IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 2855 of 2012

P. Mani ... Appellant/Petitioner

-vs-

1. State of Tamil Nadu rep. by
   Secretary,
   Home Department,
   Fort St. George,
   Secretariat,
   Chennai - 600 009.

2. Inspector General of Police,
   C.M.D.A. Tower II,
   No. 1, Gandhi Irwin Road,
   Chennai - 600 008.

3. The Superintendent,
   Central Prison,
   Vellore. ... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order in W.P. No. 29770 of 2012 dated 06.11.2012 on the file of this Court. Writ Petition praying to call for the records relating to the order dated 25.04.2012 made in No.2735/KoCU/2012 dated 25.04.2012, passed by the 3rd Respondent and quash the same and further direct the respondents to extend the benefit of the order in G.O.Ms.No.719 dated 26.08.2009 and W.P.No.2719 to 2743 of 2004 dated 24.11.2018.

For Appellant :Mr. K.M. Ramesh

For Respondent :Mrs. Srijayanthi
Special Government Pleader

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J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 06.11.2012 passed by the Learned Judge in W.P. No. 29770 of 2012.

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2. The Appellant was engaged temporarily as Escort Women Warder on daily rated basis in Central Prison, Vellore. According to her, she had been working in that post from 10.06.1981 onwards for more than 22 years. In the year 2000, some of the persons similarly placed to the Appellant, who were working as daily rated Women Warder in Central Prison, Vellore, had filed Original Applications in O.A. No. 5305 of 2000 etc., batch before the Tamil Nadu Administrative Tribunal for regularization of their service and grant of minimum scale of pay, which was allowed by common order dated 30.08.2002. The said common order was a subject matter of a batch of Writ Petitions before the Division Bench of this Court in W.P. No. 2719 of 2004 etc., batch. In the order dated 24.11.2008 passed in that batch of Writ Petitions, this Court observed that the State Government had in the interregnum issued G.O. Ms. No. 480, Home (Prison-2) Department, dated 28.04.2008 for implementation of the direction to the Inspector General of Prison, Chennai to give the Schedule of names of the persons, who are entitled to be regularized and appointed to the regular post of Female Warders. Insofar as the claim for payment of minimum scale of pay was concerned, this Court held as follows:-

> "9. The question whether the applicants have worked regularly for entire month of intermittently for few days in a month has not been specifically answered by the Tribunal nor there is any material before us to come to any conclusion. Under such circumstances, we feel that interest of justice would be served by clarifying that the applicants before the Tribunal would be paid at the rate of minimum scale of pay applicable to the regular Warden. Supposing in a given case, a particular applicant had worked for 20 days in a month she would be paid proportionately for those 20 days at the minimum scale of pay applicable to corresponding regular female warden at that time."

In furtherance to the aforesaid directions issued, the State Government issued G.O. Ms. No. 719, Home (Prison-2) Department, dated 26.08.2009, in which it has been ordered as follows:-

> "5. The Government have examined the matter in the light of the opinion of the Government Pleader, High Court of Madras. The Government after detailed examination in the matter have decided to comply with the directions of the Tamil Nadu Administrative Tribunal in its order dated 30.08.2002, 05.12.2002 and 21.01.2003 in the connected Original Applications as upheld by the High Court of Madras in its order 6th and 7th read above. They accordingly direct that the Female Escort Warders who have filed the O.A.s. covered by the common order dated 30.08.2002, 05.12.2002 and 21.01.2003 shall be paid minimum wages applicable for the actual number of days on which they were employed

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on daily wages applicable for the actual number of days on which they were employed on daily wages from the date of the order of the Tamil Nadu Administrative Tribunal as clarified by the Hon'ble High Court, Madras in its order dated 24.11.2008 in W.P. Nos. 2719 to 2743 of 2004 after deducting the daily wages already paid to them.

6. The Additional Director General of Prisons, Chennai is requested to send necessary proposals to Government furnishing the details such as the number of Female Escort Warders covered by the common orders of Tamil Nadu Administrative Tribunal dated 30.08.2002, 05.12.2002 and 21.01.2003, number of days they have actually employed, the amount to be paid to them after deducting the daily wages already paid to them, etc., so as to enable the Government to sanction the expenditure towards payment of minimum wages to the Temporary Female Escort Warders."

3. Thereafter, the Appellant approached this Court in W.P. No. 5016 of 2010 for a direction to extend the benefit of the order in G.O. Ms. No. 719, Home (Prison-2) Department, dated 26.08.2009 and W.P. No. 2719 of 2004 etc., batch to her, as she was similarly placed. The said Writ Petition was disposed by the Learned Judge of this Court by order dated 06.11.2012 as follows:-

"5. In view of the limited Prayer made by the Petitioner now before this Court, without going into the merits of the petitioner's representation dated 22.09.2009, this Court is constrained to direct the Third Respondent to consider the Petitioner's representation dated 22.09.2009 in the light of the order passed by this Court in W.P. Nos. 2719 to 2743 of 2004 dated 24.11.2008 and also in the light of G.O. Ms. No. 719, Home (Prison-II) Department dated 26.08.2009 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The Petitioner is also directed to furnish a fresh copy of the representation dated 22.09.2009 along with a copy of this order within a period of ten days from the date of receipt of copy of this order."

In pursuance of the aforesaid order passed by this Court, the Third Respondent by order No. 2735/KeCU/2012 dated 25.04.2012 on the basis of available records, communicated to the Appellant that she did not have the requisite qualification for being appointed as Women Grade-II Warder in the Prison Department as

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she had become over-aged for the same. Insofar as the claim for minimum scale of pay was concerned, it was informed that inasmuch as she was not a party in W.P. No. 2719 of 2004 etc., batch disposed on 24.11.2008, she could not be entitled to the benefits of G.O. Ms. No. 719, Home (Prison-2) Department, dated 26.08.2009.

