

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.16059 of 2015, 9940 of 2016
and Contempt Petition No.765 of 2016

D.Padmavathy .. Petitioner in both the writ petitions
and in the contempt petition

-vs-

1. The Commissioner of Fisheries
Chennai 600 006 .. Respondent in W.P.No.16059 of 2015
 2. The State of Tamil Nadu
rep.by the Secretary to Government
Fisheries Department
Fort St.George
Chennai 600 009
 3. The Commissioner of Fisheries
Teynampet
Chennai 600 006
 4. Tmt.Joice Olive Rache
 5. S.Jude Armstrong .. Respondents in W.P.No.9940 of 2016
- Dr.Tmt.Beela Rajesh, I.A.S.,
The Commissioner of Fisheries
Teynampet
Chennai 600 006 .. Respondent in Cont.P.No.765 of 2016

W.P.No.16059 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records pertaining to the order passed by the respondent herein in his R.C.No.L1/13309/2014-1 dated 02.06.2015 transferring the petitioner from Chennai to Radhapuram at Tirunelveli District and quash the same.

W.P.No.9940 of 2016 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent to set aside the orders passed by the second respondent vide Memo No.24921/L3/2014 dated 11.08.2014 and R.C.No.14866/L3/2015 dated 2.6.2015 and in the event of the Government not setting aside the charge memos

issued against the petitioner to appoint an independent officer not under the control of the second respondent to enquire into both the charges.

Contempt Petition No.765 of 2016 is filed under Section 11 of the Contempt of Courts Act, 1971 praying to punish the respondent for wilful disobedience of the order of this Court dated 8.6.2015 made in M.P.No.1 of 2015 in W.P.No.16059 of 2015.

For Petitioner :: Mr.V.Selvaraj

For Respondent(s) :: Mrs.Narmadha Sampath
Additional Advocate General
assisted by Mr.M.Elumalai
Government Advocate

ORDER

The petitioner has filed two writ petitions along with the contempt petition. Writ Petition No.16059 of 2015 has been directed against the impugned transfer and posting order dated 2.6.2015 passed by the Commissioner of Fisheries, Chennai in R.C.No.L1/13309/2014-1 transferring the petitioner from the post of Assistant Director of Fisheries (Statistics), Head Office, Chennai and posting her in the said post to Radhapuram at Tirunelveli District in the vacancy vice Mr.T.Natarajan, Assistant Director of Fisheries holding additional charge. Writ Petition No.9940 of 2016 has been filed seeking issuance of a mandamus directing the Secretary to Government, Fisheries Department, Chennai to set aside the orders passed by the Commissioner of Fisheries vide Memo No.24921/L3/2014 dated 11.08.2014 and R.C.No.14866/L3/2015 dated 2.6.2015 and in the event of the Government not setting aside the charge memos issued against the petitioner, to appoint an independent officer not under the control of the Commissioner of Fisheries, Chennai to enquire into both the charges. Contempt Petition No.765 of 2016 has been filed for violation of the order of stay granted by this Court. Hence, they are taken up together and disposed of by this common order.

2. Mr.V.Selvaraj, learned counsel for the petitioner submitted that the petitioner, while serving as Assistant Director of Fisheries in the Head Office at Chennai, was issued with a charge memo dated 11.8.2014 containing three charges by the Commissioner of Fisheries. On receipt of the same, the petitioner sent a letter dated 17.1.2015 requesting the Commissioner of Fisheries to furnish copies of some documents and the same were also furnished by the communication dated 30.3.2015. Thereafter, the petitioner submitted a detailed reply to the charge memo on 15.5.2015. Dissatisfied with the

explanation offered by the petitioner to the charge memo, the Commissioner of Fisheries appointed one Tmt.Joice Olive Rachel, who is the Deputy Director of Fisheries, as the enquiry officer. In the meanwhile, though the petitioner objected to the appointment of Tmt.Joice Olive Rachel as the enquiry officer by the letter dated 23.6.2015, she was transferred to Radhapuram, Tirunelveli by the order dated 2.6.2015, which is impugned in W.P.No.16059 of 2015. When this Court has granted an order of stay of operation of the transfer order on 8.6.2015, the petitioner has been continuing in the present place. Thereafter, she has been issued with the second charge memo dated 2.6.2015 containnig four charges and after receiving the explanation from the petitioner, the Commissioner of Fisheries chose to appoint Mr.S.Jude Armstrong, Joint Director of Fisheries as the enquiry officer. Therefore, the learned counsel for the petitioner submitted that if the respondent Department comes forward to appoint an independent officer to conduct a fair enquiry in respect of the two charge memos dated 11.8.2014 and 2.6.2015, the petitioner is prepared to cooperate with the enquiry.

3. It is at this stage, Mrs.Narmadha Sampath, learned Additional Advocate General for the respondent(s) submitted that when the petitioner has been serving in Chennai for the past 19 long years, almost touching two decades, the interest of administration warranted the transfer of the petitioner from Chennai to Radhapuram, Tirunelveli District, as the petitioner's seniority also ripened for promotion. Therefore, it is neither proper nor justified on the part of the petitioner to approach this Court questioning the correctness of her own promotion, as she has to undergo the training in the transferred place which is a pre-condition for promotion. However, the learned Additional Advocate General fairly stated that since the petitioner has given her objection in writing on 23.6.2015 to the Commissioner of Fisheries that Tmt.Joice Olive Rachel, Deputy Director of Fisheries cannot function as the enquiry officer, Mr.S.Jude Armstrong, Joint Director of Fisheries will be conducting the enquiry in respect of the first charge memo as well and if a direction is issued by this Court to the petitioner to cooperate with the said enquiry officer, he will be able to complete the enquiry and submit his report expeditiously in respect of the two charge memos dated 11.8.2014 and 2.6.2015.

4. Mr.V.Selvaraj, learned counsel for the petitioner also, in reply, stated that the petitioner is fully prepared to cooperate with the enquiry in respect of the two charge memos and even the enquiry officer can complete the enquiry within 30 days time.

5. Recording the statement made by the learned Additional Advocate General for the respondent(s) that Mr.S.Jude Armstrong, Joint Director of Fisheries will be conducting the enquiry in respect of the first charge memo dated 11.8.2014 issued to the petitioner, Tmt.Joice Olive Rachel, Deputy Director of Fisheries is relieved as the enquiry officer. Accordingly, in view of the consent given by both the parties for the appointment of Mr.S.Jude Armstrong, Joint Director of Fisheries as the enquiry officer to go into the correctness of the charge memo dated 11.8.2014 containing three charges and also the second charge memo dated 2.6.2015 containing four charges, the petitioner is directed to cooperate with the enquiry officer, who shall complete the enquiry in respect of both the charge memos dated 11.8.2014 and 2.6.2015 and file his reports to the Department expeditiously, preferably within a period of three months from the date of receipt of a copy of this order. The Commissioner of Fisheries is also at liberty to issue fresh transfer order to the petitioner. However, the petitioner is entitled to count her service till 12.5.2016, as she was enjoying the benefit of stay order and the period spent thereafter shall be treated as leave on loss of pay. With this observation and direction, both the writ petitions shall stand disposed of. No costs.

6. In view of the order passed in the main writ petition itself, nothing survives in the contempt petition. Accordingly, Contempt Petition No.765 of 2016 stands closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government
Fisheries Department
Fort St.George
Chennai 600 009

2. The Commissioner of Fisheries
Teynampet
Chennai 600 006

+1 CC to Mr.V.Selvaraj, Advocate sr 39232.
+1 CC to Govt. Pleader sr 40674.

W.P.Nos.16059 of 2015,
9940 of 2016 & Cont.P.No.765 of 2016

RSV(CO)
SP(29/05/2019)