

(2025) 11 KL CK 1858
In the High Court Of Kerala
Case No : Writ Appeal No. 427 Of 2025

Vias Bhat.C

APPELLANT

Vs

State Of Kerala Represented By Principal Secretary To
Government

RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala High Court Act, 1958 — Section 5(i)
Kerala Education Rules, 1959 — Rule 7, 7(2), 34, 34(a), 34(b), 35, 36, 37(1), 37(2),
43A, 43B, 43C, 44, 44(1), 44A, 45, 49, 51, 51A, 52, 52(1), 52(2)

Citation : (2025) 11 KL CK 1858

Hon'ble Judges : Anil K. Narendran, J; Muralee Krishna S., J

Bench : Division Bench

Advocate : K.S.Prenjith Kumar, Bea Mary Benny, Nisha Bose, R.K.Muraleedharan

Final Decision : Disposed Of

Judgement

Anil K. Narendran, J

1. The appellant is the petitioner in W.P.(C)No.22357 of 2024, which was one filed invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P9 communication dated 15.06.2024 issued by the 4th respondent District Educational Officer, Tirur; and a writ of mandamus commanding respondents 1 to 5 to appoint him as the Headmaster in the High School section of Zainudheen Memorial Higher Secondary School (ZMHSS), Poolamangalam in Malappuram District, in the vacancy that arose with effect from 01.06.2024.

2. On 17.08.1994, the appellant-petitioner was appointed as a High School Assistant (Social Science) at Zainudheen Memorial High School, Poolamangalam. The post of High School Assistant (HSA) was redesignated as High School Teacher (HST), based on the recommendation made by the 10th Pay Revision Commission in its report dated 10.07.2015. Going by the averments in the

writ petition, the petitioner has continuous regular service with effect from 05.06.1995. His initial service with effect from 17.08.1994, as well as continuous regular service from 05.06.1995, were approved by the 4th respondent District Educational Officer, Tirur.

2.1. While continuing at ZMHSS, Poolamangalam, the post held by the petitioner was reduced in the staff fixation order for the academic year 2015-16. As a protected teacher, the petitioner was initially deployed as a Cluster Resource Centre Coordinator. Later, he was recalled to the parent school, and he rejoined duty on 06.08.2019, due to the retirement of Sri. George A.J., HST (Maths) on 31.05.2019, who was adjusted to HST (English) during the academic year 2018-19. In the staff fixation for the academic year 2019-20, the post held by the petitioner was reduced, and he was deployed as a protected teacher, first at Government Higher Secondary School, Othukkungal. On 06.08.2019, he was transferred to the Block Resource Centre (BRC), Tirur. Later, he was deployed as HST (SS) in Kunhimon Haji Memorial Higher Secondary School (KMHSS), Alathiyoor.

2.2. Smt. Khadeeja P., HST (SS) in ZMHSS, Poolamangalam, retired from service on 30.04.2024. Smt. Pushpalatha V.R., the 4th Headmistress of the said school, also retired from service on 31.05.2024. The petitioner, who possesses the required graduate service as provided under Rule 44A Chapter XIVA of Kerala Education Rules (KER) and test-qualified, submitted Ext.P1 representation dated 16.09.2023 before the 2nd respondent Director of General Education, with a request to post him in the parent school, in the retirement vacancy of Smt. Khadeeja P., HST (SS), and then consider his claim for appointment as Headmaster of the school. On receipt of Ext.P1, the 2nd respondent issued Ext.P2 reply dated 14.12.2023, pointing out that the petitioner has to make a request, well in advance, before the 3rd respondent Deputy Director of Education, Malappuram, through the Manager of ZMHSS, Poolamangalam.

2.3. The petitioner submitted Ext.P3 representation dated 07.06.2024 before the 4th respondent District Educational Officer, Tirur, who is functioning as the Manager of ZMHSS, Poolamangalam. He has also submitted Ext.P4 representation dated 07.06.2024 before the 3rd respondent Deputy Director of Education, through the 4th respondent District Educational Officer. respondent District Educational Officer, by Ext.P5 communication dated 17.04.2024, informed the petitioner that the claim for appointment to the post of Headmaster has to be considered as per the seniority list prepared under the provisions of Rule 34(a) and (b), Chapter XIVA of KER.

2.4. By Ext.P6 order dated 29.05.2024 of the 3rd respondent Deputy Director of Education, protected teachers in Malappuram District, including the petitioner, were recalled to their parent schools, during the academic year 2024-25. The petitioner was recalled to ZMHSS, Poolamangalam, in the retirement vacancy of Smt. Khadeeja P., HST (SS) in ZMHSS, Poolamangalam, who retired from service on 30.04.2024. Though Ext.P6 order is dated 29.05.2024, the 3rd respondent

Deputy Director of Education signed the said order only on 03.06.2024. Based on Ext.P6 order, the petitioner was relieved from KMHSS, Alathiyoor, on 03.06.2024 AN, and he rejoined the parent school, i.e., ZMHSS, Poolamangalam, on 04.06.2024 FN. The said fact is evident from Ext.P7 communication dated 04.06.2024 of the Headmaster in the High School section of ZMHSS, Poolamangalam, addressed to the 3rd respondent Deputy Director of Education.

2.5. On the retirement of Smt. Pushpalatha V.R., on attaining the age of superannuation on 31.05.2024, the 4th respondent District Educational Officer, who is functioning as the Manager of ZMHSS, Poolamangalam, placed the 6th respondent, who was an HST (Physical Science), as the Headmaster-in-charge in the High School Section of that school. The petitioner, on rejoining duty in the parent school on 04.06.2024, submitted Ext.P8 representation dated 09.06.2024 before the 4th respondent District Educational Officer, to enter his name in all the records of ZMHSS, Poolamangalam, and to appoint him as the Headmaster in the High School Section of that school, in the vacancy that arose from 01.06.2024.

