

THE MANAGER, VKNM VOCATIONAL HIGHER SECONDARY SCHOOL A

v.

THE STATE OF KERALA AND OTHERS ETC.

(Civil Appeal Nos.518-519 of 2016) B

JANUARY 27, 2016

**[FAKKIR MOHAMMED IBRAHIM KALIFULLA AND
S.A. BOBDE, JJ.]**

Service law:

Kerala Education Rules – r. 51A, r. 7A(3)(amended) – Preferential appointment – 5th respondent worked in the appellant’s school in 3 different spells between 1997 and 1998 for a total period of two months and 19 days – Vacancy in the post of High School Assistant in social science in the year 2010, consequent to the retirement of a teacher – Subsequently, appointment of 6th respondent – Challenge to, by the 5th respondent relying upon a rule which provided for preferential appointment to some categories of qualified teachers who had the fortune of working earlier in the school – High Court allowed the writ petition – Direction to appellant-Management of private aided school to issue appointment order to 5th respondent as a teacher in its school – On appeal, held: After amendment to r. 7A(3) by Notification dated 16.04.2005, a qualified teacher cannot be said to have been engaged in a vacancy which stood terminated unless the duration of which was one full academic year – Though prior to the amendment of r. 7A(3), the 5th respondent did satisfy the unamended r. 7A(3) by having been engaged in a vacancy as a qualified teacher for a period of two months, but there was no occasion to raise a claim for any preferential appointment – It cannot be said that the right which was available under the unamended r. 7A(3) alone would remain and not the law that prevailed at the time when the 5th respondent staked her claim for preferential appointment in the year 2010 – After 12 years when the 5th respondent sought to enforce her right u/r. 51A, amendment to r. 7A(3) expressly disentitled a qualified teacher to claim to be categorized under “on account of termination of a vacancy” – Vested right did not accrue to the 5th respondent as early as in year C
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- A 1998 – *In terms of amended r. 7A(3) r/v r. 51A, if one were to be brought under the category of qualified teacher relieved on account of termination of vacancies, the amended r. 7A(3) that such engagement lasted for one clear academic year, was to be satisfied – 5th respondent did not satisfy the said requirement, thus, her claim*
- B *u/r. 51A for a preferential appointment cannot be allowed. Relief granted to 5th respondent not sustainable and is set aside.*

Allowing the appeals, the Court

- C **HELD: 1.1** The submission that the 5th respondent acquired a vested right even after the amendment was brought into the rules in particular to Rule 7A(3) cannot be accepted. After the amendment to Rule 7A(3) which was introduced by notification GO(P) No.121/2005/G.Edn. dated 16.04.2005, the position was that a qualified teacher cannot be said to have been engaged in a vacancy which stood terminated unless the duration of which was one full academic year. Rule 2A of Chapter VII of Kerala Education
- D **Rules specifically defines an ‘academic year’ to deem to commence on the reopening day and terminate on the last day before summer vacation. Under Rule 1 of Chapter VII it is specifically stipulated that all schools should be closed for summer vacation every year on the last working day of March and reopen on the 1st working day of June unless otherwise notified by the Director. Therefore, the academic year would commence on 1st June of the previous year and end on 31st March of the subsequent year. Therefore, if one were to claim any preferential right of appointment under Rule 51A under the category falling under “on account of termination of vacancies”, having regard to the stipulations**
- E **contained in the amended Rule 7A(3) such qualified teacher should have been engaged in a vacancy which lasted or existed for one clear academic year. It is not the case of the 5th respondent that she satisfied the said requirement as stipulated under Rule 7A(3) read along with Rule 51A. [Para 17] [359-C-G]**
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- G **1.2** On making a comprehensive reference to the principles of interpretation in **Garikapati Veeraya* case on the question of existence or otherwise of a vested right in a person, it can be said that for the legal pursuit of a remedy it must be shown that the various stages of such remedy are formed into a chain or
- H **rather as series of it, which are connected by an intrinsic unity**

which can be called as one proceeding, that such vested right if any should have its origin in a proceeding which was instituted on such right having been crystallized at the time of its origin itself, in which event all future claims on that basis to be pursued would get preserved till the said right is to be ultimately examined. In the event of such preservation of the future remedy having come into existence and got crystallized, that would date back to the date of origin when the so-called vested right commenced, that then and then only it can be held that the said right became a vested right and it is not defeated by the law that prevail at the date of its decision or at the date of subsequent filing of the claim. One other fundamental principle laid down which is to be borne in mind is that even such a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the extinction of any such right by express provision in the subsequent enactment, the same would lose its value. [Para 19] [361-D-G]

