

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 10TH DAY OF AUGUST 2021 / 19TH SRAVANA, 1943

WP(C) NO. 23159 OF 2018

PETITIONERS:

- 1 P.M.ALI
AGED 46 YEARS
S/O. MUHAMMED, AGED 46 YEARS, PADIKKAMANNIL (H), (P.T.A
PRESIDENT), G.H.S.S. KANNATTOPUDAM, PALAPPILLY.P.O,
THRISSUR DISTRICT, KERALA-680304,
- 2 REJI THOMAS
S/O. K.C.THOMAS, AGED 45 YEARS, KARIMBIL (H),
(P.T.A.PRESIDENT OF GOVERNMENT H.S, KALLOOPPARA)
KALLOOPARAR.P.O., THIRUVALLA, PATHANAMTHITTA DISTRICT-
689583
BY ADVS.
SRI.SAJITH KUMAR V.
SMT.ARYA RAGHUNATH
SHRI.VIVEK A.V.
SRI.N.S.DAYA SINDHU SHREE HARI
SHRI.GODWIN JOSEPH
SMT.APARNA CHANDRAN
SMT.S.PARVATHI P-960

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, GOVT. OF KERALA AND
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT AND
THIRUVANANTHAPURAM PIN-695001.
 - 2 THE DIRECTOR OF PUBLIC INSTRUCTIONS
THIRUVANANTHAPURAM-695001
- ADDL.R3 ANNA MATHEW
AGED 32 YEARS, D/O P.C KORAH, RESIDING AT PARAKUDIYIL
HOUSE, NELLAD P.O., MUVATTUPUZHA. (ADDL.R3 IS IMPEADED
AS PER ORDER DATED 25/10/2018 IN IA.14400/2018)
ARUN ANTONY ROZARIO
- ADDL.R4 AGED 30 YEARS

S/O ANTONY ROZARIO, RESIDING AT ANUGRAHA HOUSE,
CHUNDALE PO, WAYANAD-673123.

ADDL.R5 DHANYA VALSON P.V.

AGED 32 YEARS

D/O VALSON P.V, RESIDING AT PAMBUKADAN HOUSE,
PERUMBILLISSERI WEST, CHERPU PO, THRISSUR-680561.

(ADDL.R4 AND R5 ARE IMPEADED AS PER ORDER DATED
28/03/2019 IN IA.NO.01/2019)

BY ADVS.

SMT.M.U.VIJAYALAKSHMI FOR R3

SRI.NIRMAL V NAIR FOR R4 & R5

SMT.M.R.SREELETHA, SPL.GOVERNMENT PLEADER FOR R1 & R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

SHAJI P.CHALY,J

This is a Public Interest Litigation filed by petitioners, who are said to be President of Parents Teachers Association of Government Girls Higher Secondary School, Kannattopudam, Thrissur District and Government High School, Kalloorpara, Pathanamthitta District respectively , seeking a declaration that denying the post of High School Assistant (English) in Government Schools in the State of Kerala with 15 periods (3 divisions) in the High School section, is against the Kerala Education Act, 1958 and rule 4(ii) and rule 6I read with rule 3(iiA) of Chapter23 Kerala Education Rules, 1958; and to issue a writ of mandamus commanding the State Government and the Director of Public Instructions, Thiruvananthapuram to conduct staff fixation in the Government Schools under the State of Kerala considering English as a language as provided in Exhibit P2 amendment notification issued by the State Government amending certain of the provisions of the Kerala Education Rules, 1958 and to sanction at least one HSA (English) post in all Government Schools with at least three High School divisions and 15 periods for English.

