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W.P.No.10910 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.10910 of 2012

R.Thangadurai

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by its Agriculture Production Commissioner &
Secretary to Government,
Fort St. George, Chennai – 9.

2.The Director of Horticulture & Plantation Crops,
Chepauk, Chennai – 5.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari Mandamus calling for the respondents of the 1st respondent in connection with the impugned order passed by him G.O.3D No.23 Agriculture (VN8) Department dated 04.02.2012 and quash the same and grant the petitioner all consequential service and monetary benefits and grant such other further relief.

For Petitioner : Mr.K.Venkatramani
Senior Counsel
for Mr.M.Muthappan

For Respondents : M/s.N.Senthil Selvi
Government Advocate



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ORDER

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This writ petition is filed for issuance of a Writ of Certiorari Mandamus to quash the impugned order dated 04.02.2012 passed by the 1st respondent in G.O.3D No.23 Agriculture (VN8) Department and grant the petitioner all consequential service, monetary benefits and relief.

2. The case of the petitioner is that he entered the service as a directly recruited Junior Assistant through a selection conducted by TNPSC and was appointed to the service on 18.05.1985 and promoted as Assistant in the year 1993 and due for promotion as Superintendent in the year 2009, but due to the pending disciplinary proceedings initiated on 05.02.2008, the claim of the petitioner has been overlooked from 2008 onwards till date of filing of the writ petition. The Government of India conducted a Trade fair during the year 2005 in the Chennai Trade Centre for which the Government of Tamil Nadu sought funds to the tune of Rs.3.5 lakhs from the National Medicinal Plant Board, New Delhi. As the fund was not forthcoming, the concerned officer addressed a letter to the Government of Tamil Nadu and obtained funds for participating in the Arogya Mela in the year 2005. In the meanwhile, the funds from the Central Government were also sanctioned.



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Thiru.S.Ravindran, Assistant Director was not only in-charge of the Mela and also for the funds spent the sanctioned funds of Rs.3.5 lakhs by the Central Government but also the funds sanctioned by the State Government. The petitioner was issued a charge memo under Rule 17(b) of the TNCS (D & A) Rules for the allegation as an Assistant dealing with the file, he did not bring to the knowledge of the Head Department about the sanctioning of the funds by the Central Government.

3. Learned senior counsel for the petitioner would submit that Thiru.S.Ravindran, Assistant Director of Horticulture Officer and Thiru.Amanullah, Section Officer and the petitioner were proceeded departmentally under Rule 17(b) of TNCS (D&A) Rules. Though the charge memo was issued on 05.02.2008, there was no progress. Hence, Thiru.S.Ravindran, Assistant Director of Horticulture Officer, approached this Court in W.P.No.27344 of 2009 and obtained a direction on 19.11.2009 to complete the disciplinary proceedings within a period of six months from the date of receipt of a copy of the order. Finally, the Enquiry Officer was appointed in the year 2010 and conducted an enquiry on 27.04.2010.



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4. Learned senior counsel further submitted that it was a common enquiry not only against the petitioner but also against the co-delinquents, namely Thiru.S.Ravindran, Assistant Director of Horticulture as well as Thiru.A.Amanullah, Section Officer. The co-delinquent, the Assistant Director, who was responsible for the entire episode was allowed to retire from service before the conclusion of the disciplinary proceedings. Thiru.A.Amanullah, the then Section Officer who was instrumental in making a claim along with Thiru.S.Ravindran was promoted as Assistant Director even before conclusion of the disciplinary proceedings. No witness was examined on the side of the prosecution except the preliminary enquiry report followed by the Enquiry Officer and based on the report, the Enquiry Officer has held that the charges against the petitioner have been proved for the sole reason that the petitioner, who has nothing to do with the receiving of funds as well as disbursing the funds, has not brought on record the funds received from the Central Government to the Director of Horticulture and held that the charges have been proved on 02.06.2010. A copy of the Enquiry Officer's report dated 01.10.2010 was furnished to the petitioner and in turn, he submitted his further representation for the Enquiry Officer's report. The petitioner, who has also become due for promotion as Superintendent from



