

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 07.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.38964 of 2004

V.Selvaraj

...Petitioner

Vs

1.Block Development Officer,
Thirunavalloor Panchayat Union,
Villupuram District.

2.President,
Meppuliyur Village Panchayat,
Ulundurpet Taluk,
Villupuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records pertaining to the order passed by the 1st respondent in his proceedings Na.Ka.Aa.2/959/04 dated 25.11.2004 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S.Saravanakumar

For Respondents: Mrs.K.Bhuvaneswari,
Additional Government Pleader
for R1 & R2

सत्यमेव जयते
O R D E R

The petitioner herein, who belongs to Schedule Caste community, was appointed as a part time clerk in the first respondent Panchayat Union on 01.07.1999. At the time of appointment, the petitioner was aged about 33 years and 5 months. Since G.O.M.S.No.245, dated 04.03.1997, stipulated the upper age limit at 33 years for Scheduled caste candidates, the impugned order dated 25.11.2004 came to be passed stating that the petitioner had crossed the upper age limit of 33 years as on the date of appointment and therefore, removed him from service. Aggrieved over the same, the present writ petition is filed. In an interim order dated 28.12.2004, passed by this Court, the said impugned order came to be stayed and the petitioner is now

claiming to be continuing the service.

2.Mr.S.Saravanakumar, learned counsel for the petitioner submitted that the impugned order is liable to be rejected on the ground of latches. According to him, the appointment order was made in the year 1999 and after a period of five years, the impugned order came to be passed. According to him, there is a duty cast on the part of the respondent to verify the age criteria at the time of appointment or immediately thereafter and having permitted the petitioner to work for more than five years, the impugned order is liable to be rejected.

3.The learned counsel would also submit that pursuant to G.O.M.S.No.245, dated 04.03.1997, the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 came into force on 09.07.2013, whereby, the upper age limit for a Scheduled Caste candidate was increased to 35 years and as such, in view of the amended rules, the impugned order is liable to be struck down.

4.He would further add that pending the writ petition, the writ petitioner's service was regularized in a new type of scale of pay based on G.O.M.S.No.91, dated 12.08.2009, and he has been treated as a regular employee by subjecting him to computer training and re-fixation of pay. In view of the subsequent developments, it is his submission that the impugned order is liable to be set aside.

5.Learned Additional Government Pleader appearing for the respondents, on the other hand, submitted that at the point of time when the impugned order came to be passed, the upper age limit was only 33 years and since the petitioner herein had apparently crossed the age of 33 years, the appointment is itself bad.

6.The learned Additional Government Pleader further submitted that since the petitioner was over aged at the time of appointment, he cannot seek any relaxation and is liable to be disqualified in view of the then existing age criteria as per G.O.M.S.No.245.

7.I have given careful consideration to the submissions made by the respective counsel.

8.It is not in dispute that the petitioner herein was born on 10.01.1966 and that he was aged about 33 years and 5 months at the time of his appointment. The provisions governing the age criteria at the time when the petitioner was appointed was under G.O.M.S.No.245, dated 04.03.1997, which prescribed the upper age

limit of 28 years for regular candidates and 33 years for Scheduled Caste candidates. Subsequently, through G.O.M.S.No.72, Rural Development & Panchayat Raj (E5) Department dated 09.07.2013, the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013 came into force, which prescribes the upper age limit at 35 years for Scheduled caste/Scheduled Tribe candidates and 30 years as upper age limit for regular candidates. Apparently, G.O.M.S.No.72, dated 09.07.2013, had superceded the earlier G.O.M.S.No.245, dated 04.03.1997, which led to the introduction of the Tamil Nadu Village Panchayat Secretaries (Conditions of Service) Rules, 2013. Though the impugned order passed in the year 2004 cannot be found fault with since the regulations governing the upper age limit at that point of time is based on G.O.M.S.No.245, in view of the subsequent introduction of the rules as per G.O.M.S.No.72 in the year 2013 increasing the upper age limit at 35 years for SC/ST candidates, the petitioner cannot be termed to be disqualified at present in view of his age having crossed 33 years as on the date of appointment. The intention of the Government in increasing the upper age limit to 35 years is to extend such a benefit to the deprived classes and since the law as amended in 2013 entitles appointments up to the age of 35 for Scheduled Caste and Scheduled Tribe candidates, it can only be construed that the petitioner's present appointment should not be interfered or found fault with.

9.The respondents have also subsequently extended service benefits to the petitioner by re-fixing his scale of pay and subjecting him to training courses in computer and thereby recognizing him as a regular employee.

10.In view of the several given reasons, I am of the view that the impugned order directing the removal of the petitioner from his services is improper.

11.Consequently, the order passed by the 1st respondent in his proceedings Na.Ka.Aa.2/959/04 dated 25.11.2004 is set aside, insofar as it relates to the petitioner herein.

12.In the result, the writ petition stands allowed. No costs.

sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

tsg

To

1.Block Development Officer,
Thirunavalloor Panchayat Union,
Villupuram District.

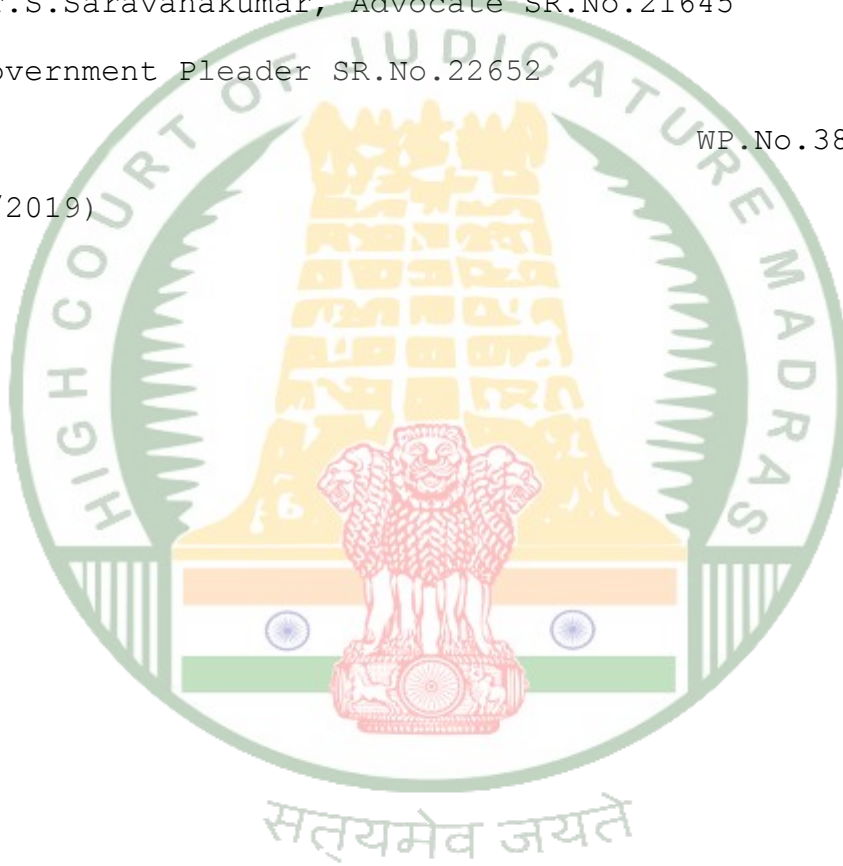
2.President,
Meppuliyur Village Panchayat,
Ulundurpet Taluk,
Villupuram District.

+1cc to Mr.S.Saravanakumar, Advocate SR.No.21645

+1cc to Government Pleader SR.No.22652

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Rgn (CO)
GMY (28/03/2019)



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