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W.P.No.14711 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.14711 of 2021

K.Chandran

... Petitioner

Vs.

1.The Director of Agriculture,
Wallahjah Road, PWD Estate,
Chepauk, Triplicane, Chennai 600 005.

2.The Joint Director of Agriculture,
Periya Kanchipuram, 631 502.

3.The Assistant Director of Agriculture,
Agricultural Extension,
Centre, BDO Office complex,
Padappai 601 301.

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

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 2 to 4 to repay the amount of Rs.91,097/- (Rupees Ninety One Thousand and Ninety Seven only) paid by the petitioner vide notice dated 10.10.2005 and 16.07.2008 within a period of time as decided by this Court.



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For Petitioner : Mr.B.Leelesh Sundaram for
M/s.Nathan & Associates
For Respondents : Mr.T.Arunkumar, AGP for R1 to R3
Mrs.T.Selvarani for R4

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, to direct the respondents 2 to 4 to repay the amount of Rs.91,097/- (Rupees Ninety One Thousand and Ninety Seven only) paid by the petitioner vide notice dated 10.10.2005 and 16.07.2008 within a time frame as fixed by this Court.

2. Heard Mr.B.Leelesh Sundaram, learned counsel for the petitioner and Mr.T.Arunkumar, learned Additional Government Pleader appearing for the respondents 1 to 3 and Mrs.T.Selvarani, learned counsel appearing for R4.

3. The petitioner who was working as an Assistant Agricultural Officer in the department of Agriculture was found fault due to the unsold agricultural goods kept in the Government Inventory which have become unusable due to its expiry of shelf life. Finding that the petitioner is responsible for the said loss, notice has been issued to the petitioner on



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10.10.2005 by demanding a sum of Rs.33,989/- and subsequently, a demand notice has also been issued on 16.07.2008 for recovery of sum of Rs.57,108/- including the penalty for the delayed payment. Later, the petitioner himself has remitted the said amount at the time of superannuation. Now the petitioner had filed this petition for refund of the said amount. The petitioner relied on the judgment of this Court in ***W.P.Nos.14888 to 14892 of 2006 dated 21.06.2006***, wherein it is held as under:

"6. In this case, the petitioner is not blamed for any loss caused to the Government and the only allegation is the stocks of the Government namely, seeds and fertilisers are unsold by the petitioner for non selling the same, the petitioner cannot be held responsible and that too when there is no notice or opportunity given to the petitioner before ordering recovery from the gratuity to the tune of Rs.87,291/-. Following the said judgment above referred to, the writ petitions are allowed and the respondents are directed to refund the gratuity recovered from the petitioner within four weeks from the date of receipt of a copy of this order."



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Now the petitioner requested this Court to apply the same yardstick and allow him to get refund of the amount already remitted by him.

4. However, it is vehemently objected by the learned Additional Government Pleader appearing for the respondents 1 to 3 by stating that the petitioner who was kept quite for all these years, suddenly came to the Court after a lapse of 13 years. Hence, this Writ Petition should be dismissed.

5. When similarly placed person has been shown empathy by the order of this Court and he has obtained the benefit of refund of the amount, the same benevolence should have been shown to the petitioner also. Even if there is an inordinate delay, as regards the matter under challenge in the earlier Writ Petitions in W.P.Nos.14888 to 14892/2006, the position has been settled as extracted above. Since recovery has been made by the respondents by giving wrong interpretation and under wrong assumption that it is the petitioner who has to be held to be responsible for the loss, the amount recovered from the petitioner should be



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refunded.

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6. It is learnt that the second respondent has already issued proceedings, the fourth respondent shall clear the bill. Since the show cause notice has been given without any legality, this Court considers the show cause notice and demand notice as '*non-est*' and hence, the failure to challenge the said notice will not stand in the way of denying the relief to the petitioner.

7. In the result, this Writ Petition is allowed. Since the second respondent has already issued proceedings, the fourth respondent shall clear the bill and make payment within a period of four weeks from the date of receipt of a copy of this order, once the bill is submitted pursuant to the sanction. No costs.

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Index : Yes

Internet : Yes/No

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R.N.MANJULA, J.

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To

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