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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

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

WP(C) NO. 7713 OF 2022

PETITIONER:

SALEELA A.
AGED 53 YEARS
W/O M.R.ABDUL SALAM, U.P SCHOOL ASSISTANT, THAZHUTHALA
MUSLIM U.P SCHOOL, KOTTIYAM P.O.KOLLAM-691 571,
RESIDING AT UPPUVEETIL, KOTTIYAM P.O. KOLLAM-691 571

BY ADVS.
S.RAMESH
SIVANKUTTY S.

RESPONDENTS:

- 1 LAILA T.M.
MANAGER, THAZHUTHALA MUSLIM U.P SCHOOL, KOTTIYAM
P.O.KOLLAM-691 571.
- 2 SMT. GRACY CHACKO,
HEADMISTRESS, THAZHUTHALA MUSLIM U.P SCHOOL, KOTTIYAM
P.O.KOLLAM-691 571.
- 3 THE ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE ASST. EDUCATIONAL OFFICER, CHATHANNOOR,
MINI CIVIL STATION, CHATHANNOOR, KOLLAM DISTRICT, PIN-
691 572
- 4 THE DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER, CIVIL
STATION, KOLLAM, PIN-691 001.
- 5 THE DEPUTY DIRECTOR OF EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM,
PIN-691 001



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6 THE DIRECTOR OF GENERAL EDUCATION,
DIRECTORATE OF GENERAL EDUCATION, JAGATHY,
THIRUVANANTHAPURAM-695 014.

7 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL
EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001

*ADDL.R8 SMT. JAMEELA
PRESENT MANAGER, THAZHUTHALA MUSLIM U.P. SCHOOL,
KOTTIYAM P.O., KOLLAM- 691571

*(ADDL.R8 IS IMPEADED AS PER ORDER DATED 20/02/2023
IN IA 1/2023)

BY ADVS.
Abdul Lathief T.M
B.MOHANLAL
ADVOCATE GENERAL OFFICE KERALA
KRISHOB K.NAIR

GP- NIMA JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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JUDGMENT*Dated this the 10th day of April, 2025*

Above writ petition is filed challenging Exts.P5 and P5(a) and also Ext.P13 order.

2. The brief facts necessary for the disposal of the writ petition is as follows:-

Petitioner was appointed as Upper Primary School Teacher in the 1st respondent school on 19.12.1990. As per Ext.P1 seniority list she is ranked No.2, whereas the 2nd respondent is ranked No.3. As the Headmaster was due to retire on 31.05.2021 petitioner made Exts.P2 and P3 representation requesting to appoint her as Headmistress based on Rule 44 of Chapter XIV of Kerala Education Rules, 1959 (hereinafter referred to as 'Rules, 1959'). While so, by Ext.P4 proceedings the 1st respondent Manager individually took a decision to appoint the 2nd respondent as Headmistress who is admittedly junior to the petitioner. Later the 1st respondent issued Exts.P5 and P5(a) proceedings appointing the 2nd respondent as Headmistress. In order to overlook the superior claim of the petitioner for appointment as Headmistress the 2nd respondent relied in Ext.P5(a) that the institution is a minority institution and therefore they could make appointments ignoring the seniority of the petitioner.



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3. Ext.P6 appeal was preferred by the petitioner. While so, the manager by a subsequent proceedings issued as Ext.P7, promoted the 2nd respondent to the post of Headmistress. The Assistant Education Officer declined to approve the appointment as per Ext.P9 order in view of the delay in submitting the same for approval. Against which appeal was preferred before the Deputy Director of Education who as per Ext.P10 order condoned the delay in submitting the proposal for approval, and by Ext.P11 order the District Education Officer issued orders directing the 3rd respondent AEO to approve the appointment of the 2nd respondent. Petitioner preferred Ext.P12 appeal before the 5th respondent. Without considering any of the contentions in Ext.P12 appeal the 3rd respondent AEO issued Ext.P13 order approving the appointment of the 2nd respondent. Petitioner would contend that going by the amendment to Rule 18 of the Right of Children to Free and Compulsory Education Rules, 2011, the teachers who are otherwise eligible for being promoted as head teachers shall be exempted from passing such departmental tests, and based on the said amendment to the Rules which is produced as Ext.P14, it is contended that petitioner is exempted from passing the test qualification as per the provisions of the above said Rule.



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4. One of the main contention raised by the petitioner is that the 1st respondent Manager has personally made a choice to appoint the 2nd respondent without relying upon any of the decision of the management, and it is contended that it is for the management committee to take a decision for appointment of the Headmaster/Principal of minority institution which is admittedly not done in the present case. Petitioner relies on Ext.P18 bye law especially clause 8 which mandates that in all the matters connected with the running of the school including appointments it is the majority decision of the management committee that is to be implemented by the Manager as per Rules. Therefore, on the basis of the same, it is contended that the decision to appoint the 2nd respondent as Headmistress was a unilateral decision of the 1st respondent Manager, and therefore the said appointment is bad. Going by the averment in the writ petition the essential contention raised by the petitioner is that she is the senior most teacher and therefore she is entitled for appointment to the post of Headmistress, and further that going by Ext.P14 amendment to the Rule 18 of the Right of Children to Free and Compulsory Education Rules, 2011, she is exempted from test qualification. Yet another contention raised by the petitioner is that even though the school could claim minority status the appointment of the 2nd respondent is



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the sole decision of the 1st respondent Manager and not by the management committee, and therefore the said decision is illegal and void. To drive home the point petitioner relies on the judgment in **Manager Corporate Educational Agency v. James Mathew and Others [(2017) 15 SCC 595]**. Relying on the said judgment it is contended that it is for the management of the minority educational institution to take a decision to appoint a person of their choice as Headmaster.

5. The 1st respondent manager at the time of appointment of the 2nd respondent has filed a counter affidavit. Based on the said counter affidavit it is contended that the 2nd respondent was fully qualified for being appointed as Headmistress as on the date of occurrence of vacancy on 01.06.2021. The 2nd respondent is appointed taking into account her suitability for the post, her qualification, seniority and acceptance. As regards the contention of the petitioner that the appointment is made by the Manager and decision is not taken by the management committee is absolutely without any basis. It is contended that, going by the provisions of the Rules, 1959 the decision taken by the management is implemented through the Manager, and in such situation it cannot be said that appointment is not made by the management especially in view of the fact that petitioner who is also a management



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committee member has no case to the effect that decision to promote the 2nd respondent is not a decision by the management. It is further submitted that as the said selection was made during the covid pandemic period, notice through whats app was given to all the management committee members, and as per Ext.R1(a) the views of all the management committee members were obtained, which is submitted as Ext.R1(a) to R1(f). It is submitted that Ext.R1(f) is the opinion given by the petitioner herself who is also a member of the management committee. Thereafter it is contended that the 1st respondent Manager acted in terms of the majority decision as per clause 8 of the approved bye law and appointed the 2nd respondent as the Headmistress. It is further contended that the post of Manager is a pivotal position connecting the educational agency and the Education Department, and the person appointed as Headmistress should work in tandem with the management and should work for the progress, upliftment and development of the school, and that the petitioner was always trying to create problem and was instrumental in taking action by the Education Department for bogus admission. The 2nd respondent's appointment as Headmistress was fully approved and her probation was declared as per Ext.R1(I) by the present Manager who is impleaded as additional 8th respondent . It is further submitted on the basis of the decision in



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Unnikrishnan v. DEO Palakkad [1996 (1) KLT 501] that the petitioner being a member of the managing body who was working as teacher in the school cannot claim the post of Headmaster in the school. It is further submitted that as per the judgment of this Court in WP(C) No.34092/2019 and connected cases, petitioner will not get the benefit of the amendment to Rule 18(1) of the Kerala Right of Children to Free and Compulsory Education Rules, 2011, as the amendment was declared to have operation only prospectively.

6. The 2nd respondent has filed a detailed counter affidavit and submits that she is fully qualified for being appointed and therefore she was considered for being appointed as Headmistress and her appointment has been duly approved as per Ext.P13 order. The petitioner has never challenged Ext.P13 order till date in any appellate proceedings and the same has become final. The learned Counsel for the 2nd respondent would further submit that after the appointment of the 8th respondent as Manager an attempt is being made to remove the 2nd respondent from the post of Headmistress and to appoint the petitioner in her place. The learned Counsel appearing for the 2nd respondent would further submit that though such an attempt was made the same is in violation of the provisions of Rule 9 of Chapter XIV A of Rules, 1959 which specifically mandates that an order of appointment shall not be affected by any



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change in the educational agency or the Manager, since the 2nd respondent has been appointed as Headmistress and the same is duly approved by the educational authorities as evident from Ext.P13. The 8th respondent who subsequently became the Manager cannot challenge the appointment of the 2nd respondent as Headmistress.

7. The 4th respondent has also filed a detailed counter affidavit, stating that the petitioner is not test qualified for being appointed as Headmistress and that the Manager of the minority institution is vested with legal right to appoint a qualified Headmistress from the staff of the school without insisting on the seniority. It is further submitted that the Manager of the management institution has absolute right to appoint a qualified teacher from the staff as Headmaster/Headmistress other than the senior claimant. The 2nd respondent is appointed as Headmistress invoking the minority rights of the educational institution which is perfectly legal and valid.

8. I have heard the rival contentions of both sides.

9. As stated earlier one of the contention raised by the petitioner is that she is senior to the 2nd respondent going by Ext.P1 and ought to have been appointed as the Headmistress of the school. Another contention raised by the petitioner is that the



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appointment of the 2nd respondent was by the Manager and not by the management committee, and therefore per se illegal and liable to be interfered with. An important aspect to be noted is that by Ext.P13 the appointment of the 2nd respondent is approved as early as on 20.09.2021. The petitioner has not preferred any statutory appeal or challenged the same in any other proceedings except challenging the same in this writ petition which was filed only on 08.08.2022 i.e. after a lapse of almost six months. Petitioner does not dispute the fact that the school is a minority run institution, and that admittedly the management has every right to appoint a qualified teacher of their choice as the Headmistress and appointed the 2nd respondent herein. The contention of the petitioner is that the appointment of the 2nd respondent is the sole decision of the 1st respondent Manager. In the counter affidavit filed by the 1st respondent it is specifically contended that notice regarding the appointment of the Headmistress was brought to the notice of all the committee members as per Ext.R1(a) and due to covid pandemic the notice was issued through whats app and as per Ext.R1(a) to R1(f) opinions of the committee members was also obtained and on the basis of the majority decision the 2nd respondent is appointed. It is pertinent to note that even the petitioner who was a management committee member has given her opinion as Ext.R1(I). In the light of



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the above, the contention of the petitioner that the appointment of the 2nd respondent as Headmistress was sole decision of the 1st respondent Manager cannot be accepted, and it is to be held that it was a decision taken out on the basis of the majority opinion of the management committee members. The Division Bench of this Court in **Unnikrishnan's** case cited supra has also categorically held that a member of the managing body who was working as teacher in the school cannot stake a claim the post of Headmaster of that school, and therefore the petitioner being a management committee member cannot claim for appointment to the post of Headmaster/Headmistress. Though the petitioner has relied on the decision of the Apex Court in **James Mathew's** case cited supra which held that it is the management of the minority institution who is to make appointment of Headmaster, the said decision has categorically held that there is absolutely no obligation for the minority institution to appoint the available senior qualified member of the same community, and since the appointment of the Headmaster depends upon the assessment of candidate's outlook, philosophy and ability to implement objects of the minority institution, even the members of the same community have to yield to right of management under Article 30(1) to establish and administer educational institutions, and further held that once the



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management of the minority educational institution makes a conscious choice of a qualified person to lead the institution either as a Headmaster/Principal, the Court cannot go into the merits of the choice or the rationality or propriety of the process of choice, and that in this regard the right under Article 30(1) is absolute.

In the light of the discussion as above no interference is called for on the appointment of the 2nd respondent as Headmistress and the consequential approval of the said appointment by the educational authorities. Accordingly the writ petition is dismissed.

**Sd/-
VIJU ABRAHAM
JUDGE**

sbk/-



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APPENDIX OF WP(C) 7713/2022

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE SENIORITY LIST AS ON 1.1.2021 PUBLISHED BY THE 1ST RESPONDENT ON 3.5.2021 |
| Exhibit P2 | TRUE COPY OF THE REPRESENTATION DATED 31.5.2021 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT |
| Exhibit P3 | TRUE COPY OF THE REPRESENTATION DATED 31.5.2021 FILED BY THE PETITIONER BEFORE THE HEADMASTER OF THE SCHOOL |
| Exhibit P4 | TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT NO 01/HM/2021 DATED 31.6.2021 WITH REGARD TO THE APPOINTMENT OF THE 2ND RESPONDENT |
| Exhibit P5 | TRUE COPY OF THE APPOINTMENT ORDER NO 02/HM/2021 DATED 1.6.2021 OF THE 2ND RESPONDENT ISSUED BY THE 1ST RESPONDENT MANAGER |
| Exhibit P5(A) | TRUE COPY OF THE APPOINTMENT ORDER NO 02/HM/2021 DATED 1.6.2021 OF THE 2ND RESPONDENT ISSUED BY THE 1ST RESPONDENT MANAGER |
| Exhibit P6 | TRUE COPY OF THE APPEAL DATED 1.6.2001 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT |
| Exhibit P7 | TRUE COPY OF THE PROCEEDINGS NO 03/HM/2021 DATED 12.6.2021 OF THE 1ST RESPONDENT |
| Exhibit P8 | TRUE COPY OF THE APPEAL DATED 12.6.2021 FILED BY THE 1ST RESPONDENT BEFORE THE 3RD RESPONDENT |
| Exhibit P9 | TRUE COPY OF THE ORDER NO D1/12383/2021 DATED 29.6.2021 ISSUED BY THE 3RD RESPONDENT |



