



2025:KER:61265

WA NO. 1878 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 18<sup>TH</sup> DAY OF AUGUST 2025 / 27TH SRAVANA, 1947

WA NO. 1878 OF 2025

AGAINST THE JUDGMENT DATED 16.07.2025 IN W.P.(C)

NO.7178 OF 2019 OF HIGH COURT OF KERALA

APPELLANT/4TH RESPONDENT:

ADDL.R4.SMT.SINDHU.S.WARRIER  
H.S.A(S.S) (UNAPPROVED) UPSA RHS, RAMANATTUKARA,  
MALAPPURAM 673 633  
(IS IMPEADED AS PER ORDER DATED 04.09.2019 IN I.A NO.2  
OF 19 IN W.P.(C) 7178 OF 19.)

BY ADV DR.GEORGE ABRAHAM

RESPONDENTS/PETITIONERS AND RESPONDENTS 1-3:

- 1 SREEDHANIA.C.M.,  
AGED 33 YEARS  
U.P.S.A, RAMANATTUKARA HIGHER SECONDARY SCHOOL,  
VIDIARANGODI P.O, RAMANATTUKARA, PIN-673633,  
RESIDING AT MADATHIL HOUSE, AZHINHILAM P.O,  
FEROKE COLLEGE VIA, KOZHIKODE.
- 2 THE STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,  
GENERAL EDUCATION DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.



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3 THE DISTRICT EDUCATIONAL OFFICER,  
MALAPPURAM-676101., PIN - 673101

4 THE MANAGER,  
RAMANATTUKARA HIGHER SECONDARY SCHOOL,  
RAMANATTUKARA, MALAPPURAM DISTRICT,  
PIN-673633.

BY ADVS.  
SHRI.KALEESWARAM RAJ  
KUM.THULASI K. RAJ  
SMT.NISHA BOSE, SR.GP

THIS WRIT APPEAL WAS FINALLY HEARD ON 04.08.2025, THE  
COURT ON 18.8.2025 DELIVERED THE FOLLOWING:



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**"CR"**

**JUDGMENT**

**Muralee Krishna, J.**

The additional 4<sup>th</sup> respondent in W.P.(C)No.7178 of 2019 filed this writ appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 16.07.2025 passed by the learned Single Judge in that writ petition.

2. By Ext.P1 order dated 01.06.2016, the 1<sup>st</sup> respondent-writ petitioner was appointed as U.P.S.A., in the school managed by the 4<sup>th</sup> respondent, with effect from the date of that order. Approval to that appointment was not given by the Educational Department due to the pendency of the writ petitions pertaining to the appointment of protected teachers in the ratio 1:1, before this Court. On 10.07.2018, 3 posts of H.S.A, such as H.S.A (Social Science), H.S.A (Physical Science) and H.S.A (English) were also sanctioned to the School, vide Ext.P8 staff fixation order. The 1<sup>st</sup> respondent contends that as on the date of occurrence of the vacancy of H.S.A (Social Science), i.e., on 10.07.2018, she was the only U.P.S.A., qualified to be promoted and appointed as H.S.A (Social Science). She had the K.TET qualification and also all other



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qualifications for getting promotion as H.S.A. She therefore claimed that she was an eligible claimant under Rule 43 of Chapter XIV-A of Kerala Education Rules, 1959, ('KER' in short). The 1<sup>st</sup> respondent submitted Ext.P9 representation dated 21.06.2018 to the Manager for getting promotion as H.S.A (Social Science). Since the 4<sup>th</sup> respondent Manager, did not give a positive response, the 1<sup>st</sup> respondent submitted Ext.P11 representation dated 10.01.2019 to the 3<sup>rd</sup> respondent District Educational Officer. Thereafter, the 1<sup>st</sup> respondent approached this Court with the writ petition filed under Article 226 of the Constitution of India seeking a writ of mandamus commanding the respondents therein to fill up the vacancy of H.S.A (Social Science) sanctioned as per Ext.P8 staff fixation order dated 10.07.2018, by promoting the 1<sup>st</sup> respondent forthwith and to issue a writ of mandamus restraining the District Educational Officer from approving the appointment of H.S.A (Social Science), if any person, other than the 1<sup>st</sup> respondent is appointed by the Manager.

