

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.18681 and 18685 of 2014

K.Muthuvijayarani .. Petitioner in
W.P.No.18681 of 2014

V.Padma .. Petitioner in
W.P.No.18685 of 2014

Vs.

- 1.The State of Tamil Nadu
rep. by the Secretary to Government,
Home Department, Fort St. George,
Chennai - 9.
- 2.The Additional Director General
of Police cum Inspector
General of Prisons, Chennai - 8. .. Respondents in
W.P.No.18681 of 2014
- 1.The Secretary to Government of
Tamil Nadu,
Home (Prisons) Department,
Fort St. George, Chennai - 9.
- 2.The Director General of Police,
Mylapore, Chennai - 4.
- 3.The Additional Director General
of Police cum Inspector
General of Prisons, Chennai - 8. .. Respondents in
W.P.No.18685 of 2014

W.P.No.18681 of 2014: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the proceedings in No.54028/W.4/2013 dated 01.04.2014 on the file of the second respondent and quash the same and direct the respondents to regularise the service of the petitioner from the date of initial appointment as female escort warder 08.12.2000 and award all attendant benefits.

W.P.No.18685 of 2014: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the proceedings in No.8606/W.4/2014 dated 02.04.2014 on the file of the third respondent and quash the same and direct the respondents to regularise the service of the petitioner from the date of initial appointment from the year 1988.

For Petitioner .. Mr.M.S.Soundara Rajan
in both W.Ps
For Respondents.. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader
in both W.Ps

COMMON ORDER

Challenging the proceedings of the second respondent dated 01.04.2014 and for a direction to the respondents to regularise the service of the petitioner from the date of initial appointment as Female Escort Warder and award her all attendant benefits, W.P.No.18681 of 2014 has been filed.

2.Challenging the proceedings of the third respondent dated 02.04.2014 and for a direction to the respondents to regularise the service of the petitioner from the date of initial appointment, W.P.No.18685 of 2014 has been filed.

3.The case of the petitioner in W.P.No.18681 of 2014 is as follows:

(i)The name of the petitioner was sponsored by the District Employment Exchange and was recruited as Female Escort Warder and posted at Sub Jail, Srivaikundam with effect from 08.12.2000. After having appointed on 08.12.2000, the services of the petitioner had been continued with some artificial breaks in between. In 2006, Tamil Nadu Uniformed Services Recruitment Board had called for filling up of vacancies for the post of Female Grade II Warder on a regular basis. In view of the recruitment announced in 2006, services of the petitioner came to be terminated by proceedings dated 23.02.2006. According to the petitioner, obviously, the posts of Female Grade II Warder were filled up only from the Female Escort Warders. But, unfortunately, by G.O.Ms.No.710 Home (Prison II) Department dated 17.08.2005, a new method of selection was adopted. Earlier, it appears that several Female Escort Warders had approached the Tamil Nadu Administrative Tribunal from the year 2000 onwards and obtained orders that their temporary services should be considered for regular appointment by applying certain relaxation.

(ii) While matter stood thus, in view of the new method of selection adopted by the Recruitment Board, the petitioner could not qualify herself in the selection. But, however, some of the Female Escort Warders, who had joined much after the petitioner, had been selected in the new method of selection.

(iii) In the meanwhile, the petitioner had approached this Court in W.P.No.15009 of 2008, challenging the order of termination and this Court, vide order dated 10.12.2008, allowed the writ petition by directing the authority to consider the petitioner's request for regularisation of her service from the date of her appointment with all consequential benefits. In pursuance of the said direction, the Government passed an order on 16.06.2009, rejecting the claim of the petitioner. In the said circumstances, the petitioner was once again constrained to approach this Court in W.P.No.11663 of 2013, seeking the same relief of regularisation. The said writ petition was also allowed vide order dated 26.04.2012, directing the authority to consider the representation of the petitioner in the light of the Division Bench order passed in W.A.Nos.179 and 180 of 2009 dated 26.04.2010.

(iv) In the said writ appeal, the Division Bench of this Court, confirmed the order passed by the learned single Judge regularising the similarly placed Female Escort Warders from the date of her appointment. Para 4 of the Division Bench judgment is extracted below:

"Considering the facts and circumstances of the case, we see no reason to interfere with the order passed by the learned single Judge. However, we make it clear that the respondent is entitled to get consequential monetary benefits only from the date of filing of the Original Application before the Tribunal. The writ appeals are allowed in part. No costs. Consequently, connected miscellaneous petitions are closed."

(v) However, notwithstanding the order passed by the Division Bench and also the orders passed by the Tamil Nadu Administrative Tribunal in various Original Applications and also several orders passed by this Court appointing the erstwhile Female Escort Warders as Female Grade II Warder with effect from the date of original appointment or from the date of filing of the Original Applications before the Tamil Nadu Administrative Tribunal, the petitioner's services came to be regularised only with effect from 08.07.2013. By granting regularisation from 2013, ignoring the entire past service rendered by the petitioner will not enure to the benefit of the

petitioner for any purpose. She would also be denied of pensionable service as she has very few years left for service.

