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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 1156 of 2012 &
Miscellaneous Application No. 181/95/2014 in OA/1156/2012
Original Application No. 40 of 2013
Original Application No. 43 of 2013

MONDAY, this the 1st day of ~~JUNE~~, 2015

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

1. Original Application No. 1156 of 2012 -

Raiza Areekath P.P.,
aged 23 years, D/o. M.C. Pookoya,
Trained Graduate Teacher (Mathematics),
Government Senior Secondary School,
Kavaratti, Residing Puthiya Pandaram, Kavaratti. **Applicant**

(By Advocate – Mr. P.V. Mohanan)

Versus

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. Director of Education,
Directorate of Education,
Union Territory of Lakshadweep,
Kavaratti – 682 555. **Respondents**

(By Advocate – Mr. S. Radhakrishnan)

2. Original Application No. 40 of 2013 -

1. Sayed Mohammed Irfan P.P., aged 34,
S/o. Cheriya Koya Thangal,
Trained Graduate Teacher (Biology),
GSSS Minicoy, Residing at Puthiyapura
Puthiyaveedu, Androth, UT of Lakshadweep.
2. Beegum Nazcedha M.K., aged 34,

D/o. M.K. Koya,
Trained Graduate Teacher (Biology),
GSSS Kavaratti,
Residing at Malmi Kakkada House,
Kalpeni Island, UT of Lakshadweep.

..... Applicants

(By Advocate – Mr. P.V. Mohanan)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

2. Director of Education,
Directorate of Education,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

..... Respondents

(By Advocate – Mr. S. Radhakrishnan)

3. **Original Application No. 43 of 2013 -**

1. Fouziya C.N., aged 27, D/o. M.K. Koya,
Trained Graduate Teacher (Social Science),
GSSS Minicoy, Residing at Cheriyanallal House,
Kalpeni Island, UT of Lakshadweep.

2. Fathahurahman M.C., Aged 30, S/o. Fathahulla K,
Trained Graduate Teacher (Social Science),
GSSS Kalpeni, Residing at Mullachetta House,
Kadamath Island, UT of Lakshadweep.

3. Najeema Mumthaz M., aged 36,
D/o. Shaikoya P., Trained Graduate Teacher (Social Science),
GSSS Kalpeni, Residing at Mammel House, Kalpeni Island,
UT of Lakshadweep.

..... Applicants

(By Advocate – Mr. Rajesh Sukumaran)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

2. Director of Education,
Directorate of Education,

Union Territory of Lakshadweep,
Kavaratti - 682 555.

..... Respondents

(By Advocate – Mr. S. Radhakrishnan)

These applications having been heard on 31.03.2015 the Tribunal on
01.06.2015 delivered the following:

COMMON ORDER

By Hon'ble Mr. U. Sarathchandran, Judicial Member-

These Original Applications have been filed by the persons who have been appointed on contractual basis as Trained Graduate Teachers, (hereinafter referred to as TGT) in different subjects. They have a common grievance that having undergone the recruitment process for TGT in the direct recruitment quota, they have been appointed on contract basis by way of a *mala fide* exercise of power, instead of posting them on a regular cadre. It is the common challenge of these applicants that the official respondents, after taking a conscious decision of diverting the post set apart for promotion quota for direct recruitment in terms of the extant rules by relaxing the rigour of those rules, have decided to post them on contract basis contrary to the Recruitment Rules. According to the applicants while doing so the respondents have been adopting the infamous Henry VIII clause*.

2. Learned counsel appearing on both sides agreed that these OAs can be heard together and disposed of by way of a common order.

*A Henry VIII clause is so called because of the penchant of the English monarch of that name to give himself power to amend (and in some cases to suspend or dispense with) statutes passed by the Parliament. So the expression "Henry VIII clause" has come to mean "a provision in a Bill which enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny".

3. Respondents contend that as per Annexure A2 employment notice 28 vacancies of 'TGT' of different disciplines were notified. A merit list was drawn which was valid up to 1.4.2012 for all notified vacancies that may arise up to 1.4.2012 under the direct recruitment quota. On completing the action of filling up of all 27 vacancies of 'TGT' from the candidates in the merit list drawn by the selection committee, there were subsequent vacancies of 'TGT's that occurred due to retirement/promotion up to 1.4.2012. There were 4 posts of 'TGT' (Social Science), 3 posts of 'TGT' (Biology), 2 posts of 'TGT' (Chemistry) and 2 posts of 'TGT' (Mathematics). The Department, without dividing these 11 vacancies between direct recruitment quota and promotion quota, suggested to fill up the same by direct recruitment candidates from the existing merit list and the applicants in these OAs were recommended by the Department. The proposal of the Department was returned by Secretary, Education to verify the status of the vacancies considered for recruitment and to assess the number of vacancies that will be available for direct recruitment and for promotion quota in accordance with Recruitment Rules. Only 8 such vacancies can be set apart for direct recruitment in accordance with the ratio prescribed in the Recruitment Rules. Therefore, the Department requested the competent authority to convert 8 vacancies of 'TGT's under promotion quota to direct recruitment quota and to appoint candidates available in the merit list. The competent authority while considering the request found that it is not permissible to fill up promotion post by direct recruitment because the direct recruitment candidates would occupy the posts till their retirement and,

