

**"C.R."**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

MONDAY, THE 21ST DAY OF OCTOBER 2024 / 29TH ASWINA, 1946WP(C) NO. 11629 OF 2020PETITIONER:

LAILA BEEGAM A.R., AGED 54 YEARS,
W/O.C.S.USMAN, UPPER PRIMARY SCHOOL ASSISTANT (UPSA)
M.M. UPPER PRIMARY SCHOOL, PITTUKARIKULAMBU,
KORANCHIRA POST, VADAKKENCHERRY, PALAKKAD-678 684,
RESIDING AT SANA MANZIL KAMANTHARA,
VADAKKANCHERRY-678 883.

BY ADVS.
U.BALAGANGADHARAN
SMT.S.ANJUSHA

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT (ANNEX), THIRUVANANTHAPURAM-695 001.
- 2 THE DIRECTOR OF GENERAL EDUCATION, (FORMER DIRECTOR OF PUBLIC INSTRUCTIONS), THIRUVANANTHAPURAM-695 014.
- 3 THE DEPUTY DIRECTOR OF EDUCATION, CIVIL STATION, PALAKKAD-678 001.
- 4 THE ASSISTANT EDUCATIONAL OFFICER, ALATHUR, PALAKKAD-678 541.



5 THE MANAGER, M.M.UPPER PRIMARY SCHOOL,
PITTUKARIKULAMBU, KORANCHIRA POST,
VADAKKENCHERRY, PALAKKAD-678684.

6 JOHN VARGHESE, HEADMASTER IN CHARGE,
M.M. UPPER PRIMARY SCHOOL, PITTUKARIKULAMBU,
KORANCHIRA POST, VADAKKENCHERRY, PALAKKAD-678 684.

BY SRI.JUSTIN JACOB, SENIOR GOVERNMENT PLEADER
BY SRI.K.K.APPU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09.10.2024,
THE COURT ON 21.10.2024 DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner has filed the captioned writ petition challenging Ext.P6 issued by the 5th respondent herein, by which, the petitioner's claim for appointment to the post of Headmistress, in preference to the 6th respondent herein stood rejected. The petitioner also seeks for a direction to the respondents to promote the petitioner as Headmistress with effect from 01.06.2020 and also to approve the same.

2. The short facts necessary for the disposal of this writ petition are as under:

The petitioner was appointed as UPSA in the 5th respondent Aided School on 16.07.1990. She points out that in the seniority list among the teachers, she was placed at Serial No.9 whereas the 6th respondent was placed at Serial No.10. A vacancy in the post of Headmaster arose in the School on 01.06.2020 and the petitioner being placed at Serial No.9, ought to have been appointed in the said post. The promotion to the post of the Headmaster in lower



primary/upper primary schools like the 5th respondent herein is governed by the provisions of Rule 45B of Chapter XIVA of the Kerala Education Rules (for short, the 'KER'). Two qualifications are required for being so appointed – the Accounts Test (Lower) and the test in the Kerala Education Act and Rules. The petitioner had qualified the latter. As regards the Accounts Test (Lower), having four papers, out of which, three were cleared by the petitioner. But, the test for the balance one paper though scheduled to be conducted on 28.03.2020, was postponed on account of the COVID-19 pandemic, points out the petitioner.

3. However, the petitioner claims that insofar as she had completed 50 years of age on 02.05.2016, was entitled to exemption from acquiring the qualification as above, by virtue of Rule 45B(4) of the KER. Though such a claim was made, the 5th respondent Manager appointed the 6th respondent as the Headmaster who was admittedly fully test qualified. Though the petitioner submitted a representation pointing out that even though the 6th respondent was fully test qualified, insofar as the petitioner



has crossed the age of 50, she is entitled to the benefits under Rule 45B(4) of the KER, the said representation stood rejected by Ext.P6 issued by the 5th respondent, taking the view that the petitioner was bound to pass the required test even if she had crossed the age of 50 years, referring to a judgment rendered by this Court in OP(KAT) No.105 of 2019.

4. It is in the above circumstances, that the captioned writ petition is filed by the petitioner with the afore prayers.

5. A counter affidavit dated 23.04.2021 has been filed by the 4th respondent. In this counter affidavit, it is pointed out that the petitioner had availed leave without allowance during 1997-98 and 1999, on account of which, the petitioner's seniority is below the 6th respondent herein. A counter affidavit has been filed by the 6th respondent also essentially contending that the petitioner may not be entitled for the benefits under Rule 45B(4) of the KER referred to above. The 6th respondent has also filed I.A.No.2 of 2021, producing Exts.R6(a) and (b) to prove that the petitioner had availed leave without allowance which is to be considered for fixing



the seniority, in which event, the petitioner is junior to the 6th respondent as regards the length of service. The 6th respondent has also filed I.A.No.1 of 2024, producing Ext.R6(d) in support of his contentions.