1.3 Though prior to the amendment of Rule 7A(3) by the notification dated 16.04.2005 the 5th respondent did satisfy the unamended Rule 7A(3) by having been engaged in a vacancy as a qualified teacher for a period of two months, as early as on 11th March, 1998, unfortunately for the 5th respondent there was no occasion to raise a claim for any preferential appointment on the basis of fulfillment of such a requirement as it existed then and as provided under Rule 51A. In fact, between 1998 and 2010, for nearly 12 years there was no scope for the 5th respondent to raise a claim on that basis. Therefore, the very fundamental principle of pursuit of a remedy at the very inception did not take place in order to consider whether any further proceedings could be pursued based on such initiation of claim. Since at the very inception a claim though even on the basis of the then existing Rule 7A(3) could not be initiated to be pursued, it is very difficult to hold that there could have been preservation of any such right as it existed under the unamended Rule 7A(3). Having regard to the said situation, it cannot be held that the law that prevailed, namely, the right which was available under the unamended Rule 7A(3) alone would remain and not the law that prevailed at the time when the 5th respondent staked her claim for preferential

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A appointment i.e. when the vacancy arose in the year 2010. After 12 years when the 5th respondent sought to enforce her right under Rule 51A as a sea change came into effect by way of an amendment to Rule 7A(3), which expressly disentitled a qualified teacher to claim to be categorized under “on account of termination of a vacancy” as such express prohibition came to be introduced by virtue of the amendment to Rule 7A(3), the submission that a vested right accrued to the 5th respondent as early as on 11.03.1998 cannot be accepted. [Para 20] [361-H] [362-A-G]

C 1.4 Going by the interpretation of amended Rule 7A(3) read along with Rule 51A, if one were to be brought under the category of qualified teacher relieved on account of termination of vacancies, the amended Rule 7A(3) required to be satisfied, namely, such engagement was lasted for one clear academic year as stipulated under Rule 1 and 2A of Chapter VII of the Kerala Education Rules. The 5th respondent not having satisfied the said requirement there was no scope to allow her to press her claim under Rule 51A for a preferential appointment. Having regard to the said legal consequence, the relief granted by the 1st respondent cannot be sustained and consequently the directions issued by the High Court in the impugned judgment cannot also be sustained. The answers to the questions made by the Full Bench are set aside and the interpretation made by this Court in ***Sneha Cheriyan* case would alone prevail. The impugned judgment is set aside. The order of the 1st respondent is also set aside. [Paras 21, 22] [362-H] [363-A-D]

F **Garikapati Veeraya v. N. Subbiah Choudhry* AIR 1957 SC 540 – followed.

***State of Kerala and others v. Sneha Cheriyan and another* (2013) 5 SCC 160: 2013 (4) SCR 460 – relied on.

G *Abdurahiman v. Government of Kerala* 2009 (2) KLT 105; *Maya v. Govt. of Kerala* 2010 (2) KLT 99; *The State of Maharashtra v. Vishnu Ramchandra* 1961 (2) SCR 26; *Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited* 2015 (1) SCC 1 – referred to.

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Case Law Reference

2009 (2) KLT 105	referred to.	Para 4	A
2010 (2) KLT 99	referred to.	Para 4	
1961 (2) SCR 26	referred to.	Para 8	
2015 (1) SCC 1	referred to.	Para 8	B
AIR 1957 SC 540	followed.	Para 19	
2013 (4) SCR 460	relied on.	Para 21	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 518-519 of 2016

From the Judgment and Order dated 08.10.2014 of the High Court of Kerala at Ernakulam in W.P. (C) No. 32734 of 2011 and W. P. (C) 2808 of 2012

WITH

C.A. NO. 520 OF 2016

Rana Mukherjee, Harshad V. Hameed, Ashly Harshad, Dileep Poolakkat, Neeraj Shekhar for the Appellant.

C. S. Rajan, P. V. Dinesh, Sindhu T. P., P. Haridas, M. T. George for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA J. Leave granted.

1. By this judgment, we dispose of Civil Appeal arising out of Special Leave Petition(C) No.33104 of 2014 also as both the appeals arise out of the common Full Bench Judgment of the Kerala High Court. The appellant in Civil Appeal arising out of Special Leave Petition No.33104 of 2014 is aggrieved by the Full Bench Judgment of the Kerala High Court which was dismissed and consequently her appointment dated 01.06.2010 in the school of the appellant in Civil Appeals arising out of Special Leave Petition Nos.31794-95 of 2014 came to be set aside at the instance of O.T. Indiramma/private respondent. For the sake of convenience, we refer to the parties as arrayed in Civil Appeal arising out of SLP (C) No.31794 of 2014.

