

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 22029 of 2015 (C)

PETITIONER:

K.P.SACHITHA, LPSA
RAMAGURU U.P.SCHOOL, P.O.CHIRAKKAL, KANNUR DISTRICT
670011.

BY ADV. SRL.P.M.PAREETH

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM-695001.
3. DISTRICT EDUCATIONAL OFFICER
KANNUR 670001.
4. ASSISTANT EDUCATIONAL OFFICER
PAPPINISSERY, P.O PAPPINISSERY, KANNUR DISTRICT-670593.
5. MANAGER
RAMAGURU U.P.SCHOOL
P.O.CHIRAKKAL RAMAGURU U.P.SCHOOL, P.O. CHIRAKKAL
KANNUR DISTRICT-670011.
6. R.V.GEETHA
HEADMISTRESS (UNAPPROVED), RAMAGURU U.P.SCHOOL
P.O.CHIRAKKAL, KANNUR DISTRICT-670011.

R1-4 BY GOVERNMENT PLEADER SMT A LOWSY
R6 BY ADV. SRL.V.A.MUHAMMED
R6 BY ADV. SRL.M.SAJJAD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: A TRUE PHOTOCOPY OF THE APPROVED SENIORITY LIST IN RESPECT OF THE TEACHERS OF THE SCHOOL.

EXHIBIT-P2: A TRUE PHOTOCOPY OF THE APPOINTMENT ORDER IN RESPECT OF SMT.KOMALAVALLI AND HER RELIGUISHMENT DATED 3.10.12.

EXHIBIT-P3: A TRUE PHOTOCOPY OF THE LETTER DATED 21.4.2014 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER.

EXHIBIT-P4: A TRUE PHOTOCOPY OF THE APPOINTMENT ORDER DATED 1.5.2014 APPOINTING THE SIXTH RESPONDENT AS HEADMISTRESS.

EXHIBIT-P5: A TRUE PHOTOCOPY OF THE JUDGMENT DATED 24.6.2014 IN W.P.(C) NO.14971/14 OF THIS HON'BLE COURT.

EXHIBIT-P6: A TRUE PHOTOCOPY OF THE APPELA DATED 5.5.2014 SUBMITTED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT.

EXHIBIT-P7: A TRUE PHOTOCOPY OF THE PROCEEDINGS NO.KDIS F/2131/2014 DATED 18.8.2014 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P8: A TRUE PHOTOCOPY OF THE REPRESENTATION DATED 17.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXHIBIT-P9: A TRUE PHOTOCOPY OF THE LETTER DATED 10.3.2015 ISSUED BY THE THIRD RESPONDENT TO THE FORUTH RESPONDENT.

EXHIBIT-P10: A TRUE PHOTOCOPY OF THE LETTER DATED 6.4.2015 ISSUED BY THE FOURTH RESPONDENT TO THE FIFTH RESPONDENT.

EXHIBIT P11: A TRUE COPY OF THE ORDER NO. G(4) 56430/15/DPI/K DIS DT 22.8.2015 ISSUED BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

K. VINOD CHANDRAN, J.

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W.P.(C) No.22029 of 2015 - C

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Dated this the 19th day of October, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner has been denied the post of Headmaster/Headmistress of the U.P.School, managed by the 5th respondent, which fell vacant on 01.05.2014. The petitioner admittedly is third in the seniority list produced at Ext.P1, the first person in Ext.P1 is retired and the second person is said to have relinquished her claim. The petitioner however was by-passed and the 7th person in Ext.P1 is granted the post of Headmistress ie., the 6th respondent herein. The petitioner contends that having attained 50 years as on the date of arising of the vacancy, the petitioner is entitled to be posted as Headmistress, considering her seniority.

2. The learned Counsel appearing for the respondents 5 and 6 contends that the petitioner does not have a test qualification under Rule 45B of Chapter XIVA of Kerala Education Rules (K.E.R) and hence she is not entitled to the post of Headmistress.

3. The petitioner's contention is already covered by Ext.P5. In Ext.P5 identical fact situation arose. There however the Manager contended that though Rule 45B Chapter XIVA of K.E.R exempts a teacher, having attained the age of 50 years from passing the Account Test (Lower), Rule 18(1) of the Kerala Right of Children to Free and Compulsory Education Rules, 2011 (for brevity, 'Rule 2011') prescribe a pass in the Kerala Education Act and Rules. This Court by Ext.P5 found that Rule 18(1) of Rule 2011 only indicates that the test qualification must be there, as may be specified in that regard. Since K.E.R test was not prescribed, this prohibition in Rule 18(1) of Rule 2011 would not be applicable. It was held so in paragraph 4 of Ext.P5.

