

(2001) 05 KL CK 0030

In the High Court Of Kerala

Case No : W.A. No's. 1707 of 1993 and Connected Cases

Philomina and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Kerala Education Act, 1958 — Section 10, 11, 36

Citation : (2001) 2 KLJ 1

Hon'ble Judges : S. Sankarasubban, J;S. Marimuthu, J;A. Lekshmikutty, J

Bench : Full Bench

Advocate : C.P. Sudhakara Prasad, L.G. Poti, A .K. Chinnan, A.K. Avirah, V.P. Seemanthini, P.K. Suresh, Abraham Vakkanal, K.A. Abraham, Julian Xavier, P.E. Cherian and G. Gopakumar, for the Appellant; P.V. Asha and N. Santha (Govt. Pleaders), for the Respondent

Judgement

Sankarasubban, J.—All the above cases have come before us on reference by a Division Bench. The question involved in these cases is regarding the interpretation of the Proviso to Rule 43 of Chap. XIV-A of the Kerala Education Rules. The first decision on this aspect is the decision reported in Babu Varghese v. Manager - 1994 (1) KLT 557. Against that, W.A. No. 1707 of 1993 was filed. It is without noting that the appeal was pending against the decision in 1994 (1) KLT 557 that the decision in Padminikutty v. DEO, Ottappalan -1996 (1) KLT 397 was rendered. All the above cases were heard together. We heard, learned counsel Sri. C.P. Sudhakara Prasad, Sri. L.Gopalakrishnan Poti, Sri. A.K. Chinnan, Smt. Seemanthini, Sri. A.K. Avirah, Sri. P.K. Suresh, Sri. Abraham Vakkanal, Sri. A.K. Abraham, Sri. Julian Xavier, Sri. P.E. Cherian, Sri. G. Gopakumar and the learned Government Pleader. Learned counsel on both sides argued the matter and a large number of decisions were cited before us. Since W.A. No. 1707 of 1993 is filed against the decision reported in 1994 (1) KLT 557, we are considering that case first.

2. This Writ Appeal is filed against the judgment of a learned single Judge in O.P.

No. 1605 of 1988. The judgment in that case is reported in Babu Varghese v. Manager- 1994 (1) KLT 557. Subsequently, a Division Bench consisting of Sreedharan (as he then was) and Koshy, JJ. in Padminikutty v. D.E.O., Ottappalam - 1996 (1) KLT 397 approved the decision in 1994 (1) KLT 557. When the present appeal and connected matters came before another Division Bench consisting of Koshy and Ramachandran, JJ., their Lordships referred the cases to be decided by a Full Bench. It appears that at the time when 1996 (1) KLT 397 was decided, the present appeal and connected cases against the judgment reported in 1994 (1) KLT 557 had been admitted and taken into file, but without noticing that the judgment had been upheld. In the meanwhile, there was a decision by another Division Bench of this court in W.A. No. 517 of 1992. There are certain other decisions on the question. Hence, the matter was referred to a Full Bench. It is in the above circumstances that the matter has come before us.

3. The question that arises for consideration is regarding the scope and effect of the proviso to Rule 43 of Chap. XIV-A of the Kerala Education Rules. Rule 43 of Chap. XIV-A as it originally stood was as following Subjet 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." After that there was a note, which stated as follows: "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 the lower grade of pay of the category of post to which promotions are to be made". The amendment was made to Rule 43 by adding a proviso before the Note, which is as follows: "Provided that in the case of promotions 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". This proviso was introduced by G.O.(P) 185/86/G.Edn. dated 22-11-1986, which was published in the Gazette dated 6-1-1987 inserted with effect from 22-4-1986. In this context, it is necessary to state that before the Rule was amended, an executive order was issued by the Government, viz., G.O.Rt. No. 1456/86-G.Edn. Dated 22-4-1986, copy of which is produced as Ext.R6(e) along with the counter affidavit filed in O.P. No. 1605 of 1988. Accepting the contention raised in the Original Petition regarding the proviso to the Rule, Usha, J. (as she then was), in para. 21 of the judgment in O.P. No. 1605 of 1988, held as follows:

In the light of the above discussions, I am inclined to accept the contentions raised by the petitioner that the minimum subject requirement referred in the proviso to Rule 43 is a subject requirement laid down in the circular dated 13-5-1985 as 1:1:1 between the core subjects, namely, mathematics, science and social studies. Any other interpretation to the term "minimum subject requirement" would make the proviso to Rule 43 unenforceable in law as it will

be in conflict with the provisions contained under Secs. 10 and 11 of the Kerala Education Act read with the provisions contained under Rules 1 and 4 Chap. XIV-A and also the provisions contained under Ch. XXXI of K.E.R. In the light of the above conclusion which I am inclined to reach, I am not going into the merit of the other contentions raised by the petitioner as below".

Sreedharan, J. (as he then was), speaking for the Bench in *Padminikutty v. D.E.O., Ottappalam* - 1996 (1) KLT 397, in para. 12 held as follows:

One has to search in vain the entire Kerala Education Rules and the Act to find out what minimum subject requirement means. From the circulars issued by the Director, it would appear that one teacher must engage the students for 25 periods a week. If there are teachers who are sufficient to engage all the periods in any of the core subjects, it appears that the minimum subject requirement in respect of that subject is satisfied. Even if the number of HSAs in that subject are capable of engaging the students during the period set apart for that subject, if any vacancy arises in that subject, it should be filled up by qualified hands to comply with the ratio of 1:1:1.

In para. 16, the learned Judge observed as follows:

From the above observations made by the Bench, it cannot be said that Their Lordships were concerned with the questions which were canvassed before us in these matters (reference is to the judgment in W.A. No. 517 of 1992). So, the said decision cannot be considered as a precedent in relation to the issues referred to us by the learned single Judge. The law stated by the learned single Judge in 1994 (1) KLT 557 is, according to us, correct and we respectfully approve the same.

In the judgment in W.A. No. 517 of 1992, after quoting Rule 43 and the Proviso, the Division Bench observed thus:

It is therefore, clear from the above said amendment that in the case of promotions to the post of High School Assistant (subject) the minimum subject requirement alone need be satisfied and if that is so, the senior-most High School Assistant though he or she is not Upper Primary School Assistant in the same subject, he or she should be promoted.

4. In the present case, the fact that the minimum subject requirements have been satisfied is admitted. To understand the scope of the Proviso and its far reaching effect, one has to go to the past before the order in which the subject ratio 1:1:1 was issued.

5. Kerala Education Act, 1958 is an Act to provide for the better organisation and development of educational institutions in the State. Sec. 10 of the Act states that the Government shall prescribe the qualifications to be possessed by persons for appointment as teachers in Government and private schools. Section 11 deals with the appointment of teachers in Aided Schools. Subject to the rules and conditions laid down by the Government, teachers of Aided Schools shall be

appointed by the Managers of such Schools from among persons who possess the qualifications prescribed under Sec. 10. Sec. 36 of the Act deals with the power of the Government to make Rules. By the amendment in 1982, the Section confers power on the Government to make Rules prospectively or retrospectively. In exercise of the Rule making power under Chap. XXXI of the Kerala Education Rules, Rules have been prescribed regarding the qualifications of teachers. Chap. XXXI deals with qualifications of teachers. Under Rule 2(a) so far as High School Assistants (Subjects) are concerned, a Degree in the concerned subject and B.Ed. conferred or recognised by the Universities in Kerala. That is the qualification for being appointed as High School Assistant. Chap. XXI deals with recruitment of teachers to Aided Schools. Chap. XXIII deals with fixation of strength of teachers in Departmental and Aided Schools. Rule 1 of Chap. XIV-A states as follows:

Managers of Private Schools shall appoint only candidates who possess the prescribed qualification. As far as High School Classes are concerned the appointment shall be made with due regard to the requirement of subjects as determined by Director of Public Instructions with reference to the curricula of studies. Whenever vacancy occurs, the manager shall follow the directions issued by Government from time to time, for ascertaining the availability of qualified hand and for filling up vacancy.

