W.P. No. 19797 of 2015 and this Court by order dated 06.07.2015 directed the concerned authority to dispose the said representation within a period of six weeks from the date of receipt of a copy of that order. In furtherance thereto, certain benefits have been paid to him on 09.09.2015. Subsequently, the Second Respondent by Order in Ni. Mu. No. 35310/NaOSa(4)/2015 dated 19.01.2016 informed him that a sum of Rs. 1,96,778/- excessively paid to him had been recovered from the gratuity due to him. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said recovery made with consequential direction to refund the said amount.

3. 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.

4. It has not been shown in the impugned order that any show cause notice has been issued to the Petitioner calling for explanation from him with supporting materials relied before effecting the recovery of the excess payment said to have been made to him. Though it is stated in the Counter-Affidavit dated 10.04.2018 filed by the First Respondent that the Petitioner had made a representation dated 04.05.2015 regarding the audit objection for excess payment, it is seen that the said representation did not relate to any audit objection as claimed, but was a request to disburse the terminal benefits. 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 insofar as it effects recovery of a sum of Rs. 1,96,778/- towards excess payment 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.

5. In the event of the concerned authorities failing to initiate such proceedings within 31.07.2022, the sum of Rs. 1,96,778/- 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.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

dm

To

1.The Director of Local Fund Audit,
Kuralagam, Chennai.

2.The Assistant Director of Local Fund Audit,
Tiruvannamalai District.

3.The Commissioner,
Vandavasi Municipality,
Tiruvannamalai District.

Copy to

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

+1 cc to Government Pleader Sr.NO.11549

+1 cc to Mr.S.Ilamvaludhi, Advocate Sr.NO. 10874

+2 ccs to Mr.O.Selvam, Advocate Sr.NO. 11116

W.P. No. 17393 of 2017

AK II(CO)

<https://hcservices.ecourts.gov.in/hcservices/>
A.SR(01/06/2022)