

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NOS:453/2006

& 556/2006.

Monday this the 11th day of December 2006.

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

O.A. 453/2006:

Habusabi P.
D/o M.C.Cheriya Koya,
Pallath House,
Kalpani Island,
Union Territory of Lakshadweep ... Applicant

(By Advocate Mr. E.S.M. Kabeer)

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1. Administrator,
Union Territory of Lakshadweep,
Kavaratti, Lakshadweep.
2. Director of Education
Union Territory of Lakshadweep,
Kavarathy.Respondents

(By Advocate Mr. Shafik M.A.)

O.A. 556/2006:

1. P.P. Mujeeburahman,
Puthiyapura House,
Kavaratti, Lakshadweep
2. Mohammed Shameem,
Mathikadanallal House,
Kalpeni, Lakshadweep
3. C.N.Zaheera Beevi,
Cheriyanallal House,
Kalpeni, Lakshadweeep
4. C.N.Sabeena
Cheriyanallal House,
Kalpeni, Lakshadweeep
5. Saleema C.N

Cheriyanallai House,
Kalpeni, Lakshadweep

6. S.Kamarunnisa Beegum,
Sheelath House,
Kavaratti, Lakshadweep

7. K.Fazeela
Kuttillammada House,
Agatti Island,Lakshadweep. ... Applicants in OA 556/2006.

By Advocate Mr.N.Nagaresh

V/s.

1. Director of Education
Union Territory of Lakshadweep,
Department of Education,
Kavaratti, Lakshadweep

2. Administrator,
Union Territory of Lakshadweep,
Kavaratti, Lakshadweep. ... Respondents.

(By Advocate Mr.Shafik M.A.)

These applications having been finally heard on 28th November, 2006, the Tribunal on 11.12.2006 delivered the following:-

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member.

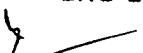
The applicant in OA-453/2006 is a candidate for Trained Graduate Teacher (Malayalam) which was notified by the respondents vide Annexure A-2 notification dated 8/12/2005. The number of posts to be filled up