

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS**

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

OP(KAT).No. 131 of 2015 (Z)

**AGAINST THE ORDER/JUDGMENT IN OA 1080/2014 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 25-03-2015**

PETITIONER(S):

1. **RAJEEVAN.V,
S/O.MANOHARAN MASTER(LATE),
THAIKKADAPPURAM P.O,
KASARGOD, KERALA - 670 314.**
2. **UNNIKRISHNAN MEKKATTILLATH,
S/O.SANKARANARAYANAN NAMBOODIRI,
PD TEACHER, GLPS MAVILAKADAPPURAM,
MAVILAKADAPPURAM P.O,
PADANNA VIA, KASARGOD, KERALA - 670 312.**

BY ADV. DR.K.P.PRADEEP

RESPONDENT(S):

1. **STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT-GENERAL
EDUCATION,
GOVERNMENT SECRETARIAT (ANNEX),
THIRUVANANTHAPURAM, KERALA - 695 001.**
2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY P.O, THIRUVANANTHAPURAM,
KERALA - 695 014.**
3. **DEPUTY DIRECTOR OF EDUCATION,
KASARGOD,
CIVIL STATION, KASARGOD, KERALA - 671 123.**
4. **GOVERNMENTN SCHOOL TEACHERS UNION,
REPRESENTED BY ITS PRESIDENT,
GOVERNMENT SCHOOL TEACHERS UNION STATE COMMITTEE OFFICE,
UNNI LANE, PILIMUDE, STATUTE,
THIRUVANANTHAPURAM - 695 001, KERALA.**

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5. ALL KERALA SCHOOL TEACHERS UNION,
REPRESENTED BY ITS GENERAL SECRETARY,
AKSTU STATE COMMITTEE OFFICE, PUNNUR,
MADAM P.O, KAREELEKULANGARA,
KAYAMKULAM, ALAPUZHA - 690 572, KERALA.
6. KERALA STATE TEACHERS UNION,
REPRESENTED BY ITS PRESIDENT, KSTU STATE COMMITTEE OFFICE,
PUTHIYAPALAM P.O, CHALAPURAM,
KOZHIKODE, KERALA - 670 003.
7. KERALA SCHOOL TEACHERS ASSOCIATION,
REPRESENTED BY ITS GENERAL SECRETARY,
KSTA STATE CENTRE, THAICADU,
THIRUVANANTHAPURAM, KERALA - 695 014.
8. R.BEENA, AGED 55 YEARS, W/O E.RAGHAVAN NAIR,
PD TEACHER (ASSISTANT IN CHARGE), GLP SCHOOL,
CHEMNAD EAST, P.O.PARAVANDUKKAM - 671 317.
RESIDING AT SREENILAYAM, CHETTUMKUZHI P.O,
PERUMBAL, VIA KAINAD, KASARGODE.

R BY GOVERNMENT PLEADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DG

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF MEMORANDUM OF ORIGINAL APPLICATION IN O.A.NO.1080 OF 2014 FILED BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P2: COPY OF THE REPLY STATEMENT DATED 7.2.2015 FILED BY THE 1ST RESPONDENT IN O.A.NO.1080 OF 2014 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P3: COPY OF THE ORDER DATED 25.3.2015 IN O.A.1080 OF 2014 OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P4: COPY OF THE JUDGMENT DATED 24.6.2014 IN WPC.14971 OF 2014 (V) OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

**THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

O.P.(KAT).No.131 of 2015

Dated this the 10th day of April, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the petitioners.
2. The private respondent and the petitioners are aspirants for promotion to the category of head teachers in schools to which the Right of Children to Free and Compulsory Education Act, 2009 (Central Act 35 of 2009) and the Kerala Right of Children to Free and Compulsory Education Rules, 2011, for short, the 'Kerala Rules', apply.
3. Admittedly, the private respondent is senior to the petitioners in the feeder category. The allegation of the petitioners before the Tribunal was that the private respondent has not passed the obligatory tests on the Kerala Education Act and Rules and

the exemption granted to the persons above 50 years of age from passing such test is only an exemption in accordance with the Kerala Education Act and Rules and such exemption would not relate to the requirement to pass departmental tests and test on Kerala Education Act and Rules, for the purpose of Rule 18 of the Kerala Rules. The Tribunal noted that Rule 18 of the Kerala Rules provides that the head-teacher shall, inter alia, possess pass in “such departmental tests and test on Kerala Education Act and Rules, as may be specified in that regard”. As rightly noted by the Tribunal, this necessarily means that the State Government has to specify the departmental tests and the test on Kerala Education Act and Rules which are required to be passed for the purpose of becoming the head-teacher in terms of Rule 18 of the Kerala Rules. Without such prescription being made, it cannot be insisted that the teachers should pass any such test for the purpose of that Rule. In so far as the prescriptions of passing the test on Kerala Education Act and Rules are concerned, that stands exempted as regards teachers who have attained the age of 50 years.

4. In the aforesaid view of the matter, it was inconsequential for the Government to have issued a professed exemption in the nature of what is contained in Annexure A6 to Exhibit P1 which states that the teachers who have completed 50 years of age are exempted from passing tests in Kerala Education Rules as laid down in Rule 18(1) of Kerala Rules. That exemption is granted on the erroneous assumption that the said Rule prescribes the passing of test in Kerala Education Rules as obligatory. That view cannot be sustained and the Tribunal was justified in holding that notwithstanding the correctness or otherwise of Annexure A6 in Exhibit P1, the private respondent is eligible to be promoted, even if she did not possess any test qualification, for the simple reason that there is no prescription of any test qualification under Rule 18(1) of the Kerala Rules or following that Rules.

5. Since, indisputably, the private respondent is senior to the petitioners in the feeder category, nothing stands in their way of being promoted to the post of head-teacher. It is, therefore, also of no consequence as to whether there was any power

under the Kerala Rules to issue any exemption order in the nature of Annexure A6 to Exhibit P1.

In the result, this original petition is dismissed.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG