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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM

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

W.P.NO.34431 OF 2019

AND

W.M.P.NOS.35101 AND 35102 OF 2019

S.Usharani

... Petitioner

.Vs.

The Additional Director (Administration),
O/o. Directorate of Medical
and Rural Health Services,
DMS Complex, Teynampet,
Chennai.

... Respondent

PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue Writs of Certiorari, calling for the records pertaining to the impugned order of the Respondent in Ref.No.1231/OPI/2/2018 dated 16.03.2018 and consequential impugned order of the Respondent in Ref. No. 1231/OPI/2/2018 dated 08.11.2019 and quash the same as illegal and unlawful.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondent : Mrs.C.Sangamithirai,
Special Government Pleader

O R D E R

Heard Mr.J.Pooventhera Rajan, Learned Counsel for the Petitioner and Mrs.C.Sangamithirai, Learned Special Government Pleader appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is working in the Tamil Nadu Khadi and Village Industries Board, was absorbed in the services of the Respondent in the post of Office Assistant in the year 2012 and had retired from service. As certain excess payments said to



have been made to the Petitioner were sought to be recovered from her relying on Letter No.2928/F1/2016-8 dated 19.12.2017 from the Principal Secretary to Government, Handloom, Handicrafts, textiles and Khadi Department, the Petitioner along with certain others had assailed the same in W.P.No.15225 of 2018 in which order dated 21.02.2019 was passed quashing the said order and directing show cause notice to be issued to the Petitioner and take a decision relating to recovery after considering the explanation that may be submitted by the Petitioner and other records and materials available in that regard. It is further stated that a reply dated 25.07.2019 had been submitted by the Petitioner in response to the show cause notice dated 22.07.2019 received from the Respondent, but without complying with the directions issued by this Court in the order dated 21.02.2019 in W.P. No. 15225 of 2018, another Order in Ref. No. 1231/OP1/2/18 dated 08.11.2019 passed by the Respondent has been served on the Petitioner enclosing the proceedings in Ref.No.1231/OPI/2/2018 dated 16.03.2018 passed by the Respondent to take action to recover the excess amount said to have been paid to the Petitioner earlier. Aggrieved thereby, the Petitioner has challenged Order in Ref.No.1231/OP1/2/18 dated 08.11.2019 and proceedings in Ref.No.1231/OPI/2/2018 dated 16.03.2018 passed by the Respondents in this Writ Petition.

3. It is borne out from the materials available on record that the impugned proceedings in Ref.No.1231/OPI/2/2018 dated 16.03.2018 had been issued prior to the order dated 21.02.2019 in W.P. No. 15225 of 2018 passed by this Court, though it has been served on the Petitioner by Order in Ref. No. 1231/OP1/2/18 dated 08.11.2019 thereafter. Moreover, the directions issued by this Court in the order dated 21.02.2019 in W.P. No. 15225 of 2018 have not been carried out before passing the impugned orders.

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 orders 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 her 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 First and Second Respondents 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 her, 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.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kv/skr

To

The Additional Director (Administration),
O/o. Directorate of Medical
and Rural Health Services,
DMS Complex, Teynampet,
Chennai.

+1cc to the Government Pleader, S.R.No.29132

W.P.NO.34431 OF 2019

KV(CO)
PBS/17/06/2022



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