3. During the pendency of the writ petition, the Manager appointed the appellant-additional 4<sup>th</sup> respondent as H.S.A (Social



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Science) and hence the 1<sup>st</sup> respondent impleaded her as an additional respondent in the writ petition.

4. The 3<sup>rd</sup> respondent District Educational Officer filed a counter affidavit dated 04.05.2021 in the writ petition, opposing the reliefs sought for and producing therewith Ext.R2(a) document. The 4<sup>th</sup> respondent Manager filed a counter affidavit dated 28.07.2019, opposing the reliefs sought for in the writ petition and producing therewith Ext.R3(a) document. The appellant/additional 4<sup>th</sup> respondent also filed a counter affidavit dated 09.06.2025, opposing the reliefs sought in the writ petition and producing therewith Exts.R4(a) to R4(e) documents.

5. After hearing the learned counsel on both sides and on perusing the materials on record, the learned Single Judge disposed of the writ petition as per the impugned judgment dated 16.07.2025, directing respondents 3 and 4 herein to promote the 1<sup>st</sup> respondent-writ petitioner as H.S.A (Social Science) with effect from 03.06.2019, the date on which the appellant was promoted as H.S.A. Consequently, the appointment of the appellant as H.S.A. with effect from that date is ordered to be set aside.



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Respondents 2 to 4 were directed to approve and regularise the service of the 1<sup>st</sup> respondent-writ petitioner with effect from 03.06.2019 to 20.12.2021 as H.S.A. The appellant was directed to be treated to have continued as U.P.S.A., till 20.12.2021. It is challenging that judgment the appellant-additional 4<sup>th</sup> respondent is now before this Court with this writ appeal.

6. Heard the learned counsel for the appellant, the learned Senior Government Pleader and the learned counsel for the 1<sup>st</sup> respondent-writ petitioner.

7. The learned counsel for the appellant submitted that the short question to be considered in this writ appeal is as to whether it is the appellant or the 1<sup>st</sup> respondent, who is qualified to be promoted as H.S.A from the post of U.P.S.A. The learned counsel would point out that based on the amendment made to Rule 7 of Chapter XXI of KER, additional posts, irrespective of category, shall be filled up by the Manager by appointing teachers from the list of protected teachers in the Teachers Bank. Therefore, the Manager could not effect promotion from the lower category by virtue of the amendment which was brought into force



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with effect from 14.12.2016. Later, the Government, by a Circular dated 08.03.2019, clarified that the appointment of protected teachers shall be made subject to Rule 43, 51A and 51B of Chapter XIV-A of KER. Therefore, it can only be considered that the vacancy arose for promotion from U.P.S.A., other than the protected teachers, only from the date of that Circular. The appellant passed the K-TET examination on 13.12.2018, and she, being the senior, has to be promoted as H.S.A (Social Science) with effect from 03.06.2019, the date of re-opening of the school. The benefit of Rule 43 of Chapter XIV-A of KER will be subject to the clarificatory order of the Government. Therefore, the finding of the learned Single Judge that the 1<sup>st</sup> respondent is to be offered appointment with effect from 03.06.2019 is illegal. The learned counsel vehemently submitted that by Ext.R4(c) Government Order dated 30.10.2017, the teachers who were appointed from the academic year 2012-2013 to 2017-2018 were given exemption from passing K-TET examination, till the academic year 2019-2020. The appellant passed the K-TET examination much prior to the academic year 2019-2020. Therefore, the appellant is



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entitled for promotion as H.S.A (Social Science) on the strength of Ext.R4(c) exemption order granted by the Government, even if the date of arising of vacancy is taken as 10.07.2018.

