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W.P.No.7380 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.Nos.7380, 7382, 7384, 7386, 8131, 8132, 8133, 8134, 8137, 8138, 8139,
8142, 13508, 13511, 13513, 13515, 13516, 13518, 13523, 13524, 13525,
27134 & 28367 of 2021

and

W.M.P.Nos.28608 & 29943 of 2021

W.P. No.7380 of 2021

K.Sivapakiam

D/o.Kuppusamy, aged 51 years

Grade II Warder

Sub-Jail, Krishnagiri

... Petitioner

/Vs/

1.The Secretary to Government

Home Department

Fort St. George

Chennai 600 009

2.Director General of Police/

Director General of Prisons and Correctional Services

Tamil Nadu Prisons and Correctional Services Department

Whannels Road, Egmore

Chennai 600 088

Respondents

...

Writ Petition is filed under Article 226 of the Constitution of India for



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issuance of 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 light of the orders passed by the Division Bench of this Court in W.A.No.179 & 180 of 2009 dated 26.04.2010 and also confirmed by the Hon'ble Supreme Court in SLP No.6328 & 6329 of 2011 dated 15.04.2011, together with all consequential service and monetary benefits, within a time-frame.

For Petitioners : M/s.G.Bala and Daisy

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Assisted by
Ms.P.Rajarajeswari,
Government Advocate

COMMON ORDER

W.P. No.7380 of 2021 has been filed for issuance of 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 light of the orders passed by the Division Bench of this Court in W.A.No.179 & 180 of 2009 dated 26.04.2010 and also confirmed by the Hon'ble Supreme Court in SLP No.6328 & 6329 of 2011 dated 15.04.2011, together with all consequential service and monetary benefits, within a time-frame.



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2.The Petitioners herein have been appointed as Female Escort Warder in

Prison Department on daily wagers, their services were regularised as follows:

S.No	W.P.No.	Petitioner Name	Date of Original appointment	Date of regularisation
1	7380/2021	K.Sivapakiam	02/09/1993	03/04/2012
2	7382/2021	N.Saraswathi	18/11/1994	22/04/2009
3	7384/2021	P.Krishnaveni	29/01/1998	03/04/2012
4	7386/2021	V.Vijayalakshmi	18/11/1994	22/04/2009
5	8131/2021	B.Kala	29/01/1998	20/04/2012
6	8132/2021	M.Umasanknari	08/11/1999	13/07/2013
7	8133/2021	R.Leeladevi	12/03/1998	12/07/2013
8	8134/2021	M.Abumathi	12/03/1998	12/07/2013
9	8137/2021	K.Saroja	24/10/2002	13/07/2013
10	8138/2021	V.Nagarathinam	22/06/1998	13/07/2013
11	8139/2021	V.P.Sathiyavani	15/12/2000	13/07/2013
12	8142/2021	K.Bakkiyalakshmi	12/02/1998	17/07/2013
13	13508/2021	S.Malarkodi	29/01/1998	21/04/2012
14	13511/2021	K.Latha	29/01/1998	24/04/2012
15	13513/2021	D.Vasuki	29/01/1998	21/04/2012
16	13515/2021	J.Vijayalakshmi	04/06/1999	23/04/2012
17	13516/2021	G.Krishnaveni	27/08/1999	08/08/2012
18	13518/2021	A.Kasturi	10/06/1999	24/04/2012
19	13523/2021	G.Thammiammal	29/01/1998	19/04/2012
20	13524/2021	R.Thilagavathi	28/07/1993	02/05/2012
21	13525/2021	R.Prabhavathi	25/09/2002	23/04/2012
22	27134/2021	Thavamani	01/07/1998	20/09/2006
23	27134/2021	Mahalakshmi	01/07/1998	20/09/2006
24	27134/2021	Jeyamani	13/06/2000	20/09/2006



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S.No	W.P.No.	Petitioner Name	Date of Original appointment	Date of regularisation
25	28367/2021	N.Periammal	20/02/2002	04/01/2012
26	28367/2021	K.Dhanalakshmi	20/02/2002	04/01/2012
27	28367/2021	V.Sarasu	20/02/2002	04/01/2012
28	28367/2021	A.Jeyasagunthala	20/02/2002	04/01/2012
29	28367/2021	M.P.Selvi	20/02/2002	04/01/2012
30	28367/2021	V.Jeyabarathi	20/02/2002	04/01/2012

Though the Petitioners have been appointed temporarily as daily wagers, they have undergone serious selection process for the said appointment.

3.Heard Mr.G.Bala, the learned counsel for the Petitioners and Mr.R.Neelakandan, learned Additional Advocate General, Assisted by Ms.P.Rajarajeswari, learned Government Advocate for the Respondents.

