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C.A.No. 6553 OF 2000

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6553 OF 2000@@
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Sumathykutty Amma .. Appellant

Vs.

State of Kerala & Ors. .. Respondents

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The vacancy to the post of Headmistress in the school run by respondent No. 4 arose on 1.6.1995 and on that date neither the appellant nor respondent No. 3 were entitled to be appointed as Headmistress as neither of them possessed the requisite qualification. This aspect has been considered in detail by the Government as follows:

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"On going through the details of the case it is seen that Smt. Sumathykutty Amma was appointed in the School on 30.6.1967 whereas Smt. B. Ushakumar was appointed only on 6.6.1994. Thus it can be seen that she has less than 2 years service at the time of appointment as Headmistress and one year service only at the time of occurrence of vacancy of headmistress. She has not fulfilled one of the major condition under Rule 45 chapter XIA of KER, that is, if there is a graduate teacher with B.Ed. or other equivalent qualification and who has got at least five years experience in teaching after graduation, he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the seniormost under graduate teacher.

Smt. Ushakumar B.S. is a graduate having B.Ed. degree. She has passed the Account Test (Lower). She has continuous service from 6.6.1994. In the case of Smt. R. Sumathykutty Amma, she has continuous service from 30.6.1967. She has completed 50 years of age, her ..2/-

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date of birth, being on 24.4.1946. Though Smt. Ushakumari has acquired B.Sc. B.Ed. she has not obtained the required experience and service as stipulated in Rule 45, Chapter XIV-AKER. Though the Director of Public Instruction has issued a direction on 15.2.1996 to appoint teacher having educational qualification and test qualification the importance of service and experience mentioned in Rule 45 Chapter XIV KER have been ignored. Hence this direction dated 15.2.1996 to the Manager, DVUPS is not in order."

.SP2

On that basis the Government found that though neither the Petitioner nor the Respondent was eligible to be appointed, the appellant having completed 50 years of age gets certain relaxations under the relevant rules and, therefore, she would become eligible to be appointed as Headmistress and thereby ordered so. That order was challenged before the High Court in a writ petition by respondent No.3. The High Court dismissed the writ petition. The matter was then carried in writ appeal and the Division Bench upset the view of the Single Judge and set aside the order made by the Government. Thereafter, the matter is carried to this Court by way of an appeal by special leave.

In somewhat identical circumstances, this Court in C.A. No. 5030-5031/1993, held that the eligibility to be considered is that if on the date of filling up of the post none of them was duly qualified and if a teacher

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who having completed 50 years of age, was not required to pass the requisite tests was available, she being the senior most teacher, could be appointed and that is the principle adopted by the Government in the present case.

The High Court, however, proceeded on a wrong premise by stating that the appellant was not qualified and she became qualified on attaining the age of 50 years on 24.4.1996. What was relevant was that by the time when that post was to be filled up she had the necessary qualification and she could have been appointed. If this aspect had been borne in mind, the High Court would not have committed the error of allowing the writ appeal. We, therefore, set aside the order made by the High Court and restore the order made by the Government.

However, we have to notice one aspect of the matter that during the pendency of these proceedings and pursuant to the interim order granted by this Court, the appellant continued as Headmistress till she retired in April, 2001 and it is now brought to our notice that respondent No.3 has now been appointed as the

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Headmistress of the school. As a consequence of this judgment, the terminal benefits due to the appellant will be calculated on the basis that she retired as Headmistress.

The appeal is allowed accordingly.

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[S. RAJENDRA BABU]@@
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[P. VENKATARAMA REDDI]@@
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February 12, 2002.

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ITEM NO.104 COURT NO.5 SECTION-XIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.6553/2000

Sumathykutty Amma .. Appellant

Vs.

State of Kerala & Ors. .. Respondents

DATE :12.2.2002 : This/These matter (s) was/were
called on for hearing today

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For Appellant (s) : Mr. B.V. Deepak, Adv.
Mr. Dilip Pillai, Adv.
M/s T.T.K. Deepak & Co.

For Respondent (s) : Mr. Ramesh Babu M.R., Adv.
Mr. K.R. Sasiprabhu, Adv.

UPON being mentioned the Court made the following
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Mr. B.V. Deepak, learned counsel started his
arguments at 11.30 a.m. and concluded at 11.45 a.m.
The appeal is allowed in terms of the signed order.

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(Meenu Sethi)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file