



2023/KER/3155

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V  
TUESDAY, THE 10<sup>TH</sup> DAY OF JANUARY 2023 / 20TH Pousha, 1944

WP(C) NO. 20757 OF 2022

**PETITIONER:**

P.PRASANNA  
AGED 53 YEARS  
D/O. BALAN NAMBIAR, HEADMISTRESS,  
SANTHI NIKETHAN HIGHER SECONDARY SCHOOL,  
THIRUVALLUR, KOZHIKODE-673541, RESIDING AT  
MULLANKUNNUMMAL HOUSE, ERAVATTUR, P.O.PERAMBRA,  
KOZHIKODE-673541.

BY ADV R.K.MURALIDHARAN

**RESPONDENTS:**

- 1 THE DIRECTOR OF GENERAL EDUCATION (HIGHER  
SECONDARY SECTION)  
HOUSING BOARD BUILDING, SANTHI NAGAR, THYCAUD,  
THIRUVANANTHAPURAM-695001.
- 2 JOINT DIRECTOR (ACADEMIC),  
OFFICE OF THE DIRECTOR OF GENERAL EDUCATION  
(HIGHER SECONDARY SECTION), HOUSING BOARD  
BUILDING, SANTHI NAGAR, THYCAUD,  
THIRUVANANTHAPURAM-695001.
- 3 THE REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY  
EDUCATION,  
KOZHIKODE, KOZHIKODE DISTRICT-673004.
- 4 THE MANAGER,  
SANTHI NIKETHAN HIGHER SECONDARY SCHOOL,  
THIRUVALLUR, KOZHIKODE-673541.



5 PRASEEDA KODATHIL,  
HSST (MATHS), SANTI NIKETHAN HIGHER SECONDARY  
SCHOOL, THIRUVALLUR, KOZHIKODE-673541.

BY ADVS.  
V.A.MUHAMMED  
M.SAJJAD

SMT NISHA BOSE, SR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 10.01.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



**"CR"**

**JUDGMENT**

The petitioner states that she entered service as High School Assistant (HSA) at the Santhi Nikethan Higher Secondary School, Thiruvallur. Being duly qualified, she was promoted to the post of Headmistress with effect from 01.04.2020. While so, the vacancy to the post of Principal arose in the school with effect from 01.06.2021. The petitioner asserts that there being no qualified Higher Secondary School teacher (HSST) qualified for promotion, she is entitled to be appointed as Principal. However, overlooking the provisions of Chapter XXXII Rule 4(1) of the KER, the 4th respondent appointed the 5th respondent and the 3rd respondent proceeded to grant approval to the appointment as Teacher-in-Charge by Exhibit P1 order. Challenging Ext.P1 order, the petitioner approached the 1st respondent, and pursuant to orders issued by this Court, Exhibit P4 order was issued rejecting the challenge raised by the petitioner. While issuing Exhibit P4 order, the 1st respondent proceeded to hold that there is no post of HSST Malayalam in the Higher Secondary Section, and as the Principal has to take eight periods, a supernumerary



post had to be created, which would entail additional financial burden to the Government. It is in the afore circumstances that this writ petition is filed seeking the following reliefs:

i) issue a writ of certiorari or any other appropriate writ, order or direction, quashing Ext.P1 order issued by the 2nd respondent dated 30.06.2021 and Ext.P4 order issued by the 1st respondent dated 08.06.2022 And;

ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 3rd respondent to appoint the petitioner as Principal of Santhi Nikethan Higher Secondary School, Thiruvallur, with effect from 01.06.2021 with all consequential benefits;

2. Sri. R.K. Muralidharan, the learned counsel appearing for the petitioner, submits that Ext.P4 order issued by the 1st respondent cannot be sustained under law. According to the learned counsel, statutory rule prescribes that the appointment shall be either from HSST or from qualified Headmasters of aided schools under the same educational agency, and preference is to the HSSTs and Headmistress in the ratio 2:1. The learned counsel contends that the petitioner is eligible to be considered to be appointed as Principal especially since there are no qualified HSSTs available. The learned counsel contends that the eligibility of the petitioner under Rule 4 of Chapter XXXII cannot be frustrated



merely for the reason that there are no posts available of HSST in the Higher Secondary Section. The learned counsel would then refer to the law laid down by the Division Bench of this Court in **Thomas K.L v. State of Kerala and Others** [2013 (4) KLT 257] to substantiate his contention. The learned counsel would urge that the law laid down in **Thomas** (supra) has been consistently followed by this Court and reliance is placed on the judgments rendered by the Division Bench in judgments dated 31.10.2019 in Writ Appeal No.957 of 2016, judgment dated 15.03.2021 in Writ Appeal No.2373 of 2019, judgment dated 06.04.2018 in Writ Appeal No.1597 of 2017 and by a learned Single Judge in **Jayaraj V.P. and Another v State of Kerala and Others** (2016 (2) KLT 200).

