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W.A.No.2725 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.A.No.2725 of 2019

D.Padmavathy ... Appellant

-Vs-

The Commissioner of Fisheries
Chennai - 600 006. ... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.16059 of 2015 dated 23.04.2019.

For Appellant : Mr.N.Sanjay
for Mr.R.Dhinesh Kumar
For Respondent : Mr.R.Kumaravel
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the writ Court
dated 23.04.2019 made in W.P.No.16059 of 2015.



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2. The appellant was working as Assistant Director of Fisheries in the respondent Department. When she was working at Chennai, on 02.06.2015 a transfer order has been passed directing her to join at Radhapuram, Tirunelveli District. Challenging the said transfer order, the aforesaid writ petition was filed by the petitioner / appellant, where the writ Court, by order dated 08.06.2015 granted an interim order of stay. Pursuant to the order of stay, on 10.06.2015, 29.07.2015, 12.08.2015, 02.11.2015 and 26.12.2015, it is claimed by the appellant that representations have been given to the respondent Department to comply with the stay order by allowing the petitioner / appellant to continue to stay and work at Chennai. Despite that, according to the petitioner / appellant the interim order of stay has not been complied with. Therefore, she has filed a contempt petition also.

3. In the meanwhile, when the writ petition came up for hearing on 29.03.2016, since there was no representation for the petitioner, it was directed to be listed on the next day ie., on 30.06.2016 under the caption 'For Dismissal'. Even on 30.03.2016 since there was no representation for the petitioner / appellant, the said writ petition was dismissed for default on 30.03.2016.

4. As against the dismissal order for default, though restoration petition had been filed sometime in April 2016, it came to be decided by the writ Court only on 22.12.2016, where the said petition was allowed. Thereby, the order dated



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30.03.2016 passed in W.P.No.16059 of 2015 was set aside and the writ petition was restored to file.

5. Even thereafter, since the writ petition was restored and was pending consideration, the petitioner / appellant neither joined in the transferred place as the respondent on 12.05.2016 itself ie., after the dismissal of the writ petition, on 30.03.2016 directed to join at the transferred place ie., Radhapuram, Tirunelveli District, nor had approached the respondent to permit her to continue her service at Chennai.

6. Even though in this context it was claimed by the petitioner / appellant that on 03.06.2016 a representation has been given, whether those representations had been considered or not by the respondent is not known. Since the very petition itself was dismissed for default on 30.03.2016, till 22.12.2016 there was no lis pending insofar as the transfer order is concerned between the parties and already on 12.05.2016 a direction had been given by the authorities ie., the respondent directing the petitioner / appellant to join in the transferred place. That position, of course virtually was continuing till the disposal of the writ petition by order dated 23.04.2019.

7. While disposing the said writ petition, the learned Judge also disposed of a connected writ petition ie., W.P.No.9940 of 2016, wherein a charge memo in the



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meanwhile issued against the petitioner was under challenge. Ultimately, by consent a common order has been passed by the learned Judge on 23.04.2019, where the learned Judge has given the following directions.

" 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."

8. As against the said order passed by the learned Judge dated 23.04.2019 in respect of W.P.No.16059 of 2015, wherein the transfer order alone was under challenge, this appeal has been preferred.



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9. Mr.N.Sanjay learned counsel for the petitioner would contend that, insofar as all other aspects of the impugned order though it was accepted by the appellant / petitioner, only last five lines where some observations have been given by the learned Judge to the effect that the petitioner is entitled to count her service till 12.05.2016 as she had the benefit of stay order and the period spent thereafter shall be treated leave on loss of pay alone is offending according to the petitioner / appellant. Therefore, only to eschew or erase such portion of the order, the present appeal has been directed by the petitioner, he contended.

10. Heard Mr.R.Kumaravel, learned Additional Government Pleader who would submit that, after several years of service rendered by the petitioner / appellant at Chennai, the said transfer order had been issued and purely on administrative reasons and not by way of any punitive action. Therefore, the said order ought not to have been challenged. Anyhow, if at all any stay order has been granted for some time, that has been closed by virtue of the dismissal of the writ petition for default on 30.03.2016. Thereafter, when a proceedings was issued by the respondent directing the petitioner to join in the transferred place, that has also not been complied with by her and she has been continuously absent for duty as she has not joined in the transferred place. Assuming that subsequently the restoration petition was allowed, that was allowed only in the month of December 2016. Therefore, for all these period since the petitioner / appellant was not in duty



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despite the writ petition was dismissed for default and even after restoration of the writ petition, the stay order granted in the miscellaneous petition has not been restored, it cannot be stated that automatically the stay order also got restored and under the cloud or under the shadow of the alleged interim order of stay having been restored, the petitioner / appellant cannot seek any shelter to claim immunity to join service in the transferred place. Therefore, the observation made by the learned Judge in the order impugned that the period after 12.05.2016 is to be treated only as leave on loss of pay is of course correct view taken by the learned Judge, he contended.

11. We have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

12. Insofar as the grievance of the petitioner/appellant is concerned that, after 12.05.2016 where the direction or observation given by the learned Judge that such period shall be treated only as leave on loss of pay is correct or not is the only question to be answered in this appeal.

13. On 30.03.2016 at least, the writ petition was dismissed for default. Thereafter, even though application was filed on 12.04.2016, the writ petition alone was restored only on 22.12.2016.



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14. However, on 12.05.2016 ie., after the dismissal of the writ petition for default, a proceedings has been issued by the respondent, whereby a direction had been given to the appellant / petitioner to join in the transferred place ie., Radhapuram at Tirunelveli District. Having received the said communication, it is the stand now taken by the petitioner that, further representation had been given.

15. When an order is passed by the employer, that has to be complied with or obeyed by the employee unless and until it is stayed by the Court of law. Here in the case in hand, the writ petition itself since was dismissed on 30.03.2016, from 01.04.2016 the petitioner/appellant did not have any authority to stay back without joining in the transferred place.

16. When a specific proceeding was issued by the employer on 12.05.2016, that should have been complied with. On what capacity or reason the petitioner / appellant has not complied with the orders issued on 12.05.2016 has not been explained by the petitioner/appellant.

17. Therefore, in our considered view, after 30.03.2016, non-joining in the place where she has been transferred, cannot be condoned. Therefore, at least from 01.04.2016 her service cannot be counted for the purpose of pay as well as other service benefits.



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18. Despite that, when the learned Judge has given such a finding upto 12.05.2016, the reason being that on 12.05.2016 only such a proceedings have been issued by the respondent. Even that extension of period from 01.04.2016 to 12.05.2016 by the observation that has been made by the learned Judge in the order impugned itself is a concession that has been given by the writ Court. Therefore, it cannot be found fault with.

19. However, the petitioner feeling as if such a finding given by the learned Judge is offending her career as well as service benefits and therefore on that ground this appeal is filed, absolutely does not have any merits. Therefore, the writ appeal deserves to be rejected and accordingly the same is dismissed. No costs.

(R.S.K.,J..) (K.B.,J.)

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Index : Yes/No
Internet : Yes/No
KST

To

The Commissioner of Fisheries
Chennai - 600 006.



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and
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