Thus, the Government has delegated this power to the Director of Public Instruction to determine the subject requirement while making appointments of teachers in High School Classes with reference to the curricula of studies. Prior to the Kerala Education Rules, as per order No. D3-8544/58 dated 13-6-1958, the Director had prescribed the minimum subject requirement and it was in force till 15-7-1972. By the Circular dated 22-4-1972, the ratio 3:4:5 for appointments of High School Assistants for Social Studies, Mathematics and Science and an internal ratio of 3:2 between Physical Science and Natural Science were introduced with effect from 15-7-1972. Teachers who were appointed prior to the introduction of the ratio of 3:4:5 are exempted from the formula and allowed to be reappointed on the basis of minimum subject requirement by Circular dated 26-10-1973. The Director had issued Circular No. H2-42115/84 dated 13-5-1985 prescribing 1:1:1 ratio for all cases of appointments including promotion with effect from 1985-86. This Government Order is extracted in the judgment under appeal reported in 1994 (1) KLT 557.

6. Before we consider the above Government Order, we shall turn to Rule 23 of Chap. VI of the Kerala Education Rules. According to this Rule, the maximum strength of a class division shall be 45, but excess admission upto 50 will be allowed. When there are more than 50 students a second division may be opened, when the strength exceeds 95 a third division, and so on. Under Rule XXIII Rule 4, in every High School, there may be one post of Headmaster. As many posts of High School Assistants as there are divisions in High School Class. As many posts of lower and Upper Primary School Assistants as there are

divisions in the Lower and Upper Primary School classes. The posts of Specialist teachers and Language teachers are determined under Rule 6B to H under the same chapter. Rule 12 provides that subject to availability of accommodation, the strength of teaching staff in each School shall be fixed by the Educational Officer in accordance with the above general provisions contained in the Chapter once a year after finalising the number of divisions based on the effective strength of class as on the 6th working day from the re-opening date in June.

7. According to the instructions issued by the Government, the total number of periods in an Aided School in a day is 7. There are 5 working days in a week. So, the total number of periods in a week is 35. But a High School Assistant has to teach in a class 25 periods every week. In the Government Order dated 20-2-1965 issued by the Director of Public Instruction, copy of which is produced as Ext. R6(b) along with the counter affidavit of the sixth respondent in O.P. No. 1605 of 1998, it is stated as follows:

In regard to subject requirements the following instructions may be borne in mind while sanctioning posts of Graduate teachers in High School Classes, A minimum number may be fixed for each of the core subjects and the remaining posts filled up as mentioned below. Since the number of periods allotted for each of the core subjects is five per week, there will be 50 periods for each of the core subjects in a High School where there are 10 divisions. The total minimum number of teachers required for each core subject is two while sanctioning the establishment. Such a minimum number should be fixed for each core subject.

After sanctioning the minimum of 2 teachers for each of the core subjects there will be 4 High School Assistants posts remaining in a school having 10 divisions. These 4 teachers may be teachers of General Science, Social Studies, General Mathematics or Language."

Thus, it can be seen from the instructions that in a High School consisting of 10 divisions for each of the core subject, the teachers permissible are 10.