2. Brief material facts to understand the situation put forth by the petitioners would be necessary and they are as follows:

3. According to the petitioners, there is wilful inaction on the part of the State and the Director of Public Instructions – respondents 1 & 2, in implementing amendments to Kerala Education Rules, 1959 incorporating English as a language to be taught in the Government and aided schools in the State of Kerala, thus denying students mostly from lower and middle class, education in English language through teachers qualified in the subject. Therefore, according to the petitioners, in terms of the amendments to Chapter XXIII & XXXI of the Kerala Education Rules, 1959, the post of High School Assistant has to be sanctioned based on the periods allocated to English. It is also submitted that as per Exhibit P3, period allotment made by the Director of Public Instructions, at least 5 periods are allocated to each division and therefore, schools with at least 3 divisions in High School Section have to be sanctioned with a post of English, which, after the amendment as per Exhibit P2 Government notification dated 23rd June 2003, a compulsory language with effect from 7th January 2002.

4. The predominant contention raised was that the statutory requirements are seen flouted by denying a sanctioned post of English in all the schools under the Government. It is also submitted that the staff fixation process being followed by the respondents denying sanctioned posts for HSA (English) is highly unfair and discriminatory. Yet another contention advanced was that English is a language as per the amended rules and for sanctioning a post in English language, periods

from 15 – 29 justifies a sanctioned post. It was also argued that English is a compulsory language in all the schools in the State of Kerala while Malayalam, Hindi, Arabic etc. are optional languages. But in the staff fixation order, there are sanctioned posts for Malayalam, Hindi etc. in schools with three divisions, despite the compulsory English language being denied a sanctioned post.

5. That apart learned counsel for petitioners Sri.V.Sajith Kumar submitted that in the absence of English teachers, English language is taught by the teachers teaching other Core Subjects who have no prescribed qualification to teach English and it is the said practice resulted in fall of standard in English Language among the students, which was sought to be remedied by amending the provisions in the Kerala Education Rules. It was also contended that the Right to Free and Compulsory Education is a fundamental right for children, between the age of 6 to 14 in terms of Article 21A of the Constitution of India and the Right to Education means imparting quality education to the students. Therefore, the sum and substance of the contention put forth by the petitioners is that denying English teachers to the students of Government Schools in spite of statutory prescriptions and constitutional mandate, is highly illegal, unjust and arbitrary and thus seeks interference.

6. The State has filed a detailed counter affidavit denying the contentions raised by the petitioners, and on the basis of the same Learned Special Government Pleader Smt M.R Sreelatha submitted that by amending the rules and

introducing rule 6I for governing sanction of post in English manifestly makes it clear that the sanctioning of post of English is not governed by rule 6D of Chapter XXIII that provides that the post of languages are to be sanctioned based on the number of periods available to that language per week, which in turn is assessed on the basis of the curriculum and courses of instructions issued by the Director from time to time.

7. It was also contended that allotment of periods for both the core subjects and languages are governed by orders and circulars issued from time to time and the latest is the one produced by the petitioners as Exhibit P1 Government Order dated 7.1.2002 bearing G.O.(MS) No.11/2002/G.Edn. It was also submitted that the number of periods required for governing the curriculum and syllabus for each subject is determined scientifically and this is subjected to periodical scrutiny by academic experts; and that the periods available in the High School sections are distributed for different subjects based on requisition so as to cover the course of instruction.

8. The further submission advanced was that there are clear guidelines for assessing periods that have to be spent by teachers for covering each subject for each class and the said guidelines have been followed meticulously in the all schools in Kerala, both Government and aided. That apart it was contended that Chapter XXIII of Kerala Education Rules provides that the strength of teaching staff is to be fixed on the basis of number of recognised class divisions and periods of

work. Therefore, after assessment of student strength, the post of HSA (English) is to be sanctioned taking into consideration the class divisions and periods of work.

9. Yet another contention advanced was that while issuing Exhibit P1 executive order the Government appended distribution of posts , which was based on a newly introduced ratio 1:1:1:1. The perusal of the earlier orders governing the curriculum of studies and the subject requirements discloses that 3:2:1 and 1:1:1 were the subject ratio earlier followed for the core subjects i.e., Science, Mathematics, Social Science. Therefore, it was contended that the new cadre of HSA (English) was created carving out the periods which were earlier dealt with by the teachers of core subjects and though English is a language and HSA (English) falls under rule 3 of Chapter XXIII, the minimum subject requirement for HSA (English) is fixed by the Director taking into consideration its earlier existence as a core subject with due regard to period of work and course of instructions. It was also submitted that unlike in the case of other core subjects, the post of HSA (English) is given a special status as its creation was carried out in a phased manner.