3. In response, it is submitted by the learned Government Pleader that Ext.P4 order was issued, taking note of the fact that there is no post of HSST(Malayalam) in the Higher Secondary Section of the School. In that view of the matter, as the Principal has to take eight periods, it would be necessary to create a supernumerary post. This would entail an additional financial burden to the Government. The learned Government Pleader would refer to the observations made by a Division Bench of this Court in the judgment dated 04.12.2018 in Writ Appeal



No.2341 of 2018, and it is submitted that while upholding the findings of the learned Single Judge, it was held that the Government was right in rejecting approval to the appointment of the teacher concerned. According to the learned counsel, the observations made in Writ Appeal No.2341 of 2018 are more apt to the facts and circumstances of the instant case.

4. I have considered the submissions advanced, and I have gone through the materials on record. I find from Ext.P4 that two reasons have been afforded to decline the approval of the petitioner as Principal of the Santhi Nikethan Higher Secondary School. The 1st reason is that the Principal will have to take eight periods, and as there is no post of HSST Malayalam, the subject requirement will not be satisfied. Next is that the creation of supernumerary posts will create an additional financial burden for the Government. The statutory rule prescribes that the method of appointment shall be either from the HSST or from qualified Headmasters of aided Schools under the same educational agency. Preference at the first instance is to the HSST's and then to the H.M. in the ratio of 2:1. The petitioner, who is qualified to be appointed as Principal, is eligible to be so considered, especially since there are no qualified HSST's available. The petitioner's eligibility under the statutory rule cannot be frustrated merely



for the reason that there are no posts available of HSST in the Higher Secondary section.

5. I find that both these issues were considered by the Division Bench of this Court in **Thomas** (supra), wherein after considering the facts and circumstances, it was held as follows in paragraphs Nos. 5 to 11.

5. The primary contention of the appellant is that the definition of "Principal" contained in Rule 1(f) of Chap.32 KER makes it abundantly clear that the Principal acts as the academic and administrative head of the Higher Secondary School. On the strength of the above definition categorizing the Principal as the academic head of the school and the further stipulation in G.O. (MS). No. 43/2005/G.Edn. Dated 11.02.2005 and G.O.(M.S.) No. 338/2003/G. Edn. Dated 16.12.2003 that a Principal is to carry on teaching duties; clearly demonstrates that a person who is not qualified as a Higher Secondary School Teacher cannot be appointed to the post of Principal of a Higher Secondary School, is the contention. The appellant also has an alternate contention with reference to Exhibit P6 produced in W.P.(C). No. 24638 of 2010, from which W. A. No. 59 of 2013 arises, which contemplates the creation of a supernumerary post of Higher Secondary School Teacher to ensure that the junior-most Higher Secondary School Teacher is not thrown out due to shortage of teaching periods; consequent on a Headmaster turned Principal taking charge and handles 16 hours teaching periods. The submission of the appellant is that while a Headmaster of a High School is appointed as Principal, it postulates creation of a supernumerary post, which burdens the State with additional financial liability while a Higher Secondary School Assistant occupying the seat of Principal would continue his teaching duties, thus requiring no additional financial liability to the State.

6. At the outset, we have to notice that financial liability to the State is not a reigning consideration of this Court in interpreting statutory rules



and notifications. The State, in its wisdom, has thought it fit that the Headmasters of High Schools also should be given a limited opportunity to occupy the seat of a Principal of a Higher Secondary School and has deemed it fit to issue notifications protecting any displacement of teachers in the Higher Secondary Schools by virtue of such benefit given to the Headmasters of High School section, We are not financial watchdogs of the State and cannot at all, under Article 226 of the Constitution, meddle with the wisdom of the State and import our own concepts of financial viability. The State also cannot contend financial exigencies when its own rules and notifications intend to confer a benefit on a particular category of teachers

7. Taking note of the contention of the respondents on the procedure of selection, we do not find any illegality in extending the scope or the zone of consideration of selection to the post of Principal in the Higher Secondary School. The explanation put forward by the Corporate Management, in the context, is very reasonable. We cannot also shut our eyes to the fact that confining the selection to the Higher Secondary School Teachers alone would have triggered a spate of litigations against the Corporate Management for compliance of the mandate of the ratio of prescription of 2.1, in the appointment to the post of Principal of Higher Secondary School. Having notified the post as available for only Higher Secondary School Teachers, on noticing the mandate in the statutory rules and the turn of Headmasters of High Schools to be considered for the post, the management rightly expanded the zone of consideration to bring in Headmasters of High Schools also. The continuance of the process of selection by interviewing both the Higher School Teachers as also Headmasters of High Schools also cannot be faulted, since in the event of none among the Headmasters being qualified, the management would have had the option to select a person from the category of Higher Secondary School Assistants itself.