therefore the vacant posts of promotion quota (8 in number) can be filled up as a stop gap arrangement and these candidates could be engaged till the vacancies are filled from feeder cadre by way of promotion. Accordingly, the applicants were issued offer of appointment against the vacant posts in the promotion quota of TGTs in the aforesaid disciplines on a stop gap arrangement basis. However, the offer of appointment so made was again reviewed by the competent authority and ordered for appointment of candidates against the promotion quota on contract basis for the academic year 2012-2013 only and instead of payment of salary on pay scale basis a consolidated sum was ordered to be paid. The applicants accepted the offer of appointment on contract basis for the academic session 2012-2013 and based on such acceptance they were given contract appointment to the promotional quota post of TGT for the academic session 2012-2013 alone. The competent authority did not approve any proposal for converting the promotion quota of TGT posts to direct recruitment quota and hence the claim of the applicants for regular appointment is unsustainable. Respondents point out that in the TGT (Mathematics) the total vacancies were 8, out of which 5 are for direct recruitment notified under Annexure A3 and 3 were for promotion. Out of the 3 promotion quota, one post was already filled up by promoting a teacher having requisite qualification.

4. A rejoinder was filed by the applicants in OAs Nos. 40 & 43 of 2013. It is stated therein that in the matter of promotion to the post of PGT (Physics, Botany & Geography) the posts set apart for promotion quota are divided to direct recruitment quota and accordingly teachers were appointed

on Pay Band of Rs. 9,300-34,800/- with Grade Pay of Rs. 4,800/-.

5. We have heard both sides. Mr. P.V. Mohanan learned counsel appeared for the applicants and Mr. S. Radhakrishnan learned Standing Counsel appeared for the respondents.

6. For the sake of convenience we refer to the annexures marked in OA No. 1156 of 2012 for the discussion of the main issue involved in these cases.

7. It appears from the pleadings and records produced that in the Union Territory of Lakshadweep there had been a dearth of qualified candidates from the promotional quota for being appointed as TGT. Annexure A1 is the Recruitment Rules on the basis of which the recruitment of TGTs have been made. As pointed out earlier, Annexure A2 is the employment notice issued by the Directorate of Education inviting applications from qualified candidates for TGT and other posts to be filled up under that department. Annexure A1 Recruitment Rules prescribes the method of recruitment for TGTs as direct recruitment through Teachers Eligibility Test (for short TET) as per the guidelines of NCTE for 60% vacancies and promotion from primary teachers possessing the qualifications prescribed in column 8 of schedule I of Annexure A1 Recruitment Rules for the 40% vacancies. It must be noted that Annexure A2 employment notice is for filling up of the vacancies set apart of direct recruits only and that there was no mention of the vacancies set apart for promotees. After the recruitment process as per

Annexure-A2 notification a rank list was published. None of the Applicants herein were amongst the selected candidates, although they were included in the merit list which had a validity till 1.4.2012.

8. Applicants have produced some pages from the file notings of the Education Department to show that there was a conscious decision taken by the respondents to fill up the vacancies set apart for promotee candidates from the select list of direct recruit candidates before 1.4.2012 (i.e. the date on which the select list would expire). Paragraph 236 in the copy of Annexure A5 file noting produced by the applicants contain the proposal for converting the vacancies of promotees from direct recruitment quota. It reads:

"236. As there are no qualified candidates with required qualification / experience in the feeder cadre of Primary School Teachers under Department of Education the competent authority may please be permitted to convert these vacancies to direct recruitment quota and to fill up the above 8 vacancies of TGT in different disciplines from the select list of candidates before 1.4.2012. These quota ratio may be permitted to equalize from subsequent vacancies/creation after 1.4.2012."

