



W.P.Nos.7880, 7881 & 7882 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.7880, 7881 & 7882 of 2018

M.Ganga,
Grade II Warder,
Female Sub-Jail,
Thiruvarur.

... Petitioner in W.P.No.7880 of 2018

R.Subbulakshmi,
Grade II Warder,
Female Sub-jail,
Thiruvarur.

... Petitioner in W.P.No.7881 of 2018

P.Valarmathi,
Grade II Warder,
Female Sub-jail,
Thiruvarur.

... Petitioner in W.P.No.7882 of 2018

-Vs-

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

2. Additional Director General of Prisons,
Gandhi Irwin Road,
Egmore,
Cennai 600 008.

... Respondents in all the Writ Petitions.



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Common Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents herein to regularise the service of the petitioner as Grade II Female Warder from the date of her original appointment, in the light of the orders passed by the Hon'ble Court in W.P.No.8269 & 42719/2006 dated 7/03/2008 and confirmed by a Division Bench of this Hon'ble Court in W.A.No.179 & 180/2009 dated 26/04/2010 and also confirmed by the Hon'ble Supreme Court in SLP No.6328 & 6329/2011 dated 15/04/2011, together with all consequential service and monetary benefits, within a time-frame as deem fit and proper by this Hon'ble Court.

For Petitioners
in all Writ Petitions : Mr.G.Bala

For Respondents
in all Writ Petitions : Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader

COMMON ORDER

Since the issue raised in these Writ Petitions is one and the same, with the consent of the learned counsel appearing for both sides, these Writ Petitions were heard together and are being disposed of by this Common Order.



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2. The petitioner in W.P.No.7880 of 2018 was appointed as Female Escort Warder on temporary basis or on daily wage basis with effect from 03.05.2000. In respect of other two petitioners in the respective Writ Petitions, they also were appointed or engaged as temporary Female Escort Warder with effect from 09.11.1990.

3. They had been working in that capacity as Female Escort Warder, of course on temporary basis or daily wage basis for several years. When they made a plea for regularisation of their service, insofar as the petitioner in W.P.No.7880 of 2018 is concerned, the Government or the Department decided to regularise the service of the petitioner by making a regular appointment of the petitioner. Accordingly, through the Uniform Service Recruitment Board, an exam was conducted, based on which after relaxing the age and other criteria, the petitioner was regularly appointed as Female Warder Grade II which was a regularly sanctioned post, as already they decided to dispense with the services of the post called Female Escort Warder. Such a reappointment was given to the petitioner in W.P.No 7880 of 2018, which was made on 15.09.2006. Since then, the petitioner had been working in the regular post of Warder Grade II.



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4. Insofar as the other two petitioners are concerned, though they had been working as Female Escort Warder from 09.11.1992, according to the respondents as they have stated in the counter affidavit, their services had been regularised only with effect from 13.03.2009 by issuance of G.O.(Ms).No.225.

5. Therefore, that two petitioners also have been working as Warder Grade II by such regularisation with effect from 13.03.2009. Till this, there is no dispute as to what had happened in respect of the services of these three Writ Petitioners.

6. However, their grievance is that, though they had rendered service from the year 1992 in respect of two petitioners, from 2000, in respect of another petitioner, because of the orders passed on 15.09.2006, where, one petitioner was regularly appointed as Warder Grade II, and two other petitioners were regularised in the post of Warder Grade II with effect from 13.03.2009, which is well after the cut off date i.e., 01.01.2004, as from 01.01.2004, there is no regular pension will be paid to those who have appointed and joined in Government service, only Contributory Pension would be given. These petitioners may not be



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eligible to get the regular pension, though they had been engaged or appointed either in the year 1992 or in the year 2000. Therefore, in order to espouse the said cause or the grievance to treat their past service rendered as Female Escort Warder from 1992 and from 2000 respectively for their continuous service for the purpose of calculating the pensionary benefits payable to the petitioners after their superannuation, they approached the respondents and thereafter, they filed the present Writ Petitions with the respective prayers.

