



W.P.No.30691 of 2015 etc., batch

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 23.01.2025

ORDERS PRONOUNCED ON : 28.03.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.30691 to 30698 of 2015

A.Balasundari	... Petitioner in WP No.30691/2015
P.Latha Rani	... Petitioner in WP No.30692/2015
P.Daisy Suseelabai	... Petitioner in WP No.30693/2015
P.V.Saraswathi	... Petitioner in WP No.30694/2015
R.Suseela	... Petitioner in WP No.30695/2015
S.Nageswari	... Petitioner in WP No.30696/2015
R.Indirani	... Petitioner in WP No.30697/2015



W.P.No.30691 of 2015 etc., batch

WEB COPY N.Thulasi

... Petitioner
in WP No.30698/2015

Vs.

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

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

... Respondents
in all W.Ps.

Prayer in W.P.Nos.30691 to 30698 of 2015 : Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent herein in his proceedings Letter No.72298/Pri.II/2013-7 dated 10.08.2015 and quash the same and consequently direct the first respondent herein to absorb the petitioners as Female Warders from the date of their original appointment, in the light of the orders passed by this Court in W.P.No.11909 of 2006 dated 21.07.2010, which was implemented by the first respondent in G.O.Ms.No.187, Home (Pri.II) Department, dated 14.03.2011 and confirmed by a Division Bench of this Court in W.A.No.635



W.P.No.30691 of 2015 etc., batch

WEB COPY

of 2011 dated 12.04.2011, together with all consequential service benefits, within a time frame as deem fit and proper by this Court.

In all W.Ps.

For Petitioner : Mr.G.Bala and Daisy
For Respondents : Mr.K.H.Ravikumar
Government Advocate

COMMON ORDER

All these writ petitions have been filed aggrieved by the common order passed by the first respondent in Letter No.72298/Pri.II/2013-7, dated 10.08.2015 rejecting the claim made by the petitioners for absorption of their services as Grade-II Warders in Tamil Nadu Jail Subordinate Service. As all the petitioners are similarly situated and the claim made by the petitioners is also identical in nature, besides the impugned order being common, all the writ petitions were heard together and are being disposed of by this common order.



W.P.No.30691 of 2015 etc., batch

WEB COPY

2. For the sake of convenience, the facts pertaining to the petitioner in W.P.No.30691 of 2015 are only referred to, as the facts of all other cases are almost identical in nature and there is no need to refer to the factual matrix of the other writ petitions.

3. The petitioner in W.P.No.30691 of 2015 was appointed as Female Escort Warder on 25.05.1998 on daily basis and her services were engaged during the years 1998 to 2008 depending upon the necessity and her services were utilised during the said years for 150, 194, 241, 229, 233, 234, 248, 241, 235, 234 and 164 days respectively and her services were discontinued in the year 2008. Similarly, the services of the petitioners in the other writ petitions were also utilised during the years 2002-2006, 1999-2006, 1998-2008, 1988-1989 & 1999-2006, 1988-1989 & 1999-2006, 2000-2006 and 1999-2005 respectively. Like the petitioner in the first writ petition, the petitioners in these writ petitions also worked only for certain number of days during every year. The services of all the petitioners were discontinued during the year 2006 except the petitioner in W.P.No.30691 of



W.P.No.30691 of 2015 etc., batch

WEB COPY

2015, whose services were discontinued in the year 2008. While so, the petitioners have submitted individual representations on 28.07.2013 requesting for absorption of their services as Female Grade-II Warders from the date of their original appointment with all service benefits claiming benefit of absorption on par with other similarly situated persons. It was thereafter, the petitioners approached this Court by filing W.P.Nos.23923 to 23930 of 2013 seeking Writ of Mandamus, directing the respondent therein to absorb the petitioners as Female Warders from the date of their appointment in the light of the orders passed in W.P.No.11909 of 2006, dated 21.07.2010 and G.O.Ms.No.187, Home (Prison-II) Department, dated 14.03.2011. The said batch of writ petitions were disposed of by a Co-ordinate Bench of this Court by order dated 08.10.2014, in the light of the orders passed in W.P.Nos.10604 to 10622 of 2012, dated 18.04.2012 directing for consideration of the case of the petitioners duly taking into consideration the orders passed in W.P.No.11909 of 2006 and G.O.Ms.No.187, dated 14.03.2011. It was pursuant to the said order passed by this Court, Respondent No.1 considered the claim of the petitioners for



W.P.No.30691 of 2015 etc., batch

WEB COPY

absorption and rejected the same by passing the impugned order dated 10.08.2015. It is aggrieved by the said order, the petitioners filed these batch of writ petitions.

