



W.P.No.34159 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.34159 of 2017

S.Vijayalakshmi

... Petitioner

Vs.

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

2. The Additional Director General of Prisons,
Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to regularize the service of the petitioner as Grade II Female Warder from the date of her original appointment in light of the orders passed by this Court in W.P.Nos.8269 and 42719 of 2006 dated 07.03.2008 and confirmed by the Division Bench of this Court in W.A.Nos.179 and 180 of 2009 dated 26.04.2010 and also confirmed by the Honble Supreme Court in



W.P.No.34159 of 2017

S.L.P.No.6328 and 6329 of 2011 dated 15.04.2011 together with all consequential service and monetary benefits.

For Petitioner : Mrs.S.Nirmala Daisy
for M/s.G.Bala and Daisy

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
for R1 and R2

ORDER

This Writ Petition has been filed seeking for a direction to the respondents to regularize the service of the petitioner as Grade II Female Warder from the date of her original appointment, in light of the orders passed by this Court in W.P.Nos.8269 and 42719 of 2006 dated 07.03.2008 and confirmed by the Division Bench of this Court in W.A.Nos.179 and 180 of 2009 dated 26.04.2010 and also confirmed by the Honble Supreme Court in S.L.P.No.6328 and 6329 of 2011 dated 15.04.2011 together with all consequential service and monetary benefits.



W.P.No.34159 of 2017

WEB COPY

2.It is the case of the petitioner that she was appointed as Female Escort Warder on 10.01.1993 through Employment Exchange. At the time of appointment, the Educational Qualifications and Physical Fitness were taken into account. The petitioner was fully qualified to hold the post of Grade II Female Warder in the Prison Department. As per the Government Orders passed from time to time, the salary of the petitioner was fixed on daily wages basis. Since she was continuously working she was called for selection for appointment to the post of Grade II Warder. The petitioner once again has attended the selection process and appointed as Grade II Female Warder from 20.04.2009. Thereafter, the probation of the petitioner had also been completed. Even at the time of the initial appointment and the subsequent selection process in the year 2009 also, the petitioner was found eligible for appointment to the post of Grade II Female Warder. Therefore, the petitioner filed O.A.No.5327 of 2000 before the Tamil Nadu Administrative Tribunal to regularize her services from the date of appointment as regular Female Warder. On 13.08.2002, the Tribunal had



W.P.No.34159 of 2017

passed final orders, directing the 1st respondent to pass orders on the proposal submitted by the 2nd respondent to appoint the petitioner as regular Female Escort Warder and further directed the respondents to pay the minimum time scale of pay to the petitioner. The Judgment of the Tribunal was upheld by the Division Bench of this Court. The 1st respondent had also fixed time scale of pay and she has been paid arrears of pay for the post of Grade II Warder from the date of her original appointment in G.O.Ms.No.719, dated 26.08.2009. Therefore, the service of the petitioner has to be regularised from the date of her original appointment, i.e., 10.01.1993 for the purpose of pension and other service benefits.

3.The learned counsel appearing for the petitioner would submit that the name of the petitioner was deleted in the District Employment Exchange and the petitioner is serving in the Prison Department as on today, without getting any promotion and she has been deprived of pension and all other service benefits only on the ground that regular appointment order was



W.P.No.34159 of 2017

issued only in the year 2006. He would submit that in a similar case, this Court in W.P.Nos.8629 and 42719 of 2006 on 07.03.2008 had passed final orders stating that the service of the petitioner has to be regularised from the date of her appointment with all consequential benefits. Thereafter, the respondents preferred an appeal in W.A.Nos.179 and 180 of 2009 and on 26.04.2010, a Division Bench of this Court had dismissed the Writ Appeal, however, restricted the monetary benefits from the date of filing of the case. The respondents had further preferred an appeal before the Hon'ble Supreme Court. On 15.04.2011, the Supreme Court had dismissed the appeal preferred by the Department in S.L.P.No.6328 and 6329 of 2011.

