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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A.(MD)No.624 of 2016 against WP(MD)No.1367 of 2016
and

CMP(MD)No.4197 of 2016

- 1.The Govt. of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai.
 - 2.The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.
 - 3.The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
 - 4.The Assistant Elementary Educational Officer,
The Office of the Assistant Elementary Educational Officer,
Kalakad Range - 627 501,
Tirunelveli District.
- .. Appellants

Vs.

- 1.Mrs.E.Daisy
 - 2.The Correspondent,
Salvation Army Primary School,
Eruvadi - 627 103,
Tirunelveli District.
- .. Respondents

PRAYER: Writ Appeal is filed under Clause XV of Letters of Patent, against the common order dated 22.01.2016 made in W.M.P.(MD)No.1146 of 2016 in W.P.(MD)No.1367 of 2016.

Prayer in WMP(MD)No.1146/ 2016 :

To grant an order of interim direction to the respondents to pay salary to the petitioner, by according temporary approval to her appointment as Secondary Grade Teacher in Salvation Army Primary School, Eruvadi-627 103, Tirunelveli District, w.e.f. 02.09.2011, pending disposal of the above Writ Petition.

Prayer in WP(MD)No. 1367/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Impugned G.O. Ms.No.181, School Education (C2) Department, dated 15.11.2011, on the file of the 1st respondent and the consequential proceedings dated 11.01.2016 in



O.Mu.No.56/A1/2016, on the file of the 4th respondent, and quash the same in respect of the petitioner, directing the respondents to approve the appointment of the petitioner Mrs.E.Daisy, as Secondary Grade Teacher in Salvation Army Primary School.

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For Appellants : Mr.VR.Shanmuganathan
Special Government Pleader

For R1 : Mr.Xavier Arul Raj

JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

In the present writ appeal, the challenge made is to the order passed by the writ Court, directing the appellants to grant temporary approval for appointment of the first respondent as Secondary Grade Teacher in the second respondent school and to pay salary to her from the date of her appointment, till the date of disposal of the writ petition.

2.Learned counsel appearing for the parties in the appeal, have consented that, they are agreeable that the order passed in W.A.(MD) No.220/2016 dated 05.02.2016, be passed in the present appeal also, details of which are given below. Thus, by consent, the present appeal is taken up and disposed of.

3.On an earlier occasion, a similar Writ Appeal (MD) No.220 of 2016, filed by the State, has been considered and disposed of on 05.02.2016 by a Hon'ble Division Bench of this Court, to which, one of us (**SMKJ**) is a party.

4.Mr.Xavier Arul Raj, learned counsel appearing for the first respondent/petitioner has consented for a similar order to be passed.

5.In as much the above learned counsel for the first respondent/writ petitioner has consented for a similar order as made in W.A.(MD) No.220 of 2016, dated 05.02.2016, this Court deem it fit to extract the same and dispose of the Writ Appeal on the same lines:

"4.In a similar writ appeal filed by the State in the Principal Bench, a Division Bench of this Court has passed the following order in W.A.No.1299 of 2015, dated 14.09.2015.

'4.Be that as it may, the issue as to whether the provisions of the Act, will be applicable to a minority institution, is pending consideration in **Aswinithanappan Vs. Director of Education and another - (2014) 8 SCC 272.**

5.In view of the above, without going into the merits of the case as to whether a teacher appointed in a minority school is required to have TET qualification, as the same is the subject matter of the Writ petition, 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.



6.Mr.D.Krishnakumar, learned Special Government Pleader (Education) appearing for the appellants fairly submits that the first respondent shall not be terminated during the pendency of the said writ petition being W.P.No.14072 of 2015.

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7.Accordingly, we direct that the first respondent shall be given her salary in the course of her employment and no steps to remove her from service shall be taken till the disposal of the writ petition. However, it is made clear that this order is subject to the final outcome of the pending writ petition. It is further made clear that the first respondent shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties, therein.

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

6.By consent, Writ Appeal is disposed of on the same lines as ordered in W.A.(MD) No.220 of 2016 dated 05.02.2016. Having consented, appellants are directed to comply with the orders. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.

To

1.The Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai.

2.The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.

3.The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.

4.The Assistant Elementary Educational Officer,
The Office of the Assistant Elementary Educational Officer,
Kalakad Range - 627 501,
Tirunelveli District.

+1cc to M/S.Fr.A.Xavier Arulraj, Advocate in SR.No. 21678

W.A.(MD)No.624 of 2016
18.04.2016

rj2

PA/SDR-SH/09.05.2016/3P/6C