

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.23774 of 2009

1. A.Kasimani (Deceased)
- 2.Thangammal
- 3.Selvambal
- 4.Kathirvel
- 5.Selvakumar

... Petitioners

(P2 to P5 substituted as LR's of the deceased P1 by order dated
02.04.2019)

-vs-

- 1.The Block Development Officer,
Rasipuram Panchayat Union,
Namakkal District.
- 2.The President,
Vadugam Panchayat
Rasipuram Panchayat Union,
Namakkal District.
- 3.The District Collector,
Panchayat Development,
Namakkal District, Namakkal.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to permit the petitioner to continue in service till he attains the age of 58 and further direct the respondents to regularize the service of the petitioner in the time scale of pay as Overhead Water Tank Operator in Vadugam Panchayat within a reasonable time.

For Petitioner : Mr.R.Abdur Rahman
For Mr.M.Muthappan
For R1 : Ms.K.Buvaneshwari
For R2 : Mr.Raghavendran
For Mr.R.Murali

For R3

: Mr.K.Magesh
Spl. Govt. Pleader

O R D E R

The Writ Petition has been filed for a direction to the respondents to permit the petitioner to continue in service till he attains the age of 58 and further direct the respondents to regularize the service of the petitioner in the time scale of pay as Overhead Water Tank Operator in Vadugam Panchayat within a reasonable time.

2. The original petitioner is no more and his legal heirs have been brought on record. It is the case of the original petitioner that he belongs to Adidravida Community and was appointed as Overhead Water Tank Operator and has not been brought into regular time scale of pay till date. It is further case of the petitioner that he was born in January, 1955 and as per the Voter's ID card issued by the Election Commission of India in the year 1997, his age was mentioned as 40 as on 01.01.1995 and he had also completed a training course conducted by the Joint Director of Rural Extension Training Centre, Krishnagiri Dam. While so, he was directed by the respondents 1 and 2 not to attend the office on the ground of completion of 58 years of age. According to the petitioner, though he was aged only 54, the 2nd respondent, in order to accommodate his close relative, discontinued the service of the petitioner and his services cannot be wiped out without any record to prove that he completed the age of 58. It is also the case of the petitioner that in the year 2004, he was directed to undergo medical examination, in which the Doctor certified that he was only 48 years and the said certificate has been replaced by another certificate by the 2nd respondent. Aggrieved by the overall act of the 2nd respondent, the petitioner is before this Court seeking for the above direction.

3. The 2nd respondent filed a counter affidavit dated 30.11.2011, wherein it was stated that the Writ Petition is not maintainable on the ground that it has been filed after retirement of the petitioner and as per the permission granted by the Government to Village Panchayat to engage part time employees, the deceased petitioner was engaged as Overhead Tank Operator on payment of Rs.60/- per month. It was further stated that on direction, the petitioner produced a certificate dated 21.05.2002, issued by the Primary Health Centre, Vadugam Panchayat, Rasipuram, mentioning his age as 53 years as on 21.05.2002, on the basis of which, his services were brought to

an end with effect from 31.05.2009 vide Resolution dated 28.05.2009. It was also stated that when the petitioner himself indicated his age as 53 in the year 2002, he cannot turn around to say that he was aged 54 years only and therefore, it is prayed for dismissal of the Writ Petition.

4. Heard the learned counsel on either side and also perused the material documents available on record.

5. The main plea taken by the original petitioner was that he ought not to have been superannuated from service, when he was 54 years as per the Election Voters ID card. According to him, since he is entitled to be regularized from service and in order to substitute another person in his place, the order of disengagement was issued at the instigation of the 2nd respondent. It is the stand of the 2nd respondent that though he is a temporary employee, any alteration in the date of birth has to be done within five years from the date of entry into service and on the basis of medical examination, the age of the deceased petitioner was entered. He never made any issue while in service and only when he was not allowed to continue his service, the petitioner insisted the respondents to calculate his age based on the date of birth as found mentioned in the Voter's ID card, which is impermissible. Since it is a question of fact, this Court do not want to go into that aspect and the petitioner must have given a correct date of birth at the time of joining the service as a part time employee. It is not in dispute that initially, his age was determined by way of medical examination and after entry, the petitioner cannot seek for alteration of his date of birth according to his own whims and fancies. In the considered opinion of this Court, there is no substance and merit in the submission put forth by the petitioner and the Writ Petition is liable to be dismissed.

