

CENTRAL ADMINISTRATIVE TRIBUNAL

**ERNAKULAM BENCH
CIRCUIT BENCH SITTING
AT KAVARATTI
UT OF LAKSHADWEEP**

Original Application No.181/00892/2017

Saturday, this the 14th day of December, 2019

**HON'BLE MR.JUSTICE L.NARASIMHA REDDY, CHAIRMAN
HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Faheema Meherban, aged 25 years
D/o.Aboosala.N
Meherland, Kadmath
Union Territory of Lakshadweep-682 556

..... **Applicant**

(By Advocate – Mr.T.N.Sreekala)

V e r s u s

- 1 The Administrator
 Union Territory of Lakshadweep (Secretariat)
 Kavaratti – 682 555
2. The Secretary (Services)
 Union Territory of Lakshadweep (Secretariat)
 Kavaratti -682 555
3. The Director (Services)
 Union Territory of Lakshadweep (Secretariat)
 Kavaratti-682 555

4. Shahida A.K
 D/o.Badarudheen
 Residing at Ashiyakkada House
 Agatti , Lakshadweep, Kerala – 682 556

..... **Respondents**

(By Advocate – Mr.S.Manu for R 1-3 & Mr.T.P.Nishad Khan for R4)

This Original Application having been heard on 14.12.2019, the Tribunal on the same day delivered the following:

O R D E R (ORAL)

JUSTICE L.NARASIMHA REDDY, CHAIRMAN

The Directorate of Health Services of Union Territory of Lakshadweep issued Employment Notice dated 14.9.2012 inviting applications for various posts. One such post is Auxiliary Midwife with pay scale of Rs.5200-20200 with Grade Pay of Rs.2000. One post was notified whereas another was said to be in anticipation. The applicant, the 4th respondent and several others have applied for the same. The qualifications stipulated for the said post is SSLC pass and completion of ANM training for two years/18 months from a recognised institution. The selection process comprised of the evaluation in SSLC as well as the ANM. A check list was published wherein the 4th respondent and the applicant, figured. The Selection Committee prepared a select list of two candidates (Annexure A-6) comprising the name of one Ms. Sumayya Thasneem.M.P and Ms. Shahida.A.K, the 4th respondent. The applicant was shown at serial no.2 in the Waiting List (WL) and one Ms.Hidaya. P was placed at serial no.1 in the WL.

2. Earlier, the applicant filed O.A. No.56/2016 challenging the action of the respondents in not including her in the list of selected candidates. The 4th respondent on the other hand filed O.A 471/2016 complaining that though she was issued offer of appointment, the respondents did not issue any order of appointment as such. Both the Original Applications were heard together by this Bench and were disposed of through an order dated 12.1.2017. The respondents were directed to assess the relative merit of the applicant on the one hand and the 4th respondent on the other hand, by taking into account, the actual marks obtained by them, instead of their grades.

3. In compliance with the orders passed in the said OAs, the respondents have obtained the particulars of marks from the concerned authority i.e, the Pariksha Bhavan of the State of Kerala and have undertaken evaluation, and the 4th respondent was selected. This Original Application is filed challenging the action of the respondents and to set aside Annexure A-10 and for a direction to the respondents to appoint the applicant as Auxiliary Midwife Nurse.

4. The applicant contends that the process adopted by the respondent nos.1 to 3 on the earlier occasion was found to be incorrect, and though the Tribunal directed them to take up an exercise in a particular manner, they deviated from that. She contends that if the method which is transparent, and objective has been adopted, it would have emerged that she is more meritorious than the 4th respondent. According to her, Annexure A-10 does not reflect correct state of affairs.

5. Respondent nos.1 to 3 on the one hand and Respondent no.4 on the other filed counter affidavits opposing the O.A. It is stated that the department has followed a method of appointment by assessing relative merits of the candidates and it clearly emerged that the applicant is less meritorious than the 4th respondent.

6. We heard Ms. Sreekala T.N, learned counsel for the applicant, Mr. S. Manu, learned counsel for respondent nos.1 to 3 and Mr. T. P. Nishad Khan, learned counsel for respondent no.4.

