IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO. 3158 OF 2023

PETITIONER:

P.M.SREENATH, AGED 34 YEARS,
S/O.P.S.MANI, LPSA, V.M. LOWER PRIMARY SCHOOL,
PALACKAPOTTA, AYALUR P.O. PALAKKAD DISTRICT,
PIN – 678510.

BY ADVS.
GEORGE ABRAHAM
JOBY D JOSEPH
SWATHY A.P.

RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY: SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM,
PIN – 695001.

2 **DIRECTOR OF GENERAL EDUCATION,**
JAGATHY, THIRUVANANTHAPURAM, PIN – 695014.

3 **DEPUTY DIRECTOR OF EDUCATION**
CIVIL STATION, KUNNATHURMEDU,
PALAKKAD, PIN – 678001.

4 **ASSISTANT EDUCATIONAL OFFICER,**
KOLLANGODE, PALAKKAD, PIN – 678504.

5 **SMT. ANITHA C, HEADMISTRESS IN-CHARGE,**
V.M. LOWER PRIMARY SCHOOL, PALACKAPOTTA,
AYALUR P.O., PALAKKAD DISTRICT, PIN – 678510.

6 **MANAGER, V.M.LOWER PRIMARY SCHOOL,**
PALACKAPOTTA, AYALUR P.O. PALAKKAD DISTRICT,
PIN – 678510.

BY ADVS.
SRI.T.JAYAN, GOVERNMENT PLEADER
SAJJAD M
P. GOPAL
V.A.MUHAMMED(K/124/1984)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.04.2025, ALONG WITH WP(C).27326/2023, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO.27326 OF 2023

PETITIONER:

C.ANITHA, AGED 49 YEARS,
W/O.MOHANDAS.R., HEADMISTRESS,
V.M LOWER PRIMARY SCHOOL, PALAKKAPOTTA,
AYALUR P.O., PALAKKAD DISTRICT -678510
(RESIDING AT MOHANAM, PADINJARETHARA, VALLANGHY,
NENMARA P.O., PALAKKAD DISTRICT – 678 508.

BY ADVS.
V.A.MUHAMMED
M.SAJJAD

RESPONDENTS:

1 **STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT ANNEXE-II, THIRUVANANTHAPURAM, PIN – 695001.**

2 **THE DIRECTOR OF GENERAL EDUCATION, JAGATHY, THIRUVANANTHAPURAM, PIN – 695014.**

3 **THE DEPUTY DIRECTOR OF EDUCATION, CIVIL STATION, KENATHUPARAMBU, KUNATHURMEDU, PALAKKAD, PIN – 678001.**

4 **THE ASSISTANT EDUCATIONAL OFFICER, KOLLENGODE, PALAKKAD DISTRICT, PIN – 678506.**

5 **THE MANAGER, V.M LOWER PRIMARY SCHOOL, PALAKKAPOTTA, AYALUR P.O., PALAKKAD DISTRICT, PIN – 678510.**

BY ADVS.
GEORGE ABRAHAM DR
JOBY D JOSEPH(K/000093/2019)
SRI.T.JAYAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01.04.2025, ALONG WITH WP(C).3158/2023, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

[W.P(C) Nos.3158 of 2023 and 27326 of 2023]

These writ petitions are filed by rival teachers seeking appointment to the post of headmaster in the school managed by the 6th respondent in W.P(C) No.3158 of 2023.

2. W.P(C) No.3158 of 2023 is filed by one P.M.Sreenath contending that he was appointed as LPSA from 01.12.2008 in a leave vacancy and that he was appointed to a permanent vacancy with effect from 01.06.2009. During 2016-17, the petitioner contends, that on account of the reduction of student strength, he was deployed to a Government school where he is still continuing. The headmistress of the school one Smt.Vijayalskhmi is stated to have retired with effect from 31.07.2003, and another Arabic teacher was placed "in charge" for some time. Later as per Ext.P3, the Manager of the school appointed the 5th respondent- Smt.C.Anitha as "headmistress in charge". He contends that the petitioner obtained 12 years of teaching experience as on 01.06.2021, having passed the