10. Among other contentions it was submitted that the formation of a new cadre of English thus automatically resulted in a threat of retrenchment to teachers of core subjects and in order to safeguard the interests of those teachers, who had been handling English classes, the Government made specific provisions in the amendment. Thus it is provided that the creation of a new cadre

would be done only in a phased manner without resulting in retrenchment of core subject teachers, who were in service on 7.1.2002 i.e., the date of the amendment of Chapters XXIII and XXXI of the Kerala Education Rules,1958. Other contentions relying upon the amended rules were also raised, which would be dealt with appropriately hereafter.

11. Petitioners have filed a reply affidavit refuting the contentions raised in the counter affidavit and reiterating the stand adopted in the writ petition. Along with I.A No.2 of 2018, petitioners have produced the National Policy on Education,1968 to canvass for the proposition that quality education shall be imparted to the students not only in core subjects but also in the languages apart from Hindi and English including regional languages, in the non-Hindi speaking States.

12. We have heard the learned counsel for petitioners Sri.V.Sujith Kumar, learned Special Government Pleader Smt.M.R.Sreelatha and perused the pleadings and materials on record.

13. The thrust of the contentions raised by the petitioners are based on Exhibit P1 Government Order dated 7.1.2002, which reads thus:

GOVERNMENT OF KERALA

ABSTRACT

General Education -Teaching of English language in the High School
Classes-Certain, improvements - Orders issued.

GENERAL EDUCATION (J) DEPARTMENT

GO. (MS) No. 11/2002/G.Edn. Dated, Thiruvananthapuram, 7-01-2002

Read: 1.G.O. (MS) No. 177/88/GEdn. dated 7—12-1988. ”

2. Letter No. All(4) 19 89/GW dated 19-10-1990 from the Public Service Commission Thiruvananthapuram.
3. D.O. letter No. H3-50526/00/DPI dtd. 12-10-2001 of the
4. Director of Public Instruction, Thiruvananthapuram.
5. G.O.(P) No.76/80/G.Edn dated 6-6-1980

ORDER

Separate Category of H. S. A. (English) is not included either in the Special Rules relating to Government Schools issued in G. O. (P) No- 76/80/G Edn. or in the K. E. R.s English language is taught by the teachers of the core subjects who possess qualifications such as a Degree in the concerned subject and B Ed / B-T-/ L.T. conferred or recognised of any Universities in Kerala. To remedy the consequent deteriorating standard of English teaching /learning, Government had ordered some measures in the G. O. read as 1st paper above for enabling the gradual creation of a separate cadre of H SA. (English). The G. O. had inter alia prescribed the qualification for direct recruitment of H.S.A(Eng.) as “A Degree in English language and Literature and B Ed / B T. / L. T. conferred or recognised by any University in Kerala “The P.S.C. had suggested the following modification to the qualification prescribed for the post of H,S A. (English) in the G.O. dated 7-12-1988.

- (i) A Degree in English language and Literature and
- (ii) B Ed./ B-T./L.T. with teaching of English as an optional subject.

In the absence of those with qualification in item (ii) above, candidates with B.Ed./B-T./ L.T. in any other subject will be considered.

The P.S.C. had also advised to effect necessary amendments to the rules, to enable the selection process for the post of H. S. A. (English). However, no such amendment was issued-

2. The Director of Public Instruction in his letter read as 3rd paper above has now

informed the Government that the present method of teaching of English followed in “High Schools is ineffective in the absence of qualified H. S.As in English language, leading to low percentage of Pass in the subject. He has forwarded certain proposals considering the need for improving the standard of teaching the subject in the Schools.