9. Respondents in their reply statement pointed out that Annexure A5 is a portion of the copy of file notings produced by the applicants only to suit their convenience. Shri Radhakrishnan learned counsel for the respondents referring to the decision of the Apex Court in *Puranjit Singh v. Union Territory of Chandigarh & Ors.* - AIR 1994 SC 2737 objected to this practice resorted to by the applicants. In that case the Apex Court held that it was improper on the part of the employee to produce the file notings in the Court proceedings assuming that he has come in possession of them

authorisedly and that such file notings in the departmental files did not create any rights in his favour. In yet another decision referred to by Mr. Radhakrishnan the Apex Court has reiterated the same view in *M.D. U.P. Land Development Corporation & Anr. v. Amar Singh & Ors.* - 2003 (5) SCC 388 and held that internal notings and orders of the office are meant for official purpose and should not be produced before the Court in support of the claims of the employees. Nevertheless, respondents have produced the relevant file notings in its entirety starting from paragraph 213 to 279 as Annexure R1 (b) which reveal the genesis of the orders impugned in these OAs.

10. Apart from the afore quoted paragraph 236 of the file notings the decision of the Director, Education not to fill up the "promotional post" by direct recruitment and to fill up the post of promotional quota (8 in numbers) as a stop gap arrangement is made more explicit in paragraph 241 of that file noting. Paragraph 241 is extracted below:-

"241. However, as regard the fill up of the promotional post by Direct recruitment is not permissible while vice-versa has been done for the reasons that the direct recruitment candidate occupies the post till his retirement. Therefore, the vacant post of promotion quota (8 no.) as explained in para 236 can be filled as stop-gap arrangement and these candidates would be engaged till vacancy is filled from the feeder cadre by way of promotion. It must be mentioned in the offer of appointment. Pl. also indicate by calculation by what time these promotional post & differently abled category post be filled with the above directions approved the proposal of the Deptt. at 'C', 'D' & 'E' of para 237 is approved."

11. The further decision of the respondents for filling up the vacancies by way of stop gap arrangements can be seen in para 255 of the filing noting which has been approved by the Administrator vide para 258. At paragraph

261 the Director of Education has again ordered as follows:-

"261. Instead of pay scale pl. mention the consolidated pay. Rest is O.K. also mention in para (2) text above arrangement is the stop gap arrangement."

12. The file notings indicate that the appointment of the applicants is on contractual basis for specified academic year and that it is purely on temporary arrangement and further that the same has been accepted by the applicants. The impugned order in respect of applicant in OA No. 1156 of 2012 and another person is extracted below for easy understanding of the nature of the order issued by the respondents:-

"Administration of the Union Territory of Lakshadweep
(Directorate of Education)
Kavaratti - 682 555

F. No. 10/282001-Edn(AW)

Dated : 22.06.2012

OFFICE ORDER

Sub:- Establishment-Education - U.T. of Lakshadweep -
Appointment of Trained Graduate Teacher
(Mathematics) on Contractual basis as stop-gap
arrangement to the promotional quota under
Education Department - Orders issued.

- Ref:- 1. This Office order of even No. dated
29.3.2012 & 8.5.2012.
2. F.No. 18/3/2009-Edn/Estt dated 21.02.2011
3. Letter dated Nil of Saheera Rammedu
Bidharuge, Minicoy.
4. Letter dated 30.3.12 of Smt. Raiza Areekath
P.P., Kalpeni.

The Secretary (Education), U.T. of Lakshadweep is pleased to appoint the following candidates who have accepted the offer of appointment issued to them vide reference 1st cited, as Trained Graduate Teacher (Mathematics) on consolidated monthly remuneration basis for the academic session 2012-13. The amount of monthly remuneration will be intimated separately when the same is finalized by the Lakshadweep Administration and posted them in the Educational Institutions as detailed below:

S. No.	Name & address	Place of posting	Remarks
1	Sabeera, Ramedu Bidharuge, D/o Ismail Moyaganthi, Ramedu Village, Minicoy	GSSS, Amini	Selected against the vacancy of Shri K. Naseema promoted

S. No.	Name & address	Place of posting	Remarks
2	Raiza Areekath P.P., D/o. M.C. Pookoya, Assistant, Service Section, Kavaratti	GSSS, Kavaratti	against the vacancy of A.P. Thahira, promoted

The above appointment is purely on contractual basis for one year for the academic session 2012-13 as stop-gap arrangement against the vacancy post of promotional quota for the academic year 2012-13. Therefore, the appointment of the above two candidates is limited to academic session 2012-13 or to the date on which these vacancies under promotional quota is filled from the feeder cadre by promotion which ever is earlier.

The individuals should report before the Principal/Head Master in the concerned Educational Institution in the concerned Island.

The Principal/Head Master concerned will report the date of joining of the individuals to this Directorate in due course specifying forenoon/afternoon.