4. The only contention that is raised before this Court by the learned counsel for the petitioners is that the petitioners in W.P.Nos.10604 to 10622 of 2012 were similarly situated like the petitioners herein and by virtue of the orders passed in the said writ petitions by orders dated 18.04.2012, their services were absorbed by issuing G.O.(Ms) No.459, Home (Prison-II) Department, dated 05.07.2013, and in terms of the order dated 08.10.2014 passed in W.P.Nos.23923 to 23930 of 2013, the petitioners are also entitled for the same relief and absorption of their service. But the petitioners were treated differently and their claim for regularisation of their services was rejected in an arbitrary manner.

5. On the other hand, Mr.K.H.Ravikumar, learned Government Advocate appearing for the respondents contended that the services of the



W.P.No.30691 of 2015 etc., batch

WEB COPY

petitioners were discontinued during the years 2006 to 2008 and thereafter, they have not raised any objections against their discontinuance. But it is only when some of the temporarily appointed Female Escort Warders were granted the benefit of absorption into service by orders in G.O.(Ms) No.459, dated 05.07.2013, the petitioners have started making a claim for absorption of their services on par with the others and therefore, their claim is belated and they are not entitled for absorption, as they were not in Government Service right from the year 2008 onwards. He also further contended that the absorption or regularisation of the temporarily appointed persons is not permissible in the light of the law laid down by the Hon'ble Apex Court in the case of *State of Karnataka and Ors. vs. Umadevi and Ors.*, reported in *(2006) 4 SCC 1* and also placed reliance on yet another decision of this Court in W.A.No.3566 of 2019, dated 30.07.2024.

6. On the other hand, learned counsel for the petitioner placed reliance on a decision of the Hon'ble Apex Court in *Om Prakash Banerjee vs. State of West Bengal & Ors.* reported in *[2023] 10 S.C.R. 427* to



W.P.No.30691 of 2015 etc., batch

WEB COPY

contend that the respondents, having extended the benefit of regularisation/absorption of service to similarly situated employees, are not justified in rejecting the claim of the petitioners herein.

7. This Court has carefully considered the submissions made by the learned counsel on either side and also perused the entire material available on record.

8. It is not in dispute that the petitioners herein were granted the similar relief in W.P.Nos.23923 to 23930 of 2013 as was granted in favour of the petitioners in W.P.Nos.10604 to 10622 of 2012. Admittedly, the petitioners in W.P.Nos.10604 to 10622 of 2012 were absorbed by issuing G.O.(Ms) No.459, dated 05.07.2013. But the similar benefit was refused to be extended in favour of the petitioners herein by passing the impugned order dated 10.08.2015 on the ground that the petitioners in the previous batch of writ petitions though were not entitled for such absorption, they were granted the said benefit and such a benefit cannot be claimed by the



W.P.No.30691 of 2015 etc., batch

WEB COPY

petitioners herein by complaining discriminatory treatment, unless the petitioners herein establish their right to seek absorption as permanent employees. It is no doubt true that the law with regard to regularisation of service is settled by now and the same cannot be claimed as a matter of right.

9. As already noted above, the petitioners in W.P.Nos.10604 to 10622 of 2012 were also similarly situated like the petitioners and they also approached this Court for the first time in the year 2012 and they were extended the benefit of absorption by orders dated 05.07.2013, whereas the petitioners herein made a claim for such absorption only thereafter by submitting representation dated 13.07.2013 and thereafter, approached this Court. Admittedly, the services of the petitioners herein were discontinued during the years 2006 and 2008. Since then the petitioners are not in service. The petitioners in W.P.Nos.10604 to 10622 of 2012 were also not in service by the year 2012, but they were appointed as Grade-II Warders in Prison Department with effect from 05.07.2013. The very same benefit is



W.P.No.30691 of 2015 etc., batch

WEB COPY

being claimed by the petitioners in these batch of writ petitions.

