

(2008) 05 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 16693, 27669 and 29869 of 2005 and 22492 of 2006

Joshy Antony

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Kerala Education Rules, 1959 — Rule 4

Citation : (2008) 05 KL CK 0021

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K.T. Shyamkumar, for the Appellant; V.M. Kurian, for the Respondent

Judgement

S. Siri Jagan, J.—Since these four writ petitions relate to the same subject matter, namely, appointment to the post of Principal in the St. Jopseph's Boys Higher Secondary School, Kozhikode, they have been heard together and are being disposed of by this common judgment.

2. The petitioner in W.P(C) Nos. 16693/2005, 27669/2005 and 22492/2006 is a higher Secondary School Teacher, who aspires for promotion to the post of Principal of the school and the petitioner in W.P(C) No. 29869/2005 is the Manager of the school, who contests the claim of the teacher for such promotion. For convenience, I shall refer to the rank of parties, pleadings and Exhibits as obtaining in W.P (C) No. 22492/2006, since the same are comprehensive and are sufficient for disposal of all the writ petitions.

3. The school is the only school owned by the Educational Agency. The petitioner entered the service of the school as a High School Assistant on 17-6-1992, at a time when the school was a High School. When Higher Secondary Section was sanctioned for the School, the petitioner was appointed as a Higher Secondary School teacher with effect from 24-8-1998. The petitioner possesses Masters Degree with 50% marks and B.Ed. Degree. One Rev. Fr. M.J. Augustine was

originally appointed as the Principal of the school. But, he did not possess one of the prescribed qualifications, namely, Masters Degree with 50% marks. Although pursuant to the decision of this Court in A.H.S.S.T. Assn. v. State of Kerala 2005 (2) KLT 94 (F.B) and the Government Orders issued in accordance with the decision, the said Fr. M.J. Augustine was liable to be reverted, the Manager of the school did not do so and therefore the petitioner filed W.P(C) No. 16693/2005 seeking a direction to the Manager to revert the said Fr. M.J. Augustine and to appoint the petitioner as the Principal of the school. While so, by order dated 19-9-2005, the Manager appointed the 4th respondent as Principal of the school. According to the petitioner, the 4th respondent was appointed as H.S.A only on 9-9-1996 having continuous service as HSA only from 2-6- 1997, and as H.S.S. Teacher only with effect from 24-8-1998 and therefore did not possess the required experience qualification of 12 years prescribed for becoming eligible for promotion as Principal. Challenging the appointment of the 4th respondent as Principal of the school on the ground that he does not have the minimum approved teaching experience of 12 years prescribed for the post of Principal in Chapter XXXII of the Kerala Education Rules, the petitioner filed W.P (C) No. 27669/2005. The action of the Manager in placing the 4th respondent as the Principal of the school was also not approved by respondents 1 and 2. Challenging orders in this regard, the Manager filed W.P(C) No. 29869/2005.

4. This Court passed the following interim order in W.P(C) Nos. 16693, 27669 and 29869 of 2005:

When this matter came up today, learned Counsel appearing on behalf of the parties have agreed that selection has to be made to the post of Principal of the School in terms of Chapter XXXII KER. It is also not in dispute that the petitioner (Shri Joshy Antony), by virtue of completion of 12 years of service, is eligible to be considered in terms of Chapter XXXII KER. In such circumstances, pending final decision in the Writ Petitions, there will be a direction to the second respondent Manager of the respondent School, to take expeditious steps, to see that the selection to the post of Principal in the respondent School is completed within a period of two months from today.

Pursuant to that interim order, a selection committee was constituted comprising of respondents 5 to 7, who interviewed the petitioner, who was the only qualified candidate available, for selection to the post of Principal. However, the 4th respondent-Manager, by Ext. P4 order, informed the petitioner that the selection committee did not recommend the petitioner for appointment as Principal and since the Manager did not find any reason to differ from the recommendation, it was decided that the petitioner cannot be appointed as Principal of the school. Challenging the said action of the Manager, the petitioner filed W.P(C) No. 22492/2006 seeking the following reliefs:

(i) To call for the records leading to the issuance of Exhibit P4 order issued by the 3rd respondent and quash the same by issuing a writ of certiorari or any other appropriate writ, m order or direction;

(ii) declare that Selection Committee constituted under Rule 4 of Chapter XXXII of KER has no authority to hold that a qualified candidate as per Rules is not entitled for promotion in the absence of any other qualified candidate eligible for promotion to the sole vacant post of Principal of the school;

iii) issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd respondent to produce before this Honourable Court the recommendations of the selection committee constituted for appointment to the post of Principal of the school along with notes of each of the members of the selection committee;

(iv) issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd respondent to appoint the petitioner in the post of Principal of St. Josephs Higher Secondary School, Kozhikode.

(Originally, the petitioner only challenged Ext. P4. A statement was filed in the writ petition on behalf of respondents 3, 4 and 5 along with which the recommendations of the three selection committee members were produced. The petitioner has thereafter amended the writ petition producing the same as Ext. P7 series and incorporating a challenge against the same also.)

5. Subsequent to amendment of the writ petition, counter affidavits have been filed by the 3rd and 5th respondents supporting the action of respondents 3 and 5 to 7, taking the stand that the school is a minority school and minority rights guarantee the right of the school to appoint a person suitable to the well being of the school and that since the selection committee has refused to recommend the petitioner for appointment, which is in accordance with the rules stipulated in Chapter XXXII of the K.E.R, their action cannot be faulted.

6. The petitioner contends that he being the only candidate possessing the qualifications prescribed by the Rules for appointment as Principal in aided Higher Secondary Schools, in the absence of any finding that he is unfit to hold the post of Principal, neither the selection committee nor the Manager could refuse to select him for appointment as Principal by promotion as contemplated in the Rules. He relies on the decisions of N.S.S. Colleges" Central Committee v. Calicut University Appellate Tribunal and Ors. 1998 (1) KLJ 54; Aided Higher Secondary School Teachers Association Vs. State of Kerala, ; Manager, S.S.H.S. School v. Lijin 2007 (3) KLT 663; Valsala Kumari Devi v. Director, Higher Secondary Education 2007(4) KLT 494 (S.C); Vijayamoney K.R v. Director of Higher Secondary Education ILR 2008 Ker 774 and Mohanan A.V. v. The manager, A.U.P. School and Ors. 2007(4) KHC 1025 in support of his contentions.

7. The Manager would contend that the right to choose a Principal of their choice is part of the right of minorities under Article 30(1) of the Constitution to establish and administer educational institution of their choice, which right would include the right to decide whether a particular candidate is suitable for the school as Principal, which alone has been done by him. He would contend that simply because the petitioner is the only qualified candidate, he does not become

eligible for automatic selection and still he has to be recommended by the selection committee, which the selection committee has not chosen to do. It is contended that the fact that the selection committee has not recommended the petitioner would mean that he is unsuitable for holding the post. The further contention is that this Court cannot sit in appeal over the decision of the selection committee, in the absence of any material to show that the decision is in any way tainted by extraneous considerations or mala fide intentions. He relies on the decisions of A. Panduranga Rao Vs. State of Andhra Pradesh and Others, ; Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, ; Ram Gopal Sharma v. The Deputy Director of Education (Secondary-1) U.P. and Ors. 1993 (7) SLR 410; Inderpreet Singh Kahlon v. State of Punjab 2006 (3) KLT.21, Case No. 34; Antony, P.A. and Ors. v. Krishnadas, M.N. and Ors. ILR 2007 Ker244; Malankara Syrian Catholic College v. Jose 2007(1) KLT 22 (S.C) and Chandramohan Nair, S. v. State of Kerala and Ors. ILR 2007 Ker 322, in support of his contentions.

8. I have carefully considered the rival contentions in detail.

9. Now it is not disputed before me that the petitioner is the only qualified person available in the field of choice and that the 4th respondent does not possess the requisite qualifications prescribed by the Rules. Therefore, I need only consider the validity of the action of the selection committee in not recommending the petitioner and that of the Manager in deciding not to appoint the petitioner as Principal. The rule applicable is item No. 1 of the Table appended to Rule 4 of Chapter XXXII of the K.E.R, which reads thus:

Principal (1) 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:- (1) The post of Principal will be a selection post and appointment to the post shall be made on the basis of the recommendation of a selection committee consisting of the Manager or his nominee as chairman, a selection grade Lecturer or Reader or Principal of a college nominated by the Manager and Government representative as members,. The Government representative shall be nominated by the Manager from among the Officers of Higher Secondary Education Department not below the rank of a Deputy Director or Officers of the Government not below the rank of a Deputy Collector.