7. Heard Mr.G.Bala, learned counsel appearing for the petitioners who would submit that insofar as these petitioners are concerned, admittedly they had been working as Female Escort Warder on temporary basis with effect from 09.11.1992 in respect of two petitioners and from 03.05.2000 in respect of petitioner in W.P.No.7880 of 2018. Therefore, their engagement is well before the cut off date i.e., 01.01.2004. Therefore, if their past service is taken into account for the purpose of continuity of service, they would be eligible to get the pensionary benefits payable to them after their superannuation. The learned counsel would also submit that, similarly placed persons who are also initially engaged as Female Escort Warder on temporary basis, but



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subsequently either was retrenched or removed from service and they were not re-appointed, were directed to be re-appointed and at the time of their appointment, when the past services of those people were to be taken into account for the purpose of continuity of service, the issue was raised by one such petitioner in W.P.No.8269 of 2006 and that Writ Petition was allowed by a learned Judge of this Court by order dated 07.03.2008, as against which, when Writ Appeals were filed, a Division Bench of this Court by order dated 26.04.2010 in W.A.Nos.179 and 180 of 2009, confirmed the order passed by the Writ Court but one modification, under which, the employees in that Writ Petition who were the respondents in the Writ Appeal are entitled to get consequential monetary benefits only from the date of filing of the original application before the Tribunal. The relevant portion of the order of the Division Bench dated 26.04.2010 in the matter of *State of Tamil Nadu, represented by the Secretary to the Government, Home Department and other* Vs. *P.Manjula* reads thus:

“ These Writ Appeals have been preferred against the order dated 07.03.2008 made in W.P.Nos.269 and 42719 of 2006



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2. *The learned single Judge directed, the appellants to regularize, the service of the respondent from the date of her appointment with all consequential benefits. According to the appellants, the respondent was temporarily appointed as Female Escort Warden on daily wage basis and therefore the question of regularization does not arise. It is also contended that based on the appointment order, the respondent is not entitled for regularization and as such the government has rightly rejected the proposal seeking regularization of her service.*

3. *On the other hand, the learned counsel appearing for the respondent would submit that the learned single Judge had taken note of the facts and circumstances in respect of two similarly situated employees. Though they were aged about 53 and 46 years at the time of their appointment, they were regularized after relaxing the educational qualifications. But in the case on hand, the respondent was aged 30 years at the time of her initial appointment whereas the required age limit was 28 years prescribed under the rules. Therefore, following the norms adopted, in the case of similarly situated, persons, the learner single Judge has rightly passed and ordered regularising the service of the respondent.*



4. Considering the facts and circumstances of the case, we see no reason to interfere with the order passed by the learned single Judge. However, we make it clear that the respondent is entitled to get consequential monetary benefits, only from the date of filing of the Original Application before the Tribunal. The Writ Appeals are allowed in part. No costs. Consequentially, connected Miscellaneous Petitions are closed.”

8. As against the said order passed by the Division Bench, when the State preferred Special Leave Petition in SLP CC No.6328 & 6329 of 2011, the SLP also was dismissed by thus, the order passed by the Writ Court as has been confirmed by the Division Bench has been confirmed by the Hon'ble Supreme Court.

9. When a similar issue once again was raised by other two employees in W.P.Nos.18681 and 18685 of 2014, a learned Judge of this Court having considered all these aspects including the earlier orders passed by the Writ Court as well as the Division Bench as confirmed by the Hon'ble Supreme Court, has passed the following order :



“8. Be that as it may, as on date, the petitioners' services had been regularised though not from the date of their initial appointment. It is also the case of the respondents that the posts in which now the petitioners are accommodated did not exist in the year when they were originally appointed. Anyway, that cannot be a point put against the petitioners. Since the Government itself had chosen to employ the persons as Female Escort Warders for the purpose of carrying out the duties attached to the Warder. In the said circumstances, the services rendered by the petitioners from the date of their initial appointment cannot be completely ignored. In the above circumstances, this Court after perusing all the orders passed by this Court by single Judges and by the Division Benches is of the view that the present petitioners are also entitled to the relief viz., regularisation with effect from the date of original appointment with continuity of service. Of course, the pay scale for the period has to be taken into account notionally and it is made clear that the petitioners are not entitled to any arrears of pay for the said period. The said period from the date of initial appointment shall be counted for all purposes except for arrears. In the said circumstances, this Court sets aside the impugned orders rejecting the claims of the



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petitioners seeking regularisation from the date of initial appointment.

