



2024:KER:96908

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 20<sup>TH</sup> DAY OF DECEMBER 2024 / 29TH AGRAHAYANA,

1946

WA NO. 1827 OF 2024

AGAINST THE JUDGMENT DATED 21/10/2024 IN WP(C)  
NO.11629 OF 2020 OF HIGH COURT OF KERALA

APPELLANT/6<sup>th</sup> RESPONDENT:

JOHN VARGHESE  
AGED 59 YEARS  
HEADMASTER IN CHARGE, M.M. UPPER PRIMARY SCHOOL,  
PITTUKARIKULAMBU, KORANCHIRA POST,  
VADAKKENCHERRY, PALAKKAD, PIN - 678684

BY ADVS.  
GEORGE ABRAHAM  
MARY CATHERINE PRIYANKA P.S.  
ALEX TOM JOSEPH

RESPONDENTS/PETITIONERS/RESPONDENTS 1 TO 5:

1 LAILA BEEGAM A.R  
AGED 54 YEARS  
W/O. C.S.USMAN, UPPER PRIMARY SCHOOL ASSISTANT  
(UPSA) M.M. UPPER PRIMARY SCHOOL,  
PITTUKARIKULAMBU, KORANCHIRA POST,  
VADAKKENCHERRY, PALAKKAD-678 684, RESIDING AT



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SANA MANZIL KAMANTHARA, VADAKKANCHERRY 678 883.,  
PIN - 678883

- 2 STATE OF KERALA  
REPRESENTED BY SECRETARY, GENERAL EDUCATION  
DEPARTMENT, GOVERNMENT SECRETARIAT (ANNEX),  
THIRUVANANTHAPURAM-695 001., PIN - 695001
- 3 THE DIRECTOR OF GENERAL EDUCATION  
(FORMER DIRECTOR OF PUBLIC INSTRUCTIONS),  
THIRUVANANTHAPURAM-695 014., PIN - 695014
- 4 THE DEPUTY DIRECTOR OF EDUCATION  
CIVIL STATION, PALAKKAD-678 001., PIN - 678001
- 5 THE ASSISTANT EDUCATIONAL OFFICER  
ALATHUR, PALAKKAD-678 541., PIN - 678541
- 6 THE MANAGER  
M.M.UPPER PRIMARY SCHOOL, PITTUKARIKULAMBU,  
KORANCHIRA POST, VADAKKENCHERRY, PALAKKAD-  
678684., PIN - 678684

BY ADV BALAGANGADGARAN UNIKKAT  
SR.GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON  
04/12/2024, THE COURT ON 20/12/2024 DELIVERED THE  
FOLLOWING:

**CR****JUDGMENT****P. Krishna Kumar, J.**

Two key legal issues arise for consideration in this writ appeal. Firstly, when calculating the service period of a school teacher for appointment as Headmaster, can the period spent on Leave Without Allowance (LWA) for employment abroad be excluded, in view of Rule 4 of Appendix XII-A of the Kerala Service Rules (KSR)? Secondly, given that the proviso to Rule 18 of the Right of Children to Free and Compulsory Education Rules, 2011 - which exempts candidates for the Headmaster post from acquiring test qualifications upon reaching 50 years - was introduced only on January 5, 2021, can a teacher claim exemption from test qualifications for a Headmaster vacancy that arose



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on June 1, 2020?

2. The appellant is the sixth respondent in the writ petition, and the first respondent herein is the writ petitioner. The first respondent was appointed as a teacher at the school on July 16, 1990, while the appellant joined on June 7, 1993. The first respondent took Leave Without Allowance (LWA) for foreign employment for approximately eight years, split into two spells between January 1, 1997, and November 1, 2005. She turned 50 on May 2, 2016. The first respondent filed the writ petition, claiming that she was the seniormost teacher in the aided school and, under Rule 45B(4) of Chapter XIV-A of the Kerala Education Rules (KER), was exempted from taking statutory tests. She alleged that the denial of her promotion to Head Teacher and the promotion of her junior, the present appellant, was unjust. The first respondent further claimed that she had passed all



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departmental tests except one paper in the Accounts Test, which was postponed due to the COVID-19 pandemic. Though she made a representation raising her claim to the Headmistress post, it was rejected by the Manager, holding that she should pass the required tests even if she had crossed the age of 50 years.

