

(2011) 02 KL CK 0045

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30114 of 2008

P. Meenakshikutty

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 KLJ 163 : (2011) 1 KLT 1032

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K.T. Shyamkumar, for the Appellant; V.A. Muhammed, K.E. Hamza, T.V. Vijayarajan, M. Sajjad, K.R.B. Kaimal (Sr.), B. Unnikrishna Kaimal and N. Sudha Devi (Govt. Pleader), for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The bone of contention between the petitioner and the 3rd respondent in this case is the post of headmaster in the A.M.M. Upper Primary School, Vadavannur, a complete aided U.P. school, the manager of which is the 4th respondent. The petitioner entered approved service of the said school as a full time Sanskrit teacher on 2-6-1981. During the academic year 2002-03, there was no sufficient student strength for a full time post of Sanskrit teacher, but the petitioner was given the benefits of a full time teacher, by virtue of clause (vi) of GO.(MS)62/73S.Edn. dated 2-5-1993 [which is produced as Ext.R1(b) along with the counter affidavit of the 1st respondent]. She was the senior-most among all the teachers of that school. The 3rd respondent is a graduate teacher in the school. The post of headmaster of the school fell vacant on 1-4-2006. The 4th respondent appointed the petitioner as the headmistress and forwarded the appointment order to the 2nd respondent for approval. By Ext. P2 order, the 2nd respondent-Assistant Educational Officer refused approval for the appointment of the petitioner as headmistress on three grounds, viz. "(1) there was no approved seniority list available in the school, (2) As per the staff fixation sanctioned to the

school, there is only one part time post of Sanskrit, seniority list is prepared with reference to the category of posts specified in clauses (iii), (iv) and (v), Rule 3 Chapter XXIII KER as stated in Rule 34 Chapter XIVA KER and (3) the appointment of P.S. Lakshmy as the manager of the school has been rejected." The petitioner's appeal to the District Educational Officer was dismissed by Ext. P3 order and by Ext. P6 order, the Government upheld the orders of the A.E.O. and D.E.O. While so, the 3rd respondent, who was the senior-most graduate teacher in the school was appointed as the headmistress relying on the rules as it stood at that time, by another manager, whose credentials as a manager are disputed by the petitioner, which appointment was also not approved by the 2nd respondent. The Government, in Ext. P6 order, held that the appointment of the 3rd respondent as the Headmistress of the school can be approved with effect from 2-5-2007. It is under these circumstances, the petitioner has filed this writ petition, seeking the following reliefs: (i) Call for the records leading to the issuance of Ext. P2, P3 and P6 orders and quash the same by issuing a writ in the nature of certiorari or any other appropriate writ, order or direction.

(ii) Declare that in view of Ext. P7 and P8 Government Orders, the petitioner is entitled to be promoted as Headmistress of the A.M.M.U.P. School, Vadavannur, Palakkad District irrespective of the fact that the petitioner is occupying a part time post with full time benefits.

(iii) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent No. 2 to approve the appointment of the petitioner as Headmistress of the A.M.M.U.P. School, Vadavannur with effect from 10.4.2006.

(iv) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction, directing respondents 1 and 2 to treat the Sanskrit Language post occupied by the petitioner as full time post from the academic year 2003-2004 till date in view of Ext. P9 strength verification reports wherein the AEO has on verification of the student strength found every year that the student strength for Sanskrit is more than 51 so as to make it a full time post.

Counsel on all sides agree that although the refusal of approval is for the abovesaid three reasons, only the validity of the 2nd reason for non-approval viz. that the petitioner was only a part time teacher, who is not entitled to be considered for appointment to the post of headmaster survives for consideration and the other two reasons are no more relevant on account of change of circumstances. The petitioner's contention is that, the petitioner was retained as a full time teacher by virtue of clause (vi) of Ext.R1(b) order, and therefore, she cannot be denied promotion on the ground that she is a part time teacher. She heavily relies on the division bench decision of this court in Sreeramachandran Vs. State of Kerala , wherein this court held that a teacher having the protection of clause (vi) of R1(b) order is entitled to be considered for promotion as headmaster, notwithstanding the fact that the student strength warranted only a part time post. 2. There are other non-graduate teachers also in the school,

senior to the 3rd respondent, eligible to be appointed as headmaster. But according to the 3rd respondent, if the petitioner is held to be not entitled to appointment as headmistress, the 3rd respondent, as a graduate teacher having half of the period of service of the next senior-most under-graduate teacher, would be entitled to be appointed as per the rule existing as on the date of occurrence of vacancy, which rule has subsequently been amended dispensing with the preference to graduate teachers available as per the unamended rules. By virtue of the interim order of stay of Ext. P6 granted by this court, the petitioner continued to function as the headmistress until she voluntarily retired from service on 30-4-2010. Therefore, if the petitioner's contentions are upheld, the 3rd respondent cannot claim the subsequent vacancy also in view of the subsequent amendment to Rule 45 of Chapter XIV of the Kerala Education Rules.