2.6. On receipt of Ext.P8 representation, the 4th respondent issued Ext.P9 communication dated 15.06.2024, whereby the petitioner was informed that he cannot be considered for appointment as Headmaster in the High School Section of ZMHSS, Poolamangalam, as his name was not included in the seniority list of the teachers in that school, as on 01.01.2024. Further, he has not rejoined the parent school on 01.06.2024. The document marked as Ext.P10 is a copy of a Government order dated 08.01.2024 issued by the 1st respondent regarding online submission of the seniority list of teachers in aided schools, for approval. Ext.P11 is a copy of the circular dated 20.02.2024 issued by the 2nd respondent Director of General Education, based on Ext.P10 Government order.

3. On 23.07.2024, when W.P.(C)No.22357 of 2024 came up for admission, the learned Single Judge passed an interim order to the effect that approval for the appointment of the 6th respondent shall be subject to the outcome of the writ petition.

4. The 6th respondent filed a counter affidavit dated 04.07.2024, opposing the reliefs sought for in the writ petition, producing therewith Exts.R6(a) to R6(c) documents, contending inter alia that as on the date of occurrence of vacancy, i.e., 01.06.2024, the petitioner was not on the rolls of ZMHSS, Poolamangalam, and he joined duty in the parent school only on 04.06.2024, on being relieved from the deployed school, i.e., KMHSS, Alathiyoor, on 03.06.2024. As per Ext.P10 Government order and Ext.P11 circular, protected teachers cannot be included in the seniority list of the parent school, which is being prepared as on 1st January of the year, as stipulated in Note (ii) to Rule 35, Chapter XIVA of KER.

5. The 4th respondent District Educational Officer filed a counter affidavit dated 19.11.2024, opposing the reliefs sought for in the writ petition, contending inter alia that the appointment of the 6th respondent as Headmaster in the High School section of ZMHSS, Poolamangalam was made strictly in accordance with

the seniority list prepared and maintained under Rule 34(a) and (b), Chapter XIVA of KER. The petitioner was not included in the final approved seniority list of 2023 and also in the provisionally approved seniority list of 2024, due to loss of post and his deployment in another school. Based on Ext.P6 order of the 3rd respondent Deputy Director of Education, the petitioner was recalled to the parent school. Accordingly, he was relieved from KMHSS, Alathiyoor, and rejoined as HST (SS) at ZMHSS, Poolamangalam, on 04.06.2024. The vacancy of Headmaster in the High School section of ZMHSS, Poolamangalam, was effective from 01.06.2024. At that time, the petitioner was working at KMHSS, Alathiyoor. In the counter affidavit, the 4th respondent has referred to Ext.P10 Government order dated 08.01.2024 and Ext.P11 circular dated 20.02.2024 of the 2nd respondent Director of General Education, and relied on the decision of a Full Bench of this Court in Abraham A.G. and others v. State of Kerala and others [2009 (3) KLT 659].

6. The petitioner has filed a reply affidavit dated 11.01.2025 to the counter affidavit filed by the 4th respondent and that filed by the 6th respondent, producing therewith Ext.P12 Government order dated 23.07.2010, whereby a proviso was added to Rule 37(1), Chapter XIVA KER, to reckon for seniority, the entire service rendered by the teacher in both the parent school and the other school, on re-appointment to the parent school.

7. After considering the pleadings and materials on record and also the submissions made at the Bar, the learned Single Judge dismissed the writ petition by the judgment dated 29.01.2025. Paragraphs 17, 18 and the last paragraph of that judgment, read thus;

"17. In this case, admittedly, the petitioner was not included in the seniority list which was drawn as on 01.01.2024. Ext.P6 order of redeployment was passed only on 29.05.2024. Even as per the Rules, the supplementary list during a school year is liable to be sent before 31st May of every year. The competent authority shall approve the list provisionally by 30th June and finally by 31st August every year. It is not in dispute that the petitioner's name was not in the seniority list of the school as on 01.01.2024 or as on 31.05.2024.

18. Furthermore, the petitioner was not physically working in the parent School as on the date of occurrence of vacancy. Ext.P7 relieving order indicates that the petitioner was relieved from the deployed school only on 03.06.2024. In the circumstances, the petitioner cannot aspire to claim the post of Headmaster which arose in the parent school. I do not find any illegality in Ext.P9.

The writ petition is without any merit and it is dismissed."

8. Feeling aggrieved by the judgment dated 29.01.2025 of the learned Single Judge in W.P.(C)No.22357 of 2024, the appellant-petitioner is before this Court in this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

9. On 06.03.2025, when the writ appeal came up for admission, the Division Bench ordered that approval to the appointment of the 6th respondent will be subject to the outcome of the writ appeal. Thereafter, on 10.04.2025, it was ordered that, if the appellant is being retrenched for want of strength, that shall not be done without orders from this Court.

10. On 05.06.2025, when the writ appeal came up for consideration, it was admitted on file. The learned Senior Government Pleader took notice for respondents 1 to 4 and notice was ordered to the 5th respondent. The 6th respondent entered appearance through counsel. By the order dated 05.06.2025, it was made clear that the interim order granted by the Division Bench on 06.03.2025 shall continue to be in force.

11. Heard arguments of the learned counsel for the appellant-petitioner, the learned Senior Government Pleader for respondents 1 to 4 and also the learned counsel for the 6th respondent.