3. Government have examined these proposals in detail and are pleased to order as follows.

a) A new cadre of HSA (English) will be created in the Aided and Government Schools by re-allocating the periods of English now allocated to the core subject (Maths, Science and Social Studies) in a phased manner, without causing retrenchment of existing H.S.As. (core subject). The new cadre will be created by appointing/promoting qualified hands against the vacancies caused by retirement/additional division/resignation/Leave observing the minimum subject ratio requirement between maths, Science and Social Studies with a view to achieve the object of distribution of posts envisaged in the table given in the appendix.

b) The qualification to the post of HSA (English) will be fixed as follows.

i) A Degree in English language and Literature and

ii) B.Ed/B.T/L.T. with English as Optional subject conferred or recognised by any of the Universities in Kerala. In the absence of those with qualifications in item (ii) Candidates with B.Ed/B.T./L.T in any other subject conferred or recognised by any of the Universities in Kerala will be considered.

c) The Present order of subjects of Science, Maths and Social Studies followed of staff fixation of H.S.A (Core Subjects) will be revised as Social Studies, General Science and Maths as a temporary measure so as to achieve the creation of a separate cadre of the HSA (English) and the D.P.I will be authorised to issue specific orders in this regard.

d) In order to implement the Orders at Para 3 (a) above, a temporary ban on promotion of claimants as per Rule 43 of Chapter XIV A KER will be imposed, exempting those who have the prescribed qualification to be posted as HSA (English)

- e) The above Scheme will be implemented from the academic year 2002-2003.
4. Formal Amendment in the K.E.Rs and G.O. (P)No. 76/80/G. dated 6-6-1980 will be issued separately.

By Order of the Governor

Sd/-

Additional Secretary to Government

Appendix to G.O.(MS) No.11/2002/G.Edn. Dated 7.01.2002

No.of Division	P/S	N/S	Maths	S/S	Eng.	Total	No.of Division	P/S	N/S	Maths	S/S	Eng.	Total
1	1	-	-	-	-	1	29	5	4	7	6	7	29
2	1	-	1	-	-	2	30	5	4	7	7	7	30
3	1	-	1	1	-	3	31	6	4	7	7	7	31
4	1	1	1	1	-	4	32	6	4	8	7	7	32
5	1	1	1	1	1	5	33	6	4	8	7	8	33
6	1	1	2	1	1	6	34	6	4	8	8	8	34
7	2	1	2	1	1	7	35	7	4	8	8	8	35
8	2	1	2	2	1	8	36	7	4	9	8	8	36
9	2	1	2	2	2	9	37	7	4	9	8	9	37
10	2	2	2	2	2	10	38	7	4	9	9	9	38
11	2	2	3	2	2	11	39	7	5	9	9	9	39
12	3	2	3	2	2	12	40	7	5	10	9	9	40
13	3	2	3	3	2	13	41	7	5	10	9	10	41
14	3	2	3	3	3	14	42	7	5	10	10	10	42
15	3	2	4	3	3	15	43	8	5	10	10	10	43
16	3	2	4	4	3	16	44	8	5	11	10	10	44
17	3	2	4	4	4	17	45	8	5	11	10	11	45
18	3	3	4	4	4	18	46	8	5	11	11	11	46
19	3	3	5	4	4	19	47	8	6	11	11	11	46

20	4	3	5	4	4	20	48	8	6	12	11	11	48
21	4	3	5	5	4	21	49	8	6	12	11	12	49
22	4	3	5	5	5	22	50	8	6	12	12	12	50
23	5	3	5	5	5	23	51	9	6	12	12	12	51
24	5	3	6	5	5	24	52	9	6	13	12	12	52
25	5	3	6	5	6	25	53	9	6	13	12	13	53
26	5	3	6	6	6	26	54	9	6	13	13	13	54
27	5	4	6	6	6	27	55	9	7	13	13	13	55
28	5	4	7	6	6	27	-	-	-	-	-	-	-