2. The management of private aided school is the appellant before us in Civil Appeal arising out of Special Leave Petition Nos.31794-95 of 2014. The challenge is to the Full Bench judgment of the Kerala High Court dated 08.10.2014 while answering a Reference made to it by the Division Bench in view of two conflicting decisions of two other Division

A Benches and thereby dismissing the appellant's Writ Petition while allowing the 5th respondent's Writ Petition. The appellant was directed to issue appointment order to the respondent as a teacher in its school.

3. The brief facts which are required to be noted are that the 5th respondent worked in the appellant's school in 3 different spells between 01.10.1997 and 11.03.1998 for a total period of two months and 19 days. Subsequently, when the post of High School Assistant in social science fell vacant in the year 2010 consequent to the retirement of a teacher, the 6th respondent came to be appointed on 01.06.2010 afresh. The 5th respondent challenged the appointment of the 6th respondent by relying upon a rule which provided for preferential appointment to some categories of qualified teachers who had the fortune of working earlier in the school. The appellant rejected the claim of the 5th respondent by relying upon a Division Bench decision of the Kerala High Court. Aggrieved by the order of the appellant dated 18.09.2010, the 5th respondent approached the 2nd respondent. The 2nd respondent by its order dated 31.03.2011 rejected her claim. The 5th respondent filed a revision before the 1st respondent and the 1st respondent by order dated 26.11.2011 directed the 4th respondent, the District Education Officer to issue necessary formal orders appointing the 5th respondent as high school assistant in the appellant school w.e.f. 01.06.2010. The appellant challenged the order of the 1st respondent by filing a writ petition in W.P.(C) No.32734/2011 before the High Court of Kerala contending that the 5th respondent would not come within the preferential Rule, namely, Rule 51A and consequently the order of the 1st respondent cannot be sustained. The 5th respondent filed a writ petition in W.P. (C) No.2808/2012 for implementing the order of the 1st respondent dated 26.11.2011. The writ petition of the appellant, the 5th respondent and another writ petition in Writ Petition No.24773/2009 filed by another claimant also relying upon Rule 51A were tagged together for hearing.

4. Be that as it may, it is stated that with reference to the implication of Rule 51A in which an amendment came to be made w.e.f. 27.04.2005 read along with amended Rule 7A(3) as there were two conflicting Division Bench decisions, namely, **Abdurahiman v. Government of Kerala - 2009 (2) KLT 105** and **Maya v. Govt. of Kerala - 2010 (2) KLT 99**, the Division Bench of the High Court before whom the above writ petitions were posted, referred the matter to a Full Bench. That is how the impugned judgment came to be passed by the Full Bench of the Kerala High Court on 08.10.2014.

5. Assailing the judgment, Mr. Rana Mukherjee, Learned Senior Counsel for the appellant contended that the issue was directly covered by a recent decision of this Court reported as **State of Kerala and others v. Sneha Cheriyan and another** – (2013) 5 SCC 160 and, therefore, the Full Bench decision impugned in this appeal is liable to be set aside. The learned Senior Counsel also took us through the relevant Rules, namely, Rule 7A, Rule 49, Rule 52 and Rule 51A along with its proviso and submitted that this Court analyzed the above Rules with particular reference to Rule 7A(3) and the proviso to Rule 51A and held that in order for a teacher who was employed and subsequently relieved on account of termination of vacancies the services of such teacher should have been engaged for one full academic year as per Rule 7A(3) and that the said stipulation having been introduced in the Rule as and from 27.04.2005, the claim of the 5th respondent by relying upon the unamended Rule 7A(3) could not have been countenanced. The learned Senior Counsel also submitted that though the decision of the Division Bench of the Kerala High Court in the case of **Abdurahiman (supra)** was affirmed by this Court which related to the appointment of a cook, the said judgment not having specifically examined the implication of the amended Rule 7A (3) and Rule 51A, the present decision in the case of **Sneha Cheriyan (supra)** of this Court alone would prevail and on that basis the law laid down by the Division Bench of the Kerala High Court should be set aside.