(ii) Preference shall be given to Aided Higher Secondary School Teachers having teaching experience at the Higher Secondary School level.

(iii) The post shall be filled up by the methods specified in item (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.

The category 2 mentioned therein is Higher Secondary School teacher. Note 1 to the Rule is the only procedure prescribed for making the selection by the selection committee. The question is whether the action of the selection committee and that of the Manager in this case is in accordance with the Rule. Ext. P7 contains the proceedings of the selection committee. It appears that the 5th respondent convenor of the selection committee, who represented the Manager, gave to the members a format for awarding marks under different heads as follows:

Max. Min. Marks Marks awarded

A. i) Qualification 1 0.50 ii) Teaching experience 1 0.50

TOTAL: (i) to (ii) 2 1.00

B. i) Contributions to teaching- innovative methods. 1 ii) Co-curricular activities 1 TOTAL: (i) to (ii) 2 1.00

C Character and Antecedent 1 0.50 D Administrative Capacity i) Administrative Experience 1 ii) General awareness of school administration. 1 iii) General attitude towards management, staff & students. 1 iv) Perception of problems and ability to tackle them. 1 v) Vision and plans for the future of the school & students. 1 TOTAL: (i) to (v) 5 2.50 GRAND TOTAL: A+B+C+D 10 5.00

The 7th respondent refused to follow the format. Respondents 5 and 6 awarded 2.75 and 2.70 marks to the petitioner and did not recommend the petitioner. The 7th respondent did not award any marks but found the petitioner "not recommendable". The 6th respondent gave his remarks along with the mark sheet thus:

The candidate Mr. Joshy Antony himself stated that he was only 70% sincere to his teaching profession. This itself means that he had really taught only 8.4 years (12 x 70/100) out of his total teaching service of 12 years. The Principal post of H.S.S. Involves both teaching and administration. The management of those with 75% sincerity will put future of the school and students at stake in his hands despite his assurance of sincerity in the future. Further, he has failed in the selection criteria on various counts. Hence, I do not recommend him for the post of Principal.

The 5th respondent appended a letter to the mark sheet thus:

You had requested me to be the management's representative in the interview conducted on 11 August 2006 in St. Joseph's School to the post of Principal in the Higher Secondary School. Three candidates were interviewed. 1) Dr. K.T. Devassia 2) Mr. Raju Jacob and 3) Mr. Joshy Antony. The first two were rejected on the grounds that they were not qualified for the post. Mr. Joshy Antony, claimed he had the required qualification for the post of Principal and he was interviewed. The certificates were verified and various questions were put to him regarding his qualification, his administrative capability, his interest in the school,

his commitment and loyalty to the institution, his vision for the school etc.

My personal assessment is that though he is academically qualified and has the required years of service, he may not be a right choice to be the Principal of a school, which has a long tradition. He had been in the institution for 12 years and he did not know the history of the school. It is seen that he was irregular in coming to the school and discharging his duty as a teacher. The manager submitted a record of his periodic absence from the school. Mr. Joshy is the president of a Teachers' Association and he has to organize a lot of meeting and he is often called to attend many meeting. His absence is grossly felt in the school.

He has not shown sufficient interest in any co-curricular activities of the school. He has not introduced any innovative methods of teaching other than just covering the portion by taking extra classes on holidays.

Mr. Joshy had put up a write-up on the Higher Secondary Staff Notice Board giving a detailed description about the various stages of his interaction with the management with regard to the post of Principalship. This was done without the permission of the Principal-in-charge. May I say that there are insinuating statements in this write-up. I feel this sort of behaviour can affect the discipline and morale of the school.

On account of the above reasons, I do not recommend him to the post of Principal in St. Joseph's Higher Secondary school, Kozhikde.