12. The learned counsel for the appellant-petitioner contended that the judgment of the learned Single Judge is one rendered without properly appreciating the legal and factual contentions raised by the petitioner. When the vacancy of HST (SS) occurred in the parent school, i.e., ZMHSS, Poolamangalam, on 01.05.2024, due to the retirement of Smt. Khadeeja P., HST (SS), on 30.04.2024, the appellant is the sole claimant for that post under Rule 51A, Chapter XIVA of KER. There was no legal impediment in recalling a protected teacher to his parent school during summer vacation, as protected teachers are drawing their salary throughout their service, from the parent school. In support of the said contention, the learned counsel placed reliance on Annexure A order dated 04.04.2017 issued by the Block Programme Officer, Block Resource Centre, Adoor, relieving Smt. Mini R., another protected teacher of ZMHSS, Poolamangalam, with effect from 04.04.2017, based on the order passed by the 3rd respondent Deputy Director of Education, for rejoining the parent school. Though Ext.P6 order of the 3rd respondent is dated 29.05.2024, the said order was signed only on 03.06.2024. The 3rd respondent Deputy Director of Education and the 4th respondent District Educational Officer delayed the issuance of Ext.P6 order, to enable the 6th respondent to get an appointment as the Headmaster in the High School section of ZMHSS, Poolamangalam, overlooking the claim of the appellant. The learned counsel further contended that, on re-appointment as HST (SS) in the parent school, in the vacancy that arose due to the retirement of Smt. Khadeeja P., the appellant is entitled to reckon his entire period of service for seniority, in view of the proviso to sub-rule (1) of Rule 37, Chapter XIVA of KER.

13. The learned Senior Government Pleader for respondents 1 to 4 and also the learned counsel for the 6th respondent contended that the reasoning of the learned Single Judge in the impugned judgment is neither perverse nor patently illegal, warranting interference in this intra-court appeal. In the said judgment, the learned Single Judge has taken note of the statutory requirements of Rules

34 and 35, Chapter XIVA of KER and also the law laid down a Full Bench of this Court in Abraham A.G. and others v. State of Kerala and others [2009 (3) KLT 659]. The appellant, who was working as HST (SS) at KMHSS, Alathiyoor, as on 01.06.2024, on deployment as a protected teacher, is not legally entitled to be appointed as the Headmaster in the High School section of ZMHSS, Poolamangalam, in the vacancy which arose on 01.06.2024.

14. Chapter XIVA of KER deals with the conditions of service of aided school teachers. As per Rule 1, Chapter XIVA of KER, the Managers of private schools shall appoint only candidates who possess the prescribed qualification.

15. As per Rule 44, Chapter XIVA of KER, the appointment of Headmasters, Headmistresses and Vice-Principals shall ordinarily be according to seniority from the seniority list prepared and maintained under clauses (a) and (b), as the case may be, of Rule 34. The Manager will appoint the Headmaster, Headmistress and Vice-Principal, subject to the Rules laid down in the matter. A teacher, if he is aggrieved by such an appointment, will have the right of appeal to the Department. As per Note to Rule 44, whenever the Manager intends to appoint a person as Headmaster, Headmistress and Vice-Principal, other than the senior claimant, the Manager shall obtain a written consent from such senior claimant renouncing his claim permanently. Such consent shall have the approval of the Educational Officer concerned.

16. As per Rule 44A, Chapter XIVA of KER, subject to the provisions contained in sub-rule (1) of Rule 44, the minimum service qualification for appointment as Headmaster, Headmistress and Vice-Principal in Aided Complete High Schools/ Training schools shall be twelve years of continuous graduate service with a pass in the test in Kerala Education Act and the Kerala Education Rules and a pass in account Test (Lower) conducted by Kerala Public Service Commission. As per the first proviso to Rule 44A, Headmasters, Headmistresses and Vice-Principals of High Schools and Training Schools, who were actually holding the said post on the 11th day of June, 1974, shall stand exempted from passing the Account Test (Lower). As per the second proviso to Rule 44A, teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the test qualification specified in sub-rule (1). As per the third proviso to Rule 44A, inserted with effect from 01.06.2015, notwithstanding anything contained in the second proviso, in the case of appointment to the post of Headmaster, preference shall be given to those teachers who have acquired the test qualifications specified in Rule 44A.

17. As per Rule 49, Chapter XIVA of KER, qualified teachers, except Headmasters appointed in vacancies which are not permanent, which extend over the summer vacation, and who continue in such vacancies till the closing date, shall be retained in the vacancies during the vacation, if their continuous service as on the closing day is not less than eight months. The teachers so retained shall be entitled to the vacation salary. These teachers shall be relieved on the closing day, if their continuous service as on that day is less than the aforesaid period.

This rule shall not apply to teachers appointed in training vacancies. As per the Explanation to Rule 49, for the purpose of Rule 49, 'Headmaster' includes Teacher-in-charge, Headmistress, Vice-Principal, also.

18. As per Rule 51, Chapter XIVA of KER, when a vacancy in any category of post terminates necessitating the relief of a teacher, senior hands shall ordinarily be retained in preference to junior hands, with due regard to the requirement of subjects determined by the Director under sub-rule (1) of Rule 1 and to the instructions issued by him under sub-rule (4) of Rule 1.

19. As per sub-rule (1) of Rule 52, Chapter XIVA of KER, teachers who are relieved on account of any reduction in the number of posts under orders of the Department shall, on re-appointment in the same school or in another school under the same management or a different management, start on the same pay as they were getting at the time of relief, whether the new appointment is permanent or not. As per sub-rule (2) of Rule 52, teachers thrown out of service due to the withdrawal of recognition of schools by the Department shall also be eligible to draw the pay which they were getting at the time of withdrawal of recognition of the school on re-appointment in another school.

20. As per Rule 51A, Chapter XIVA of KER, qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in the same or higher or lower category of teaching posts, for which he is qualified, that may arise if there is no claimant under Rule 43 in the lower category in schools under the same Educational Agency or an Educational Agency to which the school may be subsequently transferred, provided they have not been appointed in permanent vacancies in schools under any other Educational Agency. As per the first proviso to Rule 51A, a teacher who was relieved under Rule 49 or Rule 52 shall not be entitled to preference for appointment under this rule unless such teacher has a minimum continuous service of one academic year as on the date of relief. As per the second proviso to Rule 51A, the first preference under this rule shall be given to protected teachers belonging to the same Educational Agency.

21. As per Note 1 of Rule 51A, Chapter XIVA of KER, if there are more than one claimant under this Rule, the order of preference shall be according to the date of first appointment. If the date of first appointment is the same, then preference shall be decided with reference to age, the older being given first preference. In making such appointments, due regard should be given to the requirement of subjects and to the instructions issued by the Director under sub-rule (4) of Rule 1, as far as High schools are concerned. As per Note 1A of Rule 51A, fresh appointments to vacancies arising in the same or higher or lower category of teaching posts under the Educational Agency shall be made only after providing re-appointment to such teachers thrown out from service and protected teachers available under the Educational Agency. As per the Explanation, for the purpose of this clause, 'protected teacher' means a teacher who has been retrenched for want of vacancy after putting such length of regular service that may be

specified by the Government or who is eligible for such Protection as per G.O. (Ms.)No.104/69/Edn. dated 06.03.1969 or G.O.(Ms.)No.231/84/G.Edn. dated 27.10.1984 or any other orders issued by the Government from time to time. As per Note 2 of Rule 51A, the Manager should issue an order of appointment to the teacher by Registered post acknowledgement due and give a period of 14 (fourteen) clear days to the teacher to join duty. If the teacher does not join duty in time, the Manager should give a further notice to the teacher stating that another person would be appointed instead and that the preferential right under this rule would be forfeited if not exercised within another 7 (seven) clear days. If nothing is heard during that time also, the preferential right under the rule will be regarded as forfeited.

22. Rule 34, Chapter XIVA of KER deals with seniority lists. As per Rule 34, every management shall, subject to the provisions contained in Rule 37, prepare and maintain in Form II-A a staff list, otherwise called a seniority list, each for teachers in the High Schools and those in the Primary Schools, as specified in clauses (a) and (b). As per clause (a) of Rule 34, in the case of High Schools, a combined seniority list of High School Assistants (Subjects) and High School Assistants (languages) specified in clauses (ii) and (ii-A) of Rule 3, Chapter XXIII shall be prepared giving the High School Assistants (Languages) the credit of their entire service as High School Assistants (Languages), irrespective of whether they are Graduates or Title Holders, without prejudice to the inter se seniority of High School Assistants (Subjects) and High School Assistants (Languages). The purpose of the seniority list under clause (a) of Rule 34 shall be only to determine the relative position of persons who shall be eligible for promotion as High School Headmaster or Headmistress or Vice-Principal by virtue of length of service and prescribed qualifications for promotion as High School Headmaster or Headmistress or Vice-Principal.

23. As per Rule 35, Chapter XIVA of KER, if the Educational Agencies have more than one school in a District, they shall be constituted into one unit and a common seniority list shall be prepared for all the schools in the unit together and shall be submitted to the concerned District Educational Officer for approval. If the Educational Agencies have schools in more than one District within a Revenue District, they shall be constituted as one unit and a common seniority list shall be prepared for all the schools in the unit together and submitted to the concerned Deputy Director (Education) for approval. If the Educational Agencies have schools in more than one Revenue District, they shall be constituted as one unit, and a common seniority list shall be prepared for all the schools together and shall be submitted to the Director for approval. The District Educational Officer, the Deputy Director (Education) and the Director, as the case may be, may approve the list provisionally pending finalisation of appeals, if any, preferred by aggrieved teachers. The proviso to Rule 35 and Note 1 deals with the option of the Educational Agency to constitute Girls' High Schools and Training Schools for women under it as a separate unit.

24. As per Note 2 to Rule 35, Chapter XIVA of KER, the seniority list shall be made as on the 1st day of January of every year. The list should be made up-to-date and renewed every year. The supplementary list during a school year, showing the names of teachers appointed and got approved by the Controlling Officers, shall be sent by the Educational Agency to the authority competent to approve the list, with copies to all sub-controlling officers concerned, before 31st May every year. The competent authority shall approve the list provisionally by 30th June and finally by 31st August every year. As per Note 3 to Rule 35, in case the Educational Agency fails to comply with the provisions in Note 2 above, it shall be held responsible and such failure on the part of the Educational Agency shall be deemed to be sufficient cause for taking steps referred to in sub-rule (2) of Rule 7, Chapter III of KER.

25. As per Rule 36, Chapter XIVA of KER, the staff list as provisionally approved shall be circulated to the teachers and representations, if any, received from the teachers within one month from the date of circulation, shall be submitted to the concerned officer competent to approve the list, with the management's remarks, within two months from the date of receipt of the list provisionally approved, to the authorities specified in Rule 35. The list shall be maintained by the management and produced whenever required by the Departmental authorities.

26. As per sub-rule (1) of Rule 37, Chapter XIVA of KER, the seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit, provided he is duly qualified for the post. As per sub-rule (2) of Rule 37, in the case of teachers in the same grade in the same unit, whose date of commencement of continuous service is the same, seniority shall be decided with reference to the date of first appointment. If the date of the first appointment is also the same, seniority shall be decided with reference to age, the older being the senior. As per the proviso to sub-rule (1) of Rule 37, added by G.O.(P)No.130/2010/G.Edn. dated 23.07.2010, the period of service rendered in the parent school or in another school by a teacher, who is relieved under Rule 52, shall be reckoned for seniority on his re-appointment to the parent school.

27. Though the stand taken in the counter affidavit dated 04.07.2024 filed by the 6th respondent is that Ext.R6(b) is a copy of the approved seniority list as on 01.01.2024, as per the endorsement made by the 4th respondent District Educational Officer on Ext.R6(b), the seniority list as on 01.01.2024 is provisionally approved. The said endorsement is one made on 17.02.2024. The stand taken in the counter affidavit dated 19.11.2024 filed by the 4th respondent District Educational Officer is that as per Ext.P10 Government order dated 08.01.2024, the seniority list from 01.01.2024 onwards has to be submitted through Samanwaya. The process of approving the seniority list through Samanwaya has not been completed, as no further instructions have been received. Therefore, the seniority list as on 01.01.2024 has been provisionally

approved. According to the 4th respondent, as per Ext.P11 circular dated 20.02.2024 issued by the 2nd respondent Director of General Education, protected teachers, who have been working in other management, should not be included in the seniority list.

28. Prior to the addition of the proviso to sub-rule (1) of Rule 37, Chapter XIVA of KER with effect from 23.07.2010, the legal position was as laid down by a Full Bench of this Court in Abraham A.G. and others v. State of Kerala and others [2009 (3) KLT 659].

29. In Abraham A.G. [2009 (3) KLT 659], the question referred for consideration of the Full Bench was whether protected teachers would lose seniority in their parent school, on being deployed to Government schools, or whether they could count the period of their deployment also for the purpose of reckoning seniority in their parent school. After referring to the provisions contained in sub-rule (1) of Rule 37, Chapter XIVA of KER (as it stood prior to the addition of the proviso), the Full Bench observed that sub-rule (1) of Rule 37 is very specific that seniority of any teacher in any grade in any unit shall be decided with reference to the continuous service in that grade in that unit, provided the incumbent is qualified for the post. It means that broken service cannot be reckoned. Rule 34, Chapter XIVA of KER, inter alia, says that in High Schools, a common seniority list of High School Assistant (Core subjects) and High School Assistant (Languages) shall be prepared. Rule 35 provides that if there is more than one school, all the schools under the educational agency shall be treated as one unit for the purpose of seniority. Rule 36 deals with the publication of the seniority list. Going by Rule 37, it is manifestly clear that broken service cannot be counted for the purpose of seniority.

30. In Abraham A.G. [2009 (3) KLT 659], in the context of Rule 37, Chapter XIVA of KER (as it stood prior to the addition of the proviso), the Full Bench held that a plain reading of Rule 37 would show that if a teacher is deployed to a Government School on protection, the same will affect her seniority because seniority is reckoned with reference to the continuous qualified service in the concerned unit. The observation made by the Division Bench in Rahellamma v. State of Kerala [1997 (2) KLT 429] that the service rendered as a protected teacher cannot be taken into consideration as service for the purpose of seniority in the parent school is the correct legal position. But the view that the said service cannot be reckoned to compute the length of service mentioned in Rule 45, Chapter XIVA of KER is no longer a good law, in view of the Full Bench decision of this Court in Pushparaj v. Manoharan [2006 (2) KLT 951], wherein it was held that as the stipulation in Rule 45 is essentially one of qualification for eligibility for consideration to the post of headmaster, meaning thereby that graduate service equivalent to half of the service of the undergraduate teacher is considered as one of the eligibility conditions of the graduate teacher for getting preference over the senior undergraduate teacher, there cannot be any doubt that for deciding the eligibility condition, as in the case of Rule 44A, in the case

of Rule 45 also, service in another school of both teachers can be reckoned to decide such eligibility.

31. In *Usha Devi v. State of Kerala* [2002 (1) KLT 615], a decision relied on by the learned counsel for the 6th respondent, a Division Bench of this Court held that the maintenance of a seniority list is absolutely essential in respect of every establishment, as the absence of the same is likely to create unwanted and unnecessary disputes. The relevance of such a statutory provision cannot but be emphasised. Such a list is to be made up-to-date and renewed every year, and a supplementary list showing the names of fresh appointees is also to be prepared and got approved so as to ensure its authenticity. The Rule provides that if the educational agency fails to comply with the provisions, it shall be deemed to be sufficient cause for taking action against the institution.

32. In *Usha Devi* [2002 (1) KLT 615], on the facts of the case at hand, the Division Bench noticed that in the final seniority list published as on 1st January, 1995, the petitioner was shown as senior to Usha Devi. The said seniority list was published after circulating the provisional seniority list, calling for objections. Usha Devi has not filed any objections against the provisional seniority list. Even after publishing the final seniority list, she has not challenged the seniority of the petitioner. Therefore, the seniority position of the petitioner is final as on 1st January, 1995. Seniority lists for subsequent years are published only to accommodate the new entrants in service and not to revise the settled position of others. Usha Devi, who has not challenged the seniority list published in the year 1995, filed objections to the provisional seniority list published in the year 1999, questioning the settled seniority of the petitioner. The Division Bench noticed the settled position in service law that every person is entitled to sit back and consider that his seniority settled long ago would not be unsettled after the lapse of a number of years. The Division Bench, in the context of sub-rule (1) of Rule 37, Chapter XIVA of KER, as it stood prior to the addition of the proviso, held that a protected teacher has no right to seniority in the parent school from the initial date of appointment.

33. In *Prasad V.B. v. Manager, Philipose Mar Dilshus U.P. School* [2005 (3) KLT 487], a Division Bench of this Court reiterated the law laid down in *Mar Sleeba UPS v. State of Kerala* [1990 (1) KLT 626] that a protected teacher has no claim for the post of headmaster as he is not a member of the staff of the parent school during that time though he has a claim under Rule 51A of Chapter XIVA of KER. In the said decision, the Division Bench was dealing with a case in which the appellant was on protection when the vacancy in the post of Headmaster arose on 01.06.1994.

