



W.P. No. 7501 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

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

W.P. No. 7501 of 2023

and

W.M.P. No. 7603 and 7604 of 2023

K.N. Jayabalan

... 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
Thiruvallur District, Tiruvallur.
4. The Accountant General (A&E) Tamil Nadu
361, Anna Salai,
Teynampet, Chennai 600 018.
5. The Treasury Officer,
District Treasury,
Tiruvallur 602 001.

... 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 relating to the impugned order issued by the Fourth Respondent in P12/3/Pt.No.14138/22 – 23/37780/119 dated 18.11.2022, signed on 24.11.2022



W.P. No. 7501 of 2023

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 : Ms.R.Anitha
Special Government Pleader
(for R1 to R3 and R5)

Mr. S.Balaji (for R4)

ORDER

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

2. The Petitioner, who is receiving pension on retirement from service as Station Officer in the Department of Fire and Rescue Services, Government of Tamil Nadu, has filed this Writ Petition challenging the Order No. P12/3/Pt.No.14138/22-23/37780/119 dated 18.11.2022 passed by the Fourth Respondent in which the Fifth Respondent has been directed to recover the



W.P. No. 7501 of 2023

excess payment of Pension Arrear/CVP/DCRG made to the Petitioner after

issuing show cause notice, but without providing any details in that regard.

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 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



W.P. No. 7501 of 2023

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 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 under written acknowledgement.

5. In the event of the concerned authorities failing to initiate fresh such proceedings within 30.06.2023, any amount so far recovered from the Petitioner pursuant to the impugned order, which has been set aside, shall be refunded to the Petitioner under written acknowledgment and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.



W.P. No. 7501 of 2023

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Consequently, the connected Miscellaneous Petition is closed. No costs.

15.03.2023

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Index: Yes/No

Neutral Citation: 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
Thiruvallur District, Tiruvallur.
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W.P. No. 7501 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 7501 of 2023

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