



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

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

W.P. No. 1867 of 2017
and
W.M.P. No. 1865 of 2017

D. Asokan

... Petitioner

-vs-

1. The Inspector General of Prisons cum
Additional Director General of Police,
Egmore, Chennai - 600 008.
2. The Superintendent,
Central Jail-I (PUN), Puzhal,
Chennai - 600 066.
3. The Accountant-General
Accounts & Entitlements
O/o Accountant -General (C&SSA)
Tamil Nadu & Pondicherry,
Leka Pariksha Bhavan,
Chennai - 600 018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the Second Respondent in connection with the impugned order passed by him in Proc. No. 645/P2/2015 dated 22.03.2016 and Ref. No. 646/K1/2016 dated 16.11.2016 and quash the same.

For Petitioner : Mr. M.Muthappan

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

: No Appearance (for R3)



O R D E R

Heard Mr. M.Muthappan, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Proceedings No. 645/Po2/2015 dated 22.03.2016 and Proceedings No. 645/Ka1/2016 dated 16.11.2016 passed by the Second Respondent in which the Petitioner has been informed that the sum of Rs. 71,453/- excessively paid to him would be recovered from his salary and the gratuity amount due to him.

3. This Court at the time of admission on 27.01.2017 had granted an order of interim stay, 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 in the impugned order 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 orders. In that view of the matter, the impugned orders passed by the Second Respondent are 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.

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 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(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Inspector General of Prisons cum
Additional Director General of Police,
Egmore, Chennai - 600 008.
2. The Superintendent,
Central Jail-I (PUN), Puzhal,
Chennai - 600 066.
3. The Accountant-General
Accounts & Entitlements
O/o Accountant -General (C&SSA)
Tamil Nadu & Pondicherry,
Leka Pariksha Bhavan,
Chennai - 600 018.



Copy to

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

2. The Section Officer,
Writ Section,
High Court, Madras.

+lcc to Mr.M.Muthappan, Advocate SR.No.16893

+lcc to Government Pleader SR.No.17054

W.P. No. 1867 of 2017

VG II(CO)
GMY(12/05/2022)