8. What remains is the contention regarding the lack of qualification of the 6th respondent. We extract herewith the method of appointment of Principal as provided under Rule 4 and the qualifications provided under Rule 6: "4. Method of Appointment:- Appointment to the various categories specified in Column (2) of the Table below shall be made by



the method of appointment specified against Category each in column (3) thereof.-

Category - Principal

Method of appointment - By promotion from category 2 under the respective educational agency

OR

(2) By transfer from qualified headmasters of Aided High Schools under the respective educational agency

Note:- (i) [xxxxxx                      xxxxxxxxxxxx                      xxxxxxxx]

(ii) [xxxx                      xxxxxxxxxxxx                      xxxxxxxxxxxx]

(iii) The post shall be filled by the methods specified in items (i) and (ii) above in the ratio 2:1. If qualified candidates are not available for appointment to a vacancy by any one of the methods specified above such vacancies shall be filled up by the other method

6. Qualifications - No persons shall be eligible for appointment to the category in column (2) in the table below under the method specified in column (3) unless he possess the qualifications prescribed in the corresponding entry in column (4) thereof.-

Category - Principal

Methods of Appointment - By Promotion

Qualifications

(1) Master's Degree with not less than 50% marks from any Universities in Kerala or a qualification recognized as equivalent thereto by any University in Kerala

(2) B.Ed Degree from any Universities in Kerala or a qualification recognised as equivalent thereto by any University in Kerala

(3) Minimum approved teaching experience of 12 years at Higher Secondary Level under the same Educational Agency

Note:- 1. In the absence of persons having qualifications as specified above, approved teaching experience at High School/Upper Primary/ Lower Primary Schools under the same Educational Agency shall be considered

2. Such experience shall be reckoned only for qualifying Service and shall not be reckoned for Seniority.



3. Such persons must possess a minimum Service of Six years as Higher Secondary School Teacher (Senior/Junior)

By transfer

(1) Master's Degree with not less than 50% marks from any of the Universities in Kerala or a Qualification recognised as equivalent thereto by any University in Kerala

(2) BEd Degree from any of the Universities in Kerala or qualification recognised as equivalent thereto by any University in Kerala

(3) Minimum approved teaching experience of 12 years under the same Educational Agency

9. The method of appointment postulates two sources from which the Principal of a Higher Secondary School can be appointed. The first source is by promotion from Higher Secondary School Teacher and the second is by transfer from qualified Headmasters of aided High Schools, both under the respective educational agency. Note (iii) also provides that the filling up of the post of Principal by the methods provided should be in the ratio of 2:1, i.e. when two incumbents are appointed from Higher Secondary School Teachers, the next ought to be from qualified Headmasters of High Schools. The qualifications prescribed in the two methods as noticed above, also show a subtle distinction. When selection and appointment is by promotion from Higher Secondary School Teachers, what is required is an approved teaching experience of 12 years at Higher Secondary level in the same educational agency obviously as a Higher Secondary School Teacher. In the case of transfer, what is required is approved teaching experience of 12 years in the same educational agency, meaning that the teaching experience can also be at the High School Level. The educational qualifications are similar in both the methods, being a Master's Degree and a B.Ed. Degree. We notice that while the qualification for Higher Secondary School Teachers specifically provide a Master's and B.Ed. Degree in the "concerned subject", the absence of the words "concerned subject" in the qualifications prescribed for Principal amply demonstrates that the same is not a mandate as far as filling up the post of Principal is concerned. Definitely a Higher Secondary School Teacher promoted to the post of Principal would have Master's and B.Ed. Degree in the same subject. There being no such stipulation in the qualifications for the



Principal, a Headmaster of a High School would not be required to have a Master's and B.Ed. Degree in the very same subject. The absence of the words at the 'Higher Secondary level in the stipulation of experience of Headmasters and the absence of the word 'concerned' in the qualification is not an inadvertent omission but is with definite intent and purpose, ensuring the benefit at least in one of the two turns to Headmasters of High Schools. If the qualification of a Higher Secondary School Teacher were to be insisted for filling up the post of Principal of a Higher Secondary School, then the two methods of appointment prescribed and the mandate of the ratio of 2:1 would be rendered ineffective,