34. As made clear in clause (a) of Rule 34, Chapter XIVA of KER, the purpose of the seniority list under clause (a) shall be only to determine the relative position of persons who shall be eligible for promotion as High School Headmaster or Headmistress or Vice-Principal by virtue of length of service and prescribed qualifications for promotion as High School Headmaster or Headmistress or Vice-

Principal. Note 2 to Rule 35, Chapter XIVA of KER provides that the seniority list shall be made as on the 1st day of January of every year, which should be made up-to-date and renewed every year. Note 2 provides for a supplementary list during a school year, before 31st May every year, showing the names of teachers appointed, whose appointments are approved by the Controlling Officers, which shall be sent to the authority competent to approve the list, with copies to all sub-controlling officers concerned, and the competent authority shall approve the said list provisionally by 30th June and finally by 31st August every year. Rule 36, Chapter XIVA of KER, provides for the circulation of the provisionally approved staff list and its approval by the competent officer, after considering the representations, if any, received from the teachers within one month from the date of circulation, along with the remarks of the management. The competent officer shall approve the staff list provisionally approved, within two months from the date of receipt of the same, along with such representations and remarks.

35. In view of the provisions contained in sub-rule (1) of Rule 37, Chapter XIVA of KER, the seniority of a teacher in any grade in any unit shall be decided with reference to the length of continuous service in that grade in that unit, provided he is duly qualified for the post. In every other service, the seniority is normally determined with reference to the date of regular appointment. However, in the case of teachers in aided schools, their seniority is determined with reference to the length of continuous service in that grade in that unit, provided the teacher is duly qualified for the post.

36. In *Usha Devi* [2002 (1) KLT 615], a Division Bench of this Court, in the context of sub-rule (1) of Rule 37, Chapter XIVA of KER, as it stood prior to the addition of the proviso, held that a protected teacher has no right to seniority in the parent school from the initial date of appointment. Later, in *Abraham A.G.* [2009 (3) KLT 659], a Full Bench of this Court, after referring to sub-rule (1) of Rule 37, Chapter XIVA of KER, as it stood prior to the addition of the proviso, held that sub-rule (1) of Rule 37 is very specific that seniority of any teacher in any grade in any unit shall be decided with reference to the continuous service in that grade in that unit, provided the incumbent is qualified for the post. It means that broken service cannot be reckoned. A plain reading of Rule 37 would show that if a teacher is deployed to a Government School on protection, the same will affect her seniority because seniority is reckoned with reference to the continuous qualified service in the concerned unit.

37. After the decision of the Division Bench in *Usha Devi* [2002 (1) KLT 615] and the decision of the Full Bench in *Abraham A.G.* [2009 (3) KLT 659], by adding the proviso to sub-rule (1) of Rule 37, Chapter XIVA of KER, with effect from 23.07.2010, it is provided that, in the case of an aided school teacher who is relieved under Rule 52, the period of service rendered in the parent school or in another school shall be reckoned for seniority on his re-appointment to the parent school. Therefore, in view of the proviso of sub-rule (1) of Rule 37, in the case of an aided school teacher who is relieved under Rule 52, on account of any

reduction of posts in the parent school under the orders of the Department, the period of service rendered in the parent school or in another school shall be reckoned for seniority on his re-appointment to the parent school. On re-appointment to the parent school, the protected teacher is entitled to be reckoned for seniority, the period of service rendered in the parent school or in another school. In other words, on re-appointment in the parent school, the seniority of the protected teacher shall be decided with reference to his length of continuous service in that grade, after reckoning the service rendered by him in the parent school or in another school.

38. In view of the proviso to sub-rule (1) of Rule 37, Chapter XIVA of KER, added with effect from 23.07.2010, a protected teacher, on his re-appointment to the parent school, is legally entitled to placement in the seniority list prepared under Rule 34, Chapter XIVA of KER, and approved by the competent authority under Rule 35, read with the provisions under Note 2 to the said Rule, with reference to the date of his re-appointment to the parent school. In case the re-appointment of a protected teacher to the parent school is delayed, either due to the delay on the part of the competent authority of the Department in issuing an order recalling him to the parent school or due to the delay on the part of the Educational Authority concerned in permitting him to rejoin the parent school, thereby denying his claim for promotion under Rule 43, Chapter XIVA of KER to a vacancy in any higher grade of pay, or promotion under Rules 43A, 43B or 43C, or his claim for appointment as Headmaster, Headmistress or Vice-Principal under Rules 44 or 45, Chapter XIVA of KER or his claim for preferential appointment under Rule 51A, Chapter XIVA of KER, he shall be entitled to re-appointment to the parent school with effect from the date of occurrence of vacancy in the parent school; for placement in the seniority list prepared under Rule 34, Chapter XIVA of KER, and approved by the competent authority under Rule 35, read with the provisions under Note 2 to the said Rule, with effect from the date of occurrence of that vacancy in the parent school; and for consideration of his claim for promotion, appointment or preferential appointment under the above rules, in any vacancy which occurred in the parent school subsequent to the date of occurrence of the vacancy in the grade in which he was entitled for re-appointment. Any interpretation to the contrary would defeat the very object of the amendment made to sub-rule (1) of Rule 37, Chapter XIVA of KER, with effect from 23.07.2010, by adding a proviso thereto.

39. In the case at hand, Smt. Khadeeja P., HST (SS) in ZMHSS, Poolamangalam, retired from service on 30.04.2024, resulting in a vacancy of HST (SS) for re-appointing the appellant-petitioner, who was working as a protected teacher in KMHSS, Alathiyoor, to the parent school. Later, Smt. Pushpalatha V.R., the Headmistress of ZMHSS, Poolamangalam, also retired from service on 31.05.2024, resulting in a vacancy for making an appointment under Rule 44, Chapter XIVA of KER. Anticipating the said vacancies, the appellant submitted Ext.P1 representation dated 16.09.2023 before the 2nd respondent Director of General Education, with a request to post him in the parent school, in the

retirement vacancy of Smt. Khadeeja P., HST (SS), and then consider his claim for appointment as Headmaster of the school.

