

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WA.No. 1900 of 2014 () IN WP(C).16518/2014

JUDGMENT IN WP(C) 16518/2014 of HIGH COURT OF KERALA
DATED 03-07-2014

APPELLANT/WRIT PETITIONER:

SALEEMA C.M
LOWER PRIMARY SCHOOL ASSISTANT
NADVATHUL ISLAM LOWER AND UPPER PRIMARY SCHOOL
NADVATHNAGAR P.OCHERTHALA
ALAPPUZHA DISTRICT - PIN - 688 526.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS

1. NADVATHUL ISLAM LOWER & UPPER PRIMARY SCHOOL
NADVATHNAGAR P.O., CHERTHALA, ALAPPUZHA DISTRICT
PIN - 688 526.
2. THE MANAGER
NADVATHUL ISLAM LOWER AND UPPER PRIMARY SCHOOL
NADVATHNAGAR P.O., CHERTHALA, PIN - 688 526
ALAPPUZHA DISTRICT, PIN - 688 526.
3. SMT.INDUMATHI K
UPPER PRIMARY SCHOOL ASSISTANT
NADVATHUL ISLAM LOWER AND UPPER PRIMARY SCHOOL
NADVATH NAGAR P.O., CHERTHALA, ALAPPUZHA DISTRICT
PIN - 688 526.

WA.No. 1900 of 2014

4. THE ASSISTANT EDUCATIONAL OFFICER
THURAVOOR, ALAPPUZHA. PIN - 683 572.

5. STATE OF KERALA
GENERAL EDUCATION DEPARTMENT, 2ND FLOOR
SECRETARIAT ANNEXE
THIRUVANANTHAPURAM REPRESENTED BY ITS SPECIAL
SECRETARY.

R2-R3 BY ADV. SRI.P.M.PAREETH
SENIOR GOVERNMENT PLEADER SRI.M.A. FAYAZ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.1900 of 2014

Dated this the 25th day of June, 2015

JUDGMENT

Antony Dominic,J.

The appellant filed the writ petition challenging Ext.P6 order which exempted teachers who have attained 50 years from passing departmental test and test on Kerala Education Act and Rules, which were assumed to be the tests prescribed under Rule 18 of the Right of Children to Free & Compulsory Education Act and Rules, 2011, hereinafter referred to as “the Rules”, for short. By judgement under appeal, the learned Single Judge dismissed the writ petition and this judgment is under challenge before us.

2. We heard the learned counsel for the appellant and the learned Government Pleader appearing for the official respondents.

3. Rule 18(1) of the Rules reads thus:

“The Head teacher shall be a person having a minimum of twelve years of teaching experience and possessing pass in such departmental tests and test on Kerala Education Act and Rules as may be specified in that regard.”

4. Reading of the above Rule shows that a teacher need possess a pass in such departmental tests and test on Kerala Education Act and Rules only if there is a specification to that effect. Such specification must be either by a provision in the Rule itself or at least by an executive order issued by the Government. Appellant has no case that any such Government order has been issued or that the Rule contains any such prescription. If that be so, it has to be accepted that there is no such prescription. In such circumstances, appellant cannot fall back upon on the provisions of the Kerala Education Act and the Rules to infer a case of prescription of tests as contemplated under Rule 18.

5. Therefore, the learned Single Judge has fully justified in his conclusion that, as things now stand, there is no prescription

of the tests in terms of Rule 18 and that the Government mis-directed itself by issuing Ext.P6 order.

Writ appeal fails and it is accordingly dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

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P.A. to Judge

smv