8. Now, we come to Government Order dated 13-5-1985. The contention of the petitioner in the Original Petition is that the Proviso cannot violate the directions issued in the present Government Order. The Government Order refers to three earlier Circulars of 1972 and 1974. In the first Circular, it was ordered that the subjectwise distribution of posts of High School Assistants for the subjects Social Studies, Mathematics and Science should be in the proportion of 3:4:5. The above subject ratio was introduced with effect from 15-7-1972. By the second Circular, the subject ratio for Social Studies, Mathematics and Science was revised and fixed in the proportion of 1:1:1 with effect from the School year 1974-75. Subsequently, several clarifications have been issued regarding the subject ratio. The objective of evolving and introducing the subject ratio for the appointment of High School Assistants in core subjects is to ensure that the subjects Science, Mathematics and Social Studies are taught by competent teachers who are fully qualified in these subjects and thereby enable the

students to receive adequate and proper instruction in these subjects. With a view to achieving these objective, the following revised instructions are issued: As per clause 1, for the core subjects, namely, Social Studies, Mathematics and Science will be in the proportion of 1:1:1 in Government and Aided High Schools. This ratio shall also be followed in unaided recognised High Schools in the State. The break up for Physical and Natural Science will be in the ratio of 3:2. The next relevant clause is clause 4. Since appointment includes, appointment by promotion, appointment by transfer and appointment by direct recruitment, the subject ratio 1:1:1 should be strictly followed in all the above three methods of appointment of High School Assistants. The argument of the petitioner in the Original Petition was that the Circular of 1985 is the instruction issued under Chap. XIV-A of Rule 1 by which the Director of Public Instruction is directed to issue instructions regarding the subject requirements. Thus, as per this, a ratio of 1:1:1 is to be fixed among the core subjects, whether it is the appointment by promotion, appointment by transfer or appointment by direct recruitment. Since this Government Order was issued certain complaints were given by Upper Primary School Assistants. The Government issued orders on 22-4-1986. It was stated in that order that in G.O.MS.43/86/G.Edn. dated 4-3-86, orders were issued to the effect that the subject ratio of 1:1:1 should be insisted only in the case of fresh appointments and that in the case of promotion of Rule 43 claimants, the minimum subject requirement alone need be satisfied, to safeguard the interests of trained graduates who are awaiting promotion as HSA. Government now clarify that the above orders will be made applicable to the appointments made during the school year 1985-86, subject to the condition that settled cases will not be reopened.

9. According to the judgment of the learned single Judge as well as the Division Bench judgment, the minimum subject requirement in the proviso is the ratio of 1:1:1 and no other meaning can be attributed. Further, it was contended that under Chap. XIV A of Rule I, the Director of Public Instruction is given exclusive power to determine the fixation of staff strength and the fixation of post and the ratio. When that power is given to the Director of Public Instruction, the Government cannot amend the same. According to us, the meaning of the words "subject requirement" is available from Circular No. H2-128432/64 dated 20-2-1964 of the Director of Public Instruction. In the above Circular it is slated as follows:

In regard to subject requirements, the following instructions may be borne in mind while sanctioning posts of Graduate teachers in High -School Classes. A minimum number may be fixed for each of the core subject and the remaining posts filled up as mentioned below. Since the number of periods allotted for each of the core subjects is five per week, there will be 50 periods for each of the core subject in a High School where there are 10 divisions. The total minimum number of teachers required for each core subject is two. While sanctioning the establishment, such a minimum number should be fixed for each core subject.