40. Though Smt. Khadeeja P. retired from service on 30.04.2024, resulting in a vacancy of HST (SS) in ZMHSS, Poolamangalam, for re-appointing the appellant in the parent school, the 3rd respondent Deputy Director of Education issued Ext.P6 order for that purpose only on 03.06.2024. Though Ext.P6 order is dated 29.05.2024, the 3rd respondent signed the said order only on 03.06.2024. Based on Ext.P6 order, the appellant was relieved from KMHSS, Alathiyoor, on 03.06.2024 AN, and he rejoined the parent school, i.e., ZMHSS, Poolamangalam, on 04.06.2024 FN. On the retirement of Smt. Pushpalatha V.R. on 31.05.2024, the 4th respondent District Educational Officer, who is functioning as the Manager of ZMHSS, Poolamangalam, placed the 6th respondent, who was an HST (Physical Science), as the Headmaster-in-charge in the High School Section of that school, with effect from 01.06.2024.

41. The appellant, on rejoining duty in the parent school, submitted Ext.P8 representation dated 09.06.2024 before the 4th respondent District Educational Officer, to enter his name in all the records of ZMHSS, Poolamangalam, and to appoint him as the Headmaster in the High School Section of that school, in the vacancy that arose from 01.06.2024. The 4th respondent issued Ext.P9 communication dated 15.06.2024, whereby the appellant was informed that he cannot be considered for appointment as Headmaster in the High School Section of ZMHSS, Poolamangalam, as his name was not included in the seniority list of the teachers in that school, as on 01.01.2024. Further, he has not rejoined the parent school on 01.06.2024. In W.P.(C)No.22357 of 2024, the learned Single Judge passed an interim order dated 23.07.2024 to the effect that approval for the appointment of the 6th respondent shall be subject to the outcome of the writ petition.

42. In the impugned judgment dated 29.01.2025, the learned Single Judge found that though the petitioner (appellant herein) was served with Ext.P6 order of redeployment to the parent school as HST (SS) on 29.05.2024, he could join the parent school only on 04.06.2024. Therefore, the petitioner was not a teacher of the parent school as on 01.06.2024, the date of occurrence of the vacancy of Headmaster. The petitioner was not included in the seniority list of the parent school, drawn as on 01.01.2014. As per the Rules, the supplementary list during a school year is liable to be sent before 31st May of every year. The competent authority has to approve the list provisionally by 30th June and finally by 31st August every year. The name of the petitioner is not in the seniority list of the school as on 01.01.2024 or as on 31.05.2024. The petitioner was not physically working in the parent school, as on 01.06.2024, the date of the occurrence of the vacancy. Ext.P7 relieving order indicates that the petitioner was relieved from the deployed school only on 03.06.2024. Therefore, the learned Single Judge concluded that the petitioner cannot aspire to claim the post of Headmaster, which arose in the parent school on 01.06.2024. Hence,

there is no illegality in Ext.P9 communication dated 15.06.2024.

43. By the order dated 06.03.2025 in this writ appeal, it was ordered that approval to the appointment of the 6th respondent will be subject to the outcome of the writ appeal. On 10.04.2025, it was ordered that, if the appellant is being retrenched for want of strength, that shall not be done without orders from this Court. On 05.06.2025, while admitting the writ appeal on file, it was made clear that the interim order granted by the Division Bench on 06.03.2025 shall continue to be in force.

44. As already noticed hereinbefore, though Ext.P6 order of the 3rd respondent Deputy Director of Education is dated 29.05.2024, the 3rd respondent signed the said order only on 03.06.2024. Therefore, based on Ext.P6 order, the appellant was relieved from KMHSS, Alathiyoor, on 03.06.2024 AN, and he could rejoin the parent school, i.e., ZMHSS, Poolamangalam, only on 04.06.2024 FN. Therefore, the finding of the learned Single Judge that the petitioner (appellant herein) was served with Ext.P6 order of redeployment to the parent school as HST (SS) on 29.05.2024 is factually incorrect.

45. Anticipating the vacancy in the parent school, the appellant submitted Ext.P1 representation dated 16.09.2023 before the 2nd respondent Director of General Education, with a request to post him in the parent school, in the retirement vacancy of Smt. Khadeeja P., HST (SS), and then consider his claim for appointment as Headmaster of the school. As evident from Annexure A order dated 04.04.2017 of the Block Programme Officer, Block Resource Centre, Adoor, produced along with I.A.No.1 of 2025 filed in this writ appeal, Smt. Mini R., another protected teacher of ZMHSS, Poolamangalam, was relieved with effect from 04.04.2017, based on the order passed by the 3rd respondent Deputy Director of Education, for rejoining the parent school. Therefore, there was no legal impediment in recalling a protected teacher to his parent school during summer vacation, as protected teachers are drawing their salary throughout their service, from the parent school. Neither Ext.P9 communication dated 15.06.2024 nor the counter affidavit dated 19.11.2024 filed in the writ petition by the 4th respondent District Educational Officer contains any explanation for delaying the issuance of Ext.P6 order dated 29.05.2024 of the 3rd respondent Deputy Director of Education till 03.06.2024, thereby denying an opportunity to the appellant to rejoin the parent school as HST (SS), at least on 29.05.2024, in the vacancy that occurred due to the retirement of Smt. Khadeeja P. on 30.04.2024. The said vacancy occurred in the parent school, much before the date of retirement of Smt. Pushpalatha V.R. on 31.05.2024, resulting in a vacancy of Headmaster on 01.06.2024. The continuous service of the appellant-petitioner in the post of HST (SS) commenced on 17.08.1994, whereas that of the 6th respondent as HST (Physical Science) commenced only on 17.07.1995. The 6th respondent is Sl.No.3 in Ext.R1(b) seniority list as on 01.01.2024, provisionally approved by the 4th respondent District Educational Officer. If the appellant was permitted to rejoin the parent school as HST (SS), either on the

date of occurrence of vacancy, i.e., 01.05.2024, or at least on 29.05.2024, the date shown in Ext.P6 order of the 3rd respondent Deputy Director of Education, he would have become the seniormost qualified HST in ZMHSS, Poolamangalam, as on 01.06.2024, for being appointed as the Headmaster of that school.