3. The 4th respondent-manager has not chosen to file any counter affidavit to controvert the contentions of either party. The manager has also not advanced any arguments for or against the contentions of the petitioner. Counter affidavits have been filed only by the 1st and the 3rd respondents, supporting the impugned orders. Counsel for both have also advanced elaborate arguments. According to them, the question of appointment to the post of headmaster in a complete U.P. School is governed by Rule 45 of Chapter XIV A, read with Rule 34(b) of Chapter XIVA and Rule 3 of Chapter XXIII of KER. As per the Note to Rule 45, language teachers can be considered for appointment as headmasters in accordance with the combined seniority list of teachers of the school. As per Rule 34(b), in U.P. Schools, combined seniority list of teachers shall consist only of teachers, if any, specified in clauses (iii), (iv) and (v) of Rule 3 of Chapter XXIII, which are U.P. School Assistants, L.P. School Assistants and Language Teachers. Part time teachers are specifically included in clause (viii) of Rule 3 and since that clause is not included in Rule 34(b), part time teachers are excluded from consideration for appointment as headmaster, is their contention. According to them, clause (vi) of Ext.R1(b) order would not come to the rescue of the petitioner, insofar as the said clause cannot convert the part time post into full time post and the said clause can be relied upon only to enable the petitioner, occupying the part time post, to claim monetary benefits as applicable to a full time teacher, if she satisfies the conditions prescribed for availing of the benefits of that clause. They argue for distinguishing the decision in Sreeramachandran's case (supra) on facts, on the ground that in that decision, as per the staff fixation order, a full time post was actually sanctioned relying on clause (vi) of Ext.R1(b) order, whereas in this case only a part time post was sanctioned, with full time benefits to the teacher occupying the post. They point out that a learned single judge of this court has, in the decision of Lalitha v. State of Kerala, 2008 (1) KLT 416, considered the very same issue and after distinguishing Sreeramachandran's case (supra), held that clause (vi) of Ext. R1(b) order cannot override Rule 6(1) of Chapter XXIII, and that any benefit a part time teacher may get by virtue of the said G.O. could only inure to that teacher and not to the part time post held by that teacher. Therefore, according to them, the

petitioner, holding the post of part time teacher, would not become a full time teacher simply because she is getting full time benefits by virtue of clause (vi) of Ext.R1(b) order and consequently, being only a part time teacher, she is disentitled to be considered for appointment to the post of headmaster, in view of Rule 45 of Chapter XIV A, read with Rule 34(b) of Chapter XIVA and Rule 3 of Chapter XXIII of KER.

4. The counsel for the 3rd respondent would raise an additional argument that the petitioner is not entitled to even the benefit of clause (vi) of Ext.R1(b) order, insofar as the same is applicable only to part time teachers, who have put in more than 5 years of service and not to full time teachers who been reduced as part time teachers on fall in student strength and as on the date of arising of the vacancy the petitioner had not put in 5 years of service as a part time teacher. In support of this argument the counsel for the 3rd respondent relies on an unreported division bench decision in W.A. No. 1710 of 2009.

5. In reply, the petitioner would point out that the facts in all the three cases are exactly identical, in the sense that a part time teacher who was given the benefit of clause (vi) of Ext.R1(b) order was being considered for promotion as headmaster and simply on the basis of the difference in the wording used by the concerned educational officer in the staff fixation order granting that benefit, identically placed persons should not be treated differently. Therefore according to the counsel for the petitioner the ratio of the decision of the division bench in Sreeramachandran's case (supra) should be applied to the petitioner's case. He further contends that the decision in Lalitha's case (supra) is pending in appeal before the division bench. He further points out that simply because Rule 34(b) refers to clauses (iii), (iv), and (v) of Rule 3 of Chapter XXIII only, that does not ipso facto mean that for the purpose of preparation of consolidated seniority list other teachers are totally excluded. He points out that the note to Rule 45 does not refer to Rule 34 and as per the note to Rule 45, specialist teachers are also eligible to be considered for appointment as headmaster; but specialist teachers are included in clause (vi) of Rule 3 of Chapter XXIII, Which does not find a place in Rule 34 (b). Therefore according to him, other kinds of teachers such as language teachers treated as full time teachers by virtue of clause (vi) of GO. (MS) 62/73S. Edn. dated 2-5-1993 can also be included in the seniority list prepared for consideration for appointment as headmaster and such seniority list need not be one prepared in accordance with Rule 34..