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Assistant, has also approached this Hon'ble Court in W.P.No.13726 of 2011 for promotion and this Court directed the respondents to complete the disciplinary proceedings and pass final orders within a reasonable time but the same was not complied with. In the meanwhile, the petitioner's claim has been overlooked and his juniors have been promoted. The petitioner made a representation. Even afterwards, no orders have been passed. Finally, the Government issued an order in G.O.3D.No.23 dated 04.02.2012, agreeing with the findings of the Enquiry Officer and for the proven charges imposing a punishment of stoppage of increment for a period of one year without cumulative effect. The co-delinquent, namely Thiru.S.Ravindran, the Assistant Director was also allowed to retire from service and he was imposed with a cut in pension of Rs.50/- per month for one year. Thiru.A.Amanullah, the Section Officer, who is now serving as Assistant Director, was imposed with a punishment of stoppage of increment for one year.

5. Learned senior counsel further submitted that there is no absolutely no justification for imposing the punishment on the petitioner, when the petitioner had no knowledge about the receipt and as well as the



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disbursement of the amount both from the Central Government as well as the State Government. When there is a specific noting given by the Director that the file should be handled by him only, the petitioner was not aware of any happenings in respect of the exhibition. The petitioner was only an Assistant and he cannot act on his own and he has to act only as per the instructions of the superior officers. The petitioner in his explanation has specifically stated that as per the oral orders of the then Commissioner, Bhaskaran, I.A.S, the petitioner was not permitted to handle the file. Whenever there is a noting, the petitioner will be asked to put his initials for their writings in the file. The petitioner has not put any notings in the file. Moreover, the handwriting in the file would go to show that none of the notings have been prepared by the petitioner. Moreover, the petitioner was also transferred on 13.04.2005 much earlier to the period in which the disbursement has been made.

6. Learned senior counsel further submitted that there is no allegation that the petitioner has committed commissions and omissions in respect of the funds received from the Central and State Governments. As the charge itself is vague, non-specific, ambiguous and has no basis, and the petitioner as a member of ministerial staff, has in no way handled the



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expenses for the fair, he cannot be imposed with a punishment by any stretch of imagination. Moreover, the officials namely Thiru.S.Ravindran, the Assistant Director, and Thiru.A.Amanullah, the Agriculture Officer, alone handled the files and funds and when there is a specific direction that the petitioner should not handle the file, where there is the question of the petitioner being found fault for any non-existent.

7. Learned senior counsel for the petitioner drew the attention of this Court to grounds (c) and (g) of the affidavit, which are extracted hereunder:

“(c) There has been inordinate and unexplained delay in the initiation, commencement and conclusion of the disciplinary proceedings. It is submitted that for a delinquency of the year 2005, a charge memo was issued in 2008 and even after the conclusion of the enquiry on 27.04.2010 and also after obtaining further representation for the Enquiry Officer's report, no orders have been passed till February 2012. There is delay in each and every stage of the disciplinary proceedings and the delay remains unexplained. Due to the delay in the initiation, commencement and conclusion of the disciplinary proceedings, the petitioner was unable to defend himself effectively in the disciplinary proceedings. The petitioner's claim for promotion as Superintendent has been overlooked for not only for the year 2008 but also for the subsequent panels 2009, 2010, 2011 and 2012. The petitioner is highly prejudiced due to the delay in the disposal of the disciplinary proceedings. Hence, on the ground of delay alone, the impugned order is liable to be quashed.



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(g) The 1st respondent failed to see that the petitioner though serving as Assistant was not allowed to deal with the file, except simply endorsing the notes made by the Higher Officer on their direction cannot be held responsible for the grave lapses committed by the Higher Officers who deliberately refused to send the accounts for auditing by the Accountant General as per the directions of the Central Government. The petitioner cannot be held responsible in the absence of any material evidence against him can be fixed with the responsibility of failure to protect the interest of the Government. There is no basis for such conclusion.”

Aggrieved by the order passed by the 1st respondent dated 04.02.2012, the petitioner has come forward with the present writ petition.