By Circular dated 24-4-1972, the Director of Public Instruction introduced the ratio between Social Studies, Mathematics and Science as 3:4:5 with effect from the academic year 1972-74. The ratio was further modified by Circular dated 31-1-1974. From Ext. PI, it can be seen that for 50 periods in core subjects, the minimum requirement is two. It is also admitted that a teacher can take 25 periods in a week for core subjects, so that for 50 periods, the minimum should be two. Ext. PI further states that after sanctioning the minimum two teachers for each core subject, there will be four High School Assistants. Learned counsel for the appellant argued the what is meant by the "subject requirement" is that when sufficient number of teachers are there for teaching core subjects, a minimum subject requirement can be said to have been satisfied. For example, in W.A. No. 1707 of 1993. for the year 1986-87 for the subject, Mathematics, there are 170 periods. As per the instructions, one teacher will cover 25 periods. So 8 Mathematics teachers are enough. This is the minimum subject requirement. But as per the orders issued by the Director, the ratio for the core subjects is 1:1:1. Hence, there are 10 teachers for Mathematics, 10 teachers for Social Studies and 10 teachers for Physical Science. Eight teachers are enough to teach the total number of Mathematics period. We are of the view that the minimum subject requirement is not the minimum subject ratio mentioned in the Government Order of 1985. There was no necessity for enacting the proviso. Further, it is seen from the Proviso that the proviso was introduced for the benefit of the trained graduates, who are waiting promotions as High School Assistants.. It may so happen that there nun" be a senior Upper Primary School Assistant having B.Ed. qualification and specialised in Mathematics. But vacancy would have arisen in the post of High School Assistant for Social Studies. But there are enough number of High School Assistants to take up classes for Social Studies. In that event a trained graduate in Mathematics can be promoted. He is not promoted as High School Assistant (Social Studies), but is promoted as High School Assistant (Mathematics).

10. We don't agree with the observations of the learned single Judge and the observations of the Division Bench that if the subject requirement is not understood as the minimum subject ratio, it will affect the quality of teaching. We are of the view that the Rule is careful in saying that a senior trained hand can be promoted only if there are enough teachers in the subject. Further, we are of the view that under Sec. 11 of the Act appointment of teachers in Aided Schools can be made subject to the Rules and conditions laid down by the Government and under Rule 1 of Chap. XIV-A it is stated that whenever vacancy occurs, the Manager shall follow the directions issued by the Government from time to time for ascertaining the availability of qualified hand and for filling up vacancy. Under Rule making power, the Government has got power to give directions in the case of appointments, which include promotion also. Further, we find that from Rule 43 itself, promotions are to be made on the basis of efficiency. The promotions are to be made from qualified hands in the lower grade according to seniority. A number of decisions were cited before us

regarding the effect of the proviso. According to us, it is enough we refer to the decision of the Supreme Court reported in *S.Sundaram v. V.R. Pattabhiraman* - AIR 1985 SC 582, wherein it is held as follows: "a proviso may serve four different purposes; (1) qualifying or excepting certain provisions from the main enactment; (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable; (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision". By interpreting the meaning of the words "subject requirement" as subject ratio according to us, the effect of the proviso will become odious. If the subject ratio had to be maintained, then it was not necessary to introduce the proviso. Even in the absence of the proviso, promotions could be made only to the post to which vacancies arise. Thus, if a vacancy had arisen in the post of Science Teacher, necessarily, the Science Teacher had to be promoted. But what prompted the Government to introduce the proviso is the complaint made by certain sections of teachers that in the exigencies of service promotions may be made considering the seniority of the teacher even though he may not be qualified in the subject in which vacancy arose. It is to implement such a position that the proviso was enacted. An argument was advanced stating that the earlier circulars had been withdrawn and hence, they cannot be looked into to ascertain the meaning of the words "subject requirement".

11. At our request, a statement was filed by the second respondent in W.A. No. 2382 of 1998. The statement states that Rule 11 of Chap. XXIII of the Kerala Education Rules provides that the number of periods in the various subjects in each class shall be as determined by the Director from time to time. Rule 1(i) of Chap. XIV-A of the Rules provides that appointments in High Schools shall be made with due regard to the requirements of subjects as determined by the Director of Public Instructions with reference to the curriculum. In the circular dated 20-2-1965, it was directed that a minimum number may be fixed for each of the core subject. Then the number of periods allotted for each of the core subject was 5 per week. The minimum number of teachers required for the each core subject was directed to be two considering the total number of 50 periods. According to us, the subject requirement has been and down in the circular dated 20-2-1965. But subsequently, it was found that for the appointment of teachers, it was better to adopt a subject ratio in order to avoid appointment of excess teachers in each subject. It was in that context that the ratio was adopted. The subject ratio cannot be equated with the subject requirement. Even now in fixing the staff strength, we are told that each teacher is directed to take 25 periods a week. It is on that basis that the staff strength was made. No doubt, the appointments are made not merely on the basis of subject requirement, but on the basis of subject ratio. But because of this, can we say that there is nothing as

