

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE DR. JUSTICE P. DEVADASS

W.A. No.1743 of 2015

and

M.P. No.1 of 2015

1. The Government of Tamil Nadu
represented by its Secretary
School Education Department
Fort St. George
Chennai 600 009
2. The Director of Elementary Education
College Road
Chennai 600 006
3. The District Elementary Education Officer
District Elementary Education Office
Erode ... Appellants/Respondents

Vs.

1. Kasturba Aided Elementary School
represented by its President of the School Committee
Oodanillai, Erode 638 101
2. M. Selvaraj
Secondary Grade Teacher
Kasturba Aided Elementary School
Oodanillai, Kastirbagram Post
Arachalur (Via)
Erode District 638 001 ... Respondents/Petitioners/
4th Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 15.06.2015 passed in W.P. No.16892 of
2015.

W.P. No.16892 of 2015 : To issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 3rd respondent in Mu. Mu. No.891/B2/2012 dated 25.4.2012 and quash the same in so far as by imposing the condition that the said order is valid for 2012 academic year alone and also quash the rejection of approval order of the 3rd respondent in his proceedings in Na. Ka. No. 125/A3/2015 dated 14.5.2015 and consequently directing the 3rd respondents to approve the appointments of the 4th respondent as Secondary Grade Teacher and pay the salary with effect from 17.11.2014 based on the proposal sent by the petitioner School Management.

For appellants : Mr. K. Karthikeyan
Government Advocate (Education)

For R2 : Mr. K. Sathish Kumar

JUDGMENT

(Delivered by SATISH K. AGNIHOTRI, J.,)

Mr. K. Sathish Kumar, learned counsel, accepts notice for the second respondent. With the consent of the learned Government Advocate appearing for the appellants and the learned counsel for the second respondent, the matter is taken up for final disposal, at the admission stage itself.

2. Assailing the justifiability of the order dated 15 June 2015 rendered in W.P. No.16982 of 2015, the State is before us.

3. The facts in brief leading to the filing of the instant intra-Court appeal are that the second respondent was appointed as Secondary Grade Teacher in the first respondent school, which is stated to be a minority institution. The request for approval of his appointment was rejected by the State Government on the ground that the permission obtained during the academic year 2012 for filling up the post is valid only for the said academic year and that the same is not valid for the subsequent years. The said rejection order was assailed by the first respondent school before the learned Single Judge. The learned Single Judge, pointing out that the students have already suffered for three years without teacher and that when a teacher has subsequently been appointed, the educational authorities cannot refuse to grant approval of the said appointment,

disposed of the writ petition, directing the educational authorities to temporarily approve the appointment of the second respondent in the first respondent school. Feeling aggrieved by the said order, the State has preferred the instant appeal.

4. Be that as it may, the issue as to whether the approval granted for appointment of a teacher in a particular year will hold good for the subsequent years, is governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short "the Act"). Concededly, the issue as to whether the Act is applicable to a minority institution, is pending consideration in *Aswinithanappan Vs. Director of Education and another*.¹

5. In view of the above, without going into the merits of the case, we are of the considered view that interest of justice would sub-serve, if the appointment of the second respondent is protected, without giving any direction to the State Government to grant temporary approval.

6. Accordingly, we direct that the second respondent shall be given salary in the course of his employment.

7. This intra-Court appeal is disposed of accordingly. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Secretary
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009

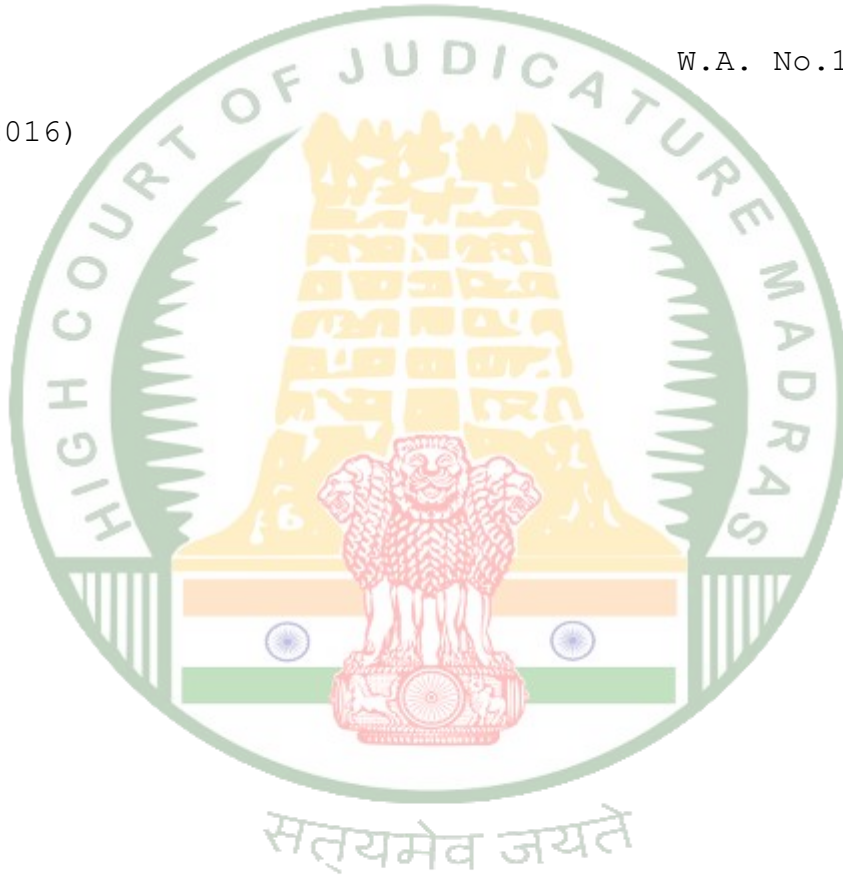
¹ (2014) 8 SCC 272

2. The Director of Elementary Education
College Road, Chennai 600 006
3. The District Elementary Education Officer
District Elementary Education Office
Erode.

+1cc to Ms.P.Mahalakshmi, Advocate, S.R.No.86
+1cc to the Government Pleader, S.R.No.151

GJ(CO)
CA(18/01/2016)

W.A. No.1743 of 2015



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