Account Test (Lower) during July, 2019 and the Kerala Education Rules (KER) test during November, 2018 and hence became entitled for appointment to the post of headmaster as was claimed before the Manger as seen from Ext.P6. The petitioner relies on Ext.P7 information obtained under the Right to Information Act, 2005 to contend that the appointment of Smt.C.Anitha was only as "in charge" and further that the scale of pay is also extended as that of the headmistress as evidenced by Ext.P8 issued by the Assistant Educational Officer (AEO). The claim made by the petitioner as above was considered by the Government as seen from Ext.P12 seeking to deny the claim made, essentially on account of the alleged lack of provisions under KER to discharge Smt.C.Anitha, who was continuing as above, and since the petitioner was not in the rolls of the school managed by the 6th respondent, on account of which, his seniority could not be taken into account. It is challenging Ext.P12 issued as above by the Government that P.M.Sreenath filed W.P(C) No.3158 of 2023.

3. On the other hand, Smt.C.Anitha filed W.P(C) No.27326 of 2023 seeking a declaration that her appointment as headmistress, noticed above, was validly made.

4. For ease of reference, the parties are referred to with reference to their names in this judgment.

5. I have heard Sri. Dr. George Abraham learned counsel for Sri.P.M.Sreenath, Sri. V.A.Muhammed, the learned counsel for Smt.C.Anitha, Sri.P.Gopal, the learned counsel for the Manager and Sri.T.Jayan, the learned Government Pleader.

6. Dr. George, the learned counsel for Sreenath, would invite the attention of this Court to various provisions of KER and the Right to Information Act, 2005, to contend that as on 01.06.2021, the petitioner was the sole qualified person who could be appointed as headmaster. He would contend that Smt.C.Anitha was not having the required qualifications, and she became entitled for the exemption from the qualification upon attaining 50 years of age only in March, 2024. *Per contra* Sri.V.A.Muhammed would contend that his client, Smt.C.Anitha,

was entitled to the appointment as headmistress with reference to Rule 45A of KER.

7. I have considered the rival contentions as well as the connected records.

8. Chapter XIVA of KER provides for the conditions of service of aided school teachers. Rule 44 of KER provides for the appointment of headmasters ordinarily according to the seniority list prepared and maintained according to the provision of Rule 34. Rule 34, on the other hand, provides for a combined seniority list for the teachers specifically for the purpose of determining the position of the persons eligible for promotion as primary school headmasters "by virtue of the length of service and prescribed qualification". With reference to the afore, the provisions of Rule 37 provide as under:-

> "37. (1) Seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit provided he is duly qualified for the post
>
> Provided that the period of service rendered in the parent school or in another school by a teacher, who is relieved

> under rule 52, shall be reckoned for seniority on his re-appointment to the parent school."

A reference to the afore would show that it is not merely the service rendered in the parent school that is being reckoned. The Rules also provide for reckoning the service of the teacher who is relieved under Rule 52 "in another school" for the specific purpose of seniority for the purpose of reappointment in the parent school. In the case at hand, as already noticed, Sreenath was relieved on account of the reduction of student strength. Therefore, he becomes a teacher who is relieved under Rule 52, and the service rendered by Sreenath in another school can also be reckoned for the purpose of seniority to the afore extent. Therefore, the refusal to calculate the seniority of Sreenath, also reckoning the service rendered by him in a different school, while issuing Ext.P12 order by the Government, cannot be sustained.

9. On the face of the afore finding, the larger issue arising for consideration is as to whether Smt.C.Anitha could be reverted from the post of headmistress in charge. While answering this question, two points have to be considered - whether

Smt.C.Anitha was qualified and whether she could be reverted under the Rules.

10. As regards qualification, there is no dispute that Rule 45A prescribing the qualification for the post of headmistress provided as under:

> "45A. Subject to rule 44, when the post of Headmaster of a complete L. P. School is vacant or when an incomplete L. P. School becomes complete the post shall be filled up from among the qualified teachers on the staff of the school or schools under the Educational Agency. The person appointed as Headmaster shall have passed S. S.L. C. or equivalent Examination with TTC issued by the Board of Public Examination, Kerala or T. C. H. issued by the Karnataka Secondary Education Examination Board, Bangalore or a pass in Pre-degree Examination with pedagogy as an elective subject conducted by the University of Kerala or any other equivalent training qualification prescribed for appointment as Primary School Assistant. In the case of those who are continuing as teachers with Standard VII or its equivalent with H.E.T.T.C. or its equivalent training qualification they shall have 12 years of continuous qualified service as Assistant for appointment as Headmasters of Lower Primary Schools."

