

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.217 of 2016

- 1 The Joint Director of School Education
(Elementary)
Office of the Director of School Education
DPI Campus, College Road
Chennai 600 006
 - 2 The Director of School Education
DPI Campus, College Road
Chennai 600 006
 - 3 The Chief Educational Officer
Panagal Building
Saidapet, Chennai - 600 015
 - 4 The District Educational Officer
Chennai East, Chennai ...Appellants
- vs.
- 1 V. Prema
 - 2 The Correspondent
The Kellet Higher Secondary School
Triplicane
Chennai 600 005. ...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 25.06.2015 passed in M.P. No. 1 of 2015 in W.P. No.18329 of 2015.

Petition praying that in the Circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant an order of Interim Direction, directing the respondents 1 to 4 to temporarily approve the appointment of the petitioner in the post of BT Assistant (Tamil) in the 5th Respondent School and to release the salary grant from the date of initial appointment, pending disposal of the Writ Petition(in M.P.1/2015 in WP.18329/2015)

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

For R1 Mr. G. Sankaran

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

Mr. G. Sankaran, learned counsel, accepts notice for the first respondent. Notice to the second respondent is dispensed with at this stage, since, no order prejudicial to its interest is passed in this intra-Court appeal. Thus, with the consent of the learned Government Advocate appearing for the appellants and the learned counsel for the first respondent, the matter is taken up for final disposal, at the admission stage itself.

2 To avoid prolixity, the parties are referred to as per their rank in the instant intra-Court appeal.

3 Assailing the justifiability of the order dated 25 June 2015 rendered in M.P. No. 1 of 2015 in W.P. No.18329 of 2015, the State is before us by way of this intra-Court appeal.

4 The facts, in brief, leading to the filing of the instant intra-Court appeal are that the first respondent was appointed as B.T. Assistant (Tamil) in the second respondent school, which is stated to be a minority institution. The request for approval for appointment of the first respondent was rejected by the State Government on the ground that she did not possess TET qualification. The said rejection order was assailed by the first respondent before the learned Single Judge by way of the instant writ petition being W.P. No.18329 of 2015. Along with the said writ petition, the first respondent filed M.P. No.1 of 2015 seeking an order of interim direction to the appellants to temporarily approve her appointment in the post of B.T. Assistant (Tamil) in the second respondent school and to release salary grant from the date of her initial appointment.

5 The learned Single Judge, while passing orders in the Miscellaneous Petition, referring to and relying on the decision of a Constitution Bench of the Supreme Court in *Pramati Educational and Cultural Trust vs. Union of India and Others*¹, directed the appellants to grant temporary approval for appointment of the first respondent, till the disposal of the writ petition. Feeling aggrieved by the said order, the instant intra-Court appeal is preferred by the State.

1 (2014) 8 SCC 1

6 The question of law involved in the writ petition is as to whether the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (for short "the Act") are not applicable to minority educational institutions. The condition of passing TET examination was introduced pursuant to the statutory requirement under the Act.

7 Concededly, the issue as to whether the Act is applicable to a minority institution, is pending consideration in Aswini Thanappan Vs. Director of Education and another.²

8 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 first respondent is protected, without giving any direction to the State Government to grant temporary approval. Accordingly, we direct that the first respondent shall be given salary in the course of her employment.

This intra-Court appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1 The Joint Director of School Education,
(Elementary)
Office of the Director of School Education,
DPI Campus, College Road, Chennai 600 006.
- 2 The Director of School Education,
DPI Campus, College Road, Chennai 600 006.
- 3 The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai - 600 015.

4 The District Educational Officer,
Chennai East,
Chennai.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.13018
+1cc to the Government Pleader, S.R.No.13084

W.A. No.217 of 2016

ad(CO)
srg(22/03/2016)



WEB COPY