

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2009

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

Writ Petition Nos.2423 to 2425 of 2008
and
M.P.Nos.1, 1 and 1 of 2008

- | | |
|-------------------|---------------------------------|
| 1. M.Sivaprakasam | ..Petitioner in WP.No.2423/2008 |
| 2. M.Ganesan | ..Petitioner in WP.No.2424/2008 |
| 3. L.N.Srinivasan | ..Petitioner in WP.No.2425/2008 |

Vs.

- | | |
|---|---------------------------|
| 1. State of Tamil Nadu,
rep. by its Secretary,
Finance Dept.,
Fort St. George,
Chennai-9, | |
| 2. The Accountant General,
Teynampet, Chennai-18. | ..Respondents in all WPs. |

Writ Petitions filed under Article 226 of the Constitution of India praying for the reliefs to issue Writs of Mandamus to direct the respondents to refund Rs.65,249/- (in respect of petitioner in WP.No.2423 of 2008) Rs.84,224/- (in respect of Petitioner in WP.No.2424 of 2008) and Rs.78,315/- (in respect of petitioner in WP.No.2425 of 2008) respectively with 18% of interest per annum and to pay the difference of pension from April 2006 in pursuance of the Inspection Note for the year 2004-2005 of the 2nd respondent and thereby refix the pensionary benefits according to law to the petitioners respectively.

For Petitioners :	Mr.A.R.Nixon
For Respondents :	Mr.T.Srinivasan, AGP
	for R.1
	Mr.V.Vijayashankar for R.2

COMMON ORDER

The writ petitioners have retired from their services in 2009 and they were paid the pensionary benefits. The writ petitions are for a direction against the respondents to refund the amounts of Rs.65,249/=, Rs.84,224/- and Rs.78,315/= respectively, with 18% of

interest per annum and to pay the difference of pension from April 2006, pursuant to the inspection note for the year 2004-2005 of the second respondent.

2. A perusal of the proceedings of the second respondent in L.Dis.2299, 2298 and 2300/07 B respectively, dated 30.11.2007 would show that based on the inspection note for the year 2004-2005, it was found that the petitioners' pension was wrongly fixed at Rs.2,910/- instead of Rs.2,181/- insofar as it relates to the first writ petitioner is concerned, Rs.3,757/= instead of Rs.2,772/= insofar as it relates to the second writ petitioner is concerned, and Rs.3,637/= instead of Rs.2,762/= insofar as it relates to the third writ petitioner is concerned, w.e.f. 1.4.1999 and it has led to excess payment made to the petitioners and that has been recovered from their pensionary benefits from July 2004 to April 2006.

3. On the face of it, it is not in dispute that while making such recovery, the second respondent has not given an opportunity to the petitioners. In fact, the Supreme Court in Shyam Babu Verma v. Union of India [(1994) 2 SCC 521] has held that in such cases where there is no fault on the part of the petitioners and in spite of it, the amount is recovered or scale has been reduced, or in cases where by a subsequent assessment, a wrong payment has been ascertained, it was held that the excess amount already paid cannot be recovered.

4. In the present case, the second respondent has recovered the amount without any notice to the petitioners, which can only be said to be an arbitrary exercise of power, as opposed to the well established canons of justice, especially in violation of the principles of natural justice. In such view of the matter, the concerned orders of the second respondent dated 30.11.2007 respectively made in L.Dis.2299, 2298 and 2300/07 B are set aside and the second respondent is directed to repay the amount already recovered, to the petitioners within two weeks from the date of receipt of a copy of this order. Needless to state that if the second respondent is advised to revise the pensionary benefits, the same shall be done only after giving notice and sufficient opportunity to the petitioners. The writ petitions stand allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gs.

To

1. The Secretary to Government,
State of Tamil Nadu,
Finance Department,
Fort St. George,
Chennai-9.

2. The Accountant General,
Teynampet,
Chennai-18.

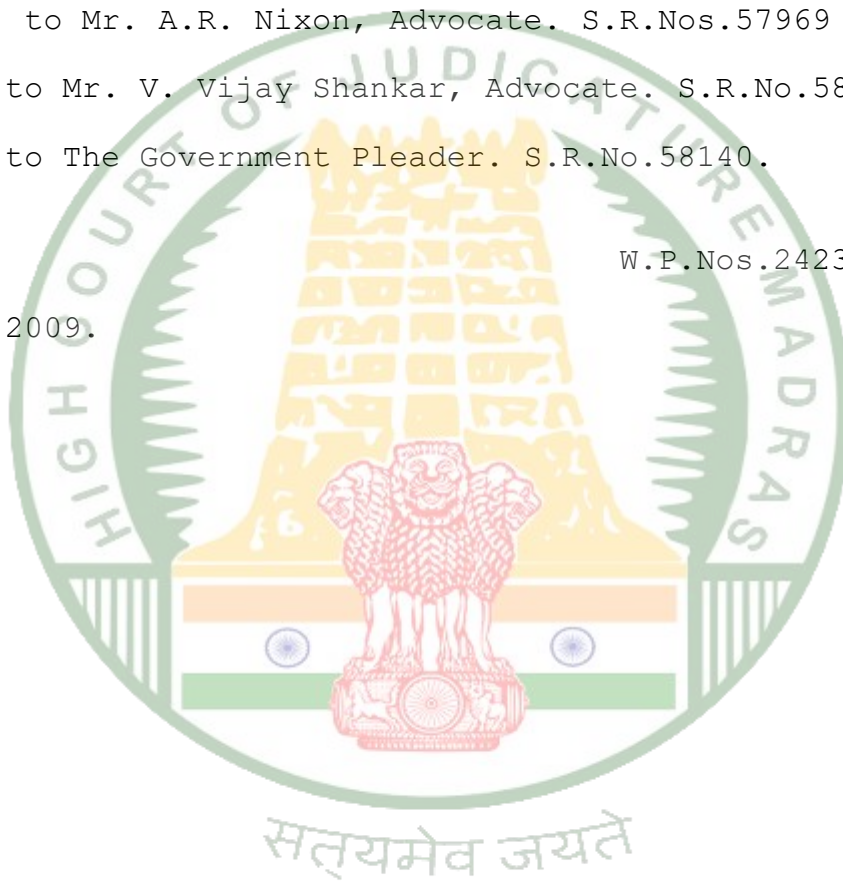
+ 3 c.cs. to Mr. A.R. Nixon, Advocate. S.R.Nos.57969 to 57971.

+ 1 c.c. to Mr. V. Vijay Shankar, Advocate. S.R.No.58052.

+ 1 c.c. to The Government Pleader. S.R.No.58140.

W.P.Nos.2423 to 2425 of 2008

DM (CO)
GSK 16.11.2009.



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