

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020
CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 3310 of 2015

T.Kannika Parameswari

..Petitioner

Vs

1. The Secretary to the Government
Home Department,
Secretariat, Fort St.George,
Chennai - 600009.

2.The Additional Director General of Police,
& Inspector General of Prison,
Chennai - 600008

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to grant terminal benefits to the petitioner including pension from the date of the petitioner's retirement on par with the other Female Escort Warders by taking into account 50% of her service as female escort warder from 20.09.1985 to 22.06.2006.

For Petitioner : M/s.M.S.Soundararajan
For Respondents : Mr.J.Ramesh, AGP

O R D E R

सत्यमेव जयते

The prayer sought for in the Writ Petition is to direct the respondents to grant terminal benefits to the petitioner including pension from the date of the petitioner's retirement on par with the other Female Escort Warders by taking into account 50% of her service as female escort warder from 20.09.1985 to 22.06.2006.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader for the respondents and perused the documents available on record.

3. The learned counsel for the petitioner submitted that the petitioner was appointed as a temporary Female Escort Warder on daily wage basis on 20.09.1985. Thereafter, the 2nd respondent, by letter dated 06.01.1998, informed the petitioner that her request for regularisation along with others is pending consideration with the 1st respondent. The petitioner along with others filed Original Application No.672 of 2004 before the Tamil Nadu Administrative Tribunal, which later, after abolition of the Tribunal, has been transferred to this Court and re-numbered as W.P. No. 18354 of 2007. This Court, by order dated 19.08.2009 disposed of the said writ petition by directing the 1st respondent to consider the case of the petitioner. The petitioner's request was rejected and she filed yet another writ petition in W.P. NO. 25668 of 2009 and, this Court by order dated 12.04.2010 directed the respondent to consider the case of the petitioner, by taking note of the fact that she has passed 10th standard and that in the case of similarly placed persons. Though the Government in G.O. Ms.2617 Home (Prisons-II) Department dated 17.12.1988 has passed appropriate orders, relaxing the Age and Educational Qualifications, but rejected the request of the petitioner by way of another order in G.O. Ms.No. 710 Home (Prisons-II) Department dated 17.08.2005. Aggrieved against the said G.O. Ms. No. 710, dated 17.08.2005, the petitioner has filed another writ petition in W.P. No.19355 of 2010, this Court by order dated 31.10.2011 has issued directions to the 1st respondent to pass appropriate orders relaxing the Age and Educational Qualification and regularise her prospectively. The said order was confirmed in W.A. No.2240 of 2012 dated 18.10.2012. In view of the said order of this Court, the petitioner was appointed on regular basis by the 2nd respondent vide his order dated 24.10.2013 and thereafter the petitioner was retired from service on 30.05.2014.

4. It is further argued by the learned counsel for the petitioner that after retirement, the petitioner has made representations to the respondent on 08.08.2014 and 12.09.2014 to consider her service from the date of initial appointment for the purpose of terminal benefits including pension on par with regular employee in the light of the judgment of this Court, but till date no order has been passed, which caused serious prejudice to the petitioner.

5. On the other hand, the learned Additional Government Pleader submitted that the orders of this Court have been complied with by the respondent and the Government have also passed orders infavour of the petitioner. Therefore, orders passed by Government are valid and proper and do not require any interference.

6. On a perusal of records, it reveals that the petitioner was originally appointed as Female Escort Warder temporarily on a daily wage basis and she was terminated from service in the year 2006. Again, as per the directions issued by this Court, the petitioner was reappointed on regular basis vide order dated 24.10.2013 issued by the 2nd respondent. She retired from service on 30.05.2004. Now sought for relief of granting terminal benefits including pension by regularising her service from the date of initial appointment as daily wages .

7. In the Government Order in G.Os. No. 790, Home (Prison-2) Department, dated 04.10.2013, it has been clearly stated that only as per the directions issued by this Court in W.P. No. 19355 of 2010 dated 31.10.2011, to regularise the petitioner's service prospectively by relaxing certain qualification, age and education of the petitioner. As per the said G.O, the petitioner was issued appointment order, appointing her on regular basis prospectively.

8. In this context, it is useful to rely upon the decision of the Hon'ble Full Bench of this Court made in W.A.Nos. 158 of 2016 etc., batch dated 03.12.2019. The relevant portion is extracted below;

"41. Thus, a government servant who may have been appointed before the cut-off date of 31.03.2003 may be entitled to government pension if he satisfies the requirement of qualifying service in Rule 3(o) of the Tamil Nadu Pension Rules, 1978. However, such a person will not be entitled to add half of the past service held in any one of the four capacity mentioned above prior to 01.04.2003 since his regularisation is subsequent to the cut off date. Therefore, only those who were appointed prior to 01.04.2003 whether as temporary appointment but in accordance with Rule 10 (a) (i) alone will be entitled to get pension.

46.....(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for

the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

9. In view of the aforesaid judgment of the Hon'ble Full Bench of this Court, the writ petitioner's service cannot be counted for the purpose of determining the qualifying service for pension, hence she is not entitled for the same. Accordingly, the Writ Petition stands dismissed. No Costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ak

To

1.The Secretary to the Government
Home Department,
Secretariat, Fort St.George,
Chennai - 600009.

2.The Additional Director General of Police,
& Inspector General of Prison,
Chennai - 600008

+1cc to M/s.M.S.Soundarajan, Advocate, S.R.No.13474

+1cc to the Government Pleader, S.R.No.13617

WEB COPY

W.P.No. 3310 of 2015

AD(CO)

KKV/30/07/2020