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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

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

W.P. No. 26909 of 2017

and

W.M.P. Nos. 28681 and 28682 of 2017

J.W.E.Dharmaraj

... Petitioner

-vs-

1. Government of Tamil Nadu,
Rep.by Secretary,
Higher Education,
Chennai - 9.
2. The Sub-Treasury Officer,
Sub-Treasury,
Tambaram,
Chennai - 45.
3. The Principal,
Madras Christian College,
Tambaram,
Chennai - 45.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Second Respondent to continue to pay the pension amount of Rs. 44,668/- which was being received by the Petitioner.

For Petitioner : Mr. B.Ravi

For Respondents: Mr. Vadivelu Deenadayalan
Additional Government Pleader
(for R1 & R2)

: Ms. H.Mary Sowmi Rexi
for M/s.Isaac Chambers (for R3)



O R D E R

Heard Mr. B.Ravi, Learned Counsel for the Petitioner, Mr. Vadivelu Deenadayalan, Learned Additional Government Pleader appearing for the First and Second Respondents and Ms. H.Mary Sowmi Rexi, Learned Counsel appearing for the Third Respondent 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. 44,668/- to Rs. 10,967/-. On an enquiry made by the Petitioner with the Respondents, it was informed to him that an excess payment to the extent of Rs. 9,93,510/- had been made to him and the same would have to be recovered. The grievance sought to be ventilated in the Writ Petition is that such recovery has been effected in violation of 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 till date.

3. This Court, at the time of admission on 13.10.2017, had passed the following self-explanatory order:-

" The Petitioner is a Senior Citizen, aged about 79 years. After serving as the Professor in English in the Third Respondent, namely, Madras Christian College, Tambaram East, Chennai-59, he retired from service on 13.10.1987 and he was paid with a pension at Rs. 828/-. At present, his pension is Rs. 44,668/-. While so, after 30 long years, the Second Respondent resolved to cut his pension on the premise that a sum of Rs. 9,93,510/- was over paid.

2. Mr. ERA.Premnath, Learned Government Advocate takes notice for the First and Second Respondents. Post the matter after four weeks for filing counter.

3. In the mean time, it is directed to the Second Respondent to pay the pension of Rs. 44,668/- continuously to the Petitioner until further orders."

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. In the Counter-Affidavit dated 29.12.2017 filed by the Second Respondent, it is contended that the Petitioner had been informed about the audit objection raised by the Commissioner of Treasuries and Accounts, Chennai in respect of his pension and requested to submit his explanation, but he did not submitted any documentary evidence in that regard. However, there is nothing to show that before taking the decision to recover the excess payment said to have been made, 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.

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 action, 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 Petitions are closed. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



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To

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1. The Secretary,
Government of Tamil Nadu,
Higher Education,
Chennai - 9.
2. The Sub-Treasury Officer,
Sub-Treasury,
Tambaram, Chennai - 45.
3. The Principal,
Madras Christian College,
Tambaram, Chennai - 45.

Copy to

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

+1cc to Mr.R.Subramanian, Advocate, S.R.No.20057
+1cc to the Government Pleader, S.R.No.20372

W.P. No. 26909 of 2017

EV[co]
NSK 11/05/2022