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W.P. No. 722 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

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

W.P. No. 722 of 2023

and

W.M.P. Nos. 659 and 660 of 2023

K.Anandapadmanabhan

... Petitioner

-VS-

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government
Home (Police) Department
Fort St. George, Secretariat
Chennai – 600 009.
2. The Director
Department of Fire and Rescue Service
Egmore, Chennai – 600 008.
3. The District Fire Officer
Perambalur District
Perambalur.
4. The Accountant General (A&E) Tamil Nadu
361, Anna Salai
Teynampet, Chennai – 600 018.
5. The Sub Treasury Officer
Panruti
Cuddalore District – 607 106.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the



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records relating to the impugned order issued by the Fifth Respondent in Na.Ka.No. 426/2022/A dated .../07/2022 signed on 18.11.2022 and to quash the same and consequently directing the Respondents to restore the pensionary benefits already sanctioned to the Petitioner in accordance with G.O. Ms. No. 304, Finance (Pay Commission) Department dated 28.03.1990.

For Petitioner : Mr. G.Sankaran, Senior Counsel
For Mr. S.Nedunchezhiyan

For Respondents : Mrs. R.Anitha (R1 to R3 & R5)
Special Government Pleader

Mr. S.Balaji (R4)

ORDER

Heard Mr. G.Sankaran, Learned Senior Counsel appearing for the Petitioner and Mrs. R.Anitha, Learned Special Government Pleader, who takes notice for the First to Third and Fifth Respondents and Mr. S.Balaji, Learned Counsel, who takes notice for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. Na. Ka. 426/2022/A dated .../07/2022 signed on 18.11.2022 passed by the Fifth Respondent in which it has been informed to the Petitioner that the excess payment of Rs. 9,10,201/- made to him would be recovered from his pension in 85 monthly installments



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of Rs. 10,710/- each from November 2022 onwards, with a consequential direction to the Respondents to restore the pensionary benefits already sanctioned to the Petitioner in accordance with G.O. Ms. No. 304, Finance (Pay Commission) Department dated 28.03.1990 issued by the Government of Tamil Nadu.

3. This Court at the time of admission on 10.01.2023 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.



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5. There is nothing to show in the impugned order 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 Fifth 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 them and after affording full opportunity of personal hearing to them and considering each of the objections that may be raised by them, 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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6. In the event of the concerned authorities failing to initiate fresh such proceedings within 30.06.2022, 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.

15.03.2023

Maya

Index: Yes/No

Note: Issue order copy by 30.05.2023.

To

1. The Principal Secretary to Government of Tamil Nadu
Home (Police) Department
Fort St. George, Secretariat
Chennai – 600 009.
2. The Director
Department of Fire and Rescue Service
Egmore, Chennai – 600 008.
3. The District Fire Officer
Perambalur District
Perambalur.



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4. The Accountant General (A&E) Tamil Nadu
361, Anna Salai
Teynampet, Chennai – 600 018.

5. The Sub Treasury Officer
Panruti
Cuddalore District – 607 106.

Copy to

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



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P.D. AUDIKESAVALU, J.

Maya

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