4. Aggrieved thereby, the Appellant filed W.P. No. 29770 of 2012 challenging the order No. 2735/KeCU/2012 dated 25.04.2012 and for a consequential direction to extend the benefits in G.O. Ms. No. 719, Home (Prison-2) Department, dated 26.08.2009 and W.P. No. 2719 of 2004 etc., batch dated 24.11.2008 passed by this Court. The Learned Judge before whom the matter came up for admission on 06.11.2018 dismissed that Writ Petition on the ground that it has not been explained by the Appellant as to how she is similarly placed to other persons who had been granted the benefits after approaching the Tribunal and that the Appellant had not given any explanation as to why she had not moved the Tribunal or come to this Court at the relevant point of time. It was also held that as the Appellant was over-aged, she was not qualified for being appointed in any regular post. The Appellant has preferred this Appeal against the aforesaid order.

5. We have heard Mr. K.M. Ramesh, Learned Counsel appearing for the Appellant and Mrs. Srijayanthi, Learned Special Government Pleader appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

6. As taken note by the Division Bench of this Court in the order dated 24.11.2004 in W.P. No. 2719 of 2004 etc., batch, the Government of Tamil Nadu had already taken a decision to consider the case of regularization of the persons, who had been temporarily engaged as daily rated Women Warder in Central Prison, Vellore, in G.O. Ms. No. 480, Home (Prison-2) Department, dated 28.04.2008. In the order dated 25.04.2012 impugned in the Writ Petition, it has been rightly pointed out that the Appellant had become over-aged and as such, she cannot be qualified for appointment on regular basis in the post of Women Grade-II Warder. Hence, we are not inclined to interfere with that part of the order impugned in the Writ Petition as confirmed by the Writ Court.

7. However, we find that the Third Respondent as well as the Learned Judge who heard the Writ Petition, have not taken cognizance of the claim of the Appellant for minimum scale of pay applicable to the regular Warden in the proper legal perspective.

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8. The most question that arises for consideration is whether the Appellant, who had been temporarily engaged on daily rated basis as Women Warder, was entitled to the minimum of the pay scales which was applicable to the regular employees holding the same post. The Division Bench of this Court in the order dated 24.11.2004 in W.P. No. 2719 of 2004 etc., batch, while dealing with claims in respect of certain persons, who were similarly placed to the Appellant, answered the same in their favour and the Respondents implemented that decision by issuing G.O. Ms. No. 719, Home (Prison-2) Department, dated 26.08.2009. Now, what has to be seen is whether the Appellant also has to be extended the same benefit.

9. The Hon'ble Supreme Court of India in State of Punjab -vs- Jagjit Singh [(2017) 1 SCC 148] and Sabha Shanker Dube -vs- Divisional Forest Officer [(2018) SCC OnLine 2440], has reiterated the settled legal position that temporary employees (daily wage employees, ad hoc appointees, employees appointed in casual basis, contractual employees and likewise) are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post. The relief granted by the Division Bench of this Court in the order dated 24.11.2004 in W.P. No. 2719 of 2004 etc. batch is in consonance with the aforesaid binding legal principle recognizing such pre-existing obligation on the State, and the Respondents have also accepted the same as policy matter and issued the said Governmental Order for its implementation, which gives rise to the inference that it has to be liberally construed as in the nature of judgment in rem with intention to give benefit to all similarly placed persons, whether or not they have approached the Court for such relief. That being so, the Respondents cannot be heard to complain of any prejudice caused due to the delay on the part of the remaining similarly placed persons, like the Appellant, approaching the Court belatedly seeking extension of the benefit to them. In this context, it would be appropriate to refer to the dictum laid down by the Hon'ble Supreme Court of India in State of Uttar Pradesh -vs- Arvind Kumar Srivastava [(2015) 1 SCC 347], where after referring to the various binding legal decisions on the subject, it has been succinctly held as follows:-

> "22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal

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rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

In the light of this legal position coupled with the facts of the case as noticed supra, it has to be held that eventhough the Appellant was not a party to the earlier litigation covered by the aforesaid batch of cases, she has to be extended the same benefits and the Respondents are bound to pay her the difference in the monetary benefits arising out of the minimum scale of pay applicable to regular Warder after deducting the amount of wages actually paid to her during the period she had worked. Hence, the order No. 2735/KeCU/2012 dated 25.04.2012 passed by the Third Respondent cannot be sustained and the same is quashed to the extent that it denies that benefit to the Appellant. The Respondents are directed to make necessary calculations for ascertaining the amount due to the Appellant in this regard and disburse the same to her under written acknowledgment and file a

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report of compliance before the Registrar (Judicial) of this Court by 30.04.2019.

10. In fine, the Writ Appeal succeeds and the order dated 06.11.2012 in W.P. No. 29770 of 2012 passed by the Learned Judge is set aside. The Writ Petition is allowed in part on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS-IV)

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vjt
Sub Assistant Registrar

To

1. Secretary to the Government of Tamil Nadu,
   Home Department,
   Fort St. George,
   Secretariat,
   Chennai - 600 009.

2. Inspector General of Police,
   C.M.D.A. Tower II,
   No. 1, Gandhi Irwin Road,
   Chennai - 600 008.

3. The Superintendent,
   Central Prison,
   Vellore.

Copy to

1) Registrar (Judicial),
   High Court of Madras,
   Chennai.

2) The Section Officer,
   Judicial Department,
   High Court, Madras

+1 cc to Mr.K.M.Ramesh, Advocate, S.R.No.10631

+1 cc to the Government Pleader, S.R.No.11391

WA No.2855 of 2012

GJI(CO)
SSM(20/02/2019)

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