4.The case of the petitioner in W.P.No.18685 of 2014 is as follows:

(i)The name of the petitioner was sponsored by the District Employment Exchange and was recruited as Female Escort Warder and posted at Sub Jail, Tenkasi with effect from 02.03.1988. After having appointed on 02.03.1988, the services of the petitioner had been continued with some artificial breaks in between. In 2006, Tamil Nadu Uniformed Services Recruitment Board had called for filling up of vacancies for the post of Female Grade II Warder on a regular basis. In view of the recruitment announced in 2006, services of the petitioner came to be terminated by proceedings in 2006. According to the petitioner, obviously, the posts of Female Grade II Warder were filled up only from the Female Escort Warders. But, unfortunately, by G.O.Ms.No.710 Home (Prison II) Department dated 17.08.2005, a new method of selection was adopted. Earlier, it appears that several Female Escort Warders had approached the Tamil Nadu Administrative Tribunal from the year 2000 onwards and obtained orders that their temporary services should be considered for regular appointment by applying certain relaxation.

(ii)While matter stood thus, the petitioner was selected as Female Grade II Warder and appointed in 2009. Placing reliance upon the Government Order issued on the subject matter, the petitioner made a representation to the third respondent on 22.02.2014, seeking regularisation from the date of initial appointment and the same was rejected by the proceedings dated 02.04.2014.

5.Mr.S.Soundararajan, learned counsel appearing for the petitioners would draw this Court's attention to various orders passed by this Court by the learned single Judge and by the Division Benches for establishing the fact that the services of those Female Escort Warders, who were appointed like the petitioners, have been reguarlised either from the date of their initial appointment or from the date of filing of the Original Applications before the Tamil Nadu Administrative Tribunal. He would particularly draw the attention of this Court to the order passed in W.A.Nos.179 and 180 of 2009 dated 26.04.2010, wherein the Division Bench confirmed the order of the learned single Judge ordering regularisation of the similarly placed Female Escort Warders from the date of their initial appointment. In fact, earlier, when the petitioner in W.P.No.18681 of 2014 had approached this Court in writ proceedings, this Court has directed the authorities to consider her claim with effect from

the date of initial appointment but the same has been turned down unjustly without properly appreciating the claim of the petitioner with reference to the various orders passed by this Court and by the Tamil Nadu Administrative Tribunal.

6. Learned counsel appearing for the petitioners would emphasise the fact that the authority who had extracted the services of the petitioner in W.P.No.18681 of 2014 uninterruptedly (except a few breaks for the last 17 years) and the petitioner in W.P.No.18685 of 2014, cannot be allowed to completely turn down their past services. Once the authorities themselves have decided to regularise the services of the petitioners, such regularisation must date back from the date of initial appointment.

7. Upon notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader entered appearance on behalf of the respondents and would submit that the petitioner in W.P.No.18681 of 2014 has not been working continuously as claimed by her and he had drawn this Court's attention to the tabular column contained in para 16 of the counter affidavit. Based upon the tabular column, it is seen that the petitioner had been working only for some days in the month but however, it must be seen that she has been continuously employed without any long breaks from 2000 till 2006. From 2006 till 2013, it cannot be said that the break can be attributable to the employee since her service came to be discharged unjustly and arbitrarily. In fact, she had challenged the same in the writ petition filed before this Court as pointed out earlier.

8. Be that as it may, as on date, the petitioners' services had been regularised though not from the date of their initial appointment. It is also the case of the respondents that the posts in which now the petitioners are accommodated did not exist in the year when they were originally appointed. Anyway, that cannot be a point put against the petitioners. Since the Government itself had chosen to employ the persons as Female Escort Warders for the purpose of carrying out the duties attached to the Warder. In the said circumstances, the services rendered by the petitioners from the date of their initial appointment cannot be completely ignored. In the above circumstances, this Court after perusing all the orders passed by this Court by single Judges and by the Division Benches is of the view that the present petitioners are also entitled to the relief viz., regularisation with effect from the date of original appointment with continuity of service. Of course, the pay scale for the period has to be taken into account notionally and it is made clear that the petitioners are not entitled to any arrears of pay for the said period. The said period from the

date of initial appointment shall be counted for all purposes except for arrears. In the said circumstances, this Court sets aside the impugned orders rejecting the claims of the petitioners seeking regularisation from the date of initial appointment.

9.The writ petitions are allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government of
Tamil Nadu,
Home (Prisons) Department,
Fort St. George, Chennai - 9.

2.The Director General of Police,
Mylapore, Chennai - 4.

3.The Additional Director General
of Police cum Inspector
General of Prisons, Chennai - 8.

+ 2 ccs to Mr.M.S. Soundararaja, Advocate SR.53956
+ 1 cc to Government Pleader Sr.55022

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18685 of 2014

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