3. The first respondent challenged the decision of the Manager on account of the statutory test exemption under Rule 45B(4) of Chapter XIVA of the KER and the decision of a Division Bench of this Court in **Nirmaladevi v. State of Kerala and Others** (2009 KHC 1340) wherein it was held that Rule 4(2) Appendix XII C of the KSR has application only if a vacancy arises during the leave period.

4. The appellant resisted the petition by contending that an unqualified hand could not be preferred against a qualified candidate awaiting



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promotion, and the only option for the unqualified hand is to pass the test within three years and to get the head teacher post by reverting the junior qualified hand. It was also contended that since the first respondent availed Leave Without Allowance for working abroad, she does not possess continuous service, unlike the appellant.

4. Referring to the Circular No.72/2005/Fin. dated 30/05/2005 issued by the Government of Kerala, the Single Bench found that the period of Leave Without Allowance taken after the declaration of probation will not affect the seniority/promotion of the teacher concerned. The Court allowed the writ petition by declaring that the first respondent, being the seniormost teacher with the test exemption under Rule 45 B(4) of the KER, was entitled to be promoted as headmistress. However, the approval of the promotion given to the appellant was not interfered with since he has



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already crossed the age of superannuation.

5. Heard the learned counsel appearing on both sides.

6. The learned counsel appearing for the appellant placed heavy reliance on the decisions in **V.B.Prasad v. Manager, P.M.D.U.P School and Others** (AIR 2007 SC 2053) to contend that the period during which the first respondent availed Leave Without Allowance for employment abroad has to be excluded while computing the teaching experience as envisaged under Rule 45 of the KER. The decision in **Shaji Sanjayi Nottithodi v. Managing Director, KSRTC** (2017 (3) KHC 631) is also relied on to urge that employees rejoining duty after availing Leave Without Allowance for taking up employment elsewhere would lose cadre seniority impairing their right to claim promotion. The decision in **State of Kerala and Others v. M.M.Thomas and Others** (2015(1)KHC 502) is



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also pressed into service in support of the contention that the period during which the teachers were on leave without allowances for working abroad cannot be reckoned while considering service seniority.

7. Let us now consider the legal questions mentioned at first. As observed by the learned Single Judge, in **Nirmaladevi's** case (supra), it is declared that the application of Rule 4 of Appendix 12C of Part I, KSR comes into play only if the vacancy in the post of Headmaster arose during the leave period. Rule 4 of Appendix XII C and Rule 4 of Appendix XII A, which is applicable in the present case, are similar provisions, except for the nature of the leaves. However, the learned counsel for the appellant contended that when Rule 4 of Appendix XIIA states explicitly that the officers shall lose all service benefits and also promotion chances as may arise, with





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reference to their seniority in the post from which they proceeded on leave, the matter requires a relook. It is beneficial to refer to Rule 4 of Appendix XIIA of Part I, KSR, which reads as follows:

“4. Permanent officers and non-permanent officers who have completed probation in their entry cadre in the regular service of Government may be granted leave without allowances under these rules. In such cases, *for, and during the currency of, the period of leave*, the officers shall lose all service benefits such as the earning of leave including half pay leave, pension, gratuity increment etc., and also promotion chances as may arise with reference to their seniority in the posts from which they proceeded on leave. They shall also lose seniority in the higher grade/grades with reference to their juniors who might get promoted to such grade/grades before they rejoin duty.”

(emphasis supplied)



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We are unable to uphold the said contention for the plain reason that Rule 4 itself explicitly limits the consequences provided therein as to the chances of promotion only 'during the currency of the period of leave'. In other words, the said rule states only that the officers shall lose the promotion chances as may arise with reference to their seniority in the post from which they proceeded on leave, during the currency of the period of leave, and not thereafter.

