

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.419/03

Tuesday this the 22nd day of March 2005

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

K.P.Mohamed Hidayatthulla Khan,
S/o.P.Ummer,
Kandiathpura House,
P.O.Androth, U.T.of Lakshadweep.

Applicant

(By Advocate Mr.N.N.Sugunapalan)

Versus

1. Director of Education,
U.T.of Lakshadweep.
2. The Administrator,
U.T.of Lakshadweep.
3. Union of India represented by
the Secretary, Ministry of Home,
New Delhi.
4. C.N.Saleema,
D/o.P.Sayed Shaikoya,
Kalpeni. U.T.of Lakshadweep.
5. M.K.Mohammed Shameem,
S/o.K.K.Kasmikoya,
Kalpeni, U.T.of Lakshadweep.
6. K.C.Saleem,
S/o.Hamza Master,
Amini Island, U.T.of Lakshadweep.
7. Sayed Kamaludheen,
Puthiyapura House,
Androth Island, U.T.of Lakshadweep.
8. Sayed Mohammed Khaleel,
Shaikinte Veedu (House),
Androth, U.T.of Lakshadweep.
9. Mohammed Hashim,
Shaikinte Veedu (House),
Androth, U.T.of Lakshadweep.
10. T.I.Sarfaras,
Thakkilailam House,
S/o.K.P.Syedmohammed Koya,
Kiltan Island, U.T.of Lakshadweep.

Respondents

(By Advocate Mr.S.Radhakrishnan[R1-2] & Mrs.Pearly Jose [R7,9,10])

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Trained Graduate Teacher from July 2000 onwards has completed three years of service. The applicant averred that he was selected after undertaking regular process of selection including an interview. The vacancy for which the applicant has applied pertains to pre-2002 period. The new Recruitment Rules came into force only on 4.9.2002. The respondents notified the posts and selection was made. The grievance of the applicant is that he should have been considered as per the old Recruitment Rules and allowed to join as a regular hand. Aggrieved by the said inaction he has filed this O.A. seeking the following main reliefs :-

1. quash and set aside Annexure A-8 list of candidates dated 14.5.2003 of the Director of Education.
2. direct the respondents to consider the applicant's contract service as per the earlier recruitment rules and appoint the applicant to the vacancies available from 2000 onwards.
3. quash Annexure A-9 in so far as it seeks to take away the rights of the applicant for regularisation in the vacancies which have arisen from the year 2000 onwards till 17.9.2002.
4. declare that the applicant is entitled to be considered for regularisation in the vacancies available from the year 2000 till 17.9.2002.

2. The respondents have filed a detailed reply statement contending that the applicant was appointed as Trained Graduate Teacher (Mathematics) in the Government High School, Chetlat on contract basis up to 25.11.2000 or on rejoining of regular incumbent after leave, whichever is earlier, on a consolidated remuneration of Rs.6500/- per month on the terms and conditions stipulated. It was specifically mentioned that the posting was against the leave vacancy of one Shri.K.Vijayan. Again the applicant was appointed on 6.6.2002 against the post of Trained Graduate Teacher (Mathematics) in the Government High School, Minicoy vide Annexure A-2 order on specific terms and

conditions stipulated in the contract executed. It was made clear in the order that the appointment made is purely on contract basis as per the terms and conditions of the contract signed by him and will not confer on him any claim for regular appointment and further the appointment was upto 31.3.2002. He was further appointed for a period upto 31.3.2003 as per Annexure A-3 order dated 13.6.2002. Thus Annexure A-1 to Annexure A-3 shows that the applicant was never in continuous service. The contract signed by the applicant is Annexure R-1. According to para 2 of the contract, the applicant will not be construed as an employee of the Department of Education/Administration and he will not have any claim for continuance or lien in government service. Annexure A-5 order was issued when there was a move on the part of the Administration to terminate the service of all mainlanders working in such posts due to local agitation in this regard. At that time, certain mainlanders working on contract/adhoc basis submitted a representation to the Ministry and the Ministry considered their case sympathetically and issued the order dated 19.1.1996 as a onetime measure (Annexure R-2). It was not based upon any legal principle but was issued on sympathetic grounds which cannot be termed as a precedence or confer any legal right to the applicant to his present claim. Since the applicant was appointed on contract basis and has not completed three years of service he has no legal right to claim any fixation or regularisation.

3. Respondents 1-2 also filed reply statement to the amended O.A. Challenging Annexure A-9 on the ground that it attempts to take away the vested right of the applicant to be considered for vacancies that have arisen till 17.9.2002, the date of new Recruitment Rules, the respondents contended that the vacancies which are being filled up are those vacancies which are created by the Administration on 5.3.2003

notified as per Annexure A-6 and can be filled up only in accordance with the new Recruitment Rules dated 17.9.2002. No vacancies which arose prior to 17.9.2002, can be filled up in accordance with new Recruitment Rules. As per Annexure A-6 the respondents have notified only three vacancies of TGT Mathematics. There is no move to fill up any other vacancies based upon the selection conducted pursuant to Annexure A-6. The allegations that the Recruitment Rules of Trained Graduate Teachers alone is amended to take away the right of contract hands is wrong.