To be read along with, is Rule 45B which reads as under:

> "45B. (1) Notwithstanding anything contained in rules 45 and 45A, Account Test (Lower) conducted by the Kerala Public Service Commission shall be an obligatory qualification to the teachers

> for promotion as Headmasters of Lower Primary and Upper Primary Schools.
>
> (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)
>
> (3) In the case of teachers awaiting promotion as Headmasters under rule 45 and 454 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
>
> (4) Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the qualification specified in sub-rule (1)
>
> (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."

Therefore, there cannot be any dispute that the qualification under Rule 45A and the obligatory test under Rule 45B have to be cleared, to be appointed as a headteacher. Admittedly, Smt.C.Anitha was not having TTC, though she was a graduate with B.Ed. qualification. Similarly, assuming that she was entitled to consideration with reference to her qualification as one satisfying Rule 45A, admittedly she had not cleared the

obligatory test under Rule 45B. It may also be noticed that under the provisions of the Kerala Right of Children to Free and Compulsory Education Rules, 2011, under Rule 18, a headteacher was required to have, apart from 12 years of teaching experience, a pass in the departmental test and test under KER. As already noticed Smt.C.Anitha did not have the required obligatory qualification noticed as above. Therefore, I am of the opinion that Smt.C.Anitha was not qualified for the post of headmistress.

11. With respect to the afore, the provision of Rule 45C of Chapter XIVA of KER is also to be noticed, which reads as under:

> "**45C. Temporary Promotion**. - (1) Where, in any aided school, a qualified teacher is not available to be promoted as Headmaster, Headmistress or Vice-Principal in accordance with the provisions contained in rule 44 and 44A, 45, 45A and 45B the appointing authority shall promote the senior most teacher on the staff of the school or the schools under the Educational Agency as Headmaster Headmistress or Vice-Principal, temporarily.
>
> Provided that in the case of High Schools and Training Schools the teacher so promoted shall be the senior most graduate teacher on the staff of the school or the schools under the Educational Agency who has put in at least 12 years of continuous graduate service as

> provided in sub-rule (1) of rule 44A of this Chapter and in the case of Primary Schools it shall be the senior most teacher possessing qualifications prescribed in rule 45 or rule 45 A as the case may be
> (2) A teacher temporarily promoted under sub-rule (1) shall be replaced as soon as possible by the member of the service who becomes entitled to the promotion under the rules."

A reading of the afore provision would show that the appointment of Smt.C.Anitha was purely a "temporary promotion" under sub-rule (2). When another teacher becomes entitled for an appointment, the one who was temporarily appointed is required to be replaced. In the case at hand, insofar as Smt.C.Anitha was only promoted temporarily, when Sri.Sreenath became entitled for consideration upon acquiring the required service as on 01.06.2021, Smt.C.Anitha ought to have been replaced.

12. Though the learned counsel for Smt.C.Anitha relied on a Full Bench decision of this Court in **Manager S.N.D.P. L.P. School v. K.V. Roy and Others [2006 (4) KLT 497]** to contend that mere degree was sufficient for consideration to the post of headmistress, I am of the opinion that subsequent to the introduction of the Kerala Rules referred to above, the afore

judgment would not have any application. I am fortified in taking the afore view by virtue of the Full Bench decision of this Court in **Sasidharan Nair V. State of Kerala [2003 (1) KLT 998]**.

On the whole, I hold that Sri.Sreenath – the petitioner in W.P(C) No.3158 of 2023 - is required to be considered for promotion as the headmaster of the school managed by the 6th respondent, reverting Smt.C.Anitha.

Resultantly, these writ petitions are ordered as under:-

i. W.P(C) No.3158 of 2023 is allowed by *setting aside* Ext.P12 issued by the 1st respondent.

ii. There will be a direction to revert Smt.C.Anitha from the post of headmistress to the post of LPSA in the school managed by the 6th respondent and to promote the petitioner in W.P(C) No.3158 of 2023 as the headmaster.

iii. W.P(C) No.27326 of 2023, filed by Smt.C.Anitha, is dismissed.