"subject requirement". According to us, the words "subject requirement" appearing in the proviso cannot be read as subject ratio as per the circular. Further, we are of the view that the proviso is careful in stating that the benefit of the proviso can be given only when sufficient number of teachers is available in the core subject in which vacancies arise. It is only after considering all these things that the senior teacher in core subject can be promoted. We don't endorse the view that if subject ratio is not followed, the quality of teaching will go down. It is one of the principles in service law that sufficient avenues should be provided for the promotion of the members of service. If they are allowed to stagnate in a particular post, it will affect the efficiency in their service. It is taking into all these things that the proviso has been introduced. Hence, we don't agree with the decision in 1994 (1) KLT 557 and 1996 (1) KLT 397.

12. In this context, we will refer to the decision in W.A. No. 5417 of 1992. After going through the decisions we cannot agree with the observations in 1994(1) KLT 557 or the observations in 1996 (1) KLT 397 that the above judgment was given on concession. In para.3 of the judgment in W.A. No. 517 of 1992 it is stated as follows:

In the normal course, according to the Rules, the seniormost Upper Primary School Assistants in the same subject, of course, have to be appointed as High School Assistants, but this is subject to certain exceptions made in the Rules which permit Upper Primary School Assistants not having the degree in the same subject to be also promoted as High School Assistants if they are seniors. At one time, the Rules required not only that the minimum subject requirements should be satisfied but also that the person to be promoted should be a senior in regard to the same subject. But the same was amended by the Government by issuing statutory rules made under Sec. 36 of the Kerala Education Act. 1958. Rule 43 of Chap. XIV-A of the Kerala Education Rules, 1959 was amended by the notification issued in G.O.(P) 185/ 86/G.Edn. dated 22-11-1986. The amendment was brought into force on 22-4-1986. The amendment is in the following terms:

In the Kerala Education Rules, 1959, in Chap. XIV-A in Rule 43 before Note the following proviso shall be inserted, namely:-

Provided that in the case of provisions 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.

There is an explanatory note to the said Government Order which reads as follows:

In Circular No. H2-42115/84 dated 13-5-1985 of the Director of Public Instruction, it has been specified that with respect to all kinds of appointments of H.S.As. in High Schools, the subject ratio 1:1:1 for Social Studies, Mathematics and Science should be strictly followed.

In consideration of the complaints received from affected teachers and Teachers' Organisations against the above circular instructions of the Director, Government in G.O.(MS) 43/86/G.Edn. dated 4-3-1986 have ordered that in the case of promotions of Rule 43 claimants, the minimum subject requirement alone need be satisfied, to safeguard the interests of trained graduates who are awaiting promotions. This amendment is to give statutory validity to the above orders.

Thereafter, the Division Bench held as follows:

It is therefore, clear from the above said amendment that in the case of promotions to the post of High School Assistant (Subject) the minimum subject requirement alone need be satisfied and if that is so, the seniormost High School Assistant though he or she is not an Upper Primary School Assistant in the same subject, he or she should be promoted.

Then, in para.4, it is stated that "it is true that if the principle of promotion according to seniority when minimum requirements of subjects are satisfied is followed. Smt. Letty Philipose (sixth respondent) who is senior to me as UPSC ought to have been promoted"....." In the instant case, none has got a case that the existing number of High School Assistants (Social Science) falls short of the minimum subject requirement".