4.The learned counsel for the petitioner would further submit that in similar circumstances, this Court passed final orders in W.P.Nos.18683 and 18685 of 2014, directing the respondents to regularise the services of the petitioners from the date of their initial appointment for all purposes except for arrears. The petitioner is also a similarly situated person and she is entitled to regularization of her services from the date she was originally



W.P.No.34159 of 2017

appointed in the Prison Department. Therefore, she submitted a representation to the respondents and requested for regularization of her services, in the light of the Judgments of this Court. But, till date no order has been passed on the representation submitted by the petitioner.

5.The learned counsel for the petitioner would further submit that the petitioner is similarly situated as that of the petitioners in W.P.No.11909 of 2006 in which this Court had directed the respondents to regularise the services of the petitioners from the date of filing of the Original Application. On 12.04.2011, the Division Bench of this Court was pleased to dismiss W.A.No.635 of 2011 filed by the respondent herein as against the final order passed in WP.No.11909 of 2006. The petitioners in the above Writ Petition had been appointed and given posting as Female Grade II Warders. Now their services have been regularised from the date of filing of the Original Applications and Writ Petitions vide G.O.Ms.No.509, dated 09.07.2012. Therefore, the petitioner is also entitled to the benefits granted under the above Government Orders. From the year 1993, she is working in



W.P.No.34159 of 2017

WEB COPY

the Prison Department. Unless her services are regularised as done in the case of other similarly placed persons, she would not be entitled to get pension and other terminal benefits in the event of her retirement. He would submit that her claim for regularization from the date of her original appointment has not been considered by the respondents. But, similarly situated persons have been granted retrospective regularization.

6.The respondents filed their counter affidavit stating that Tmt.Manjula was one among the temporary Female Escort Warders appointed on daily wage basis on 15.04.1991 and she was terminated from service on 25.02.2006. She has filed cases in W.P.Nos.8269 and 42719 of 2006 praying to regularise the services of Female Grade II Warder with all benefits. On 07.03.2008, this Court passed orders directing the 1st respondent to regularise the services of the petitioner from the date of appointment with all consequential benefits. The Government have filed W.A.Nos.179 and 180 of 2009 against the order in W.P.No.8269 and 42719 of 2006. This Court on 26.04.2010 have ordered that the respondent is



W.P.No.34159 of 2017

entitled to consequential monetary benefits only from the date of filing of the Original Application. In compliance of the order of this Court the said Manjula was regularised from the date of her initial appointment is totally false.

7.The learned counsel for the respondents would submit that the petitioner was appointed as temporary Female Escort Warder on daily wage basis which cannot be entitled to claim for regular appointment by the petitioner. In the year 2019, she was appointed only by relaxing relevant rules 2(e), 4(a) and 6 of the Tamil Nadu Jail Subordinate Service Rules regarding reservation of appointment, age and height in favour of her in G.O.Ms.No.225, dated 13.03.200 and she has not served continuously. This Court discussed the issue of payment of minimum wages in W.P.No.2721 of 2004 dated 24.11.2008. Even in the said order, issuance of G.O.Ms.No.480 dated 28.04.2008 was discussed which dealt about the regularization of Female Escort Warders. The petitioner was one among the party in the said Common Order. Further, the petitioner has not challenged the order of this



W.P.No.34159 of 2017

Court pertaining to the regularization and she is hereby constrained to raise the said issue of regularization once again by filing this Writ Petition.

8.The learned counsel for the respondents would further submit that the 1st respondent has requested to send proposals to sanction the expenditure towards payment of minimum wages to the temporary female escort warders vide G.O.Ms.No.719, dated 26.08.2009. Hence, the 2nd respondent has sent a proposal to the Government and based on the proposal, the Government in G.O.Ms.No.383, dated 20.04.2010 have accorded sanction towards the payment of minimum wages to the temporary female escort warders. The petitioner was one among the persons who got the arrears of pay. Even though the petitioner got the monetary benefits, based on the order dated 26.04.2010 on this Court in W.A.Nos.179 and 180 of 2009 against order in W.P.No.8269 of 2006 and W.P.No.42719 of 2006, the petitioner is not entitled to claim for regularising the services from the date of initial appointment with all service benefits. Further, the petitioner was not paid arrears from the date of her original appointment. In fact, she



W.P.No.34159 of 2017

has been paid the arrears of pay in terms of payment of minimum wages only from the date of Common Order of the Tribunal dated 30.08.2002. The service of the petitioner was regularised by the Superintendent, Special Prison for Women, Vellore, vide proceedings dated 17.06.2011.