4. I have considered the submissions made at the Bar by the learned counsel appearing for the petitioners. I have also gone through the pleadings and the materials on record. Rule 45B of Chapter XIVA of the Kerala Education rules stipulates that a pass in Account Test (Lower) conducted by the Kerala Public Service Commission as Headmasters of Lower Primary Schools and Upper Primary Schools. Sub rule(4) stipulates that teachers who have attained the age of 50 years shall stand permanently exempted from acquiring the qualifications specified in sub rule (1). By virtue of operation of sub rule (4) of rule 45B of Chapter XIV-A of the Kerala Education rules teachers like the party respondents herein who are aged 50 years are permanently exempted from passing the Account Test (Lower) conducted by the Kerala Public Service Commission. The Government have by the impugned order exempted the teachers who have completed the age of 50 years from possessing the qualification prescribed in ruled 18 (1) of the rules. Rule 18(1) of the rules does not in express terms stipulate that the Head Teacher shall be a person possessing a pass in a particular departmental test. It does not also in express terms stipulate that the Head Teacher should possess a pass in the Kerala Education Act and rules. On the other hand the stipulation in the rules is to the effect that a Head Teacher shall be a person possessing a pass in such departmental test and test on Kerala Education act and rules **"as may be specified in that regard"**. If the words "as may be specified in that regard" had not been there in rule 18(1), the rules will then be prescribing the test qualifications. The government did not when it framed the rules prescribe the test qualifications. The Government only stipulated in rule 18(1) of the rules that the Head Teacher shall possess a pass in such departmental test and test on Kerala Education Act and rules as may be specified in that

regard. The petitioner has no case that Government have by a notification specified that a Head Teacher governed by rule 18(1) shall possess a pass in a particular departmental test or the test on Kerla Education act and rules.

4. The learned Counsel for the respondent however submits that the provision in sub-rule (4) of Rule 45B of Chapter XIVA K.E.R, which is extracted hereunder, only applies to teachers, who attained 50 years as on 24.02.1982; the date of introduction of such rule. Sub-rule (4) of Rule 45B of Chapter XIVA K.E.R is extracted hereunder:-

Teachers who have attained the age of 50 years shall stand exempted permanently for acquiring the qualification specified in sub-rule (1).

To buttress the above contention, the learned Counsel would in fact refer to Rule 45BB to contend that otherwise there was no reason for the introduction of that Rule.

5. When sub-rule (1) of Rule 45B provided for an obligatory test qualification for promotion as Headmaster/Headmistress sub-rule(2) exempted all Headmaster/Headmistress as on that date from acquiring such

qualification. This was effective from 19.12.1978. Subsequently on 04.07.1985, w.e.f. 19.12.1978 sub-rule (3) was introduced granting temporary exemption to teachers awaiting promotion from the test qualification till 31.03.1986 and then till 31.03.1988; the later amendment on 02.09.1986 w.e.f 01.04.1986. Rule 45BB was brought in to permit such temporarily exempted persons to occupy the Headmaster/Headmistress post even without test qualification; provided they attained 50 years and also completed 25 years of service, as on 10.05.1988. Rule 45BB did not deal with teachers who attained 50 years after incorporation of sub-rule(4) of Rule 45B. Rule 45BB only saved those, who were temporarily promoted under sub-rule (3) of Rule 45B from acquiring test qualification, if they satisfied the condition of 50 years and 25 years of service.

6. Hence, going by sub-rule (4) of Rule 45B of K.E.R, there is a permanent exemption granted to teachers, who have attained the age of 50 years and there is nothing in the provision

to show that the same is confined to the date on which such provision was brought in. In such circumstance, going by Ext.P5 and the above interpretation placed on sub-rule(4) of Rule 45B of Chapter XIVA K.E.R, the petitioner is entitled to be posted as Headmistress in the aided school managed by the 5th respondent. Exts.P4 and P11 shall stand set aside. The petitioner shall be immediately posted as the Headmistress of the 5th respondent school at any rate, within a period of two weeks from the date of receipt of a certified copy of this judgment and the Government shall pay the salary from 01.05.2014 to the petitioner herein and recovery proceedings shall be initiated under Rule 7 of Chapter III of K.E.R against the 5th respondent, since it is a specific instance of denial of right for promotion to the post of Headmistress.

The writ petition would stand allowed. No costs.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/19/10/2015

// true copy //
P.A to Judge.