

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 36167 of 2010 (U)

PETITIONER(S):

**R.AJITH KUMAR, S/O. RAMACHANDRAN
UNNITHAN, AGED 33 YEARS, FULL-TIME MENIAL
HIGH, SCHOOL, PAVUMBA P.O. PAVUMBA
KARUNAGAPPALLY, KOLLAM DISTRICT.**

**BY ADVS.SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF PUBLIC INSTRUCTION
JAGATHY, TRIVANDRUM-14.**
- 3. THE DEPUTY DIRECTOR OF EDUCATION
POST KOLLAM, KOLLAM DISTRICT-691013.**
- 4. THE DISTRICT EDUCATIONAL OFFICER,
POST KOLLAM, KOLLAM DISTRICT-691 013.**
- 5. THE MANAGER, HIGH SCHOOL,
PAVUMBA, P.O. PAVUMBA KARUNAGAPPALLY
KOLLAM DISTRICT-690574.**

**R,R5 BY ADV. SRI.P.SREEKUMAR
R,R5 BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)
R,R5 BY ADV. SRI.P.SSIDHAN
R,R5 BY ADV. SRI.K.N.SATHEESAN
R1-R4 BY ADV. GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 36167 of 2010 (U)

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1 COPY OF THE ORDER NO. B5/7363/06/K.DIS OF THE DISTRICT
EDUCATIONAL OFFICER
- EXT.P2 COPY OF THE ORDER NO. B3/1323/07/K.DIS. OF THE DEPUTY
DIRECTOR OF EDUCATION.
- EXT.P3 COPY OF THE ORDER NO. ET1/4251/2010/DPI/K.DIS. OF THE 2ND
RESPONDENT.
- EXT.P4 COPY OF THE G.O(RT) NO.2568/2010/G.EDN. OF THE
GOVERNMENT.
- EXT.P5 COPY OF THE APPOINTMENT ORDER AND THE APPROVAL
THEREOF BY THE 4TH RESPONDENT.
- EXT.P6 COPY OF THE G.O(P) NO.104/2008/G.EDN. OF THE
GOVERNMENT.

RESPONDENTS EXHIBITS:

- EXT.R1(A) COPY OF THE G.O(P) NO.144/2013/G.EDN. DATED 22.4.13.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.36167 of 2010 - U

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Dated this the 7th day of September, 2015

J U D G M E N T

The petitioner was appointed as a Full Time Menial from 18.06.2005 to 10.04.2006 against a leave vacancy. The petitioner was granted only daily wages and the petitioner by the above writ petition seeks for salary in the regular scales of pay, since according to the petitioner a Full Time Menial is not governed by the concept of an academic year since he has to work during the vacations also. The specific contention is taken up since the petitioner's claim was rejected on the basis of G.O (P) No.169/2004/Gen.Edn. Dated 15.06.2004.

2. The specific contention on the wording of the above Government Order is that the reference to academic year in paragraph 6 of the order does not apply to a Full Time Menial

and hence the petitioner has to be treated as having been appointed in a regular scale of pay, though temporarily.

3. The Government Order specifically prohibited regular appointments having a duration of less than one academic year in the leave vacancies to avoid creation of multiple claims under Rule 51A of the Kerala Education Rules, 1959. It is specifically provided that the vacancies having a duration of less than one academic year will be filled up only on daily wages. Even if the post in which the petitioner has been appointed on a leave vacancy, is one in which the incumbent has to report for duty during the vacations also, the prohibition would apply insofar as the principle behind the said prohibition being to ensure the avoidance of multiple claims under Rule 51A. The petitioner was neither appointed for an academic year and much less for a financial year. The concept of financial year is not applicable and this Court has only to look at the intention of the Government; which is explicit in the Government Order

and which intention brooks of no interference.

4. The petitioner was appointed only between 18.06.2005 and 10.04.2006 in a leave vacancy, it cannot be considered as one which is a regular appointment and the rigor of the Government Order would apply squarely under Rule 7 of Chapter XXIVB, by which the rules regarding the appointment of teachers of various schools shall 'mutatis mutandis' apply to the non-teaching staff in aided schools.

In such circumstance, the writ petition is devoid of merit and the writ petition is dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB

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P.A to Judge.