8. Learned Government Advocate appearing for the respondents submitted the written instruction dated 14.02.2024 of the Director, Horticulture and Plantation Crops, Chepauk, Chennai-05, the 2nd respondent herein, which is contrary to the charge memo dated 05.02.2008.

9. A counter was filed by the respondents on 23.12.2015, in which it is stated that the petitioner failed to furnish the utilization certificate to audit before sending the same to the National Medicinal Plants Board. Therefore, he is responsible for the non-submission of the utilization



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certificate to the National Medicinal Plants Board. Moreover, it is his official duty to inform the officers regarding the non-submission of the utilization certificate after getting it audited. Such work is to be carried out only by the section clerk and the officers concerned have to be informed of these procedures only by the section clerks. The petitioner did not carry over the work of submitting the utilization certificate to the Board after getting it audited. Hence, as a section clerk, he was derelicted from his official duties. Therefore, the Government has the power to inquire into the allegations or any other flaws which are said to be due to ignorance or may be under the shield of ignorance. The petitioner has not only submitted that utilization certificate for some ulterior motive and is trying to escape with the shield of ignorance. Moreover, the writings of the Director of Horticulture “such files should be handled by the officers only”, may be interpreted on the aforesaid grounds and this need not be treated as a defense by the petitioner to conceal his above said original works to be carried over only by him after the completion of technical proceedings by the technical officers. Therefore, there is a violation of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.



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10. Learned Government Advocate submitted that Government vide G.O.(3D) 23, Agriculture (AA-8) Department dated 04.02.2012 has imposed a punishment of stoppage of increment for one year without cumulative effect. In this G.O., the details of dereliction by the petitioner was discussed in detail along with the findings of the Enquiry Officer. As the Government accepts the findings of the Enquiry Officer in this report, it is needless to contend that the Government has to comment on the findings of the Enquiry Officer also. If the view of the Government differs from the findings of the Enquiry Officer, then the Government has to comment on his findings to establish its views. But on the other hand, it is not necessary to comment on the findings, if the Government decides to accept the view of the Enquiry Officer. Therefore, the final orders of the Government are quite proper. The punishment of stoppage of increment for one year without cumulative effect is not excessive and disproportionate when the disciplinary proceedings were under 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. This itself is a consideration for the petitioner instead of imposing major penalties as part of the disciplinary proceedings under Rule 17(b). Except the amount of increment, there is no financial loss to him and he was not pushed to that state.



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11. Heard both sides and perused the materials available on record.

12. The petitioner was working only as Assistant in the office of the Director of Horticulture & Plantation Crops, Chepauk, Chennai, the 2nd respondent herein and the funds which were allotted by the State Government as well as the Central Government were handled by one Thiru.S.Ravindran, Assistant Director of Horticulture & Plantation Crops, Chepauk, Chennai, who is in-charge of conducting exhibitions at Mela as per the conducted by the National Medical Board (NMB), a sum of Rs.3.5 lakhs allocated by the Central Government for conducting Arogya Mela and a sum of Rs.2.5 lakhs was also sanctioned by the Government of Tamil Nadu since there was a delay in sanction of funds. The 2nd respondent has written to the Government for sanction of the funds for conducting the said Mela but in the mean time, the Central Government has allocated and as well as the State Government, so total the amount sanctioned for conducting the Arogya Mela is Rs.6 lakhs (Rs.3.5 lakhs for the Central Government + Rs.2.5 lakhs for the State Government).



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13. In the statement of the charge memo dated 05.02.2008, which is

extracted hereunder:

“The NMPB, New Delhi in response to the letter from Dr.R.Baskaran I.A.S has sent a D.D dated 04.01.2005 for Rs.3 lakhs. In the covering letter the NMPB has stipulated certain conditions such as utilization certificate duly signed by Government Auditor Chartered Accountants and a certificate that the Institution Organisation (i.e.Horticulture and Plantation Corporation of Tamil Nadu) has not received any financial assistance for the same purpose from any other department of Central or State Government etc should be furnished. The said amount of Rs.3 lakhs was credited in to Dr.R.Baskaran I.A.S's office Bank Account and a cheque for the same amount was given to Thiru.S.Ravindran, Assistant Director Horticulture, Kanchipuram on 11.01.2005 to spend the same for the above purpose and to furnish utilization certificate. Thiru.S.Ravindran, credited the cheque in his office account, State Bank of India, Kanchipuram. S/B account No.01100060003.