14. On an analysis of paragraph 3, it is clear that the Government have examined the proposals in regard to teaching of English in High School classes and decided to make certain improvements thereunder. It was ordered accordingly that a new cadre of HSA (English) will be created in the aided and Government schools by re-allocating the periods of English now allocated to the core subjects i.e., Mathematics, Science and Social Studies, in a phased manner without causing retrenchment to the existing High School Assistants (Core Subject). It was also decided that a new cadre of English will be created by appointing/promoting qualified hands against the vacancies caused by retirement, additional division, resignation and leave, observing the minimum subject ratio requirement between Maths, Science and Social Studies with a view to achieve the object of distribution of posts envisaged in the table given in the appendix. It is clear from the Government Order that the Government have realised that English language was being taught by the teachers of core subjects

who possesses qualifications such as a Degree in the concerned subject and B.Ed/B.T/L.T.with English as optional subject conferred or recognised by the Universities in Kerala. Therefore, the Government felt that in order to solve the problem of deterioration in the standard of English teaching/learning, definite measures are to be taken for enabling the gradual creation of a separate cadre of HSA (English).

15. It is also clear from the said order that the Government Order dated 7.12.1988 *inter alia* prescribed the qualification for direct recruitment of HSA (English) as "a degree in English language and Literature and B.Ed/B.T/L.T conferred or recognised by any Universities in Kerala". Apart from the same, it is explicit that the Public Service Commission suggested the modification, discernible from Exhibit P1 Government Order order extracted above. That apart in order to achieve the creation of a separate cadre of HSA(English), the present order of subjects of Science, Maths and Social Studies was decided to be revised as Social Studies, General Science and Maths as a temporary measure. It was also made clear that the above scheme will be implemented from the academic year 2002-2003 and formal amendment in the Kerala Education Rules and G.O.(P) No.76/80/G.dated 6.6.1980 would be issued separately.

16. Apparently it was following the above said Government Order that the State Government have issued the notification, G.O.(P) No.149/2003/G.Edn dated

6.6.2003 bearing SRO No.506/2003 and brought out amendments to the Kerala Education Rules through the Education (Amendment) Rules, 2003, which is deemed to have come into force on the 7th day of January, 2002, which is none other than the date of Exhibit P1 notification. It is relevant and important to extract the amendments so brought and they read thus:

“(2) Amendment of the Rules.-- In the Kerala Education Rules, 1959;

(1) in Chapter XXIII.---

(i) in clause (iiA) of rule 3, after item "(i) Hebrew, etc.", the following item shall be added, namely:

"(j) English";

(ii) in clause (ii) of rule 4, after the words "there are divisions " words and periods of work" shall be inserted;

"61. *Sanctioning of posts of High School Assistant (English)*. -

Notwithstanding anything contained in any other rule in this Chapter, the post of High School Assistant (English) shall be sanctioned on the basis of the periods allocated to English, observing minimum subject requirement.

Note:- Subject to any general order that may be issued by the Government, the above rule shall be implemented in a phased manner without causing retrenchment of existing High School Assistants (core subjects) as on 7th January, 2002, and observing the minimum subject requirement."

(2) Chapter XXXI, in rule 2, after sub-clause (ix) of clause (b) of sub-rule (2), the following sub-clause shall be inserted, namely:-

" (X) High School Assistant (English).-(i) A Degree in English language and Literature; and

(ii) B.Ed./B.T./L.T with English as optional subject, conferred or recognised by the Universities in Kerala;

(iii) In the absence of those with qualification in item (ii) above, candidates

with B.Ed./B.T./L.T. in any other subject, conferred or recognised by the Universities in Kerala will be considered."