7. This is the second round of litigation initiated by the applicant. The fight is between the applicant on one hand and the 4th respondent on the other hand for the 2nd place in the Select List. As observed earlier, the performance of the candidates in the matriculation examination on the one hand and the ANM examination on the other hand was taken into account. An equal component for assessing the relative merit. The respondents adopted the software generated by the NIC, in this behalf.

8. Scope extended for some doubts in the process, on account of the reason that the results in SSLC in the State of Kerala are declared in terms of grades. They did not reflect the actual marks and it is difficult to discern the exact number of marks which a candidate obtained in a particular subject from the grades. When the applicant complaint that the assessment of the merit by taking into account the grades may not yield actual results, the Tribunal, to certain extent accepted the contention and has held as under:-

“Since applicant in O.A 56/2016 has raised a genuine plea about the correctness of calculation of her marks, the respondent (competent among the respondents) is directed to re-do selection for the second post

by making a correct calculation of SSLC and ANM marks of the applicant in O.A 56/2016. To do so, applicant will make a representation indicating the specific column in which marks have not been awarded correctly and submit an accurate calculation of SSLC & ANM marks within 15 days of receipt of this order. The respondent going by applicant's representation will do a recalculation of SSLC and ANM marks and arrive at the final percentage of total of SSLC and ANM marks and list the correct candidate for the 2nd position. This is necessary as the revised calculation shown to the Bench appears to be correct, but we leave the task to be done by the respondent, accurately and correctly, as per documents produced in the O.A and the representation to be submitted. "

The Tribunal wanted the Respondents to redo the exercise by making a correct calculation of SSLC and ANM marks of the applicant in OA No.56/2016. From this it becomes clear that the applicant was permitted to make a representation for the purpose of recalculation of SSLC and ANM marks, as the final percentage of marks of the applicant. The emphasis was more on marks, in contrast to the grades. Obviously, for this reason, the 4th respondents procured the exact marks obtained by the applicant on the one hand, and the 4th respondent on the other hand in the SSLC level examination.

9. It emerged that against the aggregate of 760, the 4th respondent secured 366, making it to 48.16%. In contrast, the

applicant secured 289 against the aggregate of 640, making it to 48.72%. 50% of this was taken into account. In the ANM, the percentage of marks of the 4th respondent was 68.29% and that of the applicant was 68.50%. The half of that was taken into account. The total of the components of SSLC on the one hand and ANM on the other hand became 58.22% for 4th respondent, and 58.11% for the applicant.

10. Whether the evaluation is on the basis of grades or marks, the 4th respondent emerged as slightly more meritorious than the applicant. That being the case, we do not find any basis or merit in the contention of the applicant.

11. The OA is accordingly dismissed. There shall be no order as to costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

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List of Annexures

Annexure A-1 - True copy of Employment notification bearing number F.No.20/06/2009-Estt(2) dated 9.11.2009

Annexure A-2 - True copy of SSLC marklist of the applicant bearing registration number 383836 issued in March, 2008

Annexure A-3 - True copy of the ANM marklist dated 31.1.2012

Annexure A-4 - True copy of the ANM registration certificate bearing number 17042 dated 30.4.2012

Annexure A-5 - True copy of the revised check list produced by the respondents in O.A No.56/2016 as R1A

Annexure A-6 - True copy of the merit list dated 3.3.2014

Annexure A-7 - True copy of order dated 12.1.2017 in O.A 56/2016 passed by this Tribunal

Annexure A8 - True copy of representation dated 24.1.2017

Annexure A9 - True copy of the M.A 836/2017 in O.A 56/2016 without Annexures

Annexure A10 - True copy of the appointment order bearing number 16/8/2013-DHS/1208 dated 14.9.2017 issued to the 4th respondent

Annexure A11 - True copy of the communication bearing number 16/8/2013-DHS/1215 dated 14.9.2017

Annexure A12 - True copy of postal receipt bearing number RL 513354694IN dated 18.9.2017

Annexure R1(a) - True copy of the mark lists of the applicant for SSLC

Annexure R1(b) - True copy of the mark lists of the applicant for ANM

Annexure R1(c) - True copy of the mark lists of the 4th respondent for SSLC

Annexure R1(d) - True copy of the mark lists of the 4th respondent for ANM

Annexure R1(e) - True copy of the recalculation done by the Department for SSLC and ANM

Annexure A13 - True copy of the conversion method downloaded from the website www.kerala.gov.in

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