



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

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

W.P. No. 28663 of 2017
and
W.M.P. No. 30843 of 2017

K. Thavasimuthu

...Petitioner

-vs-

1.The Commissioner,
Transport Department,
Chepauk,
Chennai - 600 005.

2.The Regional Transport Officer,
Regional Transport Office,
Namakkal South,
Namakkal.

3.The Deputy Transport Commissioner,
Office of the Deputy Transport Commissioner,
Salem - 5.

...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 on the file of the Second Respondent relating to orders issued by him in Koo No. 43378/E1/2015 dated 14.12.2015 and Se. Mu. No. 43378/E1/2015 dated 30.03.2016 and quash the same in so far as the Petitioner is concerned and to consequently direct the Respondents herein to forthwith restore his pay and to refund the amount recovered from the Petitioner, with interests on the said payment.

For Petitioner : Mr. S.Balakrishnan
for Mr. M.Ravi

For Respondents: Mr. P.Gurunathan
Additional Government Pleader



O R D E R

Heard Mr. S.Balakrishnan, Learned Counsel for the Petitioner and Mr. P.Gurunathan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Proceedings in Ku. No. 43378/E1/2015 dated 14.12.2015 and Proceedings No. 43378/E1/2015 dated 30.03.2016 passed by the Second Respondent in which the Petitioner has been directed to remit the sum of Rs. 55,128/- excessively paid to him and re-fixing his pay and a consequential direction is sought for restoration of his pay and to refund the amount recovered from him with interest.

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 Second 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 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



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 Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

kv

To

- 1.The Commissioner,
Transport Department,
Chepauk,
Chennai - 600 005.
- 2.The Regional Transport Officer,
Regional Transport Office,
Namakkal South,
Namakkal.
- 3.The Deputy Transport Commissioner,
Office of the Deputy Transport Commissioner,
Salem - 5.

Copy to

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

W.P. No. 28663 of 2017

AJS (CO)
PR (11/05/2022)