6. The counsel for the 3rd respondent clarifies by pointing out that the note to Rule 45 was inserted by GO.(P) 273/84/G.Edn. dated 18-12-1984, published in the gazette dated 12-2-1985, whereas, Rule 34 was substituted by GO.(P) 181/84/G.Edn. dated 30-8-1984 published in the gazette on 17-9-1984 and deemed to have come in to force from 3-1-1981. Therefore the omission to amend Rule 34(b) including clause (vi) of Rule 3 of Chapter XXXI in Rule 34(b) must only have been an oversight.

7. I have given anxious consideration to the arguments on both sides. I shall first

advert to the statutory provisions applicable. Language teachers become eligible to be considered for appointment as headmaster, by virtue of the note to Rule 45 of Chapter XIVA of the KER which reads thus:

45. xx xx

Note:- The language/specialist teachers, according to their seniority in the combined seniority list of teachers shall also be appointed as Headmaster of U.P. School or Schools under an Educational Agency provided the teacher possesses the prescribed qualifications for promotion as Headmaster of U.P. School on the date of occurrence of vacancy.

Rule 34 of Chapter XIV A prescribes the mode of preparing consolidated seniority list, which reads thus:

34. Every Management shall prepare and maintain in Form 11A a staff list otherwise called the seniority list of teachers as specified below:-

(a) In the case of High Schools, a combined seniority list of teachers specified in clauses (ii) and (iiA) of Rule 3, Chapter XXIII shall be prepared.

(b) In the case of Upper Primary School and Lower Primary school a combined seniority list of teachers if any, specified in clauses (iii), (iv) and (V) of Rule 3, Chapter XXIII shall be prepared.

Rule 3 of Chapter XXIII of the KER reads thus:

3. The strength of the teaching staff in Upper Primary and Secondary Schools shall be fixed on the basis of the number of recognised class divisions and periods of work. The various posts of teachers shall be referred to by the following designations:-

(i) Headmaster.

(ii) High School Assistant

iiA High School Assistant-Language-

(a) Malayalam

(b) Tamil

(c) Kannada

(d) Sanskrit

(e) Hindi

(f) Arabic

(g) Urdu

(h) Latin

- (i) Herew, etc.
- (j) English
- (iii) Upper Primary School Assistant.
- (iv) Lower Primary School Assistant.
- (v) Language Teacher.
- (a) Malayalam
- (b) Tamil
- (c) Kannada
- (d) Sanskrit
- (e) Hindi
- (f) Arabic
- (g) Urdu
- (h) Latin
- (i) Hebrew, etc.
- (vi) Specialist Teachers
- (a) Drawing Teacher
- (b) Physical Education Teacher
- (c) Combined Drawing and Physical Education Teacher
- (d) Sewing Teacher
- (e) Music Teacher, etc.
- (vii) Craft Teacher.
- (viii) Part-time Teachers.
- (ix) Training School Assistant.

8. Now I shall extract clause (vi) of GO. (MS) 62/73S. Edn. dated 2-5-1993, which is produced as Ext. R1(b) along with the counter affidavit of the 1st respondent, which reads thus:

(vi) Conversion of part-time language teachers into full-time.

The formula for creating full-time posts in independent high schools and U.P. schools attached to high schools will be extended to independent U.P. Schools and L.P. Schools and U.P. Schools with attached L.P. Schools. Besides this, part-time language teachers who have put in more than 5 years service and have 8 periods of work shall herein forth be made full-time. The utilisation of the

services of these teachers for teaching regular classes and other subjects and giving them adequate work will be examined by the Director of Public Instruction. This will be with effect from the academic year 1973-74.