6. As against the above submissions, Mr. C.S. Rajan learned Senior Counsel appearing for the 5th respondent at the outset submitted that since the issue was squarely covered by the judgment in **Abdurahiman (supra)** which was followed by the Full Bench in the impugned judgment, the same does not call for interference. According to learned Senior Counsel for the 5th respondent, the right of the 5th respondent to claim preferential appointment got crystallized under the unamended Rules and thereby a vested right to claim such appointment was preserved in favor of the 5th respondent and consequently the amendment to Rule 7A(3) as well as the proviso to Rule 51A cannot have any implication to prejudice such a vested right already crystallized in favour of the 5th respondent. The learned senior counsel also submitted that if for any reason this court were to hold that the decision in **Sneha Cheriyan (supra)** would apply, in the light of the two conflicting views expressed in **Abdurahiman (supra)** and **Sneha Cheriyan (supra)** the issue should go to a Larger Bench.

A 7. The learned counsel for the State, Mr. M.T. George would also support the stand as was submitted on behalf of the 5th respondent and contended that the claim of the 5th respondent can alone be considered in the light of the law that was prevailing prior to the amendment of Rule 7A(3) and 51A.

B 8. Mr. Rana, Learned Senior Counsel in his submissions apart from referring to the decision in **Sneha Cheriyan (supra)** also relied upon **The State of Maharashtra v. Vishnu Ramchandra** - 1961 (2) SCR 26 and **Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited** - 2015 (1) SCC 1.

C 9. To appreciate the respective contentions, it will be necessary to note the reference order of the Division Bench dated 21.06.2012 which reads as under:

D “5. In paragraph 14 of **Abdurahiman v. Government of Kerala**, 2009 (2) KLT 105, the Division Bench specifically dealt with the impact of the amendments and held that rights already accrued could not be deprived. Later, in **Maya v. State of Kerala**, 2010 (2) KLT 99, the Division Bench appears to have taken a contrary view. This is evident from paragraph 2 of **Maya’s** case. The apparent conflict among those Bench decisions is not reconcilable by the Division Bench interpreting the Rules, though prima facie,
E we see substance in the rights of teachers who had enjoyed approved service for shorter than one year before the amendment. We also see that the right to such appointment against one category would have got enlarged to be available as against the different categories of teachers as a result of the amendment. These
F matters also need a deeper look. But, the conflict between the judgments noted above prompts us to refer these cases to the Full Bench”.

10. The Full Bench, after a detailed discussion answered the question as under in paragraph 22 which is to the following effect:

G “22. In view of the foregoing discussions we answer the above reference in the following manner:

1. The law laid down by the Division Bench in **Abdurahiman’s** case (**supra**) is the correct law as has already been approved by the Full Bench in **Soman’s** case (**supra**).

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2. The judgment of the Division Bench in Maya's case (supra) in so far as it followed the earlier Division Bench judgment in Abdurahiman's case (supra) is approved. However, the ratio as laid down in paragraph 7 of the judgment that persons retrenched earlier, after working in short term vacancies, cannot get the benefit of amended rule i.e., they are not entitled to be considered for any posts in the higher or lower category of teaching posts is disapproved and to the above extent the judgment in Maya's case (supra) is over ruled.

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3. We also hold that the first proviso to Rule 51A shall not be applicable to those teachers who were relieved on account of termination of vacancy and even if those teachers had services to less than one academic year they are entitled to benefit of Rule 51A.

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4. Those teachers who were relieved prior to the amendment of Rule 51A, are also entitled to claim appointment in any posts including higher or lower category posts.

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In view of the foregoing discussions and our answer as noted above, W.P.(C) No. 24773 of 2009 as well as W.P.(C) No. 32734 of 2011 are dismissed. W.P.(C) No. 2808 of 2012 is allowed and a direction is issued to the respondent management to issue appointment order to the petitioner in W.P.(C) No. 2808 of 2012, if not already issued, within thirty days from today. The parties shall bear their own costs."

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11. It is also necessary to note the relevant Rules namely, Rule 7A both amended as well as unamended, Rule 49 and relevant part of Rule 51A both prior to its amendment and after its amendment and Rule 52 which are as under:

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"Provision (Pre-amendment):-

Rule 7A:

(1) No appointment shall be made in anticipation of sanction of posts except in the case of new school opened or existing schools upgraded (or higher standards opened with permission in those schools);

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Provided in the case of additional posts sanctioned as per staff fixation order, appointments may be made from the date of effect of the fixation order.

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A (2) Posts that may fall vacant on the closing date shall not be filled up till the reopening date.

(3) Vacancies, the duration of which is two months or less shall not be filled up by any appointment.

Rule 51A:

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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 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.

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Provision (Post-amendment):-

Rule 7A:

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(1) Omitted vide **G.O. dated 28.10.1978.**

(2) Posts that may fall vacant on the closing date shall not be filled up till the reopening date except in the case of posts of non-vacation staff.

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(3) Vacancies, the duration of which is less than one academic year, shall not be filled up.

