



W.P(MD)No.11226 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11226 of 2017

and

W.M.P.(MD)No.8611 of 2017

Arokiaraj

... Petitioner

Vs.

1.The Agricultural Production Commissioner
and the Principal Secretary to Government,
Agriculture (AA8) Department,
St.George Fort, Chennai-9.

2.The Chief Engineer,
Agricultural Engineering Department,
No.487, Anna Salai, Nandanam,
Chennai-35.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in G.O.(3D) No.204, Agriculture (AA8) Department dated 02.09.2016 and quash the same as illegal and consequently to direct the Respondents to refund the recovery amount and consider the Petitioner for promotion to the post of Junior Engineer from the date on which his junior was promoted.



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For Petitioner : Mr.V.P.Rajan

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For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The petitioner challenges the impugned G.O.(3D)No.204, Agriculture Department, dated 02.09.2016 whereby the punishment of stoppage of increment for two years without cumulative effect has been imposed. An order of recovery has also been made. The impugned government order has to be set aside for the sole reason that the opinion of the service commission given vide letter dated 27.07.2016 was not furnished to the petitioner. The Hon'ble Apex Court in the decision reported in **2011 (4) SCC 591 (S.M.Narula Vs. Union of India)** had held that passing final order without serving the copy of the opinion of the service commission takes away the right of the employee to show cause against the proposed punishment. Since the employee was unable to make an effective representation before the disciplinary authority as



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regards the punishment, the final order has become bad on that count.

Respectfully following the aforesaid ratio, the order impugned in this writ petition is set aside. The matter is remitted to the file of the first respondent. The first respondent shall serve a copy of the opinion of the service commission given vide letter dated 27.07.2016 and invite the petitioner's response. After the petitioner offers his response, the final order will be passed on merits and in accordance with law. I make it clear that I have not gone into the merits of the matter. All the contentions and defences of the petitioner are left open. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

3. With this direction to the first respondent, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

ias

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