The 7th respondent gave his report thus:

In obedience to the order in the reference cited, I have participated in the Selection Committee meeting held at 10.00 a.m. Fr. Joseph Kalleppallil S.J. was the Nominee of the School Manager. He is also the Convenor of this Committee. Dr. K.M. George, Selection Grade Lecturer, Govt. Arts & Science College, Meenchanda, Kozhikode was the other member. Convenor has prepared a chart for awarding marks on various items of which none is relating to the administrative aspect and hence no marks is awarded by me in this chart. First candidate appeared before the Committee was Fr. K.T. Devassia. He is having only 9 and a half years of teaching experience. He is not having the minimum qualification for the post. Second individual appeared was Mr. Raju Jacob. He is having only 9 years of teaching experience. He is not having the minimum teaching experience of 12 years. Third candidate is Mr. Joshy Antony. He possess 12 years a 4 months teaching experience. He is Post Graduate in M.Sc. Botany and also obtained a degree in teaching (B.Ed.) the Manager's nominee and the other teaching faculty member examined this candidate by asking question on various aspects of teaching and curriculum activities. I have put in question on administrative aspects and on the function of the Principal in relation for the establishment matter. From the answer given by this candidate to the question of the other member it is found that the performance of this individual as a teacher of this school is not satisfactory and as such they feel that the selection of this

candidate as Principal will be against the overall interest of the institution. Answer to my question were fairly satisfactory. This individual has admitted during the interaction that due to other activities he was in the habit of availing leave and covering the teaching portions during vacation. The impression revealed is that he was not in the habit of involving himself in all the problems and activities of the school. The majority view of the committee is not to recommend Sri. Joshy Antony to the post of Principal. Though on administrative aspects he can be recommended otherwise he is found not recommendable.

The 3rd respondent in Ext. P4 gave his decision thus:

I have carefully considered the previous conduct and records of Shri. Joshy Antony in the school. Fr. K.T. Devasia, Shri. Raju Jacob and Shri. Joshy Antony started their career in the Higher Secondary School on 24-8-1998. Raju Jacob and Joshy Antony were appointed as H.S.S.T. (Junior) while Fr. K.T. Devasia was appointed as H.S.S.T. (Senior). Taking into consideration seniority and merit, I find no reason to differ from the recommendation of the committee. It is decided that Shri. Joshy Antony is not a proper candidate and cannot be appointed as Principal of St. Joseph's Higher Secondary School, Kozhikode.

None of the three members of the selection committee specifically finds the petitioner unfit to hold the post of Principal, but only that he is not recommendable. The 6th respondent does not recommend the petitioner because he is only 70% sincere and therefore he has only 8.4 years of service! The 5th respondent mainly relies on the petitioner's habit of taking leave, failure to introduce innovative methods of teaching and publishing of a write up in the notice board without permission as reasons for not recommending the petitioner. From the report of the 7th respondent, it appears that he went along with the majority opinion although on administrative aspects he found the petitioner good for being recommended. As such, there is no specific finding by any of the members of the selection committee that the petitioner is unfit to hold the post of Principal on any valid ground.

10. I had occasion to consider a similar question in Vijayamoney's case (supra). In that case, an H.S.S.T in Sanskrit was the sole qualified candidate for selection to the post of Principal. The selection committee found her not suitable for selection. In that case, after discussing the scope of Rule 4, relying on the Supreme Court decisions in Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, and Valsala Kumari Devi v. Director, Higher Secondary Education 2007 (4) KLT 494 (S.C) I held thus:

Applying those principles the eligibility for promotion of the petitioner to the post of Principal has to be decided only on the basis of her suitability. Going by the above decisions, the suitability has to be decided on the basis of the prescribed qualification and requisite experience. In this case admittedly none of the three selection committee members had any knowledge whatsoever in Sanskrit. Therefore, they could not have validly assessed the proficiency of the petitioner

in Sanskrit. Admittedly, the petitioner had the requisite qualification and experience. What they have stated in Ext. P3 is only this:

This is to certify that M/s. Vijayamony, K.R is not selected for the post of HSS Principal as her performance in the interview was below satisfactory and she seemed to be not capable of handling the post of the Principal of a Higher Secondary School.