6. Accordingly, this Writ Petition is dismissed as devoid of merits and the legalheirs, who were substituted in place of original petitioner, will not be entitled to any relief sought for by the original petitioner. Though it is a fit case to impose costs on the petitioner for wasting the time of the Court, considering the fact that the original petitioner is no more and only legalheirs are before this Court, this Court refrains itself from imposition of costs. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

1.The Block Development Officer,
Rasipuram Panchayat Union,
Namakkal District.

2.The President,
Vadugam Panchayat
Rasipuram Panchayat Union,
Namakkal District.

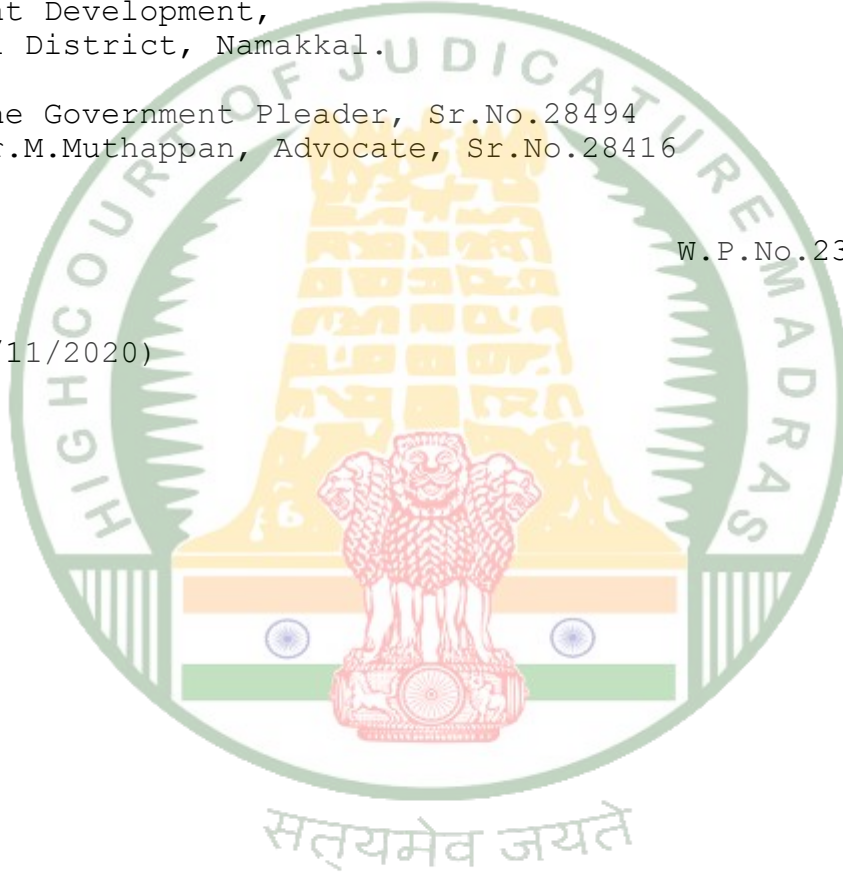
3.The District Collector,
Panchayat Development,
Namakkal District, Namakkal.

+1cc to the Government Pleader, Sr.No.28494

+1cc to Mr.M.Muthappan, Advocate, Sr.No.28416

W.P.No.23774 of 2009

vm (co)
rr ii (27/11/2020)



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