



W.P.No.846 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2025

CORAM:

THE HONOURABLE MRS. N.MALA

W.P.No.846 of 2021

J.Ayesha

... Petitioner

vs.

1.Government of Tamilnadu Rep. by the
Additional Chief Secretary to Government,
Home (Prison II) Department, Fort St.George,
Chennai - 600 009.

2. The Superintendent of Prisons,
Women Prison, Puzhal,
Chennai - 600 066.

3.The Accountant General (A & E) DMS Complex,
Teynampet, Chennai - 600 018.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned letter bearing No 39094/Pri- II/2019- 5 dated 17.9.2020 issued by the 1st Respondent herein, namely the Additional Chief Secretary to Government, Home (Prison - II) Department Secretariat Chennai 9, quash the same as *non-est* in the eye of law and to consequently direct the 1st Respondent herein to issue suitable Government orders to the effect of retrospectively regularising the



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services of the petitioners as Female Escort Warder Grade- II with effect from the date of her initial appointment i.e. on 16.04.1988 by bringing the petitioner in the regular time scale of pay in the Post of Temporary Female escort warder from the above said date and by duly sanctioning the above said post from the said date, with attendant, service and monetary benefits attached to the said post and pay the resultant arrears arising out of such retrospective regularisation and to further re-fix her pension and revise her terminal, retirement and pensionary benefits from 01.05.2021 onwards and to pay the resultant arrears arising out of such re-fixation of pension within a time frame that may be stipulated by this Court.

For Petitioner : Mr.K.S.Govinda Prasad

For Respondents : Mr.L.S.M. Hasan Fazil
Additional Government Pleader

ORDER

The petitioner and four others were appointed and posted as Grade II Female Warders on temporary basis in the vacant posts in the Special Cell for Women, Puzhal, Chennai on 24.04.2009. Since, the petitioner's services were not regularised from the date of her initial appointment, the petitioner filed the present writ petition for the aforesaid reliefs.

2. The petitioner who is qualified with S.S.L.C was called for



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interview by the District Employment Exchange, Tirunelveli and was selected and posted as Female Escort Warder at Sub Jail, Tenkasi. The petitioner's services were regularised in the post of Female Escort Warder Grade II, with effect from 24.04.2009. According to the petitioner, she was recruited through proper channel and also possessed the required qualification for the said post and hence her past services deserved to be considered and her services ought to have been regularised from the date of her initial appointment i.e., 16.04.1988. As the petitioner was denied the benefit of her past services by the impugned order the petitioner filed the above writ petition.

3. The respondents filed a detailed counter stating that the temporary Female Escort Warders post was not a sanctioned permanent post in prison department, whereas the sanctioned permanent post in the department of prisons and correctional services was Grade II Warder. The respondents therefore stated that the contention of the petitioner that her initial appointment was a regular one and that she was appointed against a sanctioned post was totally false and untenable.

3.1. The respondents contended *inter alia*, that The Tamil Nadu



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Administrative Tribunal by common orders dated 30.08.2002, 05.12.2002 and 21.01.2003 issued directions to the first respondent "to take a policy decision, to prepare a scheme for absorption of as many applicants as possible". Accordingly, the first respondent framed a scheme for regularisation of the services of temporary female escort warders by stipulating a minimum eligibility criteria for them to participate in a selection conducted by Departmental Promotion Committee as per G.O.(Ms) No.710, Home (Prison -II) Department dated 17.08.2005, so as to absorb the eligible persons as Female Grade II Warders, in the Tamil Nadu Prison Department, as a one-time measure. The respondents further contended that though the petitioner possessed required educational qualification, she had crossed the age limit of 35 years and therefore, she was not called to participate in the selection process by the Promotion Committee constituted at Trichy.

3.2. The respondents contended that the female escort warders including the petitioner who had completed 10 years of services were considered for appointment to the post of Grade II Warders as per G.O.Ms.No.22, Personnel & Administrative Reforms (F) Department, dated 28.02.2006 and were appointed as Grade II Warders as per

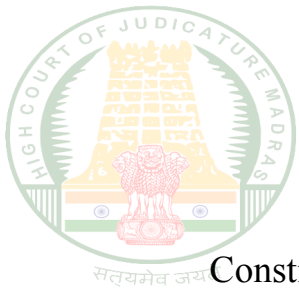


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G.O.Ms.No.225, Home (Prison-II) Department, dated 13.03.2009 by relaxing the relevant rules 2(e) and 4(a) of the Tamil Nadu Jail Subordinate Service Rules, regarding mode of appointment and age. The petitioner herein joined duty as Female Grade II Warder on 24.04.2009. The petitioner's services were regularised from 24.04.2009 as per proceedings No.768/G1/2009 dated 25.11.2011, of the Superintendent of Prisons, Special Prison for Women, Puzhal. Therefore, according to the respondents as the petitioner was appointment in the post of Grade II Warder as per G.O.Ms.No225, Home (Prison-II), Department, dated 13.03.2009, by relaxing relevant rules, the petitioner's past services could not and were not considered.

3.3. The respondents further case was that the Government servants who were appointed in service prior to 01.04.2003, in a regular capacity without any break were alone eligible for the calculation of their past service for pension purpose provided the service was rendered in a permanent post. The respondents in the counter referred to the judgments of the Hon'ble Apex Court as well as the Hon'ble Full Bench of this Court in support of the contention that regularization was not permissible in exercise of the statutory powers conferred under Article 162 of the



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Constitution of India, if the appointment was made in contravention of the statutory rules. The respondents therefore prayed that the writ petition deserved no merit and was liable to be rejected.

4. The learned counsel appearing for the petitioner relying on the common orders passed by this Court in W.P.No.7380 of 2021 (batch) dated 08.11.2023, submitted that as the facts and issues are identical the said judgement squarely applies to this case. The petitioner's counsel further submitted that in the said writ petition the learned single judge relied on the decision of the Hon'ble Division Bench of this Court in W.A.No.179 & 180 of 2009 dated 26.04.2010 which was confirmed by the Hon'ble Supreme Court in SLP No.6328 & 6329 of 2011 dated 15.04.2011. The counsel therefore prayed that the writ petition should be allowed.

5. In the common order of the learned single judge of this Court in W.P.No.7380 of 2021 (batch) it was held in paras 10 to 13 as follows :



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"10. In this regard, it is worthwhile to refer the order passed in W.A.No.714 to 716 of 2014, dated 23.03.2022, wherein it is observed as under:

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



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Singh-s case reported in (2019) 10 Supreme Court Cases 516.

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



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

6. I find that the common order of the learned single judge of this Court in W.P.No.7380 of 2021 (batch) squarely applies to the facts of the present case as the present writ petitioner has also sought for regularization of services from the date of the initial appointment for the purpose of calculating the qualifying services for pensionary benefits.

7. In the result, the Writ Petition is allowed with the direction to the respondents to regularise the services of the petitioner as Female Escort Warder Grade II, with effect from the date of her initial appointment i.e. on 16.04.1988, by bringing her in the regular time scale of pay in the Post of Temporary Female escort warder from the above said date and by duly sanctioning the above said post from the said date, with attendant, service and monetary benefits attached to the said post and pay



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the resultant arrears arising out of such retrospective regularization and to further re-fix her pension and revise her terminal, retirement and pensionary benefits from 01.05.2021, onwards and to pay the resultant arrears arising out of such re-fixation of pension within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes/No
Speaking / Non-speaking order
mtl

To

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