(Underlining supplied)

9. In this case the petitioner, after working as a full time Sanskrit teacher for 21 years, since on account of fall in student strength, no full time post could be sanctioned was retained as a full time teacher giving the benefit of clause (vi) of GO. (MS) 62/73/G Edn. dated 2-5-1973. Sreeramachandran's case (supra) and Lalitha's case (supra.) also were cases dealing with language teachers with more than 5 years" service and 8 hours" work, in schools where the student strength did not warrant full time posts in their subject, enjoying the benefit of clause (vi) of GO. (MS) 62/73/G Edn. dated 2-5-1973. Therefore, for the purpose of this case, all three were identically placed. But the educational officers concerned used different words for giving the benefit of the said clause to the said teachers, while issuing staff fixation orders. In Sreeramachandran's case (supra), the educational officer said thus in the staff fixation order:

One protected post of F.T. Hindi teacher is sanctioned to give full time benefit to Sri. Subramanya, Hindi teacher in terms of GO. (MS) 62/73/G Edn. dated 2-5-1973.

In Lalitha's case (supra), the educational officer said thus in the staff fixation order:

F.T. Benefit is given to Sanskrit Teacher Smt. K.K. Lalitha having 8 periods and 5 years" service, vide GO. (MS) 62/73/G Edn. dated 2-5-1973.

In the present case, in Ext. R1(a) staff fixation order for the year 2002-03, the A.E.O. used the following words:

The effective strength of Sanskrit students is insufficient to sanction F.T. Post. Hence P.T. Jr. Sanskrit with F.T. benefit vide GO. (MS) 62/73/G Edn. dated 2-5-1973....

In Ext. R3(a) staff fixation order for the year 2003-04, the A.E.O. used the following words:

Sanskrit post as Part time with full time benefit vide GO. (MS) 62/73/G Edn. Dated 2-5-1973....

In Lalitha's case (supra), the learned judge distinguished Sreeramachandran's case (supra) thus, in paragraph 16 of the judgment:

16. The view in the preceding paragraph requires advertence to the Bench decision of this Court in Sreeramachandran (supra). A clear understanding of the facts that led to that judgment would show that in the staff fixation orders which were considered in that case, in the column for name of posts, after the word "Hindi", it was stated "protected", within brackets. The Bench was, therefore, of

the view that such an entry only means that the post Hindi teacher is protected in terms of G.O.(M.S.) 62/73. That view was also fortified by the statements in column 11 of the staff fixation order dealt with in that case, as is discernible from para 4 of that judgment. In that case, it was stated "one protected post of F.T. Hindi teacher is sanctioned to give full time benefit to Sri. Subramanya, Hindi teacher in terms of G.O.(M.S.)62/73/GEdn. dated 2.7.73. It was in that context that cl. (vi) of G.O.(M.S.) 62/73 was read. It was rightly-noticed by the Bench that the said G.O. does not make any reference to any protection being given to the teacher and what is provided is for conversion of an existing part-time post to a full-time post, subject to certain conditions. The addition of the word "protection" by the A.E.O. to the staff fixation order in that case was deprecated, particularly when the Governmental view favours the teacher. On the facts and the circumstances of that case, it can be easily noticed that the decision in Sreeramachandran (supra) rests exclusively on the facts of that case and I am unable to find way to apply that as a precedent on a question of law relating to the interpretation and application of the terms of G.O.(MS) 62/73, which is only an executive order and which cannot run contrary to, or, in any manner, reduce the rigour of R.6 (1) in Chap. XXIII K.E.R.

When facts are exactly identical in the matter of implementation of the GO., and the mode of implementation was the subject matter in all the three writ petitions, I fail to understand how the three cases can be distinguished on facts, relying on the words used by different educational officers for giving the very same benefit. In Sreeramachandran's case (supra), the division bench held thus in paragraphs 4 and 5:

4. However, learned counsel for the appellant vehemently argues that the distinction drawn by the learned Single Judge between a protected teacher and a teacher working in a protected post is incorrect and unwarranted. According to the learned counsel, the staff fixation orders specifically stated that the 4th respondent was a protected teacher. This contention is not correct. In the staff fixation orders (Exts. P4 to P12), in the column for name of post, after "Hindi" it is stated within brackets "protected". It only means that the post of Hindi teacher is protected in terms of G.O.(P) No. 62/73/GEdn. dated 2.5.1973. This is clear from the entry in column 11. In column 11 it is stated: "One protected post of F.T. Hindi teacher is sanctioned to give full time benefit to Sri. Subramanya, Hindi teacher in terms of GO. (Ms) 62/73/GEdn. dated 2.5.73.

