

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.04.2017

DELIVERED ON: 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.41147 of 2016 and
WMP.No.35143 of 2016 and
WMP.No.6871 of 2017

G.Vivek

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Adi Dravidar Welfare,
Chepauk,
Chennai - 600 005.
3. The District Adi Dravidar & Tribal Welfare Officer,
Villupuram District,
Villupuram.
4. The District Collector cum Chairman,
District Level Vigilance Committee,
Nagapattinam District,
Nagapattinam.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by 4th Respondent in Na.Ka.2957/2011/K4 dated 26.09.2016 and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.K.Venkatramani, (for R1 to R4)
Additional Advocate General-VII

Assisted by Mr.K.Dhananjeyan
Special Government Pleader

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

The petitioner, a B.T. (Bachelor of Teaching) Assistant has come up with the present writ petition, challenging the impugned proceeding of the 4th Respondent in Na.Ka.No.2957/2011/K4/date 26.9.2016 with a prayer to quash the same.

2.The case of the petitioner as per the affidavit would be that he was born as Christian to one Gnana Aruputham and Padmavathi in Narimuduku Village, Sirkali Taluk, Nagapattinam District on 10.04.1967. Though his parents were originally professed Hinduism and his father's original name was Villu, they adopted Christianity and changed his father name as stated above. Further, the petitioner was originally named as Lazar but on attaining majority he got affinity with Hindu Religion. The Petitioner changed his name as G.Vivek and the same was published in the Tamil Nadu Gazette on 14.12.1988. Immediately after 2 years, the Tahsildhar of Sirkali Taluk issued a community certificate as the petitioner belongs to Hindu Adi Dravidar-Community vide community certificate No.DIS725/90/B4, date 20.01.1990. The Petitioner studied his under graduation in Zoology and he also completed his Bachelor degree in education in the year of 1990 and 1992 respectively. However, due to some family circumstances, he shifted the residence to Munivazhai Village, Shangarapuram Taluk, Villupuram District in the year 1998. Subsequently, due to the change of his residence to Villupuram District, his employment registration was also transferred with Registration No.183 of 2000 on 04.01.2000 to Villupuram District. Thereafter the petitioner was appointed to the post of Secondary Grade teacher with B.Ed. qualification, as per G.O.M.S.No.5, Adi-Dravidar and Tribal Welfare Department dated 05.05.2000. Subsequently, he was appointed to the Post of Secondary Grade Teacher on 18.01.2001 by the 3rd Respondent. As the facts were being so, on 05.05.2008 based on his seniority, the petitioner was promoted to the Post of B.T. Assistant and presently he is working in the Government Adi Dravidar Welfare Higher Secondary School, Kavarai Village, Gingee Taluk, Villupuram District.

3. The further case of the petitioner is that he is holding the post of District Secretary, Villupuram District in the Tamil Nadu Anaithu Asiriyargal Nala Sangam besides the post of State Level Co-ordinator. As the facts were being so, one

A.Kumaraguruparan, lodged a complaint against the petitioner alleging that he produced false community as well as education certificates. Earlier the petitioner was called to produce document by the directorate of Adi-Dravidar Welfare Department as per proceeding in Na.Ka.No.02/13816/04 date 10.02.2015. On enquiry, it was found that certificates produced by the petitioner were genuine. However, the aforesaid Kumaragruparan filed a Writ Petition before this Court in W.P.No.4153 of 2015 and challenged the appointment of the petitioner. The said Writ petition is pending before this court. On the other hand on 24.09.2016 the petitioner was directed to appear before the 4th respondent for enquiry on 26.09.2016. However, due to the declaration of local body election committee was not constituted and the District Collector and also the Secretary of Vigilance Committee were absent. The anthropologist alone was present. He gave instruction to the petitioner to give a statement and informed that the date of the next enquiry would be informed.

4. It is specifically stated by the petitioner that no enquiry was conducted on the particular day but the 4th respondent committee on 26.09.2016 itself issued an order by cancelling the community certificate of the petitioner as not genuine. The further case of the petitioner is that after converting himself from Christianity to Hindu Religion, he is professing Hinduism and adopted Hindu practice. So, the impugned order passed by the 4th respondent is liable to be quashed.

5. The learned Government Advocate appearing for the Respondent, based on the counter affidavit filed by the 4th respondent would contend that the petitioner, on 26.9.2016 gave a written statement and also produced records in support of his claim.

6. Further, the petitioner has not produced any certificate in respect of his parents. Further, all the school records of the petitioner would show that the community of the petitioner as Christian Adi Dravidar community. Though the petitioner has stated that he reconverted to Hinduism before Ariya Samaj Pedam, he did not say the place where the temple is situated besides not produced any documentary evidence about his deceleration of adopted Hinduism.

7. However, the 4th respondent conceded that the Revenue Divisional Officer did not enquire the matter as the petitioner was not residing within the jurisdiction of Mayiladuthurai Revenue Divisional Officer. Since the petitioner did not file sufficient proof that he adopted and has been practicing Hinduism, the community certificate issued by the Tahsildhar,

Sirkazhi could not be genuine one. Therefore, he prays for the dismissal of the writ petition.

8. The petitioner has filed additional typeset of papers and through such documents, it came to light that the District Scheduled Caste and Schedule Tribes Welfare Officer and secretary to the district level Vigilance Committee, Nagapattinam were not at all sitting for the enquiry on 26.09.2016. This fact came to light as per the information given by the Public Information Officer of the District Scheduled Caste and Scheduled tribes Welfare office, Nagapattinam in Na.Ka.No.24018/ 2016/K4 Dated 19.12.2016. So it is very surprising to note that the impugned order was passed as if the officers concerned of the vigilance committee were available for enquiry. The case pleaded by the fourth respondent is therefore per se false.

9. Moreover, it is stated in the impugned order itself that the petitioner appeared before the committee on 26.09.2016 and gave a statement with the anthropologist of the district Vigilance committee on 26.09.2016. The aforesaid officer was on election duty and he was at his office from 10 am to 5 Pm. He was the Election Officer and he was engaged in the nomination receiving duty. So, it is clear that the impugned order of the Vigilance Committee is nothing but a cooked one to deny the claim made by the petitioner. This court expresses its concern about the way in which the Government officials like the Secretary of Nagapattinam Vigilance Committee made attempt to create records to appear as if enquiry was conducted. Apart from that it was pointed out that by the learned Counsel for the petitioner that though it is stated that the Revenue Divisional Officer of Mailadudurai submitted a report to the committee on the genuineness of the community certificate of the petitioner, but it is shock to note here that the affidavit filed by the 4th respondent disclosed in Para No.18 "it is submitted that in much as the petitioner is not residing within the jurisdiction of the Revenue Divisional Officer, Mayiladuthurai because of that the petitioner was not enquired by the Revenue Divisional Officer". This part of the affidavit of the 4th respondent would show that the petitioner was not at all enquired by the Revenue Divisional Officer, Mayiladuthurai. However, the impugned order was passed by relying on the enquiry report of the Revenue Divisional Officer, Mayiladuthurai in Na.Ka.No.278999/2016/M2/Dated 23.09.2016.

10. Moreover, it was pointed out by the counsel for the Petitioner that the petitioner was not given sufficient opportunity to participate in the enquiry and no witness was examined to enable him to cross examine the witness. Furthermore, the impugned order does not speak about the

independent application of mind by the Vigilance Committee in passing the impugned order. The Secretary of the Vigilance Committee was not at all participated in the enquiry on 26.09.2016 and the same is proved by the petitioner from the information given by the office of the Secretary, Vigilance Committee. Therefore, for the foregoing discussions, the impugned order is deserved to be set-aside.

11. In the result:

(a) the Writ Petition is allowed and the impugned order of the District Level Vigilance Committee in Na.Ka.No.2957/2011/K4/ Dated 26.09.2016 is hereby quashed;

(b) the District Level Vigilance Committee is hereby directed to conduct fresh enquiry by giving fair opportunity to the petitioner to putforth his case and documents for proving the genuineness of his claim;

(c) the District Level Vigilance Committee is directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Principal Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Adi Dravidar Welfare,
Chepauk,
Chennai - 600 005.
3. The District Adi Dravidar & Tribal Welfare Officer,
Villupuram District,
Villupuram.

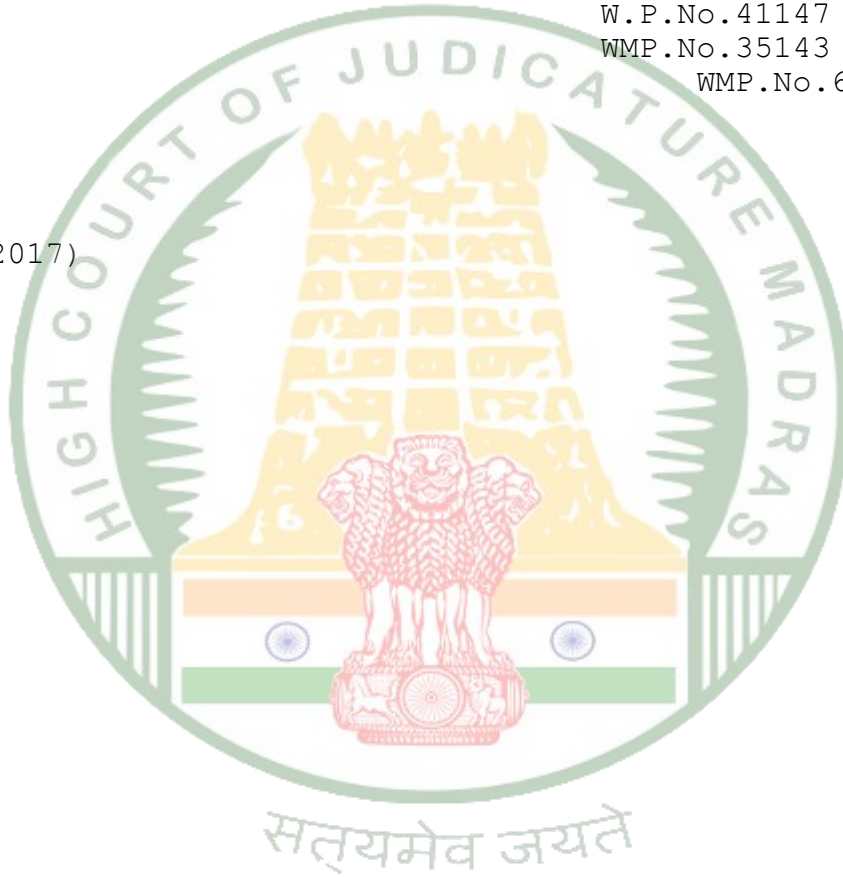
4. The District Collector cum Chairman,
District Level Vigilance Committee,
Nagapattinam District,
Nagapattinam.

+1cc to the Government Pleader, Advocate Sr. 26415

+1cc to M/S. G. Sankaran, Advocate Sr. 26311

Pre-Delivery order made in
W.P.No.41147 of 2016 and
WMP.No.35143 of 2016 and
WMP.No.6871 of 2017

RSI (CO)
VR(08/05/2017)



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