Rule 49:

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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 date 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 teacher appointed in training vacancies.

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Explanation:- For the purpose of this rule, 'Headmaster' includes Teacher-in-charge also.

Rule 51A:

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Qualified teachers who are relieved as per Rule 49 or 52 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. **(Inserted vide amendment dated 25.06.2005)**

Provided that 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:

(Inserted vide amendment dated 27.04.2005)

Provided further that the first preference under this rule shall be given to protected teachers belonging to the same Educational Agency.

Note 1. 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 appointments 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.

Note 1A: 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.

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 GO (Ms) No. 104/69/Edn. dated 06.03.1969 or GO (Ms) No. 231/84/Edn. dated 27.10.1984 or any other orders issued by Government from time to time.

- A **Note 2:** Manager should issue an order of appointment to the teacher by Registered post acknowledgment 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.
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Rule 52:

- C **(1)** Teachers who are relieved on account of any reduction in the number of posts under orders of the department shall on reappointment 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.
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(2) Teachers thrown out from 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.”

- E 12. Since this very Rule 7A(3) as well as Rule 51A along with Rules 49 and 52 were subject matter of consideration in details in the decision of this Court in **Sneha Cheriyan (supra)** before entering into any further discussion, we feel it appropriate to note the relevant conclusions drawn by this Court on a reading of the abovesaid Rules.

- F 13. The relevant paragraphs of the said judgment are 18, 19, 20, 21, 22, 23, 24, 24.1 and 24.4 which are as under:

“**18.** We may before examining the scope of sub-rule (3) of Rule 7-A and the proviso to Section 51-A read with the Government Order dated 10-6-2008, examine the scheme of the Act and the KER and the object and purpose of sub-rule (3) of Rule 7-A as well as the impugned order dated 10-6-2008. We have already indicated that as per the Kerala Education Act and the KER, the manager of the aided school is free to make appointment of teachers in their respective schools who are qualified according to the Rules and the entire salary and other allowances have to be borne by the State Government.

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19. Rule 51-A of Chapter XIV-A of the KER states that qualified teachers in aided schools who are relieved on account of termination of vacancies shall have preference for reappointment in future vacancies in the aided schools. Rule 43, Chapter XIV-A of the KER states that the vacancies in any higher grade of pay shall be filled up by promotion in the lower grade according to the seniority. We cannot read sub-rule (3) of Rule 7-A in isolation, it has to be read in the light of the proviso to Rule 51-A: they have to be read as parts of an integral whole and as being interdependent. The legislature has recognised that interdependency since both sub-rule (3) of Rule 7-A and the proviso to Section 51-A were inserted by the same amendment in the year 2005. The expression “vacancies” used in sub-rule (3) of Rule 7 means “posts which remain unoccupied”. The Rule does not say that the duration of vacancy is to be determined from the time when the vacancy occurs to the time when it expires. Duration means the time during which something continues i.e. the continuance of the incumbent. As stated in the Notification dated 15-6-2004 the vacancies having a duration of less than one academic year can be filled up on daily-wage basis. Sub-rule (3) of Rule 7-A uses the expression “academic year”. Rule 2-A of Chapter VII of the KER refers to the academic year, which reads as follows:

“2-A. Academic year shall be deemed to commence on the re-opening day and terminate on the last day before the summer vacation.”

Rule 1 of Chapter VII says

“1. All schools shall be closed for the summer vacation every year on the last working day on March and reopened on the first working day of June unless otherwise notified by the Director.”

The Notification dated 10-6-2008 only says that if the period of appointment does not cover one academic year i.e. the reopening of the school after summer vacation to the closing day for summer vacation, the appointment shall be made only on daily-wage basis. So also if the period commences after the beginning of the reopening day, but extends either next academic year/years the period up to the first vacation shall be approved on daily wages only which does not take away the right of the managers of the

A aided schools to appoint teachers in vacancies that may arise by
way of promotion, death, resignation, etc. Restriction is only with
respect to the minimum tenure/period for a new appointee to
become a Rule 51-A claimant, that is the object and purpose of
sub-rule (3) of Rule 7-A read with the proviso to Rule 51-A of
Chapter XIV-A of the KER.

B **20.** The object and purpose of the Notification dated 16-4-2005
issued by the Government in exercise of the powers conferred
under Section 36 of the Kerala Education Act is to curb the
unhealthy practices adopted by certain Managers of aided schools
by creating short-term vacancies or appointing several persons in
relatively long leave vacancies itself thereby making several Rule
C 51-A claimants against one and the same vacancy. The object
and purpose of the abovementioned notification is also to end the
practice of creation of multiple claimants in anticipatory vacancies
creating more Rule 51-A claimants imposing huge financial
D commitment to the Government.