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- Exhibit P10** TRUE COPY OF THE ORDER NO DDEKLM/10548/2021-B2/K.DIS DATED 20.8.2021 ISSUED BY THE 5TH RESPONDENT
- Exhibit P11** TRUE COPY OF THE ORDER NO B1/194200/2021 DATED 31.8.2021 ISSUED BY THE 4TH RESPONDENT
- Exhibit P12** TRUE COPY OF THE APPEAL DATED 5.7.2021 PREFERRED BY THE PETITIONER BEFORE THE 5TH RESPONDENT
- Exhibit P13** TRUE COPY OF THE ORDER NO D/114150/2021 DATED 20.9.2021 ISSUED BY THE 3RD RESPONDENT
- Exhibit P14** TRUE COPY OF THE AMENDMENT OF THE RULES PUBLISHED IN THE GAZETTE DATED 5.1.2021 AS PER NOTIFICATION GO (P) NO 1/2021/G.EDN DATED 5.1.2021
- Exhibit P15** TRUE COPY OF THE JUDGMENT IN OP(KAT) NO 184 OF 2019 DATED 27.1.2020 OF THIS HON'BLE COURT
- Exhibit P16** TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT DATED 17.6.2020 IN SLP (CIVIL) NO 12310/2020
- Exhibit P17** TRUE COPY OF THE REPLY STATEMENT FILED BY THE GOVERNMENT BEFORE THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL IN OA NO 441/2021
- Exhibit P18** TRUE COPY OF THE BY-LAW OF THE CORPORATE BODY

RESPONDENT EXHIBITS

- Exhibit R1A** True copy of the letter dated 17/5/2021 by the 1st respondent
- Exhibit R1B** True copy of the consent letter of Smt. Jameela dated 19/5/2021



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| Exhibit R1C | True copy of the consent letter of Sabeela dated 25/5/2021 |
| Exhibit R1D | True copy of the consent letter of Shyla dated 20/5/2021 |
| Exhibit R1E | True copy of the consent letter of Sheela dated 19/5/2021 |
| Exhibit R1F | True copy of the letter of petitioner dated 20/5/2021 |
| Exhibit R1G | True copy of the byelaw dated 12/3/2018 |
| Exhibit R1H | True copy of the proceedings of the under Secretary to government dated 5/3/2019 |
| Exhibit R1I | True copy of the judgment in W.P.(C) No.38056/2018 dated 25/3/2019 |
| Exhibit R1J | True copy of the judgment in W.P.(C) No. 19033/2019 dated 27/8/2019 |
| Exhibit R1K | True copy of the judgment in W.P.(C) No 31275/2019 dated 7/10/2020 |
| Exhibit R1L | True copy of the proceedings of the manager dated 1/6/2022 |
| Exhibit R1M | True copy of the test qualification certificates of 2nd respondent |

PETITIONER EXHIBITS

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| Ext.P19 | True copy of the Minutes dated 30-3-2021 and 28-7-2021 of the Managing Committee, obtained under the RTI Act. |
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RESPONDENT EXHIBITS

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| Exhibit R8 | True copy of the settlement deed bearing no 3368/1994 of Kottayam Sub Registry |
| Exhibit R2(a) | The true copy of the order dated 01.06.2022 of the 8th Respondent |



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Exhibit R2(b) The true copy of the details of the admissions made in the School issued by the Headmaster to the Public Information Officer attached to the office of the 3rd Respondent as per reference No.74/2012 dated 20.12.2012 under Right to Information Act

Exhibit R2(c) The true copy of the Reply No.A/1618/13 dated 27.05.2013 issued under Right to Information Act by the Public Information Officer attached to the office of the 3rd Respondent to Sri.M.A.Gafoor

Exhibit R2(d) The true copy of the order No.VA1/293849/2021/DGE dated 29.12.2022 issued by the 6th Respondent

Exhibit R2(e) The true copy of the Reply No.A1971/15 dated 27.07.2015 issued by the 3rd Respondent to Sri. Abdul Salam

PETITIONER EXHIBITS

Exhibit P20 True copy of the Order No. D1/1131/2020K.Dis. dated 18-5-2020 issued by the Asst. Educational Officer, Chathannoor.

Exhibit P21 True copy of the Order No. SC(1)/3061/2019/DGE dated 26-3-2021 issued by the Director of Public Instructions.