



W.P.No.1724 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.1724 of 2017
and WMP.No.1688 of 2017

J.Devakumaran

... Petitioner

Vs.

1.The Accountant General (Principal)
Accountant General Office
Audit Section, Anna Salai,
Teynampet, Chennai – 600 018.

2.The Director of Treasuries
Panagal Malaigai
Saidapet, Chennai – 15.

3.The District Treasury Officer,
Tiruvannamalai.

4.The Assistant Treasury Officer,
Sub Treasury
Vandavasi.

... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, to declare the action of the respondents in downwardly revising the pension of the petitioner from Rs.11,100/- to Rs.10,640/- and ordering recovery of the excess amount as illegal and consequently direct the respondents to restore the original pension amount of Rs.11,100/- and pay all the arrears with interest at the rate of 12% p.a. till date of disbursement.

For Petitioner : Mr.T.Saikrishnan



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For Respondents : Mr.Mr.V.Murali for R1.
Mr.P.Gunasekaran, AGP for R2 to R4.

ORDER

This writ petition has been filed against the action of the respondents wherein monthly pension of the petitioner is reduced from Rs.11,100/- to Rs.10,640/- and ordering recovery of the excess amount paid as illegal and in violation of the principles of natural justice.

2. The learned counsel for the petitioner submits that without issuing any notice or without passing order, the respondents have unilaterally decided to reduce the monthly pension of the petitioner which is in violation of the principles of natural justice. The learned counsel for the petitioner has placed the copy of the order dated **16.10.2020** in **WP.(MD).No.17259 of 2013** and another order dated **17.07.2023** in **WP.(MD).No.3828 of 2016**, wherein this Court has set aside the order of the respondents, when the recovery proceedings were initiated against the petitioner therein.

3. A counter affidavit has been by the respondents 1 and 4.

4. Though several submissions are made in the said counter affidavits, there is no specific mention about whether the petitioner was issued with any notice before reducing the pension of the petitioner. In the counter affidavit filed by the 1st respondent, it is stated that the 1st respondent has not issued any recovery orders.



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5. The learned Additional Government Pleader appearing for the respondents submits that as per the objection taken by the Treasury authorities stating that wrong fixation of pension was fixed to the petitioner and accordingly pension of the petitioner is revised as per his eligibility and further contends that there is no illegality or irregularity in the action of the respondents and sought to dismiss the writ petition.

6. On considering all the facts and circumstances of the case, it is an admitted fact that the respondents did not put the petitioner on notice before reducing the monthly pension of the petitioner.

7. In view of the same, this Court is of the considered opinion, that the action of the respondents in reducing the monthly pension of the petitioner is against the principles of natural justice.

8. On perusal of the orders of this Court relied on by the learned counsel for the petitioner, it appears that in an identical circumstances, similar writ petitions are allowed on the ground of violation of principles of natural justice.

9. In an identical circumstances, this Court by an order dated 24.03.2022 in



WP.No.1723 of 2017 held as extracted herein under :-

*“5. 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.*

6. There is nothing to show 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 concerned authorities shall 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 the



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excess payment claimed to have been made to the Petitioner 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.”

10. Following the same, the present writ petition is allowed declaring that the action of the respondents in reducing the pension of the petitioner from Rs.11,100/- to Rs.10,640/- is illegal and in violation of the principles of natural justice and accordingly the respondents are directed to restore the original pension to the petitioner and pay all arrears within two months from the date of receipt of a copy of this order.

11. It is made clear that the respondents are entitled to rectify the error in fixation of pension, but it can be undertaken only after issuing notice to the petitioner and after giving reasonable opportunity of hearing to the petitioner.



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12. There shall be no order as to costs.

13. Consequently, connected miscellaneous petition is closed.

05.02.2024

Index :Yes/No

Neutral Citation :Yes/No

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