

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.42 of 2015

S.Jubithabi

... Petitioner

Vs

1. The Secretary to Government,  
Home Department,  
Fort St.George,  
Chennai - 600 009.
2. Additional Director General of Prisons,  
Gandhi Irwin Road,  
Egmore,  
Chennai - 600 008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent herein in his proceedings Letter (Ms) No.422 Home dated 26.06.2013 and quash the same and consequently direct the respondents herein to regularise the service of the petitioner as Grade II warder, in the light of the orders passed by this Court in W.P.No.11909/2006 dated 21.07.2010 and confirmed by a Division of this Court in W.A.No.635/2011 dated 12.04.2011 which was implemented by the second respondent in his proceedings No.33441/EW4/2010 dated 26.07.2012 as per G.O.Ms.No.187 Home (Pri.II) Department dated 14.03.2011, together with all consequential service and monetary benefits within a time frame fixed by this Court.

For Petitioner : Mr.G.Bala

For Respondents : Mr.S.N.Parthasarathy,  
Government Advocate for R1 and R2

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 26.06.2013, wherein and whereby, her request

for regularising her service from 29.09.2000, was rejected.

2. The case of the petitioner in short is as follows:

She was appointed through Employment Exchange as Female Escort Warder on 05.10.1992. She possesses the requisite qualification for such post. However, the petitioner was paid daily wages, even though, she was continuously working for more than 15 years. She filed O.A.No.7197/2000 seeking for regularisation of her service before the Tamilnadu Administrative Tribunal. In the said O.A., an order came to be passed on 29.09.2000 directing the respondents therein to pass orders on the proposal, pending with them, within a period of six months. Consequently, the petitioner was appointed on regular basis as Female Grade-II Warder with effect from 22.04.2009. Till this date, she is continuing her service in the said post. Similarly situated persons filed W.P.No.11909/2006 seeking for absorption from the date of their appointment. The said writ petition was disposed of on 21.07.2010 with a direction to the respondents therein to regularise the service of those petitioners by granting relaxation of the age qualification with effect from the date of filing of the original applications filed by them and granted the benefits notionally from the date of regularisation. The said order passed by the writ court is also confirmed in the writ appeal in W.A.No.635/2011. Therefore, the petitioner is also entitled to get regularisation from the date of filing of the original application namely 26.09.2000. However, the said request was rejected by the first respondent.

3. A counter affidavit is filed by the respondents by reiterating the contentions raised in the impugned proceedings.

4. Heard both sides.

5. There is no dispute to the fact that the petitioner was appointed through Employment Exchange on 05.10.1992 and however, her service was regularised only with effect from 22.04.2009. It is also not in dispute that the petitioner, in the meantime filed O.A.No.7197/2000 before the Administrative Tribunal and the said original application was disposed of on 29.09.2000 as stated supra. It is also not in dispute that similarly situated persons filed Writ Petition before this Court in W.P.No.11909/2006 seeking for their absorption from the date of their initial appointment. It is seen that the said writ petition was disposed of on 21.07.2010 with the following directions.

In the result, the Writ Petition is disposed of with a direction to the respondents to regularise the services of the petitioners by granting relaxation of the age

qualification stipulated in G.O.Ms.No.710 dated 17.8.2005 by passing appropriate orders under Rule 48 of the General Rules with effect from the date of filing of the Original Application and grant the benefits notionally from the date of regularisation. The respondents are directed to complete the exercise within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

6. It is further seen that the said order was put to challenge by the Government in W.A.No.635/2011 and the said Appeal was dismissed by the division Bench of this Court on 12.04.2011. Therefore, it is evident that the similarly situated persons were directed to be given regularisation of their service from the date of filing of the Original Application before the Administrative Tribunal. In this case also, the petitioner has filed the Original Application before the Administrative Tribunal for regularisation and the said application was also disposed of on 29.09.2000 by directing the respondents therein to pass orders on the proposal pending in respect of regularising the service of the petitioner. Therefore, I find that the first respondent is not justified in refusing to regularise the petitioner from the date of the order passed by the Administrative Tribunal namely 29.09.2000, especially, when similarly situated persons got the benefit of such regularisation with effect from the date of filing of the original application.

7. No doubt, the petitioner has approached this Court earlier and filed a writ petition in W.P.No.33991/2012 seeking for a Mandamus to regularise her service in the light of the order passed in W.P.No.11909/2006 confirmed by the Division Bench of this Court in W.A.No.635/2011 and the said writ petition was disposed of on 18.12.2012 by directing the first respondent to consider the representation of the petitioner and pass orders on merits and in accordance with law. Now, the first respondent contends that the said order of this Court dated 18.12.2012 did not specifically direct the first respondent to consider the regularisation from the date of the order made in O.A.No.7197/2000. Needless to say that when the very writ petition in W.P.No.33991/2012 was filed for a mandamus to regularise the service of the petitioner in the light of the orders passed in W.P.No.11909/2006 dated 21.07.2010, the first respondent cannot ignore the order passed in the above writ petition namely W.P.No.11909/2006 and refuse regularisation from the date of disposal of Original Application viz., 29.09.2000. Therefore, I find that the reason stated for rejecting the

request of the petitioner cannot be sustained.

8. Accordingly, the writ petition is allowed and the impugned order is set aside . Consequently, the first respondent is directed to regularise the service of the petitioner from 29.09.2000 and extend the service benefits to the petitioner derived out of such regularisation. Such exercise shall be done by the first respondent within a period of eight weeks form the date lof receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government,  
Home Department,  
Fort St.George,  
Chennai - 600 009.
2. The Additional Director General of Prisons,  
Gandhi Irwin Road,  
Egmore,  
Chennai - 600 008.

+lcc to Mr.G.Bala, Advocate, S.R.No.35982

+lcc to the Government Pleader, S.R.No.36316

W.P.No.42 of 2015

EV(CO)

CS/20/05/2019

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