17. Thus the amendments were incorporated in the Kerala Education Rules w.e.f 07-01-2002. On a reading of the amendments it is clear that English is included as a language in rule 3(iiA). It is also clear that, in rule 4 as it originally existed, the sanction was made on the basis of divisions, however, consequent to the amendment made, the periods of work is also incorporated in clause (ii) of rule 4, to achieve the objective of sanctioning the post of HSA English. That apart after rule 6H, rule 6I was introduced dealing with sanctioning of posts of High School Assistant (English). The phraseology employed in rule 6I is very specific and clear, and it really intended that notwithstanding anything contained in any other rule in Chapter XXIII the post of HSA(English) shall be sanctioned on the basis of the period allocated to English observing minimum subject requirement.

18. Note appended to rule 6I further emphasises and makes it clear that even if rule 6I was introduced to be a stand alone provision making a departure from rule 6D dealing with High School Assistants (Languages) it is subjected to any general order that may be issued by the Government, which means it anticipates an order in future, and then the provisions would be governed by the said general order. It is true that Rule 6I shall be implemented in a phased manner without causing retrenchment of existing High School Assistant (Core

Subjects) as on 7th January, 2002 i.e., the date of Exhibit P1 Government Order and observing the minimum subject requirement. It is also clear from the amendment extracted above that qualification is prescribed as per rule 2(x) of Chapter XXX1 for the High School Assistant (English). It is important to note that as per rule 3 of Chapter XXIII, 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.

19. After analysing the above discussed amendment to the rules, as we have pointed out earlier, English is incorporated as a language along with High School Assistant (Language) as per rule 3(iiA). Likewise rule 4(ii) after the amendment makes it clear that there shall be as many posts of High School Assistants as there are divisions and periods of work in High School classes. So also as per rule 6D of Chapter XXIII dealing with High School Assistant (Languages), sub-rule (1) makes it clear that in High Schools having all or any of the standards VIII to X only, posts of language teachers may be sanctioned subject to the restrictions specified in rule 6E. In fact, languages recognised originally were only Arabic, Hindi and Sanskrit. Later Urdu was introduced as per Government Order dated 13.3.1973. Other languages that are incorporated in rule 6D are Hebrew, French, Latin, Malayalam etc. In order to have a clear understanding of the issue raised so, it is apposite to extract rule 6D dealing with the number of periods per week and number of posts, and nature of posts prescribed, it reads

thus:

“ Languages (Arabic, Hindi, Urdu and Sanskrit)

No. of Periods per week	No. of posts and nature of posts
4 and above but below 15	1 part time
15 and above but below 29	1 Full time
29 and above but below 54	2 Full time
54 and above but below 79 and so on	3 Full time
Other Languages:(Hebrew, French, Latin, Malayalam etc.)	

5 and above but below 15	1 part time
15 and above but below 30	1 full time
30 and above but below 55	2 Full time
55 and above but below 80 and so on	3 Full time”

20. Even though learned Special Government Pleader Smt.M.R.Sreelatha argued that rule 6I of Chapter XXIII can only be subject to rule 6D of Chapter XXIII dealing with High School Assistant (Languages) and only on issuance of specific order by the Government the implementation of rule 6I needs to take effect, we are unable to agree with the said argument advanced by the learned Special Government Pleader for the specific reason that rule 6I of Chapter XXIII is so clear and emphatic that notwithstanding anything contained in any other rule

of Chapter XXIII, the post of HSA (English) shall be sanctioned on the basis of periods allocated to English observing minimum subject requirement. So the only significant indication contained under rule 6I is that it shall not disturb the minimum subject requirement, however, sanctioning of posts of High School Assistants English is made mandatory. Learned Special Government Pleader also submitted that the amendment was made subject to Exhibit P1 order of the State Government dated 7.1.2002, which is clear from note made to rule 6I discussed above. We are unable to agree with the same. The Note only makes it clear that it takes in a future general order that may be issued by the Government and thereupon rule 6I shall be subjected to any such general orders passed. It is also clear from the Note that the rule shall be implemented in a phased manner without causing retrenchment of existing HSA (Core Subjects) as on 7th January, 2002 and observing the minimum subject requirement. The decision taken by the Government in Exhibit P1 Government Order dated 7.1.2002 makes it specific and clear that the present order of subjects of Science, Mathematics and Social Studies followed in regard to staff fixation of HSA (Core Subjects) will be revised as Social Studies, General Science and Maths as a temporary measure so as to achieve the creation of the separate cadre of HSA(English). Which in our considered opinion means the core subjects were regulated in such a manner to make the cadre of HSA (English). It is also made clear in the said Government Order that the phased manner intended by the Government in Exhibit P1 order as