46. As concluded hereinbefore at paragraphs 37 and 38, in view of the proviso of sub-rule (1) of Rule 37, Chapter XIVA of KER, added with effect from 23.07.2010, in the case of an aided school teacher who is relieved under Rule 52, on account of any reduction of posts in the parent school under the orders of the Department, the period of service rendered in the parent school or in another school shall be reckoned for seniority on his re-appointment to the parent school. On re-appointment in the parent school, the seniority of the protected teacher shall be decided with reference to his length of continuous service in that grade, after reckoning the service rendered by him in the parent school or in another school. A protected teacher, on his re-appointment to the parent school, is legally entitled to placement in the seniority list prepared under Rule 34, Chapter XIVA of KER, and approved by the competent authority under Rule 35, read with the provisions under Note 2 to the said Rule, with reference to the date of his re-appointment to the parent school. In case the re-appointment of a protected teacher to the parent school is delayed, either due to the delay on the part of the competent authority of the Department in issuing an order recalling him to the parent school or due to the delay on the part of the Educational Authority concerned in permitting him to rejoin the parent school, thereby denying his claim for appointment as Headmaster, Headmistress or Vice-Principal under Rule 44, Chapter XIVA of KER, he shall be entitled to re-appointment to the parent school with effect from the date of occurrence of vacancy in the parent school; for placement in the seniority list prepared under Rule 34, Chapter XIVA of KER, and approved by the competent authority under Rule 35, read with the provisions under Note 2 to the said Rule, with effect from the date of occurrence of that vacancy in the parent school; and for consideration of his claim for appointment as Headmaster, Headmistress or Vice-Principal under Rule 44, Chapter XIVA of KER, in any vacancy which occurred in the parent school subsequent to the date of occurrence of the vacancy in the grade in which he was entitled for re-appointment.

47. In the case of the appellant-petitioner, his re-appointment to the parent school as HST (SS) in the vacancy occurred due to the retirement of Smt. Khadeeja P. on 30.04.2024 was delayed since the 3rd respondent Deputy Director of Education signed Ext.P6 order dated 29.05.2024, only on 03.06.2024. As evident from Annexure A order dated 04.04.2017 of the Block Programme Officer, Block Resource Centre, Adoor, Smt. Mini R., another protected teacher of ZMHSS, Poolamangalam, was relieved with effect from 04.04.2017, based on the order passed by the 3rd respondent Deputy Director of Education, for rejoining the parent school. Therefore, there was no legal impediment in recalling the appellant, who was a protected teacher, to his parent school during summer vacation, as protected teachers are drawing their salary throughout their service,

from the parent school. Since the 3rd respondent signed Ext.P6 order dated 29.05.2024 only on 03.06.2024, the appellant was denied an opportunity to rejoin the parent school as HST (SS), at least on 29.05.2024, in the vacancy that occurred due to the retirement of Smt. Khadeeja P. on 30.04.2024, which occurred in the parent school, much before the date of retirement of Smt. Pushpalatha V.R. on 31.05.2024, resulting in a vacancy of Headmaster on 01.06.2024. In such circumstances, the reasoning of the learned Single Judge in the impugned judgment dated 29.01.2025 in W.P.(C)No.22357 of 2024 to decline the reliefs sought for in the said writ petition cannot be legally sustained.

48. In the result, this writ appeal is disposed of by setting aside the impugned judgment dated 29.01.2025 of the learned Single Judge in W.P.(C)No.22357 of 2024. Since the re-appointment of the appellant, who was a protected teacher, as HST (SS) in the vacancy that occurred in the parent school, i.e., ZMHSS, Poolamangalam, due to the retirement of Smt. Khadeeja P. on 30.04.2024, was delayed due to the delay on the part of the 3rd respondent Deputy Director of Education in issuing an order recalling him to the parent school, thereby denying his claim for appointment as Headmaster under Rule 44, Chapter XIVA of KER, in the vacancy occurred due to the retirement of Smt. Pushpalatha V.R. on 31.05.2024, it is ordered that the appellant is entitled to re-appointment in ZMHSS, Poolamangalam, the parent school, as HST (SS), with effect from the date of occurrence of vacancy, i.e., 01.05.2024; for placement in the seniority list of ZMHSS, Poolamangalam, for the year 2024, prepared under Rule 34, Chapter XIVA of KER, with effect from the date of occurrence of the vacancy of HST (SS), i.e., 01.05.2024; and for appointment as Headmaster under Rule 44, Chapter XIVA of KER, in the vacancy which occurred in ZMHSS, Poolamangalam, the parent school, on 01.06.2024. Ext.P9 communication dated 15.06.2024 issued by the 4th respondent District Educational Officer and the approval granted to the appointment of the 6th respondent as Headmaster, ZMHSS, Poolamangalam, with effect from 01.06.2024, vide order No.B3/729583/2024 dated 24.07.2024, which was made subject to the result of W.P.(C)No.22357 of 2024 (in view of the interim order dated 23.07.2024), which was also subject to the outcome of this writ appeal (in view of the interim order dated 06.03.2025 in this writ appeal), are set aside.

The 4th respondent District Educational Officer, who is functioning as the Manager of ZMHSS, Poolamangalam, shall appoint the appellant as the Headmaster of the school, with effect from 01.06.2024, with all consequential benefits. The appellant shall also be given placement in the seniority list of ZMHSS, Poolamangalam, for the year 2024, prepared under Rule 34, Chapter XIVA of KER, with effect from the date of occurrence of the vacancy of HST (SS), i.e., 01.05.2024. Necessary steps in this regard shall be taken by the 4th respondent District Educational Officer, who is functioning as the Manager of ZMHSS, Poolamangalam, and also by the 3rd respondent Deputy Director of Education, within a period of one month from the date of receipt of a certified copy of this judgment.