In the mean time the Government of Tamil Nadu have sanctioned Rs.2.5 lakhs for the same purpose on 07.01.2005 vide G.O.Ms.No.3 Agriculture Department Thiru.H.A.Amanullah, Horticulture Officer, T&E Section, Office of the Commissioner of Horticulture and Plantation Crops Department, Chennai, failed to bring it to the notice of the Commissioner of Horticulture about the sanction of money earlier by NMPB New Delhi for the same purpose and the conditions imposed by it. Resulting which Dr.R.Baskaran, I.A.S., Commissioner of Horticulture and Plantation Crops Department, Chennai, issued a proceedings on 19.01.2005 authorising Thiru.S.Ravindran to draw and utilize this amount also for the installation of department stalls in the exhibition. Thiru.S.Ravindran had withdrawn both the amounts and shown them spent for the same purpose. Thiru.S.Ravindran had failed to adhere the conditions stipulated by NMPB while granting the funds for arranging the stall in Arogya – 2005 and submitted utilization certificates for utilizing the funds to the T & E Section, Office



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of the Com"missioner of Horticulture and Plantation Crops Department, Chennai. Being the incharge of the section Thiru.H.A. Amanullah failed in his duty to act on the utilization certificate to get audited by a Government Auditor Chartered Accountants Thiru.R.Thangadurai had thus failed to act in the best interest of the department and caused financial loss.

14. The findings of the Enquiry Officer's report dated 01.10.2011, which is extracted hereunder for better appreciation and understanding:

“விசாரணை அலுவலரின் கண்டுபிடிப்புகள்

இக்குற்றச்சாட்டின் தொடர்பாக பிழையாளர் அளித்துள்ள விளக்கம் 27.04.10 காஞ்சிபுரம் தோட்டக்கலை துணை இயக்குநர் அலுவலகத்தில் நடைபெற்ற நேரடி விசாரணையின்போது திரு.எஸ்.ரவீந்திரன், முன்னாள் தோட்டக்கலை உதவி இயக்குநரும் மற்றும் திரு.எச்.ஏ.அமான்னல்லா, தோட்டக்கலை அலுவலர் ஆகியவர்களிடம் பெறப்பட்ட வாக்குமூலம் திரு.எஸ்.ராமச்சந்திரன் தோட்டக்கலை உதவி இயக்குநர் (திட்டம்), சென்னை அவர்களிடம் பெறப்பட்ட கடிதம் லஞ்ச ஊழல் ஒழிப்புத்துறை.

அலுவலரின் விசாரணையின் போது இவ்வழக்கு சம்பந்தப்பட்ட அலுவலர்களிடம் பெறப்பட்ட வாக்குமூலம் திரு.இரா.தங்கதுரை உதவியாளரால் 27.04.2010 அன்று விசாரணையின் போது அளிக்கப்பட்ட கூடுதல் விளக்கம் மற்றும் இவ்வழக்கு குறித்த ஆவணங்கள் ஆகியவை என்னால் தீர பரிசீலனை செய்யப்பட்டது.

27.04.2010 அன்று திரு.இரா.தங்கதுரையிடம் நேரடி விசாரணை செய்து பெறப்பட்ட வாக்குமூலத்தின்படி கோப்பு எண் P.L.N1/28293/04-ஐ தொழில் நுட்ப அலுவலர் என்ற முறையில் தோட்டக்கலை அலுவலர் (தொழில் நுட்பம்) திரு.எம்.ஏ.அமான்னல்லா அவர்களாலே முழுக்க, பராமரிக்கப்பட்டுள்ளதும், அனைத்து கடிதங்களும் (பயனீட்டுச் சான்று கடிதம் உட்பட) பகிர்மான பதிவேட்டு எண் இடப்படாமல் இருப்பதும் குறிப்பு