6. I have heard Sri.U.Balagangadharan, the learned counsel for the petitioner, Sri.Justin Jacob, the learned Senior Government Pleader and Sri.K.K.Appu, the learned counsel representing the 6th respondent.

7. Sri.Balagangadharan, the learned counsel for the petitioner contends that:

i. As regards the leave without allowance availed by the petitioner, that is not to be considered for arriving at the seniority, as contended by the respondents herein. He relies on the judgment of a Division Bench of this Court in **Nirmaladevi v. State of Kerala [2010 (1) KLT 16]** in support of the above contention.

ii. That the petitioner is eligible for the exemption under Rule 45B(4) of the KER as claimed. In support of the said



contention, he relies on the judgments of this Court in **Manager, H.M. High School v. State of Kerala [1987 (2) KLT 555]**, **Joly George v. Manager, S.K.G.M.A.U.P. School [2015 (4) KLT 679]** and **Manager, Pavandoor Higher Secondary School v. Sadanandan C.M. [2016 (4) KLT 207]**.

8. Per contra, Sri.K.K.Appu, the learned counsel for the 6th respondent contends that:

- i. In view of the order of the Full Bench of this Court in WA No.755 of 2018 dated 16.02.2024, the petitioner is not entitled for the exemption claimed by her.
- ii. He also relies on the judgment in WA No.755 of 2018 dated 23.05.2024 in this regard, rendered pursuant to the order of the Full Bench.

9. I have considered the rival submissions as well as the connected records.

10. The dispute in this writ petition is with reference to the appointment of the Headmaster in the 5th respondent school. The



petitioner and the 6th respondent are the rival claimants. Admittedly, the petitioner did not have the qualification prescribed under the KER, insofar as she had not cleared one paper in the Accounts Test (lower). The petitioner points out that this was not deliberate and was only on account of the lock down etc. pursuant to COVID-19 pandemic. However, she asserts that she was not required to be qualified as above, on account of the operation of Rule 45B(4) of the KER as per which she was entitled to exemption from acquiring the qualification prescribed under the KER. The 6th respondent, on the other hand, points out two aspects. Firstly, the petitioner had no eligibility for exemption going by the Full Bench decision referred to above. Secondly, he points out that if the leave without allowance availed by the petitioner is also taken into account, the 6th respondent becomes senior to the petitioner.

11. On account of the above rival contentions, the following questions arise for consideration in this writ petition.

- i. Is the period of leave without allowance availed by the petitioner to be reckoned for calculating the seniority, by



reducing the period of leave from the total length of service?

ii. Is the petitioner entitled for exemption prescribed under Rule 45B(4) of the KER?

12. As regards the first question, it is seen that under Circular No.72/2005/Fin dated 30.05.2005, the Government has specifically laid down that leave without allowance after declaration of probation in the cadre from which the officer proceeds on leave, is not to be reckoned for considering the seniority/promotion of the teacher concerned. By virtue of the above, this Court is of the opinion that the petitioner is entitled for reckoning the period during which she had proceeded on leave without allowance for calculating the seniority. Similarly, in **Nirmaladevi's** case (*supra*), this Court considered the very same question with respect to the seniority of an aided school teacher with reference to the leave without allowance availed by her. After noticing that the leave was being granted subject to the conditions under Appendix XII-C of the KER, wherein Rule 4 provided that the benefits like promotion chances will be lost with reference to the seniority, during the period of leave



alone, this Court laid down the law as under:

“A reading of the above rule would show that if the vacancy in the post of Headmaster arose during the sixth respondent’s leave period, the appellant could have been promoted and on her return, the sixth respondent should continue as a UPSA. The sixth respondent, in that event, will not have any claim for promotion as Headmaster, reverting the appellant. But, in this case, no vacancy arose during the sixth respondent’s leave period. Therefore, in the lower cadre of UPSA, the sixth respondent will not lose seniority and, in preference to the appellant, she is entitled for promotion to the vacancy which arose after her leave period. In view of the above position, we find that the Director of Public Instruction and the Government, as per Exts. P6 and P8 orders, decided in favour of the sixth respondent rightly. So, the learned Single Judge has correctly dismissed the Writ Petition.”

Thus, it is only in a situation where the vacancy in the post of the Headmaster arose during the period in which the petitioner was on leave, the question of considering the 6th respondent herein would arise. On the contrary, in the case at hand, the vacancy to the post



of Headmaster arose much later, when the petitioner as well as the 6th respondent were working in the School. In such a situation, the seniority is to be reckoned without reference to the leave without allowance availed by the petitioner. If that be so, the 6th respondent may not be justified in contending that the petitioner is not entitled for the service seniority on account of the leave without allowance.

