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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. 28244 of 2017
and
W.M.P. No. 30359 of 2017

R. Sundaramoorthy

... Petitioner

-vs-

1. The Chief Engineer (Buildings) and Engineer in Chief,
Public Works Department,
Chepauk,
Chennai - 600 005.

2. The Assistant Executive Engineer,
PWD-Electrical Sub-Division,
Chepauk,
Chennai - 600 005.

3. The Accountant General (A and E),
Office of the Principal Accountant General,
No. 361, Anna Salai,
Teynampet,
Chennai - 600 018.

... 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 relating to the Second Respondent's order made in Proc. No. AEE/Elec.Chepauk/Overpayment/2016 dated 11.05.2017, to quash the same and consequently direct the Respondents to refund/return the amount of Rs. 5,87,528/- forthwith.

For Petitioner : Mr. L.Chandrakumar

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

: Mr. S.Balaji (for R3)



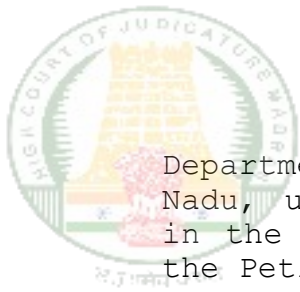
O R D E R

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

2. The Writ Petition challenges the Proceedings No. AEE/Elec/ Chepuak/Over Payment/2016 dated 11.05.2017 passed by the Second Respondent in which the Petitioner has been directed to remit the sum of Rs. 5,87,528/- towards wrongful payment said to have been made to him towards incentive increments for higher qualification and a consequential direction is sought for refund of the deducted 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. 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 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 impugned order passed by the Second 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 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.

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5. 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 III)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Chief Engineer (Buildings) and Engineer in Chief,
Public Works Department,
Chepauk, Chennai - 600 005.
2. The Assistant Executive Engineer,
PWD-Electrical Sub-Division,
Chepauk, Chennai - 600 005.
3. The Accountant General (A and E),
Office of the Principal Accountant General,
No. 361, Anna Salai,
Teynampet, Chennai - 600 018.

Copy to

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

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.16755

+1cc to Mr.S.Balaji, Advocate, S.R.No.16763

+1cc to the Government Pleader, S.R.No.17049

W.P. No. 28244 of 2017

MG(CO)
SB(11/04/2022)