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W.P.No.9545 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.9545 of 2024

P.Rajam

.. **Petitioner**

Vs.

1.The State of Tamil Nadu
Rep.by its Secretary
Animal Husbandry and Fisheries Department
Fort St.George, Chennai – 600 009.

2.The Director
Tamil Nadu Fisheries Development Corporation Limited
No.571, 4th Floor, Anna Salai
Nandhanam, Chennai – 600 035.

.. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records culminated in Na.Ka.No.950/JOB-1/2023 dated 14.12.2023 passed by the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to grant the petitioner with death cum gratuity benefits, counting the date from 02.04.1993 forenoon, being the date of petitioner's regularization



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as Junior Assistant, ending 24.11.2009, being the left out period together with applicable interest, in a time frame.

For the Petitioner : Mr.C.Johnson

For the Respondents : Mr.C.Jayaprakash
Government Advocate for R1
Mr.R.Kumaravel
Additional Government Pleader
for R2

ORDER

This Writ Petition is filed challenging the impugned order dated 14.12.2023, rejecting the representation of the petitioner dated 25.09.2023. In the said representation, the petitioner had prayed that her services should be taken into consideration with effect from 02.04.1993 for the purpose of calculating gratuity. The same is now rejected by the respondents.

2. The petitioner was appointed as a Commercial Apprentice in the 2nd respondent – Corporation. While so, she was terminated from service with effect from 30.04.1992. Thereafter, the petitioner approached the Labour



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Court by way of Industrial Dispute in I.D.No.1933 of 1992. An award was passed on 06.06.1995, in favour of the petitioner, by granting reinstatement and back wages. The same was challenged by the 2nd respondent – Corporation in W.P.No.15048 of 1995 and the same was came to be disposed of by an order dated 03.11.2008, by upholding the award. Apart from upholding the award, following direction was issued and it is essential to extract paragraph No.10:-

“10.Though the Award of the Labour Court does not call for any interference, that will not solve the problem between the parties. Therefore, as similarly placed persons were granted regular employment as Junior Assistants, the second respondent also must be granted the post of Junior Assistant within a period of four weeks from the date of receipt of the order. If such a post is granted, she will get paid only prospectively. But, however, she will get notional seniority only from the date on which P.Balakrishnan was appointed to the post of Junior Assistant. She will not claim any back wages for the aforesaid period. However, since the Labour Court had ordered reinstatement with back wages, she will be paid Rs.25,000/- as full and final settlement of all claims arising out of the Award.”

Therefore, this Court while upholding the award of the Labour Court, as the same does not call for interference, took notice of the fact that the petitioner's juniors were all regularised with effect from 02.04.1993 and



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therefore, directed the 2nd respondent – Corporation to regularise the services of the petitioner with effect from 02.04.1993, however, restricted the back wages alone by directing the respondents to grant regularisation notionally with effect from the said date and also grant seniority with effect from 02.04.1993. The said order was also implemented on 18.11.2009. However at the time of retirement, when the gratuity is calculated, the same was calculated only from 18.11.2009, by leaving out the services from 02.04.1993 to 18.11.2009. Therefore, the petitioner made a representation and upon being rejected by the respondents, the petitioner is before this Court.

3. The Writ Petition was resisted by filing a counter affidavit.

4. The respondents also admit the above facts. However, in paragraph Nos.10 and 11 of their counter affidavit it has been pleaded that this Court had ordered only notional regularisation of service and only grant of notional seniority above one *P.Balakrishnan*. Therefore, the petitioner will not be given the benefit of counting the service for the purpose of



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calculating gratuity.

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5. This Court heard, *Mr.C.Johnson*, the learned counsel appearing on behalf of the petitioner; *Mr.C.Jayaprakash*, the learned Government Advocate appearing on behalf of the 1st respondent and *Mr.R.Kumaravel*, the learned Additional Government Pleader appearing on behalf of the 2nd respondent, who reiterated the statements contained in the affidavit as well as the counter affidavit.

6. This Court considered the submissions made on either side and perused the material records of the case.

7. The rights of the parties are governed by the earlier Judgment inter-parties. Already paragraph No.10 of the said Judgment is extracted above. Therefore, this Court has directed the respondents to regularise the services of the petitioner with effect from 02.04.1993 and the notional appointment would mean that the services will be calculated as service for all other purposes, except the back wages which is denied. Therefore, the said period



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i.e., with effect from 02.04.1993 to 18.11.2009 shall also be calculated as the period of service for the purpose of calculating gratuity. The respondents erred in rejecting the said benefit, by way of the impugned order and accordingly, this Writ Petition deserves to be allowed on the following terms:-

- (i) The impugned order dated 14.12.2023 passed by the 2nd respondent is hereby set aside;
- (ii) The respondents are directed to include the services of the petitioner with effect from 02.04.1993 upto the date of superannuation;
- (iii) The above exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order;
- (iv) It is needless to state that when it comes to gratuity and other belated payments, if any, shall be accompanied with appropriate statutory interest as may be applicable;
- (v) No costs.

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Neutral Citation : No

To

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