13. The second issue, arising for consideration in the case at hand, is with reference to the eligibility of the petitioner for the benefits of the exemption under Rule 45B of the KER. Admittedly, the qualification for being appointed as Headmaster is prescribed under the said Rule, providing that a claimant should have qualified the Account Test (Lower) and the test in the Kerala Education Act and Rules and the petitioner had not cleared one paper in the Account Test (Lower). However, she had crossed the age of 50 years as on 02.05.2016, in which event, she claims the benefits under Rule 45B(4) of the KER, which reads as under:

“45B(4). Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the qualification specified in sub-rule (1).”



If the above benefits are extended to the petitioner, the petitioner stands on the same pedestal as of the 6th respondent herein, is not in dispute. However, the 6th respondent points out that the petitioner is not entitled to the said benefit.

14. Sri.K.K.Appu, the learned counsel for the 6th respondent in support of the above contention, relied on the order of the Full Bench of this Court in WA No.755 of 2018 and connected cases dated 16.02.2024. The said matter was placed before the Full Bench pursuant to a reference by a Division Bench doubting the correctness of the decisions in **Pavandoor Higher Secondary School v.Sadanandan [2016 (4) KLT 207]** and **Harifa Beevi Kallan v. The Manager, PPM Higher Secondary School and Others (WA No.925 of 2019)**. Straightaway, it is to be noticed that in the second paragraph of the order of the Full Bench, this Court had noticed that the two judgments which were doubted were rendered with reference to the provisions under Rule 44A(1) of Chapter XIVA of the KER.



15. Rules 44A and 45B of Chapter XIVA of the KER read as under, excluding the explanations/notes attached there under:

R. 44A	R. 45B
<p>(1) Subject to the provisions contained in sub-rule (1) of rule 44, the minimum service qualification for appointment as Headmaster in Aided Complete High Schools/Training schools shall be twelve years of continuous graduate service with a pass in the test in Kerala Education Act and the Kerala Education Rules and a pass in account Test (Lower) conducted by Kerala Public Service Commission.</p> <p>Provided that Headmasters of High and Training Schools, who were actually holding the said post on the eleventh day of June, 1974 shall stand exempted from passing the Account Test (Lower).</p> <p>Provided further that Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the test qualification specified in Sub rule (1).</p>	<p>(1) Notwithstanding anything contained in rules 45 and 45A, Account Test (Lower) conducted by the Kerala Public Service Commission with a pass in the test in KE Act and the KE Rules shall be an obligatory qualification to the teachers for promotion as Headmasters of Lower Primary and Upper Primary Schools.</p> <p>(2) Every person who is holding the post of Headmaster in a lower primary school or an upper primary school on the date of these rules shall stand exempted from acquiring the qualifications specified in sub-rule (1).</p> <p>(3) In the case of teachers awaiting promotion as Headmasters under rule 45 and 45A as the case may be there shall be temporary exemption to them from acquiring the qualification specified in sub-rule (1) till 31st day of March 1988.</p>



<p>Provided also that, notwithstanding anything contained in the second proviso, in the case of appointment to the post of Headmaster, preference shall be given to those teachers who have acquired the test qualifications specified in this rule.</p>	<p>(4) Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the qualification specified in sub-rule (1).</p> <p>(5) During the period of exemption allowed under sub-rule (3) promotions to the posts of Headmasters shall be made without insisting on the qualification specified in sub-rule (1) and those who fail to acquire the said qualification within the said period of exemption shall be reverted.</p>
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A reading of the above provisions would show that Rule 44A of the KER dealt with the qualification for appointment as Headmaster in Aided High Schools/Training Schools whereas Rule 45B dealt with the qualifications required for appointment as Headmaster in LP/UP Schools. Both the above Rules provided the qualification under sub-rule (1). Second proviso to Rule 44A and sub-rule (4) to Rule 45B of the KER extended exemption from acquiring the qualification under sub-rule (1) in case of those who had crossed the age of 50



years. Upto this, there is no dispute between the parties. However, with effect from 13.12.2017, the third proviso to Rule 44A was introduced with retrospective effect from 10.06.2015.

16. By the said third proviso, the benefits extended under the second proviso stood curtailed, by providing that, if there is a claimant who has acquired the test qualification under sub-rule (1), he would be preferred to the claimant seeking the benefit under 2nd proviso to Rule 44A(1) of the KER.

