

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**THE HON'BLE SRI JUSTICE A.V. SESA SAI**

**WRIT APPEAL No. 1400 of 2016**

**JUDGMENT:** (*Per VRS,J*)

Aggrieved by an interim order passed by the learned single Judge directing the 2<sup>nd</sup> respondent herein-Tirumala Tirupati Devasthanam to consider the representation made by the writ petitioner/1<sup>st</sup> respondent herein, the 3<sup>rd</sup> respondent in the writ petition has come up with the above writ appeal.

2. Heard Mr. P. Venu Gopal, learned senior counsel appearing for the appellant, and Mr. M. Vidya Sagar, learned counsel for the 1<sup>st</sup> respondent. Smt. K. Lalitha, learned standing counsel for Tirumala Tirupati Devasthanam, takes notice for the 2<sup>nd</sup> respondent and the learned Government Pleader for Endowments (AP) takes notice for the 3<sup>rd</sup> respondent.

3. The 1<sup>st</sup> respondent herein filed a writ petition in W.P.No.39804 of 2016, seeking a mandamus to direct the 2<sup>nd</sup> respondent-Devasthanam to consider his claim for promotion as Pradhana Archaka/Senior Archaka in the Devasthanam. Pending the writ petition, he sought an

interim direction in W.P.M.P.No.49044 of 2016, seeking a direction to the 2<sup>nd</sup> respondent-Devastanam to consider his claim.

4. While ordering notice in the writ petition, the learned Judge passed an interim order to the following effect:

*“Smt. K.Lalitha, learned counsel, takes notice for 1<sup>st</sup> respondent. Learned Government Pleader for Endowments takes notice for 2<sup>nd</sup> respondent.*

*Personal notice is permitted on 3<sup>rd</sup> respondent.*

*Pending further orders, the 1<sup>st</sup> respondent shall consider petitioner’s representation dt.21-06-2016 within four weeks from the date of receipt of a copy of this order and communicate his decision thereon to the petitioner.”*

5. Aggrieved by the said order, the 3<sup>rd</sup> respondent in the writ petition has come up with the above writ appeal, on the short ground that the interim direction would virtually tantamount to allowing the writ petition at the stage of admission.

6. The learned senior counsel is partly right, though not fully, in his contention that the interim direction would tantamount to allowing the writ petition. Though the learned Judge has directed the Devastanam only to consider the representation of the 1<sup>st</sup> respondent, the very question, as to whether the claim was liable to be and the claim was capable of being adjudicated by the Devastanam, is something that has not yet been adjudicated in the writ petition. A

claim for promotion made by a person is obliged to be considered, only if the person, who makes a claim, has a right to be considered for promotion. So long as such a right is not tested, the interim direction may have, though not always, but at least some times, the effect of allowing the writ petition itself.

7. Therefore, we are of the considered view that the order of the learned single Judge could be modified, so that the rights of both parties are saved. Accordingly, the Writ Appeal is disposed of, and the interim order of the learned Judge is modified to the following effect:

- 1) It is open to the 2<sup>nd</sup> respondent-Devastanam to consider the representation of the 1<sup>st</sup> respondent/writ petitioner, dated 21.06.2016, and to pass orders, as directed by the learned single Judge.
- 2) If the order is in favour of the 1<sup>st</sup> respondent, the same shall not be implemented, until the writ petition is disposed of.
- 3) In case the order passed by the 2<sup>nd</sup> respondent-Devastanam is against the 1<sup>st</sup> respondent, it will be open to the 1<sup>st</sup> respondent to challenge the same.

Consequently, miscellaneous petitions if any pending in the writ appeal shall stand dismissed. No order as to costs.

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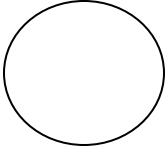
**V. RAMASUBRAMANIAN, J**

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**A.V. SESA SAI, J.**

19<sup>th</sup> December, 2016  
cbs





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