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கோப்பு பக்கம் 1-ல் தோட்டக்கலை ஆணையாளர் அவர்களால் “Such files should handled by officers only” என்று எழுதப்பட்டுள்ளதும், பயனீட்டுச் சான்று கடிதத்தில் Received on 17.02.05 என்று திரு.எச்.ஏ.அமானுல்லா தோட்டக்கலை அலுவலர் (தொழில் நுட்பம்) அவர்களால் எழுதி கையொப்பம் இடப்பட்டுள்ளதும், இக்கோப்பில் 7 நடவடிக்கைகள் தவிர மற்ற அனைத்து நடவடிக்கைகள் யாவும் தோட்டக்கலை அலுவலர் (தொழில் நுட்பம்) அவர்களாலே மேற்கொள்ளப்பட்டுள்ளதும், பயனீட்டு சான்று கோப்பில் இணைக்கப்பட்டுள்ளதும், பிரிவு உதவியாளருக்கு அறிவுரை வழங்கி குறிப்பு எழுதிய விபரம் அடங்கிய கோப்பினை தன் பொறுப்பிலேயே வைத்துள்ளதும் இது குறித்த நிலையில் தணிக்கையாளருக்கும் மற்றும் பதுடெல்லி, NMPB நிறுவனத்திற்கும் பயனீட்டு சான்று அனுப்பிடாமல் உள்ளதும் ஊர்ஜிதமாகிறது.

எனவே விசாரணை அலுவலர் என்ற முறையில் இக்குற்றச்சாட்டினை ஆய்வு செய்கையில் திரு.இரா.தங்கதுரை உதவியாளர் Non Technical என்பதும், இவர் உயர் அலுவலர்களின் அறிவுரையினை ஏற்றுதான் சில இடங்களில் நடவடிக்கை எடுக்கப்பட்டுள்ளதும், “Such files should handled by officers only” என குறிப்பு கோப்பில் தோட்டக்கலை ஆணையர் அவர்களால் தன் கைப்பட எழுதப்பட்டுள்ளதும், திரு.இரா.தங்கதுரை உதவியாளர் குறித்து திரு.எஸ்.ராமச்சந்திரன், தோட்டக்கலை உதவி இயக்குநர் (திட்டம்) சென்னை மற்றும் திரு.எஸ்.ரவீந்திரன், முன்னாள் தோட்டக்கலை ஏதம் வழங்கப்படாத நிலை இருந்த போதிலும், பயனீட்டு சான்று பெற்று, தணிக்கைக்கு அனுப்பி, NMPBக்கு அனுப்ப நடவடிக்கை தொடர வேண்டிய நிலைய, தோட்டக்கலை அலுவலர் (தொழில் நுட்பம்) உள்ளிட்ட உயர் அலுவலர்களின், கவனத்திற்கு கொண்டு செல்ல வேண்டியது, ஒரு பிரிவு உதவியாளரது கடமை என்பதிலிருந்து தவறியுள்ளார் என்பதிலிருந்து மட்டும், நடத்தை விதிகள் 1973ல் விதி 20ஐ மீறி செயல்பட்டுள்ளார் என்பது ஊர்ஜிதமாவதால் இவரின் மீதான குற்றச் சாட்டு நிரூபணமாகிறது.”

15. It is clear and evident that the funds has been handled by



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Thiru.S.Ravindran, Assistant Director of Horticulture & Plantation Crops, Chepauk, Chennai, and not by the petitioner, who is only working as Assistant in the said office. The punishment imposed on Thiru.S.Ravindran, who is also a co-delinquent is cut-off Rs.50/- for pension in the period of one year and Thiru.A.Amanullah who is Section Officer in the 2nd respondent's office was imposed with the punishment for stoppage of six increments for one year and subsequently he was also permitted to the post of Assistant Director in the place of Thiru.S.Ravindran, after the superannuation.

16. It is also pertinent to note that the petitioner was transferred from the post of Assistant on 13.04.2005 and earlier to the period in which the disbursement has been made and hence the petitioner cannot be held responsible for the above said disbursement.