well as the amended rules is implementation of the ordered amendment from the academic year 2002-2003. It is also clear from Exhibit P1 that the temporary bar of promotion of claimants as per rule 43 of Chapter XIVA KER will be imposed, exempting those who have the prescribed qualification to the post as HSA(English). That apart paragraph 3 of Exhibit P1 order makes it clear that the new cadre to be created from the date aforesaid, by appointing/promoting qualified vacancies caused by retirement/additional division/leave observing the minimum subject ratio requirement. Also Chapter XXXI dealing with qualification of private school teachers was amended by introducing clause (x) to rule 2 dealing with HSA(English) and the qualification prescribed reads thus:

"[(x) High School Assistant(English):- (i) A degree in English language and literature; and

(ii) B.Ed/B.T./L.T. with English as optional subject, conferred or recognised by the Universities in Kerala;

(iii) In the absence of those with qualification in item (ii) above, candidates with B.Ed/ B/T/L.T. in any other subject, conferred or recognised by the Universities in Kerala will be considered.]

[Provided that a postgraduate degree in the subject or language concerned shall be considered as an alternative qualification of degree in such subject or language concerned for appointments as High School Assistant (Subject) or High School Assistant (Languages) as case may be.]

[Note:- B. Ed. Degree obtained through Correspondent course, which are not specifically approved by the Government shall not be considered as a qualification for appointment as HSA.]"

21. On a conjoint reading of the above provisions, it is clear that HSA(English) had to be sanctioned on and with effect from the academic year

2002-2003, which is the phased manner intended by the Government as per the Government Order dated 7.1.2002. That apart, the explanatory Note to Exhibit P2 amendment rules speaks in volumes the general purport of the amendment of Chapter XXIII and Chapter XXXI, which reads thus:

Explanatory Note

(This does not form part of the Notification, but is intended to indicate its general purport.)

At present in High School classes English is taught normally by those teachers who do not possess Degree in English language and Literature and B.Ed/B.T./L.T. with English as optional subject. This state of affairs have been constituting for the past several years. On verification of the performance of pupils appearing for the S. S. L. C. Examination, it is seen that most of the pupils fail in English subject. The State average marks in English is far below when compared to other subjects. This situation has arisen mainly due to the fact that Teaching of English has not been carried out in an effective manner. Considering persistent demands from various quarters, Government have taken a policy decision, in public interest to create posts of HSA (English), to appoint qualified hands in teaching English against vacancies arising in High Schools due in retirement or by any other manner without causing retrenchment of existing HSAs due to the implementation of the above rules; in a phased manner. In order to achieve the objective, the relevant provisions under Chapter XXIII and XXXI of the Kerala Education Rules; 1959 are to be amended.

The Notification is intended to achieve the above object.”

22. Thus on a close scrutiny and analysis of the provisions of Kerala Education Rules, 1959 discussed above and Exhibit P1 Government Order and the

