

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.7873 of 2014
and
M.P.Nos.1 & 2 of 2014

S.Chandra

...Petitioner

Versus

1. State of Tamil Nadu, represented by
its Secretary to Government,
Home Department,
Fort St.George,
Chennai - 600 009.
2. The Inspector General of Prisons,
Kilpauk, Chennai - 600 010.
3. The Superintendent of Prisons,
Sub-Jail and Borstal School,
Pudukottai.
4. The Director,
Directorate of Pension,
259, Anna Salai, 3rd Block,
2nd Floor, Teynampet,
Chennai - 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order No.57032/EW4/2007 dated 19.09.2008 issued by the second respondent and the connected order M.M.No.9204/EW4/2011 dated 11.12.2012 of the second respondent to quash the same and consequently, direct the respondents to regularize the petitioner and to provide all the benefits which the petitioner is entitled to.

For Petitioner : Mr.C.Kanagaraj

For Respondents : Mr.R.Neelakandan,
Government Advocate

O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The relief sought for in this Writ Petition is to call for the records of the impugned order No.57032/EW4/2007 dated 19.09.2008, and the connected order M.M.No.9204/EW4/2011 dated 11.12.2012, issued by the second respondent and to quash the same and consequently, direct the respondents to regularize the petitioner and to provide all the benefits which the petitioner is entitled to.

3. It is the case of the petitioner that on 24.01.1978, she was initially appointed as Female Escorts Warden at Sub Jail, Pudukottai for daily wages of Rs.5/-. From the date of appointment, the petitioner has been made to work in the same cadre but her service has not been regularized. At one stage, the petitioner came to know that the services of the counter parts who working in other Sub-Jails like Madurai, Trichy, Vellore, Coimbatore, etc., were got regularized. The petitioner's grievance is that she has put in more than 25 years of service and though she has crossed the age of superannuation, she has been paid a meagre amount of Rs.60/- as a daily wage employee. Hence, she made a representation before the respondents to regularize her service whenever, the Government directly recruits for the service of female wardens in the open market. By proceedings dated 19.09.2008, the second respondent/Inspector General of Prisons informed the petitioner that his case was examined in terms of G.O.No.710 dated 17.08.2005 and since she crossed the age of 35 and has also completed the retirement age of 58 years, her request could not be considered. The petitioner also made several representations before the Government of Tamil Nadu seeking regularization of her service and grant of pension. She also sent a Letter dated 09.10.2012, to the Chief Secretary, Government of Tamil Nadu, and a representation to the Honourable Chief Minister's Cell, Chennai requesting the regularization of her service. In response, the Additional DIG Prisons vide Proceedings No.M.M.No.9204/EW4/2011 dated 11.12.2012, has replied that since she has been appointed on temporary basis, her service has not taken into account for grant of retirement benefits as per Government Order No.408 dated 25.08.2009 and therefore, she was not eligible for retirement benefits. Challenging the aforesaid proceedings, the petitioner has filed the present writ petition.

4. The learned counsel appearing for petitioner submitted that the petitioner has rendered more than 25 years of service in the respondent Department but her service has not been regularized by the Department. The learned counsel for

petitioner further submitted that the requests made by the similarly placed persons who joined in service along with the petitioner were considered by the respondent Department and their service were regularized by the Department but the petitioner's request has not been considered. He further submitted that the petitioner has already crossed the retirement age of 58 years and still, if her service has not been regularized, she will lose the pensionary benefits. Therefore, the learned counsel prays for appropriate orders, quashing the impugned proceedings passed by the respondents.

5.1. Per contra, the learned Government Advocate appearing for respondents contending that since the petitioner's appointment is on temporary basis she is not entitled to seek for regularization. Further, he contended that her service has not been regularized.

5.2. The learned Government Advocate for respondents has also drawn the attention of this Court to the counter affidavit filed by the respondents, in which, the respondents have stated that the petitioner was aged and also not having the required educational qualification. It is also stated in the counter affidavit that the petitioner was one among the persons terminated from temporary service of Female Escort Warder, on 06.02.2003 ordered by the third respondent vide his order No.SJ1/881/2003, dated 24.02.2003 for the reasons that there was no female lock-up in the Borstal School, Pudukkottai and Sub Jails and therefore, the request of the petitioner for regularization of her service cannot be considered.

5.3. He further submitted that it is also averred in the counter affidavit that one Tmt.Selvarathinam possessed the educational qualification prescribed for the post of Grade - II Warden was appointed afresh as Grade - II Warden in relaxation of Rule 4(a) of the Special Rules for the Tamil Nadu Jail Subordinate Service relating to age in favour of the individual as per G.O.(Ms).No.1504, Home (Prison-II) Department, dated 10.10.1995 in compliance with the court order. But the petitioner herein does not have the required educational qualification prescribed for the post of Grade - II Warden. He also stated that in the aforesaid order, the qualification prescribed for the post of Female Grade II Warden is Xth standard and the age limit has been prescribed as 35 years for general category and 40 years for SC/ST.

6. Considering the facts and circumstances of the case and the submissions made on either side, this Court is not inclined to interfere with the orders of the second respondent. However, considering the fact that the petitioner has put in more than 25

years of service in the respondent Department and now she is at the age of retirement, and also she will lose her retirement benefits, if her service is not regularized, liberty is granted to the petitioner to make a representation before the respondent Department for regularization of her service and for getting her pensionary benefit who had rendered more than 25 years of service in the respondent Department. If any such representation is made by the petitioner, within two weeks from the date of receipt of a copy of this order, the respondent Department is directed to consider the same and pass appropriate orders in accordance with law as expeditiously as possible within a period of six months from the date of receipt of a copy of this order.

7. This Writ Petition is dismissed with the above directions. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (CJ Conf.,)

//True Copy//

mrr

Sub Assistant Registrar

To

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai - 600 009.
2. The Inspector General of Prisons,
Kilpauk, Chennai - 600 010.
3. The Superintendent of Prisons,
Sub-Jail and Borstal School,
Pudukottai.
4. The Director,
Directorate of Pension,
259, Anna Salai, 3rd Block,
2nd Floor, Teynampet,
Chennai - 600 006.

+1 cc to Mr.C.Kanagaraj, Advocate, S.R.No.34433

+1 cc to the Government Pleader, S.R.No.34702

W.P.No.7873 of 2014

PP(CO)

SSM(19/06/2019)