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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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

W.P. No. 19572 of 2017

and

W.M.P. Nos. 21129 of 2017 and 973 of 2019

A.Nedunchelian

... Petitioner

-vs-

1. The Government of Tamilnadu,
Rep. by its Commissioner of Municipal Administration
and Water Supply Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Erode City Municipal Corporation,
Erode - 638 001.
3. Deputy Director of Local Fund Audit,
O/o. Erode City Municipal Corporation,
Erode.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na. Ka. No. C1/1898/2017 dated 22.06.2017 on the file of the Second Respondent and quash the same; consequently direct the Respondents to restore the Petitioner's scale of pay at Rs.5200-20200+2400 and continue to pay the same in the present post and also to refund the recovered amount of Rs.4,800/- from the salary of the Petitioner's salary for the month of June 2017.

For Petitioner : Mr.P.Rajavel

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

Mr. M.Rajamathivanan (for R2)



O R D E R

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

2. The Writ Petition challenges the Proceedings in Na. Ka. No. C1/ 1898/2017 dated 22.06.2017 passed by the Second Respondent in which the Petitioner has been informed that his scale of pay has been re-fixed and the sum of Rs.1,94,916/- excessively paid to him would be recovered from his salary. It is further contended that the sum of Rs. 4,800/- has been deducted from his salary for the month of June 2017 and in furtherance thereto, a consequential direction is sought for restoration of his scale of pay at Rs. 5,200/- - Rs. 20,200/- + Rs. 2,400/- and refund of the deducted amount.

3. This Court at the time of admission on 31.07.2017 had granted an order of interim stay of recovery alone, 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 that either in the impugned order or in the Counter-Affidavit filed by the Third Respondent 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 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 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 acknowledgment.

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 III)

/True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Municipal Administration
and Water Supply Department,
The Government of Tamil Nadu
Fort St. George,
Chennai - 600 009.
2. The Commissioner,
Erode City Municipal Corporation,
Erode - 638 001.
3. The Deputy Director of Local Fund Audit,
O/o. Erode City Municipal Corporation,
Erode.



Copy to

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

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+1cc to Mr.P.Rajavel, Advocate, S.R.No.10697
+1cc to Mr. M.Rajamathivanan, Advocate, S.R.No.10698
+1cc to the Government Pleader, S.R.No.11547

W.P. No. 19572 of 2017

KJ[co]
NSK 11/05/2022