

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WA.No. 558 of 2015 () IN WP(C).2553/2013

AGAINST THE JUDGMENT IN WP(C) 2553/2013 of HIGH COURT OF
KERALA DATED 04-11-2014.

APPELLANT(S)/RESPONDENTS 1 TO 3 IN THE WP(C):

1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF COLLEGIATE EDUCATION,
OFFICE OF THE DIRECTOR OF COLLEGIATE EDUCATION
DEPARTMENT, THIRUVANANTHAPURAM.
3. THE ACCOUNTANT GENERAL (A&E),
OFFICE OF THE ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI. S. JAMAL

RESPONDENT(S)/PETITIONER AND RESPONDENT NOS.4 & 5 IN THE
WPC:

1. V. NARAYANAN NAMBOOTHIRI,
LECTURER, SELECTION GRADE (RETIRED), S.D. COLLEGE,
ALAPPUZHA, RESIDING AT NALANDA, SANATHANAPURAM P.O.,
ALAPPUZHA-688 003.
2. THE PRINCIPAL, SANATHANA DHARMA COLLEGE,
KALARKODE, ALAPPUZHA-688 003.

3. THE KERALA STATE WAREHOUSING CORPORATION, ERNAKULAM SOUTH, ERNAKULAM-682 016, REPRESENTED BY ITS MANAGING DIRECTOR.

R3 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R3 BY ADV. SRI.P.GOPINATH
R3 BY ADV. SRI.P.BENNY THOMAS
R3 BY ADV. SRI.K.JOHN MATHAI
BY ADV. SRI.P.C.SASIDHARAN, SC, PSC.
BY ADV. SRI.S.SUJIN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

**W.A.No.558 of 2015 &
C.M. Application No.408 of 2015**

Dated this the 13th day of March, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This writ appeal by the establishment - State - against the judgment of the learned single Judge comes with an application seeking condonation of delay of 72 days in its institution.

2. We have heard the learned Government Pleader quite in extenso on the merits of the appeal as well.

3. The 1st respondent/writ petitioner, a Post Graduate in Economics with M.Phil, had to do work as Clerical Assistant in the service of the 3rd respondent/the Kerala State Warehousing Corporation, at one stage, since that was the only employment that was available to him

then. While working so, he applied for selection and appointment as Lecturer in the Sanathana Dharma College, Kalarcode, Alappuzha, which is an aided college. The notified vacancy was a leave vacancy for 5 years. Anticipating a possible non-availability and continuity of service in that college, since that vacancy was a leave vacancy, the 1st respondent availed leave without allowance from the service of the 3rd respondent/Warehousing Corporation and served as Teacher and taught the students in the S.D. College for those 5 years. By that time, there was a permanent vacancy in that college and the 1st respondent was appointed against the said vacancy with effect from 01/04/1991. The short issue that was projected for consideration before the learned single Judge was as to whether the 5 years' period of service before 01/04/1991 is also eligible to be counted for the purpose of determining the length of service for pensionary benefits or whether that is liable to be excluded on the sole reason that leave without allowance was obtained from the Warehousing Corporation to work in an aided school. Though there are Government instructions shown by the learned Government

Pleader, we are of the view that the learned single Judge has correctly appreciated the facts and the constitutional setting in granting relief, more particularly because, there was nothing on record to show that the teacher concerned had not discharged the duties and responsibilities attached to the vacancies regarding the post to which he was appointed lawfully. Such appointments were also duly approved by the affiliated University within whose jurisdiction that matter lies. On the totality of the facts and circumstances, the exercise of power by the learned single Judge in writ jurisdiction, as has been done in the case in hand, does not warrant any interference in this intra-court appeal. Since we do not see any illegality or perversity in the matter of exercise of such discretionary power, the writ appeal fails.

In the result, the application for condonation of delay and the writ appeal are dismissed in limine.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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/true copy//

P.S. to Judge