10. As seen from the impugned order, it is the specific stand of the respondents that the petitioners in the previous batch of writ petitions are not entitled for regularisation/absorption, but they were appointed erroneously by issuing G.O.(Ms) No.459, dated 05.07.2013. If that is the stand of the respondents, it is for the petitioners to establish as to how they are entitled for absorption/regularisation of their services. Though this Court is convinced that the only difference between the petitioners in the previous batch of writ petitions and the present batch of writ petitions is one year delay, that is, the petitioners in the previous batch have approached this Court in the year 2012 and whereas the petitioners in the present batch of writ petitions have approached this Court in the year 2013. Mere delay of one year would not make much difference. Considering all these aspects, this Court is in agreement with the claim made by the petitioners on the ground that they are similarly situated like the petitioners in the previous batch of writ petitions. But in the light of the reasoning assigned by



W.P.No.30691 of 2015 etc., batch

WEB COPY

Respondent No.1 in the impugned order contending that the orders issued in G.O.(Ms) No.459, dated 05.07.2013 is erroneous and therefore, such a benefit cannot be claimed as a matter of right is concerned, this Court finds substantial force in the said stand taken by Respondent No.1. The question of absorption or regularisation of service of a temporary employee would arise only in case such employee is continuing in service.

11. In the instant case, admittedly, the services of the petitioner in W.P.No.30691 of 2015 were discontinued in the year 2008 and the services of the petitioners in the other writ petitions were discontinued during the year 2006. Therefore, the question of regularisation or absorption of their services by virtue of a claim made by them through their representation dated 13.07.2013 for the first time does not arise at all. Absorption or regularisation presupposes continuance in service. Once services were discontinued, question of absorption/regularisation does not arise in the absence of any vested right for absorption. In such an event, it is only an appointment. Therefore, the claim made by the petitioners in this batch of



W.P.No.30691 of 2015 etc., batch

WEB COPY

writ petitions for absorption after discontinuance of their services, that too after a lapse of more than 6 years does not arise. So also, the benefit of appointment granted in favour of the petitioners in the previous batch of writ petitions is concerned, this Court is unable to endorse or acknowledge the said appointment and therefore, this Court equally does not deem it appropriate to direct extending the said benefit to the petitioners herein also.

12. Admittedly, the respondents have issued two Government Orders in G.O.Ms.No.710, Home (Prison.2) Department, dated 17.08.2005 and G.O.(Ms) No.225, Home (Pri.II) Department, dated 13.03.2009 providing for regularisation/absorption of the temporarily appointed Female Escort Warders. But the petitioners herein does not fit into any of the schemes provided under the said Government Orders. Further, the petitioners herein are out of service for the past more than 17 years and they are about to reach their age of superannuation and at this stage, the question of regularisation/absorption of their service is not permissible under law. As the law with regard to claim for regularisation is well settled, this Court is



W.P.No.30691 of 2015 etc., batch

WEB COPY

not inclined to refer to the various decisions relied upon on behalf of the respondents.

13. Further the petitioners whose services were discontinued during the years 2006 and 2008 kept quiet till the year 2013 when other similarly situated persons got the benefit of regularisation/absorption and then made their claim for the first time in the year 2013. Thus, it is evident that the petitioners have no intention of making any claim for their absorption/regularisation of their services till the year 2013. Therefore, for this reason also, the claim made by the petitioners herein is liable to be rejected.

14. Insofar as the decision relied upon by the learned counsel for the petitioners in the case of ***Om Prakash Banerjee (supra)*** is concerned, it is settled law that the negative equality cannot be claimed on the ground of violation of Articles 14 and 16 of the Constitution of India and once this Court is convinced that the petitioners in the previous batch of writ petitions



W.P.No.30691 of 2015 etc., batch

WEB COPY

were extended the benefit of the appointment, though they were not entitled legally, this Court cannot issue a mandamus to extend or perpetrate such illegality. Therefore, the said decision has no application to the facts of the case on hand.

15. In the light of the above, this Court does not find any error or illegality in the impugned order passed by Respondent No.1 and accordingly, all these Writ Petitions are dismissed. There shall be no order as to costs.

28.03.2025

NCC : Yes/No
Index : Yes/No
ABR



WEB COPY



W.P.No.30691 of 2015 etc., batch

MUMMINENI SUDHEER KUMAR, J.

ABR

To

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

Pre-delivery Order made in
W.P.Nos.30691 to 30698 of 2015

28.03.2025