21. Sub-rule (3) of Rule 7 does not restrict the right of the managers
of various schools in making regular appointments in the established
vacancies, what it does is to prevent the misuse of that provision
and to prevent the aided school managers in creating short-term
E vacancies and appointing several persons in those vacancies so
as to make them claimants under Rule 51-A. Looking to the
mischief or evil sought to be remedied, we have to adopt a purposive
construction of sub-rule (3) of Rule 7-A read with the proviso to
Rule 51-A of Chapter XIV-A of the KER.

F **22.** We are inclined to adopt such a construction since the stand
of the respondents is that Rule 7-A speaks of “duration of
vacancies” and not “duration of appointment”. The expression
“vacancy” used in sub-rule (3) of Rule 7-A has to be read along
with the expression “academic year” so as to achieve the object
and purpose of the amended sub-rule (3) of Rule 7-A so as to
G remedy the mischief. The evil, which was sought to be remedied
was the one resulting from widespread unethical and unhealthy
practices followed by certain aided school managers in creating
short-term vacancies during the academic year. We are adopting
such a course, not because there is an ambiguity in the statutory
H provision but to reaffirm the object and purpose of sub-rule (3) of

Rule 7-A read with the proviso to Section 51-A and the Government Order dated 10-6-2008. A

23. We notice later that the Government passed yet another G.O. (P) 56/11/Gen.Edn. dated 26-2-2011 clarifying the earlier G.Os. dated 15-6-2004 and 10-6-2008. The operative portion of the same reads as under: B

“1. Approval can be granted subject to the conditions under Rule 49 Chapter XIV-A of the KER for the appointments to the vacancies arising due to the existing teachers’ retirement, resignation, death, long leave, etc. and to the approved vacancies arising and continuing beyond 31st March due to the sanctioning of additional divisions. C

2. Appointments for a duration of less than 8 months in an academic year can be approved on daily-wage basis and appointments of a duration of more than that are to be approved as regular (on pay scale).” D

We have referred to the above G.O., for the sake of completeness, which has of course no bearing on the interpretation which we have placed on sub-rule (3) to Rule 7-A read with the proviso to Rule 51-A of Chapter XIV-A of the KER, but may have application on facts in certain cases which have to be decided independently. E

24. We are, therefore, inclined to allow these appeals and set aside the judgment of the Division Bench with the following directions:

24.1. A teacher, who was relieved from service under Rules 49 and 53 of Chapter XIV-A of the KER, is entitled to get preference for appointment under Rule 51-A only if the teacher has a minimum prescribed continuous service in an academic year as on the date of relief. F

24.2 xxx xxx
24.3 xxx xxx G

24.4. The Manager can make appointments in school even if the duration of which is less than one academic year but on daily-wage basis and if the duration of vacancy exceeds one academic year that can be filled up on scale of pay basis.” H

A 14. In the above paragraphs this Court has clearly found that
 after the amendment of Rule 7A(3), in order for a qualified teacher to
 claim preferential appointment under the category “on account of
 termination of vacancies” as mentioned in Rule 51A, earlier appointment
 in such vacancies should have been for a duration of one full academic
 B year namely, from 1st June of the previous year till the last day of March
 of the subsequent year. For instance if the academic year is 2000-2001
 the appointment in any such vacancy should have commenced on 1st
 June of 2000 and ended on 31st March of 2001. If the appointment in
 any such vacancy fell short of the period as mentioned above then such
 teacher cannot be held to have come under the category “on account of
 C termination of vacancies” and consequently cannot claim preferential
 appointment in any future vacancies.

15. Once we steer clear of the said position having regard to the
 law laid down by this Court in **Sneha Cheriyan (supra)**, we have to
 consider the submissions of learned counsel for the 5th respondent Mr.
 D C.S. Rajan who was supported by the standing counsel appearing for
 the State, who both wanted to support the conclusion of the 1st respondent
 in its order dated 26.11.2011.