Sd/-
HARISANKAR V. MENON,
JUDGE

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APPENDIX OF WP(C) 27326/2023

PETITIONER'S EXHIBITS:

EXHIBIT P-1	**TRUE COPY OF THE APPOINTMENT ORDER OF THE PETITIONER DATED 14.10.1998.**
EXHIBIT P-2	**TRUE COPY OF THE APPOINTMENT ORDER DATED 12.12.2005 POSTING THE PETITIONER AS TEACHER IN CHARGE.**
EXHIBIT P-3	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION VIDE NO. 24380/2006 DATED 17.11.2006..**
EXHIBIT P-4	**TRUE COPY OF THE LETTER SUBMITTED BY THE MANAGER DATED 17.11.2006 ALONG WITH TYPED COPY**
EXHIBIT P-5	**TRUE COPY OF THE ORDER NO. F-1910/13/L.DIS DATED 29.11.2013.**

APPENDIX OF WP(C) 3158/2023

PETITIONER'S EXHIBITS:

EXHIBIT P1	**A COPY OF THE ORDER OF APPOINTMENT DATED 1.12.2008 ISSUED BY THE MANAGER.**
EXHIBIT P2	**A COPY OF THE SENIORITY LIST APPROVED BY THE ASSISTANT EDUCATIONAL OFFICER, KOLLANGODE.**
EXHIBIT P3	**A COPY OF THE APPOINTMENT ORDER DATED 12.9.2007 ISSUED TO THE 5TH RESPONDENT.**
EXHIBIT P4	**A COPY OF THE CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION DATED 24.1.2020**
EXHIBIT P5	**A COPY OF THE CERTIFICATE DATED 27.11.2018 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.**
EXHIBIT P6	**A COPY OF THE REPRESENTATION SUBMITTED TO THE MANAGER DATED 2.6.2021.**
EXHIBIT P7	**A COPY OF THE INFORMATION ISSUED BY THE ASSISTANT EDUCATIONAL OFFICER, KOLLANGODE DATED 09.03.2021.**
EXHIBIT P8	**A COPY OF THE PROCEEDINGS NO. F-1910/13/L.DIS OF THE ASSISTANT EDUCATIONAL OFFICER, KOLLANGODE DATED 29.11.2013.**
EXHIBIT P9	**A COPY OF THE PETITION SUBMITTED BY THE MANAGER DATED 3.6.2021 TO THE 1ST RESPONDENT.**
EXHIBIT P10	**A COPY OF THE GAZETTE NOTIFICATION NO. G.O.(P) NO. 19/2020/G.EDN. DATED 23.12.2020.**
EXHIBIT P11	**A COPY OF THE PETITION DATED 18.6.2021 BEFORE THE 1ST RESPONDENT.**
EXHIBIT P12	**A COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT GO(RT)NO.155/2023/G.EDN. DATED 06.01.2023.**

RESPONDENTS' EXHIBITS:

EXHIBIT R-5(A)	**TRUE COPY OF THE ORDER NO. F/286/2021 DATED 10.10.2021.**

EXHIBIT R-5(B)	**TRUE COPY OF THE ORDER NO. B4/7039/2021/K.DIS DATED 25.02.2023.**
EXHIBIT R-5(D)	**TRUE COPY OF THE LETTER NO. A3/55/2019/G.EDN DATED 09.07.2019.**
EXHIBIT R-5(E)	**TRUE COPY OF THE APPOINTMENT ORDER DATED 12.12.2005**
EXHIBIT R-5(F)	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION VIDE NO. 24380/2006 DATED 17.11.2006.**
EXHIBIT R-5(C)	**TRUE COPY OF THE LETTER NO. 335/T2/2018/G.EDN DATED 25.05.2019.**
EXHIBIT R-5(G)	**TRUE COPY OF THE LETTER DATED 17.11.2006 SUBMITTED BY THE MANAGER ALONG WITH TYPED COPY.**
EXHIBIT R-5(I)	**TRUE COPY OF THE G.O(P) NO. 1/2021 DATED 05.01.2021**
EXHIBIT R-5(H)	**TRUE COPY OF THE ORDER NO. F-1910/13/L.DIS DATED 29.11.2013.**