9. The Writ Petitions are allowed on the above terms. No costs.”

10. The learned counsel for the petitioners also relied upon a further decision made by a learned Judge of this Court in yet another two Writ Petitions which were also similarly placed in W.P.Nos.3658 and 6168 of 2021, where, a learned Judge of this Court by order dated 17.03.2021 has passed an order by following the order passed in W.P.Nos.18681 and 18685 of 2014 cited supra and the learned Judge has allowed the said Writ Petitions in the following terms:

“4. Taking note of the submissions of the learned counsel on either side and in view of the ratio laid down by thi Court in the order dated 28.07.2017 passed in W.P.Nos.18681 and 18685 o f2014 (supra) and also in the light of the order dated 26.04.2010 passed by the Division Bench of this Court in W.A.Nos.179 & 180 of 2009, as confirmed by the Apex Court vide order dated 15.04.2011 in S.L.P.Nos.6328 & 6329 of 2011, this Court directs the Respondents herein to regularize the services of



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the Petitioners from the date of their original appointment, together with all consequential service and monetary benefits, within a period of four months from the date of receipt of a copy of this order.

In fine, Writ Petitions are ordered accordingly.

No costs.”

11. Relying upon these decisions, the learned counsel appearing for the petitioners would seek indulgence of this Court to give a direction to the respondents to take the past service rendered by the petitioners as Female Escort Warder as a continuity of service for all service benefits without any back-wages or any difference of pay.

12. Per contra, Mr.R.U.Dinesh Raj Kumar, learned Additional Government Pleader appearing for the respondents would submit that, insofar as the post of female Escort Warder is concerned, it was not a regular post created and only in order to meet the contingency to escort the female prisoners in the prisons, these kind of Female Warders on temporary basis that too on daily wage basis were engaged. At the time of engagement or at the time of their continuous working as such female Escort Warder on daily wage basis, they were not having the required



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educational qualification and age criteria for either appointment or regularisation on regular basis. At one point of time, the Government wanted to abolish such an engagement on daily wage basis to the post of Female Escort Warder and only Warder Grade II post, which is a permanent post where these kind of Female Warders can be appointed on regular basis on various methods, accordingly, these people have been reappointed or regularised.

13. The learned Additional Government Pleader would further submit that in some cases like the petitioner in W.P.No.7880 of 2018, it was purely a reappointment based on examination where the educational qualification as well as the age criteria was relaxed, thereafter only was selected and appointment was given which is purely a fresh appointment only with effect from 15.09.2006 that is well after 01.01.2004.

14. Like that, in respect of other two Writ Petitions, though they had been temporarily engaged from 1992 in respect of their regularisation by adopting the principle as contemplated under the relevant Government Orders including the G.O. i.e., G.O.No.22 Personnel and Administrative Reforms(F) Department, the department



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thought it fit to regularise their services by issuing a further

G.O.Ms.No.225 dated 13.03.2009. Even for such regularisation, since the

petitioners and similarly placed persons were to be given so much of relaxation in respect of age, educational qualification and method of recruitment etc. such a relaxations were given and regularisation had been given to the post of Warder Grade II, that too well after the cut off date 01.01.2014. Therefore, none of these petitioners would be eligible or entitled to seek for any continuity of service for the purpose of regular old pension benefits on their superannuation. Since from 01.01.2014, the New Pension Scheme had been adopted, such kind of old pension scheme cannot be extended to these petitioners.

15. Insofar as the earlier orders passed by this Court as referred by the learned counsel appearing for the petitioners is concerned, the learned counsel appearing for the respondents has submitted that, as against the order passed by the Writ Court dated 28.07.2017 in W.P.Nos.18681 and 18685 of 2014 is concerned, intra-Court appeal has been filed which is pending before this Court. Insofar as the subsequent orders passed by another learned Judge of the Writ Court dated 17.03.2021 in W.P.Nos.3658 and 6168 of 2021, certainly appeal would



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be filed. Therefore, it has not been concluded by orders of the learned Single Judge passed in both the cases in the Writ Court as that has to be tested before the Division Bench, hence the principle adopted or the orders passed by the learned Judges in the respective orders referred by the learned counsel for the petitioners cannot be treated as a precedent for the purpose of giving any benefit to these petitioners. Therefore, the learned Additional Government Pleader seeks indulgence of this Court to reject these Writ Petitions as devoid of merits.

16. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

17. It is an admitted fact that these petitioners were engaged even on daily wage basis as Female Escort Warder from 09.11.1992 in respect of two writ petitioners and from 03.05.2000 in respect of one writ petitioner.