4. The applicant has filed a rejoinder contending that the posts are obviously prior to Annexure A-9 list and the applicant was fully eligible to be considered for the same just as the persons who have been considered as per Annexure A-5. The applicant and the persons shown in Annexure A-5 are on the same footing. The applicant had appeared in the selection test and interview only through abundant caution so that he could aspire for post Annexure A-9 vacancies. However, his appearance for the selection test and interview would not be in any way take away his right to be appointed against the pre Annexure A-9 vacancies.

5. The party respondents 7,9 & 10 also filed a reply statement contending that the new Recruitment Rules came into force on 17.9.2002 where as the posts were created on 5.3.2003. The notification inviting application was on 31.3.2003. There is no provision in the new recruitment rules for regularisation of contract employees. The applicant participated in the test and only after failure he is now challenging the recruitment rule.

6. We have heard Shri.N.N.Sugunapalan & Shri.Balakrishna Gopinath, learned counsel for the applicant and Shri.S.Radhakrishnan for R 1-2 & Smt.Pearly Jose for R 7,9 & 10. Learned counsel for the applicant argued that the applicant now completing three years of service is entitled for regularisation by the department in the same post. The selection was conducted for the vacancies available both previous to the amendment of the rules and after the new rule was introduced. The new rule came into force with effect from 4.9.2002. But the three vacancies notified was available under the earlier amended rules issued in 1994 wherein there is chance of regularising the teachers who are working on contract basis. In fact number of persons were thus regularised by the respondents. Annexure A-9 attempts to take away the vested right of the applicant to be considered for vacancies that have arisen from the year 2000 onwards till 17.9.2002 which is the date of coming to effect of the new notification. Learned counsel for the respondents, on the other hand, persuasively argued that the applicant was never in continuous service and the vacancies for which the party respondents were selected and appointed were subsequent to 17.9.2002..

7. We have given due consideration to the arguments advanced by the learned counsel on either side and the pleadings, materials and evidences placed on record. It is borne on record that the applicant was appointed as TGT on short term leave vacancy on contract basis and Annexure A-1, Annexure A-2 and Annexure A-3 specifically stipulates that the appointment made was purely on contract basis and would not confer any claim for regular appointment and that too was on a consolidated remuneration of Rs.6500/- (Rupees Six Thousand and Five Hundred) only per month on the terms and conditions stipulated in the contract executed. The engagement was also not continuous but only

intermittently. Admittedly he has not completed three years of service. Therefore the question whether the applicant is entitled for regularisation has been disputed by the respondents. The wait listed candidate in the three vacancies claimed by the applicant prior to the Recruitment Rules was subject matter of the decision in O.A.1012/03 and vide order dated 6.8.2004 such claim was dismissed by the Tribunal. Therefore the three vacancies claimed by the applicant prior to the Recruitment Rules is no more in existence which has been settled once for all. Apart from that the applicant was not able to bring any rule or instruction which provide for regularisation to contract teachers against the provisions of statutory Recruitment Rules. The fact that in 1998 by Annexure A-5 notification certain contract teachers were inducted in service as a special dispensation will not confer any right to the applicant. This is not a general order but only a special dispensation and one time measure in an exceptional circumstance issued by the Lakshadweep administration in furtherance of special order issued by the Ministry of Home Affairs, New Delhi dated 19.1.1996 (Annexure R-2). Therefore the applicant cannot take advantage of the same. Learned counsel for the respondents also brought to our notice a decision reported in AIR 1995 SC 705 (Chandigarh Administration Vs. Jagjith Singh) where the Apex Court has held that "the fact that the authority has passed a particular order in the case of another person similarly situated case never be a ground for issuing a writ in favour of the petitioner on the plea of discrimination". Apart from that on the perusal of the pleadings and materials placed on record we find that the new Recruitment Rules came into force on 17.9.2002, the selected posts for which the applicant is making claim were created on 5.3.2003. The letter dated 6.2.2003 issued by the Ministry of Human Resource Development to the Director of Education conveying the approval of the Govt. of India for creation of 103 teaching posts

under U.T.Administration of Lakshadweep and vide order dated 5.3.2003 the Administrator has created teaching posts which includes 26 posts of T.G.T. This evidently shows that these posts are created subsequent to the new Recruitment Rules and therefore the applicant has no claim whatsoever as prayed in the O.A.

8. In the conspectus of facts and circumstances we are of the considered view that the applicant is not succeeded in proving his case and therefore the O.A. is not merited and it is only to be dismissed. Accordingly we dismiss the O.A. In the circumstances no order as to costs.

(Dated the 22nd day of March 2005)



H.P.DAS
ADMINISTRATIVE MEMBER

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K.V.SACHIDANANDAN
JUDICIAL MEMBER