Clause (vi) of the said Govt. Order provides as follows:

(vi) Conversion of part-time language teachers into full-time

The formula for creating full-time posts in the independent high schools and U.P. schools attached to high schools will be extended to independent U.P. Schools and L.P. Schools and U.P. Schools with attached L.P. Schools. Besides this, part-time language teachers who have put in more than 5 years service and have 8 periods of work shall henceforth be made full-time. The utilisation of the services

of these teachers for teaching regular classes and other subjects and giving them adequate work will be examined by the Director of Public Instruction. This will be with effect from the academic year 1973-74.

In clause (vi) of the above mentioned Government Order quoted above, there is no reference to any protection being given to the teacher. What is provided is for conversion of an existing part-time post to a full time post subject to certain conditions. If the said conditions are satisfied, the Educational Officer concerned is competent to convert a part- time post to a full time post and sanction the post of full time teacher.

Therefore, strictly speaking, the Asst. Educational Officer was not justified in adding the word "protected" within brackets. Merely because the Asst. Educational Officer described the post as protected in the sense in which he used it to explain the position, it does not follow that the teacher appointed or accommodated against the full time post of Hindi teacher was a "protected teacher" as commonly understood or that he was subject to the liabilities of a protected teacher. In Ext. P3 order the Government also have-taken the view that the 4th respondent was not a protected teacher but a teacher working in a protected post.

5. In the above circumstances, the contention of the appellant that in view of the judgment in *Manager Mar Sheba U. P. School Vs. State of Kerala and . Others*, a protected teacher cannot be appointed as Headmaster, has no relevance to this case. Since the 4th respondent was not a protected teacher and since he was qualified for being promoted as Headmaster, Ext. P3 Government Order did not warrant any interference under Art. 226 of the Constitution of India and the learned Single Judge was right in dismissing the Original Petition.

(Underlining supplied)

In that decision, the law laid down by the Division Bench also was that the rights of the parties cannot be governed by the words used by the educational officer, while granting the benefit of clause (vi) of GO. (MS) 62/73/G Edn. dated 2-5-1973. That being so, when in an identical fact situation the Division Bench has rendered a decision, I cannot refuse to apply that decision to the facts of this case, distinguishing that decision on the basis of the difference in the words used by different educational officers in the staff fixation orders applicable in implementation of the same GO. Clause (vi) of GO. (MS) 62/73/G. Edn. dated 2-5-1973 has to be implemented uniformly in all cases, by the educational officers concerned and the mode of such implementation cannot be left to the discretion of the educational officers concerned. One educational officer cannot say that the post is part time post with full time benefits to the teacher and another that the part time post is converted as a full time post in I view of clause (vi) of GO. (MS) 62/73/G Edn. dated 2-5-1973. Implementation of the GO. should be uniform in all identical cases, failing which it may be used by unscrupulous educational officers for fostering nepotism and corruption and the

beneficiaries to obtain illegal benefits therefrom, which cannot be permitted under law. As a corollary, notwithstanding the words used by different educational officers for implementing the GO., the rights of the beneficiaries accruing from such implementation must be the same or construed to be the same.

10. The view of the learned single judge in Lalitha's case (*supra*) to the effect that the government order, permitting part time post to be treated as full time post subject to conditions, cannot alter the effect of the statutory provisions in Rule 6 of Chapter XXIII of the KER may be a possible view based on the general law, which is that an executive order cannot amend a statutory provision. But that view does not take into account Rule 3 of Chapter I of the KER, which reads thus:

3. Where the Government are satisfied that the operation of any rule under these Rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner.

(Underlining supplied)

GO. (MS) 62/73/G Edn. dated 2-5-1973 has been issued by the Government in exercise of that power conferred on the Government. Therefore, the Government order cannot be read down simply on the ground that the Government order runs counter to the rules, insofar as by another statutory rule in KER themselves, the Government has been given the power to dispense with or relax the requirements of the said Rule itself, if the conditions in Rule 3 of Chapter I of KER are satisfied. Hence the general law that an executive order cannot alter a statutory provision does not apply in this case in view of Rule 3 of Chapter II. When, in exercise of powers under Rule 3 of Chapter I of the KER, the Government has, by issuing the said G.O., decided to relax the rigour of Rule 6 of Chapter XXIII, by permitting part time teachers, who have put in 5 years of service and have 8 periods of work, to be made full time, although the student strength does not warrant a full time post in that school and the division bench has interpreted the said G.O. to the effect that if the conditions in the GO. are satisfied, the Educational Officer is competent to convert a part time post into a full time post to sanction the post of full time teacher, the GO. cannot be held to be one giving mere monetary benefits of full time post to the teacher occupying a part time post, without the teacher being treated as a full time teacher. As per the latter part of the GO., the services of the teacher availing of the benefit of the GO has to be utilised for teaching regular classes and other subjects giving them adequate work and therefore they are bound to work as a full time teacher and not as a part time teacher alone. Therefore, the object of the G.O. is to treat the teacher as a full time teacher for all intents and purposes including consideration for appointment as headmaster. In this connection, it is worthwhile to note that in Lalitha's case (*supra*), the learned judge has also understood the