17. The Full Bench considered the question as to whether the introduction of the third proviso was invalid and whether by virtue of the said amendment, the benefit of exemption can be taken away retrospectively. In paragraph 11 of the order, the Full Bench held that the introduction of the third proviso was perfectly valid. As regards the 2nd question concerning the retrospective introduction, the Full Bench after analysing various judgments, held that the retrospective introduction of the third proviso limits the exemption and does not violate any provisions of the Constitution. Thus, the Full Bench answered accordingly, holding that the judgment in



Harifa Beevi Kallan's case (*supra*) which held otherwise is not laying down the correct law.

18. On a careful consideration of the provisions under Rule 44A and Rule 45B of the KER, in the light of the order of the Full Bench relied on by the learned counsel for the petitioner, this Court notices that the Full Bench order centred around the introduction of the third proviso to Rule 44A alone. The Full Bench was not called upon to consider the benefits flowing out of Rule 45B(4) of the KER. That being the position, the learned counsel for the 6th respondent is not justified in contending that by virtue of the afore Full Bench judgment, the petitioner is not entitled to claim the benefits. In such circumstances, the question is to be considered with reference to the decisions cited by the learned counsel for the petitioner.

19. In **Manager, H.M. High School v. State of Kerala [1987 (2) KLT 555]**, this Court held that a teacher on attaining the age of 50 years, automatically gets exempted from the requirement of qualifications under Rule 45B(1) of the KER. To the same effect is to the judgment in **Joly George's** case (*supra*).



20. In such circumstances, I am of the opinion that the petitioner is entitled to the benefits under Rule 45B(4) of Chapter XIV of the KER claimed by him.

Resultantly, I allow this writ petition, declaring that the petitioner was entitled to be promoted as Headmistress of the 5th respondent school, being the senior most teacher having test exemption under Rule 45B(4) of the KER with all consequential benefits. Insofar as the petitioner has already crossed the age of superannuation, the approval of the appointment given to the 6th respondent is not interfered with.

Sd/-

JUSTICE HARISANKAR V. MENON

In

APPENDIX OF WP(C) 11629/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE EXAMINATION RESULT OF DEPARTMENTAL EXAMINATION CONDUCTED BY PSC IN JULY 2019.
- EXHIBIT P2 A TRUE COPY OF THE EXAMINATION RESULT OF DEPARTMENTAL EXAMINATION CONDUCTED BY PSC IN JANUARY 2020.
- EXHIBIT P2 (A) A TRUE COPY OF ADMISSION TICKET NO.106052 DATED 24.2.20 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.
- EXHIBIT P2 (B) A TRUE COPY OF EXAMINATION SCHEDULE PUBLISHED BY THE KPSC AS DOWN LOADED FROM THE OFFICIAL WEBSITE.
- EXHIBIT P2 (C) A TRUE COPY OF THE ADJOURNMENT NOTICE ISSUED BY THE KPSC DATED 17.3.2020 TO 31.3.2020.
- EXHIBIT P3 A TRUE COPY OF GO (MS) 16/18/G.EDN DATED 19.2.2018.
- EXHIBIT P4 A TRUE COPY OF GO (MS) 92/14/G.EDN DATED 2.6.2014.
- EXHIBIT P5 A TRUE COPY OF THE GO (MS) 27/2018/G.EDN DATED 6.3.2018.
- EXHIBIT P6 A TRUE COPY OF ORDER OF 5TH RESPONDENT NO.9/SL/2020 DATED 29.5.2020.
- EXHIBIT P7 A TRUE COPY OF REPRESENTATION/OBJECTION SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT DATED 8.6.2020.
- EXHIBIT P8 A TRUE COPY OF THE GO (RT) 242/2020/G.EDN DATED 15.1.2020.



- EXHIBIT P9** **A TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION**
- EXHIBIT P10** **A TRUE COPY OF THE SENIORITY LIST AS APPROVED BY THE 4TH RESPONDENT AEO DATED 14-12-2021.**
- EXHIBIT P 11** **A TRUE COPY OF THE CIRCULAR NO. J 1//21/G .E.DN ISSUED BY THE 2ND RESPONDENT DATED 27.11.2022**
- EXHIBIT P 12** **A TRUE COPY OF THE REVISION PETITION DATED 22.05.2023 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT**
- EXHIBIT P13** **A TRUE COPY OF THE GOVT LETTER NO. B3/151/2023/G. EDN DATED 27.06.2023**
- EXHIBIT P 14** **A TRUE COPY OF THE CIRCULAR NO. 72/2005/FIN. DATED 30.12.2005**
- RESPONDENTS' EXHIBITS:**
- EXHIBIT R6(D)** **THE TRUE COPY OF THE LETTER NO.DDEPKD/537/2023-B2 DATED 23-10-2023**