8. When the statutory rule provides the consequences in a particular circumstance alone, extending the same to any other situation is impermissible. The learned Single Bench referred to Circular No.72/2005/Fin dated 30.05.2005 for holding that Leave Without Allowance availed after the declaration of probation should not be reckoned for considering the seniority/ promotion



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of the teacher concerned. Thus, we find no reason to uphold the challenges made against the impugned judgment in the light of Rule 4 of Appendix XII A of Part I of the KSR.

9. We also find no justification in assailing the impugned judgment based on the law laid down in **V.P.Prasad's** case, **Shaji Sanjay's** case and **M.M.Thomas's** case (supra). In **V.P.Prasad's** case (supra), when the appellant therein has been working as a teacher on a regular basis with effect from 01.06.1989, he was granted study leave for two years up to 28/02/1993. The Apex court noted that as per Rule 45 of the KER, a candidate for the Headmaster post must have got atleast five years experience in teaching. Then, the Court held that the mandatory experience for five years must be 'real teaching experience' and not 'deemed teaching experience'. It was in this context the court opined that if the period of leave is



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excluded while computing the mandatory teaching experience, the appellant therein will become ineligible. The said finding has no relevance in the present case as the Leave Without Allowance availed by the first respondent for working abroad was over by 01/11/2005 and the vacancy of Headmaster arose only on 01/06/2020.

10. Similarly, the decision in **Shaji Sanjayi's** case (supra) is also on an entirely different premise. The challenge in the said case was with respect to an employee of the KSRTC who has not acquired qualifying service for claiming promotion to a higher grade. In the said context, the Full Bench of this court opined that a senior who has not rendered the requisite period of service is not entitled to be treated as a person who acquired the appropriate grade merely on the strength of his seniority protected in terms of Rule 4 of Appendix XIIA of Part I, KSR. The court



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further held that *"However, it needs to be clarified that if the employees who rejoin duty after availing Leave Without Allowances are promoted to the higher cadre in the course of time on acquiring the requisite qualifying service, they would be entitled to claim seniority in the higher cadre."* In **M.M. Thomas's** case, this court examined the question whether the period of Leave Without Allowance during which private college teachers affiliated to the Universities in the State of Kerala were employed abroad is liable to be reckoned for the purpose of (1) pension (2) for grant of benefit of placement under the University Grants Commission (UGC) Scheme. However, this scheme has no bearing on the service of school teachers, who are instead governed by the KER and the KSR.

11. The next contention advanced by the appellant is in respect of the effect of Rule 18



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of the Right of Children to Free and Compulsory Education Rules, 2011. Rule 18(1) of the said Act stipulates that a Head Teacher must have a minimum of 12 years of teaching experience and must have passed the requisite departmental tests, as well as the test on the Kerala Education Act and the prescribed Rules. A proviso was added to the said clause on 05.01.2021 to the effect that the teachers who are otherwise eligible for being promoted as Head Teachers shall be exempted from passing the said departmental test on or after attaining the age of 50 years. The contention of the appellant is that, as the said proviso was not in force when the Headmaster vacancy arose on 01.06.2020, the first respondent is not eligible for any exemption.

12. We find no merit in this contention as well. The said proviso was added to Rule 18 by the Kerala Right of Children to Free and Compulsory



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Education (Amendment Rules), 2021. Rule 1(2) of the said Amendment Rules, 2021 provides that the said Rules shall come into force with effect from 30.04.2011. The sole purpose of the said Amendment Rules was to introduce the said proviso to the earlier Rule of 2011. In the present case, the appellant reached the age of 50 on 02.05.2016. When the vacancy arose on 01.06.2020, she was thus statutorily exempted from obtaining the said test qualification.

13. In short, both the questions raised by the appellant are untenable and hence we find no reason to interfere with the impugned judgment.

The Writ Appeal is thus dismissed.

Sd/-

**A.MUHAMED MUSTAQUE**

**JUDGE**

Sd/-

**P. KRISHNA KUMAR**

**JUDGE**

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