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W.P. No. 11809 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM

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

**W.P. No. 11809 of 2023
and
W.M.P. No. 11710 of 2023**

M.Abdul Jaleel

... Petitioner

-VS-

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

2. The Pension Pay Officer
Nandanam
Chennai District – 600 035.

... 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 proceedings of the Second Respondent in Na.Ka. No. Nil/2022/dated Nil/01/2023 and quash the same and to consequently forbear the First and Second Respondents from withholding or effecting any recovery from the Petitioner's pension for future months.

For Petitioner : Mr. Swarnam J.Rajagopalan

For Respondents : Mrs. Hema Muralikrishnan (R1)

Mr. B.Vijay (R2)
Additional Government Pleader



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ORDER

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Heard Mr. Swarnam J.Rajagopalan, Learned Counsel for the Petitioner, Mrs. Hema Muralikrishnan, Learned Counsel for the First Respondent and Mr. B.Vijay, Learned Additional Government Pleader who takes notice for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent in Proceedings Na. Ka. No. Oo. Va. A./2022 dated 17.02.2023 has required the Petitioner to remit the sum of Rs. 5,36,098/- said to have been excessively paid to him, which is assailed in this Writ Petition and a consequential direction has been sought to forbear the First and Second Respondents from withholding or effecting any recovery from his pension for future months.

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



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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 and would vitiate the impugned order. In that view of the matter, the impugned order passed by the Second 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



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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 acknowledgment.

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 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 Petition is closed. No costs.

19.04.2023

Maya

Index: Yes/No

Neutral Citation : Yes/No

Note: Issue order copy by 30.05.2023.



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To

1. The Accountant General (A&E)
361, Anna Salai
Teynampet, Chennai – 600 018.
2. The Pension Pay Officer
Nandanam
Chennai District – 600 035.

Copy to

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



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P.D. AUDIKESAVALU, J.

Maya

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