16. According to Mr. C.S. Rajan, learned Senior Counsel for the
 5th respondent in the first instance, the 5th respondent had already acquired
 E a vested right having regard to the unamended Rule 7A(3) which prevailed
 at the time of her engagement in the leave vacancies between 01.10.1997
 and 11.03.1998. As was noted by us earlier she had put in two months
 and nineteen days in the said period i.e., between 11.01.1998 and
 11.03.1998. Under unamended Rule 7A the stipulation was that
 F vacancies, the duration of which is two months or less should not be
 filled up by any appointment. Since at the relevant point of time the said
 unamended Rule was in force, the engagement of the 5th respondent
 between 10.01.1998 and 11.03.1998 was fully governed by the
 unamended Rule 7A(3). Thus, the 5th respondent’s engagement was a
 valid engagement. If the amended Rule 7A(3) is to be ignored certainly
 G she would fall within the category “on account of termination of vacancies
 as is stipulated in Rule 51A”. In support of the above submission, the
 learned Senior Counsel also drew our attention to Note 2 prescribed
 under Rule 51A and submitted that in the event of the fulfillment of the
 said requirement by the qualified teacher concerned it was mandatorily
 cast on the Manager to issue an order of appointment by registered post
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acknowledgment due by giving 14 clear days notice to the teacher to join duty and in the event of the said teacher is not joining duty, to give one more opportunity with 7 clear days and even thereafter only if the teacher failed to join duty the forfeiture of the preferential right would operate. The learned Senior Counsel, therefore, contended that even if the 5th respondent had not applied when the vacancy arose in the year 2010 without compliance of Note 2 of Rule 51A the appointment of 6th respondent could not have been resorted to by the appellant.

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17. Though, in the first blush, the argument appears to be very sound and appealing, we are not able to appreciate the said submission, inasmuch as, we are not in a position to accede to the submission of the learned counsel that the 5th respondent acquired a vested right even after the amendment was brought into the rules in particular to Rule 7A(3). At the risk of repetition it must be stated that after the amendment to Rule 7A(3) which was introduced by notification GO(P) No.121/2005/G.Edn. dated 16.04.2005, the position was that a qualified teacher cannot be said to have been engaged in a vacancy which stood terminated unless the duration of which was one full academic year. In order to find out what would constitute a full academic year this Court in **Sneha Cheriyan (supra)** referred to Rule 2A of Chapter VII of Kerala Education Rules which specifically defines an 'academic year' to deem to commence on the reopening day and terminate on the last day before summer vacation. Under Rule 1 of Chapter VII it is specifically stipulated that all schools should be closed for summer vacation every year on the last working day of March and reopen on the 1st working day of June unless otherwise notified by the Director. Therefore, the academic year would commence on 1st June of the previous year and end on 31st March of the subsequent year. Therefore, if one were to claim any preferential right of appointment under Rule 51A under the category falling under "on account of termination of vacancies", having regard to the stipulations contained in the amended Rule 7A(3) such qualified teacher should have been engaged in a vacancy which lasted or existed for one clear academic year, namely, between 1st June of the relevant year till the end of 31st March of the subsequent year. It is not the case of the 5th respondent that she satisfied the said requirement as has now been stipulated under the Rule, namely, 7A(3) read along with Rule 51A.

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18. Having noted the said position, we feel it appropriate to cull out the principles of interpretation arising under such contingencies. It

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A will be worthwhile to refer to certain principles on the question of existence or otherwise of a vested right in a person by making reference to a Constitution Bench decision of this Court reported as **Garikapati Veeraya v. N. Subbiah Choudhry** – AIR 1957 SC 540. It will be profitable to briefly recapitulate the facts noted in the said decision by the renowned Judge Hon'ble Mr. Justice S.R. Das, Chief Justice. The petitioner in that case filed a Special Leave Petition from the judgment passed by the High Court of Andhra Pradesh on 10th February, 1955. The suit out of which the special leave petition arose was instituted on 22nd April, 1949 in the subordinate court. The Trial Court passed its judgment on 14th November, 1950 dismissing the suit. The plaintiff filed the appeal. The High Court of Andhra Pradesh accepted the appeal by its judgment dated 04th March, 1955 and reversed the decree of the Trial Court and decreed the suit. Aggrieved against the same, the Special Leave Petition in that case moved the High Court for leave to appeal to this Court and the same was dismissed inter alia on the ground that the value of the property was only Rs.11,400/- and did not come up to the level of Rs.20,000/-. In the Special Leave Petition petitioner contended before this Court that the judgment being one of reversal and the value was above Rs.10,000/-, he was entitled, as a matter of right to come up to this Court on appeal and since the said right was denied to him by the High Court, by invoking Article 136 of the Constitution, he moved the Special Leave Petition. The contention of the Special Leave Petition petitioner was that as from the date of the institution of the suit he acquired a vested right to appeal to this Court and in support of his submissions he relied upon various decisions. The Constitution Bench after making a detailed analysis of the issue raised has laid down the following principles, which are as under:

F “From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

G (ii) The right of appeal is not a mere matter of procedure but it a substantive right.