provisions of the Kerala Education (Amendment) Rules, 2003, the Government intended sanctioning of HSA(English) w.e.f. the academic year 2002-2003 in order to achieve the objectives. Even though contention was advanced that the number of divisions has also to be taken into account for sanctioning of post of HSA(English), we are unable to agree with the same in view of the specific Government Orders and amendment to the Rules. What is important to be looked into in the context, in our considered view, is the language employed in the amendment Rules as well as the amended provisions of rule 6I, which makes it imperative, clear and patent that, notwithstanding anything contained in Chapter XXIII, rule 6I has to be implemented, and as stated earlier the note only enables the State Government to issue future general orders in regard to the sanctioning of HSA(English), which in our view may not have any bearing to rule 6D as it remains now to canvass and contend that the Government is at liberty to continue the system of teaching English language using the core subject teachers. It is also quite disturbing to note that the Government have not cared to implement its own order i.e; Exhibit P1, in the phased manner intended from the academic year 2002- 2003 utilising the vacancies occurred in the manner prescribed in the said order. Therefore we are convinced that the intention of the State Government, though late, is to be translated at the earliest, also taking into account and bearing in mind that the amendment of the rules were made w.e.f from 07-01-2002, so as to achieve the object and purpose of the amendments

made to the Kerala Education Rules 1959, deliberated above.

Resultantly, petitioners are entitled to succeed in the writ petition. Accordingly the writ petition would stand allowed and there would be a direction to the State Government and the Director of Public Instructions to do the necessary at the earliest in order to create and formulate the cadre of HSA (English) on and w.e.f. the academic year 2021- 2022 onwards.

Sd/-

**MANIKUMAR
CHIEF JUSTICE**

Sd/-

**SHAJI P.CHALY
JUDGE**

smv

APPENDIX OF WP(C) 23159/2018

PETITIONER EXHIBITS

- EXHIBIT P1: A TRUE COPY OF THE G.O. (MS) NO.11/2002/G.EDN DATED 07.01.2002 ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P2; A TRUE COPY OF THE AMENDMENT NOTIFICATION DATED 06.06.2003 ISSUED AS PER G.O. (P)NO.149/2003/G.EDN
- EXHIBIT P3: A TRUE COPY FO THE CIRCULAR NO.QTP(2) 29920/15/DPI DATED 06.06.2015 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P4: A TRUE COPY FO THE REPRESENTATION DATED 18.12.2017 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT
- EXHIBIT P5: A TRUE COPY OF THE REPRESENTATION DATED 18.12.2017 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 2ND RESPONDENT
- EXHIBIT P6: A TRUE COPY OF THE NEWSPAPER REPORT IN DECCAN CHRONICLE DATED 29.03.2018.
- EXHIBIT P7: A TRUE COPY OF THE REPLY DATED 10/3/2017 BY THE MINISTER FOR EDUCAITON BEFORE THE KERALA LEGISLATIVE ASSEMBLY ALONG WITH ENGLISH TRANSLATION
- EXHIBIT P8; A TRUE COPY FO THE REPLY DATED 30/1/2018 BY THE MINISTER FOR EDUCATION BEFORE THE KERALA LEGISLATIVE ASSEMBLY ALONG WITH ENGLISH TRANSLATION
- EXHIBIT P9; A TRUE COPY OF THE RELEVANT PAGES OF THE NATIONAL EDUCATION PLICY, 1986.

RESPONDENTS' EXHIBITS

- EXHIBIT R4 (A) A TRUE COPY OF THE NOTIFICATION DATED 31.12.2012 FOR CATEGORY NO.664/2012 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.
- EXHIBIT R4 (B) A TRUE COPY OF THE RANKED LIST NO.815/2016/SSV FOR WAYANAD DISTRICT ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION
- EXHIBIT R4 (C) A TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED BY THE CHAIRMAN, MEDICAL BOARD, GOVERNMENT MEDICAL COOLEGE HOSPITAL, THRISSUR.
- EXHIBIT R4 (D) A TRUE COPY OF THE RANKED LIST NO.893/2017/SSV FOR THRISSUR DISTRICT ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION
- EXHIBIT R4 (E) A TRUE COPY OF THE REPRESENTATION DATED NIL

EXHIBIT R4 (F)

SUBMITTED BY THE 1ST PETITIONER BEFORE THE
HONOURABLE CHIEF MINISTER OF KERALA

A TRUE COPY OF THE LETTER
NO.J2/11/19/GEN.EDN. DATED 25.1.2019 ISSUED
BY THE 3RD RESPONDENT.