10. The further contention based on the notifications cited above that a Principal would be necessarily required to carry on the teaching duties, which a Headmaster of a High School would be disabled from, in the event of the candidate being not qualified to be appointed as a Higher Secondary School Teacher, also does not impress us, since such an interpretation would again render otiose the two methods of appointment clearly mentioned in the Rules. For one, the stipulation of a Principal being the academic head, does not necessarily contemplate teaching duties on the incumbent, since the academic matters in a school is not confined to teaching alone. In any event, the prescription of 16 hours teaching duty to a Principal is not as per the Rules and is as per the notifications cited above. The prescription in a notification cannot render ineffective or whittle down a statutory rule. It is also pertinent that the Government has thought it fit to bring out Exhibit P6 notification, which provides for retention of the junior-most teacher in a subject, in a supernumerary post, when a Headmaster, by transfer, is appointed as Principal. Such a prescription in a notification is intended with the object of the smooth implementation of the provisions of the Rules and are strictly in order.

11. In the instant case, the 6th respondent is a Master's Degree holder and B.Ed, having teaching experience of 12 years in the High School Level under the Corporate Management. The 6th respondent amply satisfies the qualification provided for appointment as a Principal, by transfer, as provided under Rule 6 of Chap.32 KER. The order of the educational authority holding that the 6th respondent would not be



qualified to take classes for higher secondary students is of no consequence, since the Government has provided, by virtue of notification, that the junior-most teacher would be retained in a supernumerary post so as to give the benefit to Headmasters of High Schools to occupy the post of Principal on the every third vacancy arising thereat.

6. I find that the observations made in **Thomas** (supra) have been consistently followed by subsequent Division Benches in the judgment dated 31.10.2019 in Writ Appeal No.957 of 2016, judgment dated 15.03.2021 in Writ Appeal No.2373 of 2019 and judgment dated 06.04.2018 in Writ Appeal No.1597 of 2017

7. However, I find that a discordant note was struck by a Division Bench of this Court in Writ Appeal No.2341 of 2018, wherein it was observed that in the absence of subject requirement, the Government was right in rejecting approval to the appointment of the teacher therein. However, I find that in the said case, the school to which the petitioner therein was transferred, there was already an HSST (Economics) who was working. At the time of consideration of the writ petition, the teacher had retired as well. The binding judgment in **Thomas** (Supra), followed by other Division Benches, was also not brought to the notice of this Court. Furthermore, that was a case wherein the Government had directed the RDD to take immediate action for the payment of salary and other



allowances last drawn as Headmaster to the teacher concerned. As a matter of fact, the Division Bench in **Thomas** (supra), after considering the statutory provisions, had held that if the qualification of a Higher Secondary School teacher were to be insisted for filling up the post of Principal of a Higher Secondary School, then the two methods of appointment, prescribed and the mandate of the ratio of 2:1 would be rendered effective.

8. In the instant case, I find that the learned Government Pleader has no response to the contention of the petitioner that as per Chapter XXXII Rule 4, if the qualification of Higher Secondary School teacher were to be insisted for filling up of the post of Principal of Higher Secondary School, then the two methods of appointment prescribed at the mandate of the ratio of 2:1 would be frustrated. In that view of the matter, I am inclined to follow the law laid down in **Thomas** (supra) as the principles laid down therein squarely apply to the facts of the instant case. Furthermore, it has been held by this Court that financial liability to the State is not a reigning consideration while interpreting statutory rules and notifications. It has also been held that the State cannot rely on financial exigencies when its own rules and notifications intend to confer a benefit



on a particular category of teachers.

Resultantly, this writ petition will stand allowed. Ext.P1 issued by the 3rd respondent and Ext.P4 issued by the 1st respondent will stand quashed. There will be a direction to the 3rd respondent to appoint the petitioner as Principal of Santhi Nikethan Higher Secondary School with effect from 01.06.2021, and she shall also be entitled to all eligible benefits.

Sd/-  
**RAJA VIJAYARAGHAVAN V,  
JUDGE**

IAP



**APPENDIX OF WP(C) 20757/2022**

PETITIONER'S EXHIBITS:

Exhibit P1                    A TRUE COPY OF THE ORDER NO.A2/2285/2021  
OF THE 3RD RESPONDENT DATED 30.6.2021.

Exhibit P2                    A TRUE COPY OF THE JUDGMENT IN WP(C)  
NO.18229/2021 DATED 15.12.2021.

Exhibit P3                    A TRUE COPY OF THE ARGUMENT NOTE  
SUBMITTED BEFORE THE 2ND RESPONDENT  
DATED 10.3.2022.

Exhibit P4                    A TRUE COPY OF THE ORDER  
NO.ADC.B1/226248/2022/HSE DATED 8.6.2022  
ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS'  
EXHIBITS:                    NIL