



W.P. No. 4834 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. 4834 of 2023

and

W.M.P. No. 4864 of 2023

1. P.Jayapal

2. C.Janarthanan

3. S.Arumuga Poomalai

4. A.Namasivayam

5. K.Thangarasu

... Petitioners

-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 General of Police
Fire and Rescue Services
Marshalls Road
Egmore
Chennai – 600 008.

3. The Accountant General (Accounts & Entitlements) Tamil Nadu
361, Anna Salai
Chennai – 600 018.



W.P. No. 4834 of 2023

4. The Senior Deputy Accountant General (Pension)

O/o. the Accountant General (Accounts & Entitlements) Tamil Nadu

361, Anna Salai

Chennai – 600 018.

... 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 records relating to the impugned order issued by the Fourth Respondent in PEN 30/6/OR 245/GO 304/20-21/46482 dated 08.02.2021 and to quash the same and consequently directing the Respondents to sanction the revised pension to the Petitioners as per the revised Pension Payment Order issued by the Third Respondent in implementation of G.O. Ms. No. 304, Finance (Pay Commission) Department dated 28.03.1990 with all consequential and other attendant benefits.

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

For Respondents : Mrs. R.Anitha (R1 & R2)
Special Government Pleader

Mr. S.Balaji (R3 & R4)

ORDER

Heard Mr. G.Sankaran, Learned Senior Counsel appearing for the Petitioners and Mrs. R.Anitha, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. S.Balaji, Learned Counsel



W.P. No. 4834 of 2023

appearing for the Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. PEN 30/6/OR 245/GO 304/20-21/46482 dated 08.02.2021 passed by the Fourth Respondent directing the Second Respondent to issue necessary instructions to the respective Treasuries for recovery of the excess pension paid to the Petitioners as G.O. Ms. No. 304, Finance (Pay Commission) Department dated 28.03.1990 issued by the Government of Tamil Nadu has been found inadmissible to them, with a consequential direction to the Respondents to sanction the revised pension to the Petitioners as per the revised Pension Payment Order issued by the Third Respondent in implementation of G.O. Ms. No. 304, Finance (Pay Commission) Department dated 28.03.1990 issued by the Government of Tamil Nadu with all consequential and other attendant benefits.

3. This Court at the time of admission on 22.02.2023 had granted an order of interim stay, 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,



W.P. No. 4834 of 2023

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 order that before the excess payment claimed to have been made was effected, any show cause notice had been issued to the Petitioners calling for an explanation from them 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 Fourth 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 Petitioners along with working-sheet of the calculation for



W.P. No. 4834 of 2023

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 Petitioners under written acknowledgement.

6. In the event of the concerned authorities failing to initiate fresh such proceedings within 30.06.2023, any amount so far recovered from the Petitioners pursuant to the impugned order, which has been set aside, shall be refunded to them 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.

15.03.2023

Maya

Index: Yes/No

Note: Issue order copy by 30.05.2023.



W.P. No. 4834 of 2023

To

WEB COPY

1. The Principal Secretary to Government of Tamil Nadu
Home (Police) Department
Fort St. George, Secretariat
Chennai – 600 009.
2. The Director General of Police
Fire and Rescue Services
Marshalls Road
Egmore
Chennai – 600 008.
3. The Accountant General (Accounts & Entitlements) Tamil Nadu
361, Anna Salai
Chennai – 600 018.
4. The Senior Deputy Accountant General (Pension)
O/o. the Accountant General (Accounts & Entitlements) Tamil Nadu
361, Anna Salai
Chennai – 600 018.

Copy to

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



WEB COPY



W.P. No. 4834 of 2023

P.D. AUDIKESAVALU, J.

Maya

W.P. No. 4834 of 2023

15.03.2023