13. Learned counsel for the contesting respondents contended that on the day on which his client was promoted, there was no Rule. There was only an executive order. It was submitted that his client was appointed as H.S.A. (Maths) on 2-6-1986. At that time, there was only Ext.P6 order dated 4-3-1986 stating that subject requirement can be resorted to in effecting promotions. That order, according to the counsel for the contesting respondent, cannot go against his client, since it was only an executive order and there was no amendment to the Rule, Hence, counsel submits that since at the time of initial appointment there was no Rule, his appointment should be approved. But it is now clear that the Proviso to the Rule has been retrospective with effect from 22-4-1986. If that be so, the petitioner's appointment was rightly not approved. That the rule can be retrospective is clear from Sec. 36 of the Act. Learned counsel then contended that when once he was promoted, there was a vested right and that vested right cannot be taken away by way of retrospective operation. According to us, this argument cannot be accepted. Merely by appointment, no right is vested in the teacher so long as his appointment has not been approved. If the appointment had been approved, the respondent's contention would have been very substantial and this court could have very well said that the retrospective action of the Government cannot take away a vested right. Hence, this argument cannot be approved. Accordingly, the judgment of the learned single Judge is set aside and the Original Petition is dismissed.

W.A. No. 892 of 1994

14. Appellant in this Writ Appeal is the appellant in W.A. Nos. 2718 of 1998 and 2382 of 1998. Promotion given to her by the Manager was set aside by a learned

single Judge of this court on the basis of the decision in Padminikutty v. D.E.O., Ottappalam 1996 (1) KLT 397. In the Original Petition, the petitioner challenges Ext.P9 order dated 14-10-1993 passed by the Government. Ext.P9 order was upheld by the learned single Judge. We set aside Ext.P9 order and direct the Government to reconsider the entire question and pass appropriate orders in the light of the principles we have held in this judgment. W.A. No. 892 of 1994 is disposed of.

W.A. No. 1305 of 1996

15. W.A. No. 1305 of 1996 is filed by the petitioner in O.P. No. 15066/ 95. Petitioner was High School Assistant in an Aided School. The Original Petition was filed challenging Exts. P8 and P10 orders. By Ext. P8 order, the second respondent found that the petitioner was an excess hand and had to be given protection retaining the fourth respondent in the School. A revision was filed by the petitioner against Ext. P8 before the first respondent. The first respondent confirmed Ext. P8 rejecting the revision petitioner. The petitioner submitted that Exts. P8 and P10 are contrary to Exts. P11 and P12 circulars. Learned single Judge relying on the decision reported in Padminikutty v. D.E.O., Ottappalam - (1996 (1) KLT 397) held that the ratio 1:1:1 has to be followed. According to the appellant, Ext. P11 gives protection to those who were appointed before 4.6.1985 and this matter has not been considered by the authorities.

16. According to us, the Government has to look into Exts. P11 and P12 circulars without following the decision in 1996 (1) KLT 397. Further, the decision in 1996 (1) KLT 397 was with regard to the validity of the proviso to Rule 43 of Chap. XIV-A of the Kerala Education Rules. In the light of the above, we direct the Government to reconsider Ext.P9 in accordance with law. W.A. No. 1305 of 1996 is disposed of.

W.A. Nos. 1065, 1066, 1067 and 1068 of 1996

17. W.A. No. 1065 of 1996 is filed against the judgment in O.P. No. 15463 of 1994 by the petitioner in the Original Petition. W.A. No. 1066 of 1996 is filed against the judgment in O.P. No. 17472 of 1994 by the second respondent in the Original Petition. W.A. No. 1067 of 1996 is filed by the petitioner in O.P. 164 of 1995 and W.A. No. 1068 of 1996 is filed by the fourth respondent in O.P. No. 17472 of 1994. The three original petitions viz. O.P. Nos. 15463 of 1994, 17472 of 1994 and 164 of 1995 were heard together and a common judgment was passed. The learned single Judge allowed O.P. No. 17472 of 1994 and dismissed O.P. Nos. 15463 of 1994 and 164 of 1995.

