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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1964 OF 2021

T.Kannika Parameswari ...Appellant

Vs.

1.The Secretary to Government
Home Department
Secretariat, Fort St. George
Chennai - 600 009

2.The Additional Director General of Police
& Inspector General of Prison
Chennai - 600 008 ...Respondents

Prayer:

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 17.02.2020 in W.P.No.3310 of 2015.

Prayer in W.P.No.3310 of 2015:-

Petition 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 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 Appellants : Mr.V.Kannan

For Respondent : Mr.C.Jayaprakash
Govt. Advocate

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JUDGMENT

PUSHPA SATHYANARAYANA, J.

The unsuccessful petitioner before the writ court, is the appellant herein, questioning the order of the writ court dated 17.02.2020 in W.P.No.3310 of 2015, by which the writ court declined to grant terminal benefits to the appellant herein/writ petitioner including pension from the date of her retirement on par with other Female Escort Warders by taking into account 50% of the services rendered by her as female escort warder from 20.09.1985 to 22.06.2006.

2. The appellant herein/petitioner was originally appointed as Female Escort Warder temporarily on daily wage basis on 20.09.1995 and thereafter, the 2nd respondent, by letter dated 06.01.1998, informed the petitioner that her request for regularization along with others, was pending consideration with the 1st respondent. The petitioner along with others filed Original Application No.672 of 2004 before the Tamil Nadu Administrative Tribunal. After abolition of the said Tribunal, the Original Application No.672 of 2004 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.

3. The petitioner's request was rejected and once again she filed another writ petition in W.P. No. 25668 of 2009 and the same was disposed of on 12.04.2010 directing the respondent to consider the case of the petitioner, in the light of G.O. Ms. No.2617 dated 17.12.1988 in a time bound manner. 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.

4. Aggrieved by the said government order in G.O. Ms. No. 710, dated 17.08.2005, the petitioner has filed another writ petition in W.P. No.19355 of 2010, and 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 order dated 24.10.2013 and thereafter the petitioner retired from service on 30.05.2014. After her retirement, the petitioner has made

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representations to the respondents 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. As there was no response, the petitioner has knocked at the doors of this court by way of a writ petition. The learned single Judge, dismissed the writ petition by order dated 12.05.2017 and the same is questioned in this intra-court appeal.

5. Heard both sides and perused the materials available on record.

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

7. Subsequent to the directions issued by this court in W.P. No.19355 of 2010 dated 31.10.2011, G.O. Ms. No. 790, Home (Prison-2) Department, dated 04.10.2013, has been passed, to regularise 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. The petitioner, having failed to challenge the order regularizing her prospectively, now cannot seek a direction to the respondents herein to grant terminal benefits including pension from the date of her retirement on par with other Female Escort Warders by taking into account 50% of her erstwhile service.

8. Moreover, in a reference before the Hon'ble Full Bench of this court in Government of Tamil Nadu represented by Secretary to Government, Public Works Department, Secretariat, Chennai - 600 009 and others vs R.Kaliyamoorthy, reported in 2019-2-L.W.-673, the Hon'ble Full Bench, has held as follows:

> 45. In the light of the above, we answer the reference as follows:
>
> i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003;
>
> (ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu

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Pension Rules, 1978.

(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. Hence, following the dictum laid down in the decision of the Full Bench, the learned single Judge held that writ petitioner's service cannot be counted for the purpose of determining the qualifying service for pension and hence declined the relief sought for by the petitioner and dismissed the writ petition by order dated 17.02.2020. In view of the settled position, we do not find any defect in the order of the learned single Judge and the same is sustained.

10. In the result, the Writ Appeal is dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

Asr

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To

1.The Secretary to Government
Home Department
Secretariat, Fort St. George
Chennai - 600 009

2.The Additional Director General of Police
& Inspector General of Prison
Chennai - 600 008

+1cc to Mr.V.Kannan, Advocate, S.R.No.43303

W.A.No.1964 of 2021

GPL(CO)
PM/17/09/2021

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