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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.12239 of 2020

and

W.M.P. (MD) Nos.10498 & 12904 of 2020

J.Selvam

... Petitioner

vs.

The Executive Engineer
Public Works Department /
Water Resource Organization
Cauvery Basin Division
Thanjavur

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned proceedings in Se.Mu.A.No.NiA-1/Ko-21(365)/2020, dated 19.03.2020 issued by the respondent and quash the same as illegal.

For Petitioner : Mr.V.R.Shanmuganathan
for Mr.AL.Kannan

For Respondent : Mr.D.Sadiq Raja
Additional Government Pleader

O R D E R

The order of refixation of pay and recovery, dated 19.03.2020, passed by the respondent, is under challenge in this writ petition.

2. The petitioner is working as Assistant in the respondent - Public Works Department. His pay was fixed as per the Pay Rules in force and certain benefits were extended with the reference to the Government Orders passed.



3. The learned counsel for the petitioner made a submission that the impugned order of recovery was issued without issuing any show cause notice to the petitioner. No doubt, the petitioner was provided with an opportunity to submit his objection, however, the objections raised by the petitioner were not considered by the respondent.

4. The learned Additional Government Pleader appearing for the respondent objected the above contentions by stating that an opportunity was provided to the petitioner to defend his case, the order was kept in abeyance and the petitioner was permitted to submit his representation, however, before taking a final decision, the petitioner has approached this Court.

5. This Court is of the considered opinion that such an opportunity was provided to the petitioner after passing an order and keeping the order in abeyance, which would create further suspicion that an opportunity in clear terms was given to the petitioner or not. If at all opportunity was given after passing an order and keeping it in abeyance, the same cannot be treated as an acceptable procedure for the purpose of complying with the principles of natural justice. Therefore, this Court is of the opinion that a show cause notice must be issued to the petitioner and on receipt of explanation, the objections raised by the petitioner are to be considered on merits and thereafter, a final order is to be passed.

6. At this juncture, the learned Additional Government Pleader appearing for the respondent submitted that the petitioner has given an undertaking that in the event of any audit objection or excess pay, it can be recovered in one lump sum. When such an undertaking is given by the petitioner with reference to the Judgment of the Honourable Supreme Court, the Authorities are competent to recover the same. However, all those facts are to be decided by giving an opportunity to the petitioner.

7. In such view of the matter, the writ petition is allowed and the impugned order dated 19.03.2020, passed by the respondent, is quashed. The matter is remanded back to the file of the respondent. The respondent is directed to issue a show cause notice to the petitioner setting out all the facts and circumstances, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the show cause notice, the petitioner is at liberty to submit his objection along with documents, if any, within a period of two weeks thereafter. Subsequently, the respondent is directed to decide the issues on



merits and in accordance with law by passing a speaking order as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CO)

/ /2022

Sub Assistant Registrar(CS)

krk

To:

The Executive Engineer,
Public Works Department /
Water Resource Organization,
Cauvery Basin Division,
Thanjavur.

+1 CC to M/s.AL. KANNAN, Advocate
(SR-21752[F] dated 27/04/2022)

+1 CC to M/s.SPL.GOVERNMENT PLEADER
(SR-21864[F] dated 27/04/2022)

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and
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SP/11/05/2022/3P/4C