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18. After rendering several years of service, either they have been reappointed by giving some relaxation or their services have been regularised of course by giving certain relaxation.

19. The reappointment and regularisation when was made, they have been reappointed or regularised in the post of Warder Grade II which is a regular post. But before their regularisation or reappointment they had been continuously engaged as a Female Escort Warder not for a short period but for several years. In respect of the two writ petitioners they have been engaged as Female Escort Warders for 17 years and one writ petitioner for 6 years. Therefore, for such a long period, their services were required for the Department as their service as Female Escort Warder is an essential one, without which, the female prisoners in the prisons or jails cannot be escorted properly. Therefore, merely because the nomenclature was stated earlier as Female Escort Warder on temporary basis and subsequently as Warder Grade II on permanent basis, it is the convenience of the respondents to take any nomenclature but the fact remains that, that kind of job was required to be retained by the Department, where the incumbents were appointed of course on daily wage or temporary basis and they have been in service for several years.



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20. Only after having realised their long years of service, the Government thought it fit to regularise their services after long years and in respect of some of the cases like the petitioner in W.P.No.7880 of 2018, it was by way of reappointment that petitioner was posted as Warder Grade II with effect from 15.09.2006.

21. So what has been done sometime in 1992 or thereafter i.e., well before 01.01.2004, they have been regularised suitably as that become necessitated for the Department to regularise their services either by way of regularisation or by the way of reappointment.

22. Merely because of this exercise of regular appointment, regularisation had been taken place by the respondents' action which was belated one, the benefits accrued on the petitioners right from the 1992 or from 2000 as the case may be cannot be denied. This aspect has been considered by more than two times by the Writ Court and the earliest order passed in this regard was on 07.03.2008 that too after long years where the lis was pending before the Tamil Nadu State Administrative Tribunal where at the earliest point of time, those persons approached the



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Tribunal for getting the relief of regularisation and service benefits and the order passed by the Writ Court dated 07.03.2008 which was an earlier order having been confirmed by the Division Bench on 26.04.2010, and SLP also to that extent was dismissed by the orders of the Hon'ble Supreme Court dated 15.04.2011, those orders have been implemented.

23. Insofar as the other similarly placed persons are concerned, yet again two other writ petitions were disposed of by the learned Judge of this Court by order dated 28.07.2017 and the import of the said order at paragraph 8 has been quoted herein above and I am in complete agreement with the view expressed by the learned Judge in the said order. Though an intra-Court Appeal has been filed against the said order, it is submitted by the learned counsel appearing for both sides that, there is no stay granted by the Hon'ble Division Bench.

24. Moreover, pursuant to the said order passed by the Writ Court dated 28.07.2017, further orders were passed in other two Writ Petitions in W.P.No.3658 and 6168 of 2021 dated 17.03.2021, where paragraph 8 of the earlier order as quoted herein above has been quoted by the



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learned Judge and he has passed an order at paragraph 4 of the said order dated 17.03.2021, which is also herein before mentioned.

25. The reason stated by the learned Single Judges in the said two cases as stated above, one is in the year 2017 and another is in the year 2021 and the facts mentioned therein would squarely apply to the facts of the present case. Therefore, this Court feels that absolutely there is no reason to take any different view than the one already been taken three times by the Writ Courts. Hence, this Court has no hesitation to hold that the Petitioners are entitled to seek for the relief sought for in these Writ Petitions.

26. In the result, these writ petitions are disposed of by passing the following orders :

(i) That there shall be a direction to the respondents to treat the past service rendered by these petitioners as Female Escort Warders from 9.11.1992 in respect of petitioners in W.P.Nos.7881 and 7882 of 2018 and from 03.05.2000 in respect of petitioner in W.P.No.7880 of 2018 as continuous service. It is made clear that the said past



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service shall be taken into account only for the purpose of continuity of service for service benefits and not for any back-wages or payment of any difference of pay.

(ii) If the said past service is taken into account, the petitioners would be entitled to seek for pensionary benefits on their superannuation/retirement under the Old Pension Scheme and accordingly, such benefit also shall be extended to them on their superannuation if they are otherwise eligible to.

27. With these directions, these writ petitions are ordered accordingly. However, there shall be no order as to costs.

10.08.2022

Index: Yes/No
Speaking order: Yes/No
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R.SURESH KUMAR, J.

sha/sgl

To

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