4.Mr.G.Bala, the learned counsel for the Petitioners relied upon the order made by this Court in W.P.Nos.8269 & 42719 of 2006 (*P.Manjula Vs. 1.The Secretary to the Government*) dated 07.03.2008, wherein this Court has ordered regularisation of similarly placed persons from the date of appointment with consequential benefits. Against which Writ Appeal in W.A.No.179 & 180 of 2009 was preferred by the Government and the same was partly allowed on 26.04.2010 by stating that the Respondent is entitled to get consequential



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monetary benefits only from the date of filing of the Original Application before the Tribunal. The S.L.P.(Civil) No.6320-6329 of 201 preferred against the Judgment passed in W.A.No.179 & 180 of 2009 was dismissed by the Hon'ble Supreme Court on the ground of delay.

5.An identical issue in W.P.No.3658 & 6168 of 2021 was dealt with and in the said Writ Petition an order dated 17.03.2021 has been passed by giving direction to regularize the services of the Petitioners therein, from the date of their original appointment, together with all consequential service and monetary benefits. The relevant portion of the said order is extracted as under:

“Taking note of the submissions of the learned counsel on either side and in view of the ratio laid down by this Court in the order dated 28.07.2017 passed in W.P.Nos.18681 and 18685 of 2014 (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 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”



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6.This Court has passed an order in an yet another identical issue in W.P.No.7880 to 7882 of 2018 dated 10.08.2022, and it is held that the past services 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 different of pay. The relevant part of the said order is as under:

“(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 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.”

7.Mr.R.Neelakandan, learned Additional Advocate General for the Respondents submitted that the Full Bench of this Court on 03.12.2019 in



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W.A.No.158 of 2016 & batch cases held that if the regularisation has taken

place subsequent to 01.04.2003, the past services cannot be taken into account

for the purpose of pension. The excerpts of the said order is given below:

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 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.



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(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."

8.Mr.R.Neelakandan, learned Additional Advocate General further submitted that in the present case, the Petitioners' services were regularised from 2006 onwards, as they fall under clauses (iv) & (v) of the above Full Bench judgment of this Court in W.A.No.158 of 2016 & batch, they are entitled to compute their past service for determining the qualifying years of service for getting pension.

9.Mr.G.Bala, the learned counsel for the Petitioner submitted that before the order passed by the Full Bench of this Court, 40 employees have already been regularised and the pension has been granted to them. Subsequent to the above said order of the Full Bench also a Government Order in G.O.(Ms).No.155 Home (Prison-II) Department, dated 13.03.2020 has been issued and the benefits of pension was extended to some of the employees.

10.In this regard, it is worthwhile to refer the order passed in W.A.No.714



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to 716 of 2014, dated 23.03.2022, wherein it is observed as under:

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“18. Failure to take into account the above-mentioned crucial aspects produces results which may fall foul of Article 14 of the Constitution and may also constitute unfair labour practices in terms of Industrial Disputes Act, 1947 and it is impermissible on part of the State Government to be exploitative i.e., to take work from the employees under the above schemes

...

20. We find merit in the submission made by the Senior counsel for respondents on both the counts, thus in our view the Full Bench may require reconsideration. Let the matters be placed before the Hon'ble Chief Justice for appropriate directions.”

11. In the above order made in W.A.No.714 to 716 of 2014, dated 23.03.2022, the principles of equality was applied and the benefit was extended by counting the past service for the purpose of pension, by taking into account the benefit enjoyed by similarly placed person. In paragraph 6 of the order in W.A.No.714 to 716 of 2014, dated 23.03.2022 the Division Bench of this Court has observed that the Hon'ble Full Bench, while issuing guidelines did not take into account of the earlier Supreme Court Judgment in Prem Singh's case reported in (2019) 10 Supreme Court Cases 516.



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12.The Hon'ble Supreme Court held in *The State of Gujarat & Ors., Vs.*

Talsibhai Dhanjibhai Patel in (SLP(C).No.1109/2022) dated 18.02.2022, as

under:

“It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the Respondents are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years are thereafter to contend that an employee who has rendered 30 years continues service shall be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High Court has not committed any error in directing the State to pay pensionary benefits to the Respondent who has retired after rendering more than 30 years service.”

13.The Government itself has passed an order subsequent to the Full Bench Judgment by granting pensionary benefits to 37 female Grade II warders vide G.O.(Ms.)No.155 Home (Prison-II) Department, dated 13.03.2020. Similarly placed persons are enjoying the benefits pursuant to the Division Bench Judgment in W.A.No.714 to 716 of 2014, dated 23.03.2022, which distinguished the Full Bench judgment by making reference to *Prem Singh's*



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case. Hence, I feel it is appropriate to grant the relief sought by the Petitioners.

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14.In the result, these Writ Petitions are allowed with the direction to the Respondents to regularise the services of the Petitioners as Grade II Female Warder from the respective date of their original appointment, in light of the orders passed by the Division Bench of this Court in W.A.No.179 & 180 of 2009 dated 26.04.2010 which was also confirmed by the Hon'ble Supreme Court in SLP No.6328 & 6329 of 2011 dated 15.04.2011, with all consequential service and monetary benefits. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

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

2.Director General of Police/
Director General of Prisons and Correctional Services
Tamil Nadu Prisons and Correctional Services Department
Whannels Road, Egmore



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R.N.MANJULA, J.

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