

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.6634 of 2014

A.Mumthaj Begam

... Petitioner

Vs

The Government of Tamilnadu  
represented by the Secretary to the  
Government,  
Home (Prisons) Department,  
Fort St.George, Chennai - 600 009

... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondent to consider the petitioner's representation dated 30.12.2013 praying for taking into consideration the period from 08.07.1972 to 08.03.1979 as qualifying service for calculating pensionary benefits of the petitioner in the light of G.O.Ms.No.554, Home (Prison-II) Department dated 18.07.2012 and G.O.Ms.No.565, Home (Prison-II) Department dated 23.07.2012 and G.O.Ms.No.941, Home Department, dated 30.10.2013.

For Petitioner : Mr.P.Rajedran

For Respondents : Mr.P.Chinnadurai  
Additional Government Pleader

ORDER

Heard both sides and perused the materials brought on record.

2.The prayer made in this writ petition is to direct the respondents to consider the petitioner's representation dated 30.12.2013 and take into consideration the period from 08.07.1975 to 08.03.1979 as qualifying service for calculating pensionary benefits of the petitioner in the light of G.O.Ms.No.554, Home (Prison-II) Department dated 18.07.2012 and G.O.Ms.No.565, Home (Prison-II) Department dated 23.07.2012 and G.O.Ms.No.941, Home Department, dated 30.10.2013.

3. According to the petitioner, she was initially appointed on 08.07.1972 and worked on temporary basis upto 08.03.1979. While so, she was terminated from service on 08.03.1979 on the ground that she did not possess the required educational qualification and her appointment was irregular. Subsequently, the Government, vide G.O.Ms.No.1007, Home (Prison-II) Department, dated 17.04.1986, relaxed the relevant rules in her favour and appointed the petitioner as female Grade II Warder on regular basis from the date of joining the duty. Accordingly, the service of the petitioner was regularised with effect from 17.10.1986 i.e., date of joining the duty. On reaching the age of superannuation, she retired from service on 31.12.2010 as Chief Head Warder, Sub Jail, Nilakottai. Stating that the earlier services rendered by the similarly placed persons before termination were counted as qualifying service for calculating pensionary benefits, the petitioner submitted a representation dated 30.12.2013 to the respondent seeking to extend the same benefit to her. Finding no response on the said representation, the petitioner has come up with this writ petition for the aforesaid relief.

4. Upon notice, the respondent filed a detailed counter affidavit, wherein it is inter alia stated that the petitioner worked as Second Grade Warder on temporary basis and she is not at all eligible for retrospective regularisation, since her service without minimum general educational qualification from 08.07.1972 to 08.03.1979 is not a continuous one, but having 10 breaks; the Government issued G.O.Ms.No.1007 dated 17.04.1986 relaxing the relevant rules such as age, educational qualification of the petitioner only from 17.10.1986 i.e., the date of joining the duty; and the Government Orders referred to in the writ petition relating to similarly placed persons were passed with respect to the concerned individuals only. It is further stated therein that the petitioner already filed WP.No.45289 of 2006 for regularising the period from 08.07.1972 to 08.03.1979, which was dismissed by this Court on 02.12.2010, the relevant portion of which reads as under:

"9. The petitioner was terminated on 8 March 1979. Subsequently, she made an application for re-employment on 17 July 1985. The Government examined the said request and by relaxing Rule 48 of the General Rules in Part II of the Tamil Nadu State and Subordinate Services Rules appointed her as Female Warder with effect from the date of her joining duty. The order was very specific that regularization would be effective only from the date of joining duty. The petitioner accepted that order and joined service on 17 October 1986. The order contains a clear statement that it was a fresh appointment and her earlier representation for

regularising the services was rejected. The petitioner after accepting the said order entered the service as a fresh appointee. It was only thereafter, she made representation for regularising her services from 8 July 1972 to 10 July 1986. Even during the said period, her service was not on a regular basis. She worked only for few days. Her services were terminated and thereafter she worked on daily wages. That was also for few days, depending upon the admission of prisoners. The very relaxation granted by the Government was a concession. When the very appointment was made effective from the date of joining service, as per order dated 17 April 1986, the question of regularising the earlier service does not arise at all. The period of service indicated above also shows that it was not continuous. Without disclosing the actual period of service rendered, the petitioner made a request to regularise the entire period from 8 July 1972 to 10 July 1986. In case the impugned order is considered in the light of the order of appointment dated 17 April 1986, it would clearly prove that the petitioner is not entitled for regularising her services for the above said period. Therefore, I am of the view that the first respondent was fully justified in rejecting the prayer made by the petitioner. I do not find any error or illegality in the said order warranting interference in a proceeding for judicial review under Article 226 of the Constitution of India.

10. In the result, the writ petition is dismissed. No costs."

5. It is seen from the aforesaid averments made in the counter affidavit filed by the respondent that the petitioner already approached this Court by filing WP.No.45289 of 2006 seeking the very same relief as sought herein and by order dated 02.12.2010, the said writ petition was dismissed. Since the issue involved herein was already decided against the petitioner, this Court cannot take a different stand, without any concrete materials. Hence, this writ petition is also liable to be dismissed.

6. Accordingly, this writ petition stands dismissed. No costs.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msv  
To

The Secretary to the Government,  
The Government of Tamilnadu  
Home(Prisons) Department,  
Fort St. George,  
Chennai - 600 009.

+lcc to Mr.P.Rajendran, Advocate Sr.3181  
+lcc to the Government Pleader Sr.2575

W.P.No.6634 of 2014

br[co]  
srg 29/06/2021



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