

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.902 of 2016
and
C.M.P.No.11573 of 2016

The Correspondent
St.Xaviers Primary School
Pucklipalayam Mangalam Post
Tiruppur District Appellant/3rd Respondent

Versus

- 1 Sr.Arockia Selvi ...1st Respondent/Petitioner
- 2 State of Tamilnadu
Rep by its Secretary
School Education Department
Fort St.George Chennai 600 009 ...2nd & 3rd Respondents/1st
2nd Respondents
- 3 The District Elementary
Educational Officer
District Elementary
Educational Office Tiruppur

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 25.2.2015 passed in W.P.No.29735 of 2014 on the file of this court his writ petition filed under Article 226 of the Constitution of India for the issuance of writ of certiarari calling for the records and order of termination of service dated 16.10.2014 issued by the 3rd respondent to the petitioner and quash the same as illegal.

For appellant : Mr.Isaac Mohanlal, Senior Counsel for
Mr.P.Godson Swaminath

For R1 : Mr.J.Antony Jesus
For R2 & R3 : Mr.R.Prathapkumar, AGP

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties for some time.

2. The writ appeal is for the maintainability of the disciplinary proceedings initiated by the private management and imposing of punishment of dismissal from service, on the basis of unauthorised absence of a Teacher.

3. According to the learned counsel for the appellant section 22 of the Tamil Nadu Recognized Private Schools (Regulations), Act 1973 is not applicable to the minority institutions and therefore, the appellant is not bound by such provision so as to obtain permission from the competent authority, however that contention was negatived by the learned Single Judge and against which this appeal is filed. He would further contend that apart from the issue of applicability of section 22 of the Act, the order of the learned Single Judge is shocking the conscience so far as the punishment imposed for the unauthorised absence, is set aside.

4. All these things can be gone by the learned Single Judge after affording opportunity to both the parties so that the entire matter would be re-considered and appropriate order would be passed . In the meanwhile, the legal position with regard to applicability of the provisions of enactments to the minority institutions is at stake and pending before the Apex court under various proceedings. The stand of the learned counsel for the appellant is that since a Division Bench of this court, in its judgment, reported in W.P.No.4478 of 1974 disposed of on 17.12.1975 is to save the situation that minority institutions are not bound by certain regulations of the Act, especially with regard to seeking prior permission under section 22 of the Act is concerned.

5. Per contra, learned Additional Government Pleader appearing for respondents 2 and 3 herein would contend that in R.V.THEVAR MEMORIAL GIRLS HIGH SCHOOL V. THE DIRECTOR OF SCHOOL EDUCATION (2002 (4) CTC 129, it is held otherwise and therefore, there are different versions in the matter of applicability of section 22 of the Act to private recognized institutions.

6. All these things can be adjudicated before the learned Single Judge. With that view, we remit the matter back to the learned Single Judge while setting aside the order passed by the learned Single Judge. All the contentions are left open to be raised before the learned Single Judge, both on merit and maintainability. However, it is made clear that since already there is an order in favour of the writ petitioner, and she has been reinstated in service and is being paid salary, the same may be continued by way of maintaining status quo pending disposal of the writ petition or the appeal as the case may be. Both the parties are at liberty to press for early disposal of the writ petition. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Secretary
State of Tamilnadu
School Education Department
Fort St.George Chennai 600 009
- 2 The District Elementary
Educational Officer
District Elementary
Educational Office Tiruppur

+1cc to Mr.P.Godson swaminath, Advocate, S.R.No.59829
+1cc to Mr.J. Antony Jesur, Advocate, S.R.No.59693
+1cc to the Government Pleader, S.R.No.60141

rsi(CO)
md(21/11/2016)

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