8. On the other hand, the learned counsel for the 1<sup>st</sup> respondent-writ petitioner submitted that the exemption granted for obtaining qualification of K-TET by Ext.R4(c) Government Order is applicable only for continuing in the post as U.P.S.A. and not for promotion. For promotion, the qualification as prescribed under Rule 43 of Chapter XIV-A of KER has to be obtained by the appellant. As on the date of arising of vacancy, i.e., on 10.07.2018, the appellant was not qualified K-TET examination and hence it is the 1<sup>st</sup> respondent who was eligible to be promoted as H.S.A. The learned Senior Government Pleader also supported this argument of the learned counsel for the 1<sup>st</sup> respondent and submitted that the exemption in Ext.R4(c) Government Order is only to continue in that post, and it is intended only to protect the teachers in a particular post and not for promotion. Since, as on the date of arising of vacancy by Ext.P8 staff fixation order, the protected teachers did not approach, there is no necessity to go





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back to that stage. As on the date of arising of the vacancy, by virtue of the amendment to Rule 7 of Chapter XXI of KER, it is the 1<sup>st</sup> respondent who is qualified to be appointed as H.S.A, and hence no interference is needed to the impugned judgment of the learned Single Judge.

9. The appellant, as well as the 1<sup>st</sup> respondent, were appointed in the school as U.P.S.A. on the same date. So, based on the date of appointment, their seniority cannot be fixed. The Date of Birth of the appellant is 03.05.1978, whereas that of the 1<sup>st</sup> respondent is 30.05.1984. Therefore, as per Rule 37(2) of Chapter XIV-A of KER, the appellant is entitled to claim seniority over the 1<sup>st</sup> respondent. The vacancy of H.S.A (Social Science) arose in the school on 10.07.2018 due to Ext.P8 staff fixation order. As per amendment brought to Rule 7(2) of Chapter XXI of KER, which came into force with effect from 29.01.2016, the additional post, irrespective of category, on staff fixation shall be filled up by the Manager by appointing teachers from among the list of protected teachers in the Teachers Bank, with the permission of the Deputy Director (Education) concerned and by



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appointing teachers otherwise than from the Teachers Bank in the ratio 1:1 respectively.

10. Going by the above provision, it is clear that when an additional vacancy of H.S.A. arose as per Ext.P8 order, the first option ought to have been given by the Manager to the protected teachers. By a Circular dated 08.03.2019, the Government issued the following clarification to Rule 7(2) of Chapter XXI of KER, which reads as under;

"കെ.ഇ.ആർ അധ്യായം XXI ചട്ടം 7(2) പ്രകാരം 29.01.2016 മുതലുള്ള അധിക തസ്തികകളിലെ നിയമനങ്ങൾക്ക് 1:1 എന്ന അനുപാതം പാലിക്കേണ്ടതാണ്. ഇതിൽ ആദ്യത്തെ ഒഴിവ് സംരക്ഷിത അധ്യാപകനുവേണ്ടി നീക്കിവെക്കണം. കെ.ഇ.ആർ അധ്യായം XIV A, ചട്ടം 43, 51A, 51B എന്നിവ പ്രകാരമുള്ള മുൻഗണനാവകാശികളുണ്ടെങ്കിൽ രാജി, മരണം റിട്ടയർമെന്റ് ട്രാൻസ്ഫർ പ്രമോഷൻ തുടങ്ങിയ വ്യവസ്ഥാപിത ഒഴിവുകളിൽ നിയമിക്കപ്പെട്ടതിന് ശേഷം മാത്രമേ അധിക തസ്തികകളിൽ നിയമനം നടത്താവൂ. ഇപ്രകാരം നിയമനം നടത്തിയതിന് ശേഷം വരുന്ന അധിക തസ്തികകളിലെ നിയമനങ്ങളിൽ മേൽ സൂചിപ്പിച്ച 1:1 അനുപാതം പാലിക്കേണ്ടതാണ്. അധിക തസ്തികയിൽ ചട്ടം 43 അവകാശിയെയാണ് നിയമിച്ചതെങ്കിൽ പ്രസ്തുത സ്ഥാനക്കയറ്റം വഴിയുണ്ടായ ഒഴിവിൽ സംരക്ഷിത അധ്യാപകനെ നിയമിക്കേണ്ടതില്ല."

