

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C).No. 22681 of 2015 (I)

PETITIONER(S):

**VALSALA A.,
ASSISTANT TEACHER, V.R.U.P SCHOOL, MUTHUKURISSI
ELAD P.O, CHERUKARA VIA, MALAPPURAM 679 340**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
GENERAL EDUCATIONAL DEPARTMENT
THIRUVANANTHAPURAM 695 001**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM-695 014**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM 679 001**
- 4. THE DISTRICT EDUCATION OFFICER
MALAPPURAM 679 001**
- 5. ASSISTANT EDUCATIONAL OFFICER
PERINTHALMANNA 679 322**
- 6. THE MANAGEER
V.R.U.P SCHOOL, MUTHUKURISSI, ELAD P.O
CHERUKARA VIA, MALAPPURAM 679 340**
- 7. E. GIRIJADEVI
HEADMISTRESS, V.R.U.P SCHOOL, MUTHUKURISSI
ELAD P.O, CHERUKARA VIA, MALAPPURAM 679 340**

**R6,R7 BY ADV. SRI.P.CHANDRASEKHAR
R6,R7 BY ADV. SRI.S.PRASANTH
R6,R7 BY ADV. SMT.UMA
R6,R7 BY ADV. SRI.K.NANDAKUMAR
R6,R7 BY ADV. SMT.V.A.HARITHA
R6,R7 BY ADV. SMT.P.M.MAZNA MANSOOR
R BY GOVERNMENT PLEADER SMT. A LOWSY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 22681 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER
BEFORE THE 5TH RESPONDENT**

**EXHIBIT P2 TRUE COPY OF THE LETTER DATED 27-04-2015 ISSUED BY THE
1ST RESPONDENT**

**EXHIBIT P3 TRUE COPY OF THE MEMO DATED 22-06-2015 ISSUED BY THE
5TH RESPONDENT TO THE 6TH RESPONDENT**

RESPONDENT(S)' EXHIBITS

**EXT. R6(A) COPY OF THE CERTIFICATE DATED 14.12.2000 ISSUED BY
PUBLIC SERVICE COMMISSION THAT ONE OF THE
RESPONDENT HAS PASSED TEST LOWER CONDUCTED BY
KERALA PUBLIC SERVICE COMMISSION.**

**EXT.R6(B) COPY OF CERTIFICATE DATED 14.12.2000 THAT THE 7TH
RESPONDENT HAS PASSED ACCOUNT TEST LOWER
CONDUCTED BY KERALA PUBLIC SERVICE COMMISSION**

EXT.P6(C) COPY OF MY REPLY DATED 13.7.15 TO THE 5TH RESPONDENT.

**EXT.R6(D) COPY OF COUNTER AFFIDAVIT FILED BY THE ASSISTANT
EDUCATIONAL OFFICER EDAPPAL IN W.P.(C) NO.16844 OF 2013.**

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.22681 of 2015 - I

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Dated this the 30th day of September, 2015

J U D G M E N T

The petitioner, a teacher, who has passed 50 years of age, claims the post of Head Mistress in the 6th respondent school, as the senior most, eligible for such promotion, based on the exemption under Rule 45(B) of Chapter XIV A of the Kerala Education Rules. It is undisputed that by Rule 45(B), persons, who are aged 50 years are permanently exempted from passing Account Test (Lower), conducted by the Kerala Public Service Commission. Further as far as Upper Primary Schools are concerned, there is no requirement for passing K.E.R test, which is a requirement only for being posted as a Head Mistress in a high school.

2. The 7th respondent being appointed as the Head Mistress, the petitioner was before the Principal Secretary, Higher

Education Department, which representation was forwarded to the A.E.O, Perinthalmanna. By Ext.P3, the A.E.O directed the 6th respondent to offer his explanations as to the complaint.

3. The 6th respondent by Ext.R6(c) replied to the complaint contending that as per Rule 18(1) of Right of Children to Free, and Compulsory Education Rules, 2011 (for brevity, 'the Rules'), a test qualification in K.E.R and Accounts Test is compulsory and petitioner having neither of that would be disentitled from claiming promotion to the post of Head Mistress. The next senior most teacher, having such a test qualification, being the 7th respondent is appointed, was the specific contention.

4. The learned Counsel for the petitioner however would rely on a decision of this Court in W.P(C) No.14971 of 2014 dated 24.06.2014 and the exemption Order issued under the Kerala Education Act, being G.O (MS) No.92/2014/G.En. Dated 02.06.2014, which granted exemption from test

qualifications for persons, who have crossed 50 years of age.

5. The learned Counsel appearing for the respondents 6 and 7 would contend that in any event, the vacancies arose on 01.06.2014 and the exemption order was issued only on 02.06.2014. This evidences the disentitlement of the petitioner from being promoted, is the contention. The 7th respondent was appointed on 01.06.2014.

6. However, what assumes significance is the decision of this Court aforecited, wherein paragraph 4 is extracted hereunder:-

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 45(b) 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 45(B) of Chapter XIV-A of the Kerla 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.

7. This Court on a reading of Rule 18 of the Rules specifically found that there is no test specified for a person to be promoted as a Head Mistress. In such circumstance, Rule 45

(B) of the K.E.R would apply and even if the Government Order was not brought in, there would still be exemption, for reason of no test qualification being specified as per the power conferred under Rule 18(1) of the Act, was the finding.

8. Going by the above binding precedent, the petitioner has to be appointed as the Head Mistress. The appeal filed against the rejection of approval of the 7th respondent is said to be pending before the 3rd respondent. However, on the direction issued by this Court, the said appeal would no more be relevant. The petitioner shall be appointed to the post from 01.06.2014 with all consequential benefits.

The writ petition would stand allowed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

SB/30/09/2015

// true copy //

P.A to Judge.