5. Nothing is stated in the counter affidavit as to how the Selection Committee has proceeded to assess the suitability of the petitioner. It is beyond comprehension as to what the Selection Committee meant when they said that the petitioner's performance in the interview was below satisfactory when admittedly the Selection Committee members had no knowledge of Sanskrit whatsoever. The third respondent is also unable to explain to me as to how the Selection committee came to the conclusion that the petitioner is not capable of handling the post of Principal of a Higher Secondary School. Such a conclusion cannot be arrived at by merely asking questions to a candidate seeking promotion as principal in an interview. In the decision of Janki Prasad Parimoo's case (supra) the Supreme Court had occasion to consider the question of promotion to the post of Headmasters in schools. One particular paragraph of that decision is relevant for our purpose. The same reads thus:

The case of all other teachers including those who were officiating as Head Masters and Tehsil Education Officers and are eligible for promotion shall be reviewed in a proper selection made in accordance with the 1969 rules. Interviews shall not be the only test. The character rolls and the confidential records shall be taken into due consideration. If in any case the same are not available, a report or reports should be obtained from authorities who had opportunity to observe the teachers' performance and character.

Here there is no such procedure of maintaining character rolls and confidential records in an aided higher secondary schools. The question of obtaining any report from a higher officer also does not arise since this is the first time a Principal is being appointed to the 3rd respondent's school after the Higher Secondary selection started.

10. In the above circumstances, I am not satisfied that the proceedings of the Selection Committee which led to rejection of the petitioner's candidature is sustainable in so far as they do not categorically find "the petitioner unsuitable for holding the post. Accordingly, Exts. P13 and P14 are quashed. The petitioner is the only qualified Higher Secondary School Teacher in the School whom the selection committee does not categorically find unsuitable to hold the post of Principal based on any tangible material. The 3rd respondent has no case that the petitioner has any bad marks in her conduct or performance as a Higher Secondary School teacher and therefore she is unfit for the post of principal. Therefore as the only Higher Secondary School teacher available for promotion she is entitled to be selected for promotion. It is declared so. Appropriate orders

based on such declaration in favour of the petitioner shall be passed within one month from the date of receipt of a copy of this judgment.

11. As I have already observed, none of the selection committee members found the petitioner unsuitable for holding the post of Principal. Two of them only doubt his sincerity and dedication and therefore do not recommend the petitioner. The third practically finds him suitable but goes along with the majority to not recommend him. The 3rd respondent has filed a counter affidavit in which he has taken pains to give reasons for finding the petitioner not suitable for the post. First is that the petitioner has exhibited a printed write up in the notice board containing insinuations in respect of which a show cause notice is stated to have been issued to him. Admittedly, the petitioner has filed explanation disowning responsibility. In any event, it has not culminated in a finding against the petitioner in an enquiry complying with principles of natural justice, and the same still remains as allegations by the Manager, who appears to be somehow or other interested in seeing that the petitioner is not selected. Ext. R3(b) is the alleged write up. Assuming that it is authored by the petitioner, the same deals only with the contentions of the petitioner regarding appointment of Principal, which are stated in these writ petitions also. Thereafter, with the help of Ext. R3(g) attendance position in staff meetings, Ext. R3(h) attendance position in staff council meetings, and Ext. R3(i) PTA meetings, the 3rd respondent tries to show that the petitioner does not take active part in the affairs of the school. With the help of Ext. R3(j) leave record of the petitioner he tries to show that the petitioner is irregular in attendance in the school. But there is no material to show that these facts were made available to the selection committee although the 5th respondent, who is the 3rd respondent's nominee, in his affidavit states so. There is also no material to prove the correctness of the same. The proceedings signed by respondents 6 and 7 do not reveal that any such material was placed before them. In any event, the 3rd respondent has no case that these allegations have been proved in any enquiry conducted for the purpose. The 3rd respondent alleges that the petitioner is the President of a Teachers' Organisation in connection with whose activities the petitioner used to take leave frequently. The 3rd respondent has no case that the petitioner was unauthorisedly absent at any time. That would mean that the petitioner only took leave which was available to him, as per rules. In any event, after granting leave applied for, the 3rd respondent cannot hold that as a disqualification for appointment as Principal. In this connection, it may be noted that the 3rd and 5th respondents admit that the petitioner used to take classes during holidays to finish syllabus portions, which would show the commitment of the petitioner to the welfare of the students. The fact that he is the President of a Teachers' Organisation only proves his leadership qualities. The Government also recognises rights of teachers to take part in organisational activities of teachers. On a perusal of the proceedings of the members of the selection committee, what one can gather is that they have set very high standards for selection, which in their estimation, the petitioner did not meet. I am of opinion that, that