H (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. A

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.” B

19. In our considered view the above principles laid down by the Constitution Bench of this Court will have full application while considering the argument of learned Senior Counsel for the 5th respondent claiming a vested right by relying upon unamended Rule 7A(3). Principles (i), (iii), (iv) and (v) of the said judgment are apposite to the case on hand. When we make a comprehensive reference to the above principles, it can be said that for the legal pursuit of a remedy it must be shown that the various stages of such remedy are formed into a chain or rather as series of it, which are connected by an intrinsic unity which can be called as one proceeding, that such vested right if any should have its origin in a proceeding which was instituted on such right having been crystallized at the time of its origin itself, in which event all future claims on that basis to be pursued would get preserved till the said right is to be ultimately examined. In the event of such preservation of the future remedy having come into existence and got crystallized, that would date back to the date of origin when the so-called vested right commenced, that then and then only it can be held that the said right became a vested right and it is not defeated by the law that prevail at the date of its decision or at the date of subsequent filing of the claim. One other fundamental principle laid down which is to be borne in mind is that even such a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the extinction of any such right by express provision in the subsequent enactment, the same would lose its value. C
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20. Having thus noted such well laid down principles on a claim of vested right, when we test the argument made on behalf of the 5th respondent, at the very outset it must be stated that though prior to the amendment of Rule 7A(3) by the notification dated 16.04.2005 the 5th H

A respondent did satisfy the unamended Rule 7A(3) by having been engaged in a vacancy as a qualified teacher for a period of two months, as early as on 11th March, 1998, unfortunately for the 5th respondent there was no occasion to raise a claim for any preferential appointment on the basis of fulfillment of such a requirement as it existed then and as provided under Rule 51A. In fact, between 1998 and 2010 i.e. for nearly 12 years there was no scope for the 5th respondent to raise a claim on that basis. Therefore, the very fundamental principle of pursuit of a remedy at the very inception did not take place in order to consider whether any further proceedings could be pursued based on such initiation of claim. Since at the very inception a claim though even on the basis of the then existing Rule 7A(3) could not be initiated to be pursued, it is very difficult to hold that there could have been preservation of any such right as it existed under the unamended Rule 7A(3). Having regard to the said situation in the case on hand, it cannot be held that the law that prevailed, namely, the right which was available under the unamended Rule 7A(3) alone would remain and not the law that prevailed at the time when the 5th respondent staked her claim for preferential appointment i.e. when the vacancy arose in the year 2010. By that time i.e. after 12 years when the 5th respondent sought to enforce her right under Rule 51A as a sea change came into effect by way of an amendment to Rule 7A(3), which expressly disentitled a qualified teacher to claim to be categorized under “on account of termination of a vacancy” as such express prohibition came to be introduced by virtue of the amendment to Rule 7A(3), it will have to be held that the submission of learned Senior Counsel for the 5th respondent that a vested right accrued to her as early as on 11.03.1998 cannot be countenanced. Since, the very foundation of the 5th respondent’s claim rested on the said submission, we do not find any scope to apply Note 2 of Rule 51A to come for her rescue. Equally the reliance placed upon by the learned counsel in **Abdurahiman (supra)** will also be of no avail when once the claim of the 5th respondent fall to the ground by virtue of the principles laid down by the Constitution Bench decision of this Court in **Garikapati Veeraya (supra)**. Consequently, the faint attempt of the learned Senior Counsel for the appellant to refer this case to a Larger Bench cannot also be acceded to.

21. Therefore, going by the interpretation of amended Rule 7A(3) read along with Rule 51A, if one were to be brought under the category of qualified teacher relieved on account of termination of vacancies, the

amended Rule 7A(3) required to be satisfied, namely, such engagement was lasted for one clear academic year as stipulated under Rule 1 and 2A of Chapter VII of the Kerala Education Rules. The 5th respondent not having satisfied the said requirement there was no scope to allow her to press her claim under Rule 51A for a preferential appointment. Having regard to the said legal consequence, the relief granted by the 1st respondent in order dated 26.11.2011 cannot be sustained and consequently the directions issued by the High Court in the impugned judgment cannot also be sustained. The answers to the questions made by the Full Bench are also liable to be set aside and in its place, it must be held that the interpretation made by this Court in **Sneha Cheriyan (supra)** would alone prevail.

22. The appeals stand allowed. The impugned judgment is set aside. The order of the 1st respondent dated 26.11.2011 is also set aside. The appointment of the 6th respondent stands restored and there will be no order as to cost.

Nidhi Jain

Appeals allowed.