9.Heard the learned counsels appearing on either side and perused the material available on record.

10.On perusal of the records, it is seen that the petitioner was appointed as temporary Female Escort Warder on daily wage basis in 1993. Thereafter, to regularize the service from the date of appointment as regular Female Warder, the petitioner has filed O.A.No.5327 of 2000 before the Tamil Nadu Administrative Tribunal. On 13.08.2002, the Tribunal had passed final orders, directing the 1st respondent to pass orders on the proposal submitted by the 2nd respondent to appoint the petitioner as regular Female Escort Warder and further directed the respondents to pay the minimum time scale of pay to the petitioner. It is further seen that the



W.P.No.34159 of 2017

Judgment of the Tribunal was upheld by the Division Bench of this Court.

The 1st respondent had also fixed time scale of pay and she has been paid arrears of pay for the post of Grade II Warder from the date of her original appointment in G.O.Ms.No.719, dated 26.08.2009. Therefore, the service of the petitioner has to be regularised from the date of her original appointment, i.e., 10.01.1993 for the purpose of pension and other service benefits. Further, in a similar case, this Court in W.P.Nos.8629 and 42719 of 2006 on 07.03.2008 had passed final orders stating that the service of the petitioner has to be regularised from the date of her appointment with all consequential benefits. Thereafter, the respondents preferred an appeal in W.A.Nos.179 and 180 of 2009 and on 26.04.2010, a Division Bench of this Court had dismissed the Writ Appeal, however, restricted the monetary benefits from the date of filing of the case. The respondents had further preferred an appeal before the Hon'ble Supreme Court. On 15.04.2011, the Supreme Court had dismissed the appeal preferred by the Department in S.L.P.No.6328 and 6329 of 2011. In similar circumstances, this Court passed final orders in W.P.Nos.18683 and 18685 of 2014, directing the



W.P.No.34159 of 2017

respondents to regularise the services of the petitioners from the date of their initial appointment for all purposes except for arrears. The petitioner is also a similarly situated person and she is entitled to regularization of her services from the date, she was originally appointed in the Prison Department in the light of the Judgments of this Court.

11.By a Judgment dated 10.08.2022 in W.P.Nos.7880 to 7882 of 2018, the following directions have been granted by this Court:

"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 09.11.1992 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



W.P.No.34159 of 2017

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."

Hence, this Court is not inclined to accept the submission of the learned counsel for the respondents.

Accordingly, this Writ Petition is allowed and the respondents are directed to regularize the service of the petitioner as Grade II Female Warder from the date of her original appointment, in light of the orders passed by this Court in W.P.Nos.8269 and 42719 of 2006 dated 07.03.2008 and confirmed by the Division Bench of this Court in W.A.Nos.179 and 180 of 2009 dated 26.04.2010 and also confirmed by the Honble Supreme Court in S.L.P.No.6328 and 6329 of 2011 dated 15.04.2011 together with all consequential service and monetary benefits. No costs.

06.11.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
mps

13/15



WEB COPY



W.P.No.34159 of 2017

To

1. The Secretary to Government,
Home Department,
Fort St. George,
Chennai - 600 009.
2. The Additional Director General of Prisons,
Gandhi Irwin Road,
Egmore,
Chennai - 600 008.



WEB COPY



W.P.No.34159 of 2017

V.BHAVANI SUBBAROYAN, J.

mps

W.P.No.34159 of 2017

06.11.2023