[Emphasis Supplied]

11. As the above clarification dated 08.03.2019, while giving posting in the ratio 1:1 under Rule 7(2) of Chapter XXI of KER, the first preference has to be given to the claimants under Rule 43, 51A and 51B of Chapter XIV-A of KER and thereafter only



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the ratio 1:1 has to be followed. If a claimant under Rule 43 is given promotion, then the arising vacancy need not be filled up from the protected teachers.

12. Rule 43 of Chapter XIV-A of KER read thus;

"Subject to rules 44 and 45 and considerations of efficiency and any general order that may be issued by the Government, vacancies in any higher grade of pay shall be filled up by promotion of qualified hands in the lower grade according to seniority, if such hands are available:

Provided that in the case of promotion to the post of High School Assistant (Subject), the minimum subject requirements alone need be satisfied, to safeguard the interests of trained graduates who are awaiting promotions as High School Assistants.

Provided further that where a Headmaster, Headmistress, Vice-Principal or a teacher who has been promoted under this rule faces retrenchment for want of vacancy, he shall be reverted to the category of post from which he has been promoted provided he is not eligible for protection in the retrenched post as per the orders issued by the Government from time to time.

Note:-(1) A teacher in a lower grade of pay in one category of post is eligible for promotion to a higher grade of pay in another category of post provided:

(i) he has the prescribed qualifications; and

(ii) there is no teacher with the prescribed qualifications in



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the lower grade of pay of the category of post to which promotions are to be made.

Note:-(2) Promotion under this rule shall be made from persons possessing the prescribed qualifications at the time of occurrence of vacancy.” [Emphasis Supplied]

13. The appellant, as well as the 1<sup>st</sup> respondent, claims promotion to the post of H.S.A (Social Science) based on the above Rule. As per Note (1) to Rule 43, 2<sup>nd</sup> proviso, a teacher in a lower grade of pay in one category of post is eligible for promotion to a higher grade of pay in another category of post, provided only if he or she has the prescribed qualifications. As rightly argued by the learned counsel for the 1<sup>st</sup> respondent-writ petitioner and the learned Senior Government Pleader, the appellant herein, on the date of arising of the vacancy of H.S.A (Social Science) in the school based on Ext.P8 staff fixation order, had not acquired the qualification of K-TET. The appellant passed K-TET examination on 13.12.2018. Whereas the 1<sup>st</sup> respondent had acquired that qualification on 13.11.2013. In view of Note (1) to Rule 43 of Chapter XIV-A of KER, the exemption granted by the Government by Ext.R4(c) order can only be taken as one for continuing in the post and not for promotion. In such



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circumstances, it is only to be held that, as on the date of the arising of the vacancy, it is the 1<sup>st</sup> respondent who was qualified to be promoted as H.S.A (Social Science) and not the appellant herein. It is not the date on which the amendment is notified, but the date of arising of the vacancy that has to be considered, when the rule was amended with retrospective effect, on a date prior to the date of arising of the vacancy.

In such circumstances, we find no reason to interfere with the impugned judgment of the learned Single Judge. In the result, this writ appeal stands dismissed.

Sd/-

**ANIL K.NARENDRA, JUDGE**

Sd/-

**MURALEE KRISHNA S., JUDGE**

MSA



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APPENDIX OF WA 1878/2025

PETITIONER ANNEXURES

Annexure A1

A TRUE COPY OF THE ELIGIBILITY  
CERTIFICATE DATED 23/03/2019