purport of the GO. that way, but held that the G.O. should be read down since the said G.O cannot run contrary to the statutory provision in Rule 6(1) of Chapter XXIII. Viewed thus, in view of the Division Bench decision in Sreeramachandran's case (supra), which is binding on single judges of this court, the decision in Lalitha's case (supra) cannot be held to be good law on this point Further the learned single judge has not held and could not have held that the decision bench is wrong. In fact the learned judge has not even doubted the correctness of that decision. Consequently it must be held that by virtue of GO. (MS) 62/73/G Edn. dated 2-5-1973, the petitioner is a full time teacher holding a deemed full time post for all purposes, including for the purpose of appointment as headmistress.

11. Therefore, I am of opinion that the petitioner should be held to be a Full time Language Teacher coming within the purview of the Note to Rule 45 of Chapter XIV A of the KER and hence she is entitled to be promoted as headmistress, applying the ratio of the decision of the division Bench in Sreeramachandran's case (supra).

12. As far as the contention of the 3rd respondent, relying on the decision of the Division Bench in W.A. No. 1710/2009, is concerned, insofar as the staff fixation order or the grant of the benefit of GO. (MS) 62/73/G Edn. dated 2-5-1973 to the petitioner, is not under challenge before me and she had been enjoying that benefit for long years without any objection, I am not called upon to decide that question. I leave it at that. However, I am of opinion that when a part time teacher having 5 years" service can be treated as a full time, denial of the same benefit to a teacher having 21 years" full time service on being found that for a particular year onwards there is student strength only for a part time teacher is patently unjust. Moreover, the benefit is given to part time teachers, who have put in more than 5 years" service and not more than five years" part time service. I am of opinion that in view of the division bench decision, the Government should step in to clarify the GO., if necessary retrospectively, to make the law clear beyond doubt, as regards such teachers and render justice to that section of unfortunate teachers also. Petitioner has got a case that during the relevant year, there was sufficient student strength to warrant a full time Sanskrit teacher going by Ext. P9 strength verification report of the A.E.O. But since the above finding is sufficient to dispose of this case, I am not considering the said contention, as also the contention raised by the petitioner on the basis of the absence of reference to specialist teachers in Rule 34(b). Perhaps as suggested by the counsel for the 3rd respondent, the failure to amend Rule 34(b) in tune with the note to Rule 45 may have been an omission, since the note to Rule 45 was a later addition. But I may add that for sake of clarity and to avoid possible unnecessary litigation, it is only appropriate that the Government amends Rule 34(b) also in tune with the Note to Rule 45. In the result, the impugned orders are quashed. It is declared that the petitioner is entitled to be appointed and approved as the headmistress of the A.M.M. Upper Primary School, Vadavannur, in the vacancy, which arose on 1-4-2006. The 2nd

respondent is directed to approve the appointment of the petitioner as headmistress of the A.M.M. Upper Primary School, Vadavannur, as per the appointment order issued by the manager of the school, which led to Ext.P2 order. If the appointment order has been returned to the manager, the manager shall resubmit the appointment order or, if the appointment order is not now available for any reason, issue afresh appointment order appointing the petitioner as headmistress with effect from 1-4-2006, (notwithstanding whether the present manager is the manager who issued the original appointment order or not) within two weeks from the date of receipt of a copy of this judgment. The 2nd respondent shall approve the same within one month from the date of receipt of a copy of this judgment, if the appointment order is still with the 2nd respondent or the date of receipt of the appointment order from the manager in the latter case. The monetary benefits arising therefrom shall be disbursed to the petitioner within one month therefrom. The retirement benefits of the petitioner shall also be recomputed and arrears disbursed to her, within the said time limit.

The writ petition is allowed as above, but without any order as to costs.