18. Petitioner in O.P. No. 15463 of 1994 challenged Ext.P8 order dated 27-8-1994 issued by the Government, copy of which is also produced as Ext. P14 in O.P. No. 164 of 1995. The Manager also challenged Ext. 15 order whereby the District Educational Officer directed to implement Ext. P14 order. The petitioner in O.P. No. 17472 of 1994 seeks for implementation of Ext. P6 order. Ext.P6 in O.P. No. 17472 of 1994 and Ext.P8 in O.P. No. 15463 of 1994 and Ext. P14 in

O.P. No. 164 of 1995 are one and the same order. The learned single judge followed the decisions in *Cherian v. State of Kerala* -1990(2) KLT 481, *Babu Varghese v. Manager* - 1994(1) KLT 557 and *Padminikutty v. DEO, Ottappalam* -1996 (1) KLT 397 and allowed O.P. No. 17472 of 1994 while dismissing the other two original petitions.

19. In the above view of the matter, Exts. P6, P8 and P14 are set aside and we direct the Government to look into the matter afresh and pass appropriate orders in the light of the principles we have held in this judgment. Writ Appeals are disposed of.

W.A. No. 2718 & 2382 of 1998

20. W.A. No. 2718 of 1998 is filed against the judgment in O.P. No. 9630 of 1998 by the petitioner, while W.A. No. 2382 of 1998 is filed against the judgment in O.P. No. 10925 of 1997. The petitioner/appellant in both these cases is same and the appeals are filed against the common judgment in O.P. Nos. 10925 of 1997 and 9630 of 1998. A learned single Judge of this court following the decision in *Padminikutty v. DEO, Ottappalam* - 1996 (1) KLT 397, dismissed the original petitions. The petitioner had challenged in that Original Petition Ext. P9 order passed by the Government. So far as OP No. 9630 of 1998 is concerned, it was dismissed on the basis that the petitioner was not entitled to be promoted as per Ext. P9 order. In the view that we have taken regarding the interpretation of the proviso to Rule 43, we quash Ext. P9 order and direct the Government to reconsider the matter and pass appropriate orders within two months from today. W.A. Nos. 2718 & 2382 of 1998 are disposed of.

O.P. No. 1067 of 1992

21. In this original petition, petitioner challenges Exts.P2 and P7 orders and for a direction to implement Ext.P3 order. The question for consideration is whether the petitioner is entitled to be promoted as High School Assistant. The petitioner is a B.Sc. (Natural Science) graduate with B.Ed. degree. She was appointed as High School Assistant in a leave vacancy in the Mar Philixinos High School, Kumbazha. Her services were terminated on 17-2-1985. The School has High School and Upper Primary Sections. The petitioner was appointed as an Upper Primary School Assistant on 15-7-1985 and she continued in that post. She was promoted as High School Assistant for short term vacancy and was reverted when the vacancy ceased to exist.

22. The fifth respondent is a B.Sc. (Maths) graduate with B.Ed. degree. She was appointed in a leave vacancy. An additional post was sanctioned in the Mar Philixinos High School for the school year 1988-89. The vacancy was deemed to have arisen on 15-7-1988. The petitioner was eligible to be promoted as High School Assistant with effect from that date. Her claim squarely came within the ambit of Rule 43 of Chap. XIA of the Kerala Education Rules. The fourth respondent however appointed one Jolly Amma against that vacancy with effect from 15-7-1988. Her appointment was not approved. The fourth respondent

claims that he obtained a letter of resignation from Jolly Amma. Thereafter the fourth respondent appointed the fifth respondent against the vacancy with effect from 5-7-1989. Copy of the appointment order is produced as ExtP2. This was rejected by the Authorities. According to the petitioner, the proviso was overlooked while passing Ext. P7 order. 23. In view of the above, we direct the Government to reconsider Ext. P7 and pass appropriate orders within two months from today in the light of the principles held in this judgment. Original Petition is disposed of.

Writ Appeals and the Original Petition are disposed of as above.