is not what the Rules contemplate. What the selection committee can look into is as to whether a candidate is in any way unfit to hold the post. If a candidate is not unfit to hold the post his comparative merit has to be assessed vis-a-vis other candidates. If he is the only candidate, in so far as he is not found unfit, even if he does not possess the very high standards fixed by the selection committee, the action of the selection committee in not recommending him amounts to arbitrary action. In any event, I am not satisfied that the reasons stated by the members of the selection committee or the 3rd respondent are sufficient to hold that the petitioner is unfit to hold the post of Principal. It is surprising that when a qualified person is available in the school, the 3rd respondent thinks that it is better to run the school with an unqualified person in-charge of Principal, especially when in the decision of Manager, S.S.H.S. School v. Lijin (supra) a Division Bench of this Court has held that it is not permissible and the senior-most qualified person has to be appointed as Principal in-charge. As such, the contentions of the 3rd respondent against the appointment of the petitioner sounds hollow and does not inspire any confidence.

12. Further, I am of opinion that managers of aided schools cannot be trusted with such sweeping and arbitrary powers to exclude qualified persons from selection on the ground that such candidates do not meet the standards fixed by him or the selection committee for that matter. Minority rights cannot be stretched to mean that once there is no person of the choice of the minority for promotion as Principal, they can also refuse to appoint a qualified person available on their own subjective satisfaction of suitability of that person, which if permitted, would result in scuttling the legitimate rights of an otherwise qualified person. Therefore, in so far as there are no reliable material to hold that the petitioner is unfit to hold the post of Principal of the school, the 3rd respondent has no choice but to appoint the petitioner, who is the only qualified person in the feeder category, entitled for promotion as Principal.

13. Counsel for the 3rd respondent argued at length to convince me that such a right is vested in the manager of an aided minority educational institution. For this, he relies heavily on the Supreme Court decision in Malankara Syrian Catholic College's case (supra) and the decisions of the Supreme Court and this Court on the vital importance of the post of Headmaster/Principal in a school or a college. The argument is that when the right to choose a Principal is part of the right of the minority under Article 30(1) of the Constitution, then the right of the minority to select only a Principal who would be suited to the institution in the opinion of the manager must also be read into it. Paragraph 5 of the decision of the Division Bench of this Court in Manager, S.S.H.S School v. Lijin (supra) coupled with the decision of the Supreme Court on the basis of which I have rendered Vijayamoney's case (supra) is a complete answer to that contention, which itself is based on the very same decision of Malankara Syrian Catholic Colleges case (supra) relied on by the 3rd respondent. The said paragraph may be extracted here:

5. We are of the view that in the absence of a qualified teacher from the minority community the Management is bound to appoint the qualified seniormost teacher as Principal-in-charge even if he is not a member of the minority community. In other words, an unqualified teacher belonging to the minority community cannot be posted as Principal-in-charge. In such circumstances, Management has no other alternative but to appoint the seniormost qualified person even if he does not belong to minority community as Principal-in-charge of the school. Management has always got the freedom to make regular appointment to the post of Principal and it is open to the Management to appoint a person of that community. Till such time, seniormost qualified teacher can only be put in charge of the Principal though he does not belong to that community.

Therefore, when in the feeder category there is no person the manager can choose, in exercise of right of minority under Article 30(1) of the Constitution of India, the senior-most qualified teacher cannot be denied his right of promotion unless found unfit to hold the post.

14. Relying on Ext. P7, counsel for the 3rd respondent wants me to hold that their refusal of the selection committee to recommend the petitioner should be taken as finding him unfit to hold the post. He relies on the decision of the Supreme Court in Pandurangan Rao's case (supra) and that of the Allahabad High Court in Ram Gopal Sharma's case (supra) in support of that contention. Those are decisions relating to direct recruitment, which cannot be made applicable to selection for promotion, especially when there is a direct decision of the Supreme Court interpreting the very same rule in the KER, in Valsala Kumari Devi's case (supra), which has already been adverted to above, wherein the Supreme Court has held that once the requirement of the prescribed qualification is satisfied, selection must be made on the basis of seniority and suitability and there is no scope for making comparison of qualifications or comparative assessment of suitability. The Supreme Court further held that the expression suitability means that a person to be appointed shall be legally eligible and eligible should be taken to mean fit to be chosen. I am satisfied that the ratio of that decision directly applies to this case. The petitioner satisfies the requirement of prescribed qualifications and without any material before the selection committee to hold that the petitioner is "not fit to be chosen", they cannot refuse to recommend the petitioner for promotion. The following passage in N.S.S. Colleges' Central Committees case (supra) is also apposite in this context:

12. We heard the counsel for the appellant, the respondent, the management and the impleading petitioners and perused the records. Section 57(3) of the Act makes it obligatory for the management to select for the post of Principal on the basis of the seniority-cum-fitness. Seniority-cum-fitness has been interpreted by this Court in various decisions. The management can choose a junior person if it can be shown that he was demonstrably more fit than the senior. Here admittedly the respondent is senior to the appellant. Hence, if it could be shown that the appellant was demonstrably more fit than the first respondent, he could

be selected for the post of Principal. But, we have nothing to satisfy ourselves as to how this was arrived at by the Selection Committee. The minutes of the Selection Committee quoted above only show that the Selection Committee selected Dr. Haridasan Pilli on the basis of the seniority-cum-fitness. The records of the committee did not show anything more. The educational agency should have taken more care when it constituted the Selection Committee. They should have properly instructed the committee to make selection on the basis of certain guidelines and also on the basis of written records. This was more so particularly necessary when the aggrieved person has been given the right of appeal u/s 57(8) of the Act. From the minutes of the Selection Committee it appears that power has been given to the committee to choose its own persons for its own reasons without waiting to see whether these reasons have any legal standing with regard to seniority-cum-fitness. The Selection Committee forgot its duty in not keeping the records of the proceedings regarding selection. The committee was interviewing persons who were outstanding in their respective academic fields. One was a Professor of Physics having a service of 25 years and the other was a person who was holding a Doctorate in Hindi and was also serving the institution from 1975. Both of them had given details regarding the achievements in their academic fields and teaching profession. In these circumstances, it was the bounden duty of the Selection Committee to give reasons as to why one was preferred to another and particularly when they had selected the junior. We can certainly understand the heartburn of the respondent because he had put in more years than the appellant and if the appellant becomes the Principal, the respondent has no chance to become the Principal. Hence, the Selection Committee should have taken the matter very seriously. It appears that the Selection Committee as well as the management had treated this matter very lightly. Hence, we agree with the Appellate Tribunal that there has been no proper selection.

In the above circumstances, I am unable to accept the contention of the 3rd respondent that the fact that the selection committee did not recommend the petitioner for promotion must be construed as a finding that the petitioner is not fit to hold the post of Principal.

15. Relying on the decision in Dalpat Abasaheb Solunke's case, counsel for the 3rd respondent would contend that the finding of the selection committee is not open to scrutiny of this Court. I am not interfering with the finding of the selection committee at all, but is holding that there is no finding by the selection committee that the petitioner was unfit to hold the post of Principal, especially in the absence of any material before the selection committee to hold so.

16. Therefore, the petitioner is entitled to succeed in his three writ petitions.

17. As far as W.P(C) No. 29869/2005 filed by the 3rd respondent -Manager is concerned, in view of the decision in Manager, S.S.H.S. School v. Lijin (supra), which has been discussed above, the same is liable to be dismissed when, admittedly, the 4th respondent does not possess the qualifications prescribed for

the post of Principal. I do so.

In the result, Exts. P4 and P7 in W.P(C) No. 22492/2006 are quashed. The petitioner being the only qualified Higher Secondary School Teacher in the school for finding whom unfit to hold the post of Principal, there is no acceptable material on record, it is declared that he is entitled to be selected for promotion as Principal of the school to the existing vacancy, which the 4th respondent is put in charge of. Appropriate orders based on such declaration in favour of the petitioner shall be passed by the Manager and forwarded to the respondents 1 and 2 in W.P(C) No. 22492/2006 within one month from the date of receipt of a copy of this judgment and the competent among respondents 1 and 2 shall pass appropriate orders on approval of the same within one month of receipt of appointment order by the 3rd respondent. W.P(C) Nos. 16693/2005, 27669/2005 and 22492/2006 are allowed as above.