

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 417/2011

Friday, this the 23rd day of March, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. P.V.Abdul Saleem, S/o Kadapurathillam Hamsath,
Engine Driver, Department of Fisheries,
Kavaratti, U.T of Lakshadweep,
Residing at Puthiyaveedu,
Kavaratti, Lakshadweep.
2. M.C.Hidayathula, S/o late Muthukoya,
Deck Crew, Department of Fisheries,
Kavaratti, U.T of Lakshadweep,
Residing at Madalachetta, Amini Island.
3. K.M.Abdul Jaleel, S/o late Koya Kidave,
Cook, Department of Fisheries,
Kavaratti, U.T of Lakshadweep,
Residing at Keelamadam House,
Kadamath Island. - Applicants

(By Advocate Mr M.P.Krishnan Nair)

v.

1. Lakshadweep Administration, rep. by
Administrator, U.T. Of Lakshadweep,
Kavaratti-682 555.
2. The Director of Fisheries,
Lakshadweep Administration,
Kavaratti-682 555.Respondents

(By Advocate Mr S Radhakrishnan)

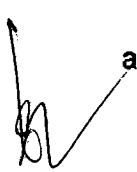
This application having been finally heard on 21.03.2012, the Tribunal on 23.03.2012
delivered the following:

✓

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The three applicants were, in pursuance of their application in response to Annexure A-1 notification dated 13-09-2005 were appointed respectively as Engine Driver, Deck Crew and Cook, vide the appointment orders dated 05-11-2005 (Annexure A-5), dated 22-11-2005 (Annexure A-10) and Annexure 8 order dated 22-11-2005. The terms of appointment were identical in all these three appointment orders. The appointment was on contract basis for a compensation of consolidated amount specified in the respective orders per mensem plus victualling Allowance per diem as specified therein. The appointments were also stated to be purely temporary and would be terminated at any time without further notice. A caution was also administered that the appointment would not confer on the candidates any claim for further appointment in the department. There has been no mention about the applicability or otherwise of the service Rules, such as CCS(CC&A) Rules, provident fund subscription and not even as to the entitlement or otherwise any leave.

2. The applicant continued in the said contractual appointment and when Annexure A-16 notification calling for applications to fill up the post of Engine Driver, Deck Crew and Local Fisherman (along with certain other posts) had been notified, the applicants filed Annexure A-32 representation and as no favourable response was received, the applicants approached this Tribunal challenging the action on the part of the respondents in issuing the notification and claiming that the applicants should be regularized in their respective posts instead of calling for applications from the open market. The relief sought for is as under:-



- (a) To call for the records leading to Annexure A-16 and quash the same;
- (b) To declare that the applicants are entitled to be regularised in service as Engine Driver, Deck Crew and Cook respectively with effect from the date of initial appointment, i.e. from November, 2005 and also entitled to get all service benefits and consequential monetary benefits with retrospective effect;
- (c) To direct respondents to regularise the applicants in service as Engine Driver, Deck Crew and Cook respectively with effect from the date of initial appointment, i.e. from November, 2005 and also entitled to get all service benefits and consequential monetary benefits with retrospective effect;
- (d) To declare that the new Recruitment Rules viz, Annexure A-24, A-25, and A-26 hereto is illegal, bad in law, ad initio void, unjust, unreasonable and unsustainable and violative of the fundamental rights of the applicants;
- (e) To direct the respondents to kept vacant at least 3 vacancies, 1 Engine Driver, 1 Mechanical Grade B and 1 Local Fisherman, so as to accommodate the applicants;
- (f) Pass any other appropriate order or orders, directions which are deemed just and necessary in the facts and circumstances of the case.

3. At the time of initial admission of the OA, an interim order (dated 23-05-2011) directing the respondents to provisionally permit the applicants to participate in the process of selection was passed and the applicants had accordingly been permitted to participate on provisional basis. Thereafter, on the availability of sanctioned post, vide Annexure A-16 notification, applications were called for, stipulating the age limit and other qualifications as per Annexure R 1(a) Recruitment Rules. Till issue of the said notification, no recruitment to the



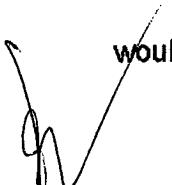
post was conducted. In the wake of the said notification, as many as 26 applications including that of the first applicant were received and only eight candidates were found qualified as per the Recruitment Rules. The age limit as on 30-04-2011 was worked out and the applicant No. 1 was 37 years as on that date. Likewise, 72 applications were received for the post of Mechanic Grade B including that of the third applicant, who was 40 years as on the last date for receipt of application. Similarly, in respect of local Fisherman, applications, including that of second respondent, received are 143 and the age of the said applicant as on 30-04-2011 was 39.

4. Respondents have also stated that age limit is granted only for departmental candidate and the applicants continuing as contractual appointees cannot be treated as departmental candidates.

5. Applicants have filed their rejoinder as also subsequently, filed certain misc. applications annexing various documents. The sum and substance of the rejoinder and such documents related to the fact they fulfill the qualifications as per the Recruitment Rules and that their initial appointment was after following the due procedure and that at the time of their initial engagement, the age limit was 40 years.

6. An impleading application by a third party had also been filed as he was one of the aspirants to the post of Local Fisherman and due to certain direction of this Tribunal, entire selection for the said post has been suspended.

7. Counsel for the impleading respondents has stated that he has no quarrel with the claim of the applicants and the interest of the impleading respondent would be served if the case is heard expeditiously.



8. Counsel for the applicant submitted that initially the Boat in which the applicants are serving was operated through another body and on the boat having been brought back by the Fisheries Department, necessity was felt to have the same operated through the applicants. The contractual term in fact was comparable to regular appointment as the consolidated salary had been paid by the Fisheries Department. The applicants have all been qualified to hold the respective posts, and only age limit has come in their way. The counsel stated that the claim of the applicants could well be restricted to their participation in the selection for which age relaxation be given taking into account the twin facts that earlier the age limit in the Annexure A-1 notification was 40 and that the applicants have put in 5 to 6 years of service.

9. Counsel for the respondents has submitted that there is no provision for age relaxation in so far as the applicants are concerned, as such relaxation is available only for the departmental candidates. For a pointed question, the counsel submitted that a departmental candidate is one who has been recruited in accordance with Recruitment Rules and against a regular post. The counsel also referred to the following two decisions of the Apex Court in support of the contention of the respondents that contractual employment does not give any right to the individuals for regularization:-

(a) *Mohd. Abdul Kadir v. Director General of Police, Assam*, (2009) 6 SCC 611
(b) *Sandeep Kumar v. State of U.P.*, 1993 Supp (1) SCC 525

10. Arguments were heard and documents perused. The Apex Court has dealt with a case of almost an identical character, vide judgment in the case of *Union Public Service Commission vs Girish Jayanti Lal Vaghela* (2006) 2 SCC 482. That was a case, where, the respondent Vaghela was appointed as

Drug Inspector in March 1996 on contract basis on a fixed salary for a period of six months or till a candidate selected by UPSC joined the duty on regular basis, whichever is earlier. The said appointment continued over five years. An advertisement was issued by UPSC in March, 2001 for making regular selection on the post of Drug Inspector. The upper age limit was 30 years in that case, which is relaxable for Government servants upto five years in accordance with the extant instructions. Respondent having become over aged by two years, he had requested the Union Territory of Daman and Diu for age relaxation and since there was no response, he filed OA in July 2001 and the Tribunal directed the Administrator to decide the representation and meanwhile the respondent was provisionally allowed to appear in the interview. On account of refusal of the Administrator to grant age relaxation certificate, the respondent Vaghela moved another OA before the Tribunal which passed an interim order to the effect that appointment to the post of Drug Inspector, if any made, would be subject to outcome of the O.A. The UPSC cancelled the candidature of the said respondent and recommended another individual (who was respondent No. 4 before the Apex Court) for the post of Drugs inspector. The contract appointment of the respondent Vaghela came to an end on 30-09-2002 and was not extended further. The Second Original Application was dismissed by the Tribunal in June, 2002 on the ground that the appointment of the said respondent was purely on contractual basis and he was not appointed by following the recruitment Rules and further the intention of the Government was to provide relaxation in age only to regular government servants and not to those who have been appointed on ad hoc basis dehors the rules. Writ petition filed by the application against the order of the Tribunal was allowed and the Administrator was directed to issue necessary age relaxation certificate to the said respondent Vaghela. The UPSC was also directed to consider the claim of the said respondent for issuing him an offer of appointment as Drug Inspector.



This judgment was challenged before the Apex Court and the Apex Court has held as under:-

"The appointment being purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was he entitled to any pension which are normal incidents of a government service. Similarly, he could neither be placed under suspension entitling him to a suspension allowance nor could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that Respondent 1 was a government servant."

The Apex Court, after referring to certain other decisions, ultimately held as under:-

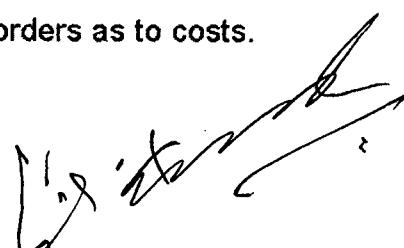
"24. For the reasons discussed above, we are clearly of the opinion that Respondent 1 cannot be said to be a government servant as he was working on contract basis and, therefore, he was not eligible for any relaxation in upper age-limit. The view taken by the High Court is clearly erroneous in law and is liable to be set aside."

As the above decision applies in all four squares to the case in hand, other decisions relied upon by the respondents need not be referred to.

11. Following the Apex Court decision in the case of *Union Public Service Commission vs Girish Jayanti Lal Vaghela* (2006) 2 SCC 482, the OA is liable to be dismissed, which we accordingly order.

12. Under the circumstances, there shall be no orders as to costs.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER