

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WA.No. 1117 of 2012 () IN WP(C).17600/2006

AGAINST THE JUDGMENT IN WP(C) 17600/2006 of HIGH COURT OF KERALA DTD. 25-11-2011

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APPELLANS/RESPONDENTS IN WP(C):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION,
MALAPPURAM.**
- 4. THE DISTRICT EDUCATION OFFICER,
CHAVAKKAD.**
- 5. THE ASSISTANT EDUCATIONAL OFFICER,
TIRUR.**

BY SENIOR GOVERNMENT PLEADERSRI. VIJU THOMAS

RESPONDENT(S)/PETITIONER IN W.P(C):

**RAFI
S/O.K.T.SAIDALAVI, KARATTUKADAVATH THOTTIYIL HOUSE
MANGALAM P.O, TIRUR, MALAPPURAM DISTRICT
(PHYSICAL EDUCATION TEACHER, S.H.M.U.P.SCHOOL, KOTTAYI
TIRUR) 676101.**

BY SRI.P.CHANDRASEKHAR

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-03-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

OKB

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

Writ Appeal No.1117 of 2012

Dated this the 3rd day of March, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

1. We have heard the learned Government Pleader for the appellants.

2. The respondent-writ petitioner challenged Ext.P8, by which the Government rejected his claim for approval of his service for the period from 8/9/1988 to 15/12/1992. The learned single Judge, among other things, noted that the appointment of the petitioner in that leave vacancy cannot be left without approval since two other Physical Education Teachers were appointed earlier in that vacancy for the period from 9/7/1979 to 31/1/1982 and from 1/6/1982 to 31/1/1987. The petitioner was also appointed against the same leave vacancy of Sri.K.Jamal Mohammed for the period from 8/9/1988 to 15/12/1992. In that context, we are unable to see that the Manager has made any appointment with any mala fide intention or with the motive to infract any particular Rule. That position notwithstanding, the learned

single Judge has also taken the view that Rule 6B of Chapter XXIII of Kerala Education Rules does not contain any prohibition of appointment of Specialist Teachers in leave vacancy and substitutes in lieu of Specialist Teacher working under clubbing arrangement. Whatever the correctness of that finding may be, even in Ext.P8, the admitted fact situation was that the writ petitioner was later appointed and approved as a regular Physical Education Teacher with effect from 14/10/1993. The fact of the matter demonstrated thereby is that the petitioner had actually discharged duties and responsibilities in relation to the vacancy concerned and it would be gross injustice to deny him the benefit of the fruits of his labour. We do not see that the impugned judgment of the learned single Judge issued in discretionary writ jurisdiction operates against the interest of the State. This intra-court appeal, therefore, fails.

In the result, this writ appeal is dismissed.

Sd/-

THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-

K.HARILAL, JUDGE

okb.