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W.P.No.34226 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.34226 of 2012

K.Jeeva Mary

...Petitioner

vs.

1.The Government of Tamil Nadu represented by the
Secretary to the Government, Home (Prisons)
Department, Fort St.George,
Chennai – 600 009.

2.The Additional Director General of Police,
Inspector General of Prisions,
CMDA Tower-II,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

3.The Superintendent,
Special Prison for Women,
Puzhal, Chennai – 600 006.

... Respondents

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 3rd respondent in Proceedings No.768/Po.1/2009 dated 30.04.2011 and quash the same in so far as it



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restricts regularization of service only from 27.04.2009 and direct the respondents to regularize the petitioner's service with effect from the date of her initial appointment namely, 02.03.1989 and grant her all consequential benefits.

For Petitioner : Ms.Simi Mathew

for Mr.A.M.Packianathan Easter

For respondents : Mr.R.Neethi Perumal
Government Advocate

ORDER

This Writ petition has been filed challenging the order of the 3rd respondent in restricting the regularization of service of the petitioner only with effect from 27.04.2009 and to direct the respondent to regularise the service of the petitioner with effect from the date of initial appointment namely 02.03.1989.

2. Heard Ms.Simi Mathew, learned counsel for Mr.A.M.Packianathan Easter appearing for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing on behalf of the respondents.



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3. The learned counsel for the petitioner would submit that the petitioner's name was sponsored by Employment Exchange and she had been appointed as Temporary Female Escort Warder on 02.03.1989 by the Superintendent, Central Prison, Madurai and was posted at Kodaikanal Sub Jail. Thereafter, she was transferred to Vedansandur Sub Jail on 05.05.1989 and to Dindigul Sub Jail on 13.08.1993. On creation of exclusive prison for women at Nilakkottai, Paramakudi and Sattur, she was transferred and posted at Nilakkottai on 17.01.2003. When steps were taken for appointment of fresh Grade-II Female Warders, the petitioner had approached this Court to consider her to be appointed and also to reinstate her in service as she was directed not to report to duty from 28.02.2006. The Government by considering various requests of the similarly placed persons like petitioner, the Government had taken a policy decision who had completed 10 years of temporary service as on 01.01.2006 subject to the condition that they were educationally qualified. Further, the Government order in G.O.Ms.225 Home(Prison-II) Department, dated 13.03.2009 the



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services of the petitioner were all regularised by relaxing the relevant Rules.

In so far as the petitioner is concerned, age, height and the mode of appointment were relaxed. However, when the order of regularization was issued on and from 27.04.2009. Being aggrieved against the same, the petitioner had approached this Court.

4. The learned counsel for the petitioner would contend that the entire service of the petitioner from 1989 to 2009 had been totally ignored by the respondent. She would also rely upon the Policy of the Government taken in other Departments by regularising the services from the date of their original appointment. she would also rely upon the judgment in 2006 WLR 480, wherein the Court had in fact directed the regularization of such appointment from the date of initial appointment. He would further rely upon the judgment of the learned Single Judge in W.P.Nos. 18681 & 18685 of 2014 dated 28.07.2017. She would submit that the petitioner in W.P.No.18685 of 2014 was also one of the person who had been regularised in services like that of the petitioner. She would submit that the learned Single Judge even in that case had directed regularization of the said person



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from the date of initial appointment. Therefore, She would pray this Court to regularise the services of the petitioner from the date of her initial appointment.

5. On the other hand, countering the submissions made by the learned counsel for the petitioner, Mr.R.Neethiperumal, learned Government Advocate appearing for the respondents would contend that a benefit had been extended by regularising the petitioners who had been appointed not through the regular course of appointment. He would further submit that the nature of work of Female Escort Warders and the regular Female Grade-II Warders are totally different and a benefit had been conferred by the Government by regularising them in a post which has altogether a different duty. Further, he would submit by relying upon a judgment of the Hon'ble Apex Court reported in *(1991) 1 SCC 691* and *(2008) 6 Scale 101* and submitted that a person who had been appointed on a temporary basis had only a right to continue till a regular selection is made. Therefore, their right to continue is only till regular selection is made.



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Even though they have been regularised in the regular post they cannot claim to regularise their temporary services as it is a Policy decision taken on a compassionate ground to accommodate this petitioner. Therefore, he prayed before this Court to reject this Writ Petition.

6. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

7. Admittedly, the petitioner had been appointed on a temporary basis through the Employment Exchange as there was shortage of Female Warderers in the Prison Department. She had continued in service for nearly two decades and when a regular appointment was sought to be made, the petitioner sought to challenge the same. But the Government in the interregnum considering the fate of similarly placed persons like the petitioner decided to regularise the services of such persons by prescribing a condition that they should have put in 10 years of service as on 01.01.2006 and should be educationally qualified. In the present case, the petitioner had



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put in 10 years of service and is also educationally qualified and therefore, by relaxing the Rules, the Government had passed a Government order in the year 2009 regularising the services of the petitioner.

8. In the judgment relied upon by the petitioner in the case of a similarly placed person, this Court had directed regularization of service from the date of initial appointment but, however, had directed fixation of pay only notionally and that they were not entitled for any arrears for the said period. For better appreciation, the relevant paragraph in the said judgment is extracted hereunder:-

“8. Be that as it may, as on date, the petitioner's 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



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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., regularization 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 petitioners seeking regularisation from the date of initial appointment.”

9. I do not find any reason to deviate from the view taken by the learned Judge in the aforesaid Writ Petition. In fine, the order impugned in this Writ Petition is modified by directing regularization of the services of the petitioner from the date of her initial appointment namely 02.03.1989. But, she would be entitled for fixation of salary notionally from the said date and she would not be entitled for any arrears of such fixation. However, from the date of order of regularization she would be entitled for



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all other attendant benefits.

10. With the above observations, this Writ Petition is partly allowed. However, there shall be no order as to costs.

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gba

Index : Yes/No

Speaking order : Yes/No

Neutral citation : Yes/No

To

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