17. In the written instruction dated 14.02.2024 of the Director of Horticulture and Plantation Crops, the 2nd respondent herein, it is stated that the amount of Rs.3.00 lakhs was credited into Dr.R.Baskaran, I.A.S's Office Bank Account and a cheque for the said



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amount was given to Thiru.S.Ravindran, Assistant Director Horticulture, Kanchipuram, on 11.01.2005 to spend the same for the above purpose and to furnish utilization certificate. Thiru.S.Ravindran, credited the cheque in his office account, State Bank of India, Kanchipuram S/B account No.01100060003. In the meantime, the Government of Tamil Nadu sanctioned Rs.2.5 lakhs for the same purpose on 07.01.2005 vide G.O.Ms.No.3, Agriculture Department, Thiru.Amanullah, Horticulture Officer, T&E Section, Office of the Commissioner of Horticulture and Plantation Crops Department, Chennai-5.

18. It is pertinent to note G.O.(3D) No.23, Agriculture (AA8) Department, dated 04.02.2012 imposing the punishment under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. It is stated that the exhibition was conducted in the month of August 2005, whereas the petitioner has been transferred on 13.04.2005 from the said post.

19. It is further stated that Thiru.S.Ravindran is authorised to



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draw and utilize this amount for the installation of department stalls in the exhibition. He has withdrawn both amounts and shown them spent for the same purpose. Thiru.S.Ravindran had failed to adhere the conditions stipulated by NMPB while granting the funds for arranging the stall in Arogya-2005 and submitted utilization certificate for utilizing the funds to the T&E Section, Office of the Commissioner of Horticulture and Plantation Crops Department, Chennai.

20. It is to be noted that in the writings of the Director of Horticulture i.e. **“such files should be handled by officers only”**. Hence, the petitioner has failed to furnish the utilization certificate to the audit and to the National Medical Plants Board. Therefore, the petitioner is responsible for non-submission of Utilization Certificate to the National Medical Plants Board after getting it audited.

21. **From the above facts, it is clear that Thiru.S.Ravindran, Assistant Director of Horticulture and Plantation Crops, is the in-charge Officer for conducting Mela and spending the amount which was sanctioned by the State as well as Central Government and he has shown**



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record as if the entire amount has been spent, which is also mentioned in the written instruction of the 2nd respondent dated 14.02.2024 submitted before this Court. If such is the case, then the punishment imposed on Thiru.Ravindran is only a cut-off Rs.50/- in the pension for a period of one year and for the other co-delinquent, Thiru.Amanullah, who is the Section Officer. According to the respondents, they are responsible for not bringing to the knowledge of the Commissioner about the sanctioning of the fund by the Government of India. The punishment imposed on the petitioner is stoppage of the increment for one year without cumulative effect, because of the punishment imposed, the promotion of the petitioner was also delayed for a period of three years.

22. This Court is unable to understand how the petitioner, who is an Assistant is held responsible for collecting funds for conducting exhibitions at Mela, whereas the concerned officer responsible for the same, is Thiru.S.Ravindran, Assistant Director of Horticulture and Plantation Crops. The charge against the petitioner as per the written instruction dated 14.02.2024 is that he failed to furnish the utilization certificate to audit before sending the same to the National Medicinal



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Plants Board whereas the utilization certificate was also submitted by Thiru.S.Ravindran. Moreover, it is the official duty of the petitioner to inform the officers regarding the non-submission of the utilization certificate after getting it audited, is unsustainable and the impugned order passed by the 1st respondent is liable to be quashed.

23. In view of the above factual matrix of the case, the impugned order of G.O.3D No.23 Agriculture (VN8) Department passed by the 1st respondent dated 04.02.2012 is hereby quashed and the respondents are directed to give all consequential service and pay monetary benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of the order.

In the result, the writ petition stands allowed with the above observations and directions. No costs.

15.02.2024

cda
Index : Yes/No
Speaking/Non-Speaking Order

J.SATHYA NARAYANA PRASAD, J.



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cda

WEB COPY

- To
- 1.The Agriculture Production Commissioner &
Secretary to Government,
The State of Tamil Nadu,
Fort St. George, Chennai – 9.
 - 2.The Director of Horticulture & Plantation Crops,
Chepauk, Chennai – 5.

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15.02.2024