



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.17991 of 2023
and W.M.P.Nos.17146 of 2023 & W.M.P.Nos.26193 of 2024

Mr.M.N.Ramamurthy

... Petitioner

Vs.

1.The Regional Joint Director,
Department Treasuries and Accounts,
Coimbatore.

2.The District Treasury Officer,
Nilgris District Treasury,
Udhagamandalam,
The Nilgris District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in connection with the impugned order passed him in Na.Ka. No.3603/ 202/ D2 dated 16.05.2023 and quash the same

For Petitioner : Mr.P.Venkataraman

For Respondents : Mr.P.Balathandayutham
Special Government Pleader



ORDER

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2.The case of the petitioner is that he joined the service as a Secondary Grade Teacher on 01.09.1979 in the Government Primary School, Ootacamund. Thereafter, he was promoted to the post of Head Master in the year 2004 and the petitioner retired from service w.e.f., 31.01.2005. An order was issued on 02.02.2005 and the monthly pension of the petitioner was fixed. According to the petitioner, the pension was computed as per the pay fixation by the Pay Commission and accordingly, the petitioner was receiving a sum of Rs.26,090/- as pension.

3.The further case of the petitioner is that the 2nd respondent issued a Show Cause notice dated 05.05.2023 to the effect that the petitioner has been paid excess



amount to the tune of Rs.2,82,173/- for the period between 01.01.2011 to 30.04.2022 and that the said objection was raised by the Audit report of the 1st respondent. Accordingly, the petitioner was asked to give his explanation within a period of fifteen days from the date of receipt of the Show Cause Notice. The petitioner received the Show Cause Notice only on 10.05.2023 and by the time the petitioner responded, the impugned proceedings of the 2nd respondent came to be issued on 16.05.2023 and the same has been put to challenge in the present writ petition.

4.The learned counsel for the petitioner further submitted that during the pendency of this writ petition, the Block Educational Officer, Ootacamund through proceedings dated 04.01.2024, canceled the pension that was fixed for the petitioner. This was pursuant to the order passed by the District Treasury Officer which is under challenge in the present writ petition. This order passed by the Block Educational Officer dated 04.01.2024 was put to challenge by filing W.P.No.11077 of 2024. The said writ petition was allowed by an order dated 24.04.2024 and the order passed by the Block Educational Officer was set aside and liberty was granted to the said authority to issue a fresh Show Cause Notice



and afford opportunity to the petitioner. Pursuant to the same, a fresh Show Cause Notice dated 18.09.2024 came to be issued by the Block Educational Officer and on receipt of the same, the petitioner also submitted his explanation dated 03.10.2024 and the same is pending before the Block Educational Officer.

5.Heard Mr.P.Venkataraman, learned counsel appearing on behalf of the petitioner and Mr.P.Balathandayutham, learned Special Government Pleader appearing on behalf of the respondents.

6.The short issue that arises for consideration in the present writ petition is as to whether the impugned proceedings of the 2nd respondent dated 16.05.2023, requires the interference of this Court.

7.Before dealing with the above issue, it must be kept in mind that the writ petition was entertained on 16.06.2023 and the following interim order was passed by this Court:

Mr.P.Sanjay Gandhi, learned Government Advocate, who takes notice for the respondents, seeks time to file counter.



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The recovery of excess payment made from a pensioner owing to wrong fixation by the department is impermissible under law, in view of the ratio laid down in The State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334. Hence, there shall be an order of interim stay. Post on 21.07.2023.

8. In spite of the above interim order, the Block Educational Officer has acted upon the decision taken by the District Treasury Officer and has canceled the pension that was fixed to the petitioner. In the considered view of this Court, this action ought not to have been taken by the Block Educational Officer, since the decision taken by the District Treasury Officer is already under challenge and an interim order has also been passed by this Court.

9. The main grievance that was expressed by the learned counsel for the petitioner is that the Show Cause Notice dated 05.05.2023 came to be issued by the 2nd respondent and it was received by the petitioner only on 10.05.2023. Even in the Show Cause Notice, fifteen days time was given to the petitioner to submit his explanation. However, the 2nd respondent in a hasty manner, issued the impugned proceedings dated 16.05.2023 much before the expiry of fifteen days time that was



given to the petitioner. Accordingly, it was contended that no opportunity was given to the petitioner and that the impugned order was passed by the 2nd respondent in a hasty manner and thereby, resulting in initiating steps to recover the alleged excess amount paid to the petitioner.

10. The petitioner has retired from service as a Head Master in the year 2005. According to the petitioner, the pension pay order came to be issued only on considering the pay fixation that was done by the competent authority and the last drawn pay of the petitioner. All of a sudden, the proceedings came to be issued in the year 2023 on the ground that excess payment has been made to the petitioner for the period from 01.01.2011 to 30.04.2022. When such a notice is issued to the pensioner, sufficient opportunity must be given to the pensioner to give his explanation, since the pensioner is depending upon the pension received by him for his livelihood. Therefore, sufficient opportunity ought to have been given to the petitioner and whereas, the impugned proceedings came to be issued by the District Treasury Officer even before the expiry of fifteen days time which was given to the petitioner to submit his explanation. Therefore, the action taken by the District Treasury Officer certainly results in civil consequences and the petitioner has been



denied sufficient opportunity resulting in violation of principles of natural justice.

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11. In view of the above discussion, this Court has absolutely no hesitation to interfere with the impugned proceedings of the 2nd respondent dated 16.05.2023 and the same is accordingly quashed. In view of the same, there shall be a further direction to the Block Educational Officer not to proceed further with any enquiry pursuant to the Show Cause Notice issued on 18.09.2024. This is in view of the fact that the Block Educational Officer was only following up the earlier order passed by the District Treasury Officer and since the said order has now been interfered, there is no scope for the Block Educational Officer to proceed further with any enquiry and the said authority has to necessarily await for the final decision to be taken by the District Treasury Officer.

12. In the result, this writ petition is allowed and the impugned proceedings dated 16.05.2023, is hereby quashed. The petitioner is directed to submit his explanation for the Show Cause Notice dated 05.05.2023, within a period of fifteen days from the date of receipt of copy of this order. On receipt of the explanation from the petitioner, the 2nd respondent shall deal with the same on its own merits



and in accordance with law and pass final orders, within a period of six weeks thereafter. Depending upon the order passed by the 2nd respondent, the Block Educational Officer shall decide on the further course of action. A copy of this order shall also be marked to the Block Educational Officer-3, Ootacamund, The Nilgris District. No Costs. Consequently, connected miscellaneous petitions are closed.

14.10.2024

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
ssr



To

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- 1.The Regional Joint Director,
Department Treasuries and Accounts,
Coimbatore.
- 2.The District Treasury Officer,
Nilgris District Treasury,
Udhagamandalam,
The Nilgris District.
- 3.The Block Educational Officer-3,
Ootacamund,
The Nilgris District.



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N. ANAND VENKATESH, J.

SSR

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