No TA/DA will be paid for joining the post.

This issues with the approval of the Secretary (Education), U.T. Of Lakshadweep vide diary No. 6605 dated 21.06.2012.

Sd/-

(Dr. M.S. Sayed Ismail Koya)
Director of Education

To

The Individuals

Copy to:

- 1.The Principals/Head Masters, Govt. Senior Secondary School/Senior Basic School/Junior Basic School in the concerned Island.
- 2.The AO, PAO, Kavaratti/IAO, FPII in the concerned Island.
- 3.The Member Secretary, LAB in the concerned Island.
- 4.The Chief Executive Officer, DP, Kavaratti.
- 5.The Joint Director (Education), DP, Kavaratti.
- 6.PA to the President cum Chief Counsellor, DP, Kavaratti."

13. Shri P.V. Mohanan learned counsel for the applicants submitted that the authorities are empowered to divert the reserved vacancies to the direct recruitment quota by virtue of a Government of India instruction issued by DOP&T vide OM No. AB-14017/30/89-Estt(RR) dated 10.7.1990. It reads as follows:-

"For posts filled both by direct recruitment and by promotion with separate quotas, Ministries / Departments are competent to approve diversion of a reserved vacancy from promotion to direct recruitment temporarily in the event of non-availability of suitable departmental candidate. In the subsequent

year(s), the available reserve point in the direct recruitment quota will be transferred to promotion quota and utilized by appointing a promotee. Such diversion will be resorted to only if reserved category is not likely to be available for promotion in the near future."

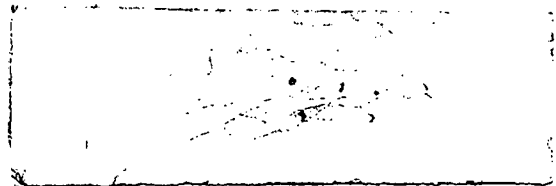
(underlining supplied)

14. Shri P.V. Mohanan submitted that the quota of promotees prescribed in the Recruitment Rules could not be filled by the respondents due to want of qualified personnel and therefore, it has to be deemed that the quota system has failed. He further submitted that by the conscious decision of the respondents as can be seen from Annexure A5/Annexure R1(b) file notings to divert the vacancies of promotional quota to be filled up by the candidates in the select list for direct recruitment vacancies and therefore the department was conscious that the quota system is not be able to be implemented. Shri Mohanan argued that in the light of the Full Bench decision of the Hon'ble Apex Court in the *Direct Recruit Class-II Engineering Officers Association and others v. State of Maharashtra & Ors.* – AIR 1990 SC 1607 wherein the Apex Court held that if it becomes impossible to adhere to the existing rules it can be substituted by appropriate rules to meet the needs of the situation and therefore such a vacancy can be filled up by candidates from the open market. Shri Mohanan submitted that in the light of the aforementioned decision of the Supreme Court which lays down the law, the applicants are entitled to be considered to be treated as regularly appointed candidates.

15. Mr. Mohanan further argued that when Annexure A1 Recruitment Rules do not provide for any contractual appointment of TGTs the

respondents have exceeded their power and went beyond the Recruitment Rules and have introduced new modes of filling up the vacancies by contractual basis and that too with a consolidated salary. According to Shri Mohanan such actions of the respondents amount to invoking Henry VIII clause *de hors* to the recruitment rules.

16. Shri S. Radhakrishnan learned counsel for the respondents submitted that the respondents have taken a decision to fill up the vacancies only on temporary basis in view of the reasons stated in paragraph 241 in Annexure R1(b) the file notings that filling up of the promotional post by direct recruitment is not permissible. It is seen from the pleadings that as sufficient number of qualified hands were not available from the primary school teachers to fill up the post of TGT in the promotional quota the respondents decided not to fill up of such posts with candidates from the merit list of direct recruitment quota on a permanent basis and to fill up the vacancies in the promotional quota as and when qualified hands become available. It appears to us that the respondents were guided by the belief that there is a likelihood of candidates eventually getting qualified from the feeder category i.e. primary school teachers and therefore, the promotional posts need not be converted to be filled up with candidates from direct recruit quota. Shri Radhakrishnan submitted that by resorting to filling up of the vacancies in the promotional quota with the candidates from the select list of direct recruits the Department had twin objectives i.e. to ensure smooth functioning of the schools with all vacancies of the teachers filled up and that while filling up the vacancies of promotional quota, the rights of the candidates in



the feeder category shall not be foreclosed. Shri Radhakrishnan submitted that it is because of this reason respondents decided to fill up such vacancies with the candidates from the merit list of the direct recruitment quota on temporary and contractual basis with consolidated salary for a specified tenure. He submitted that the 1st appointment order of the contractual appointment which indicated a pay scale was later modified as an appointment with consolidated emoluments only to ensure that the vacancy of the promotional quota are not filled up forever. Shri Radhakrishnan further argued that having accepted the offer applicants are estopped from contesting it on the ground that they ought to have been appointed on regular basis.

17. It is well settled position that public appointments have to be made in accordance with the rules governing recruitment. In the instant case Annexure A1 is the Recruitment Rules existed at the time of the selection process initiated with Annexure A2 employment notice. Annexure A1 Recruitment Rules provides for power to relax the Recruitment Rules. It reads as follows:-

"5. Power to relax:- Where the Administrator, Union Territory of Lakshadweep is of the opinion that it is necessary or expedient so to do, he may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons except rule 4 of these rules."

18. Now the question to be examined is whether the action of the respondents in deciding to appoint the applicants on contract basis with a consolidated emolument is arbitrary or unreasonable, *de hors* the



Recruitment Rules and extant administrative instructions. In *Harinder Kaur & Ors. v. Union of India & Ors.* – (2009) 13 SCC 90 it was held by the Apex court :

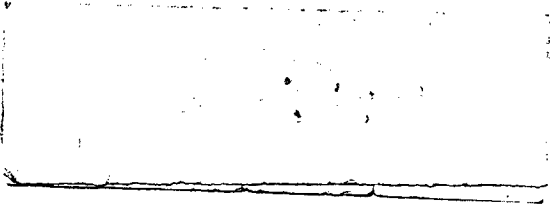
“11. When appointments in public office are required to be made, the provisions of Articles 14 and 16 of the Constitution of India are required to be scrupulously followed. When a departure is made for not scrupulously following the conditions precedent laid down in the statutory rules as also the constitutional scheme, it is imperative that the same must be done within the four corners of the delegated power by the authority concerned.”

19. In these cases we are of the view that Annexure A1 Recruitment Rules do grant the Administrator the power to relax the rules. After considering the circumstances under which the authorities decided to deviate from the quota system prescribed in the Recruitment Rules we are of the view that the respondents have taken extreme care in ensuring that quota set apart for the feeder category for promotion are not taken away permanently. At the same time as there was no sufficient number of qualified candidates from the feeder category for filling up the vacancies in the promotion quota the respondents decided that in order to fill up the vacancies of teachers and to ensure the smooth functioning of the schools the vacancies of promotional quota need to be filled temporarily with persons, who have undergone the recruitment process for the direct recruitment quota and were found qualified to be appointed, on the basis of their merit. We are of the view that such a conscious decision to deviate from the Recruitment Rules in the general interest of the student and the Education Department was only a reasonable exercise of power. We are unable to see any arbitrariness in such a decision.



20. We find force in the arguments of the learned counsel for the respondents Mr. S. Radhakrishnan that the applicants having accepted the contractual appointment with a specified tenure and consolidated salary have no right to agitate the matter in the light of the legal principles of estoppel and acquiescence. We are unable to accept the contentions of Mr. Mohanan, learned counsel for the applicants that by virtue of the conscious decision taken in Annexure A5 and Annexure R1(d) file notings the quota rule has collapsed for ever. On the other hand we perceive from the subsequent file notings in paragraph 241 of Annexure R1(b), that the respondents were eager to preserve the quota system and to give appointments to the applicants only on a purely temporary basis till the qualified candidates from the promotional quota becomes available.

21. Referring to the subsequently produced documents in OA Nos. 40 of 2013 and 43 of 2013 Mr. Mohanan submitted that the respondents have modified the qualifications prescribed for promoting the primary school teachers deleting the requirement of "pass in teachers eligibility test (TET)". In this connection he referred to Annexure A10 copy of the message issued by respondent No. 2 in OA No. 1156 of 2012. We are of the view that any change in the Recruitment Rules regarding the qualifications prescribed for the post of TET is within the decision making powers of the respondents and that the Courts/Tribunals are not to interfere with it unless the same is opposed to any legal provisions or is not in accordance with the constitutional provisions for public appointments.



22. Taking stock of the facts and circumstances of these cases we find no merit in these OAs and hence we hold that they are only to be dismissed. Accordingly, the OAs are dismissed. No order as to costs. The MA No. 181/95/2014 in OA No. 1156 of 2012 is also dismissed. The parties shall suffer their own costs. A copy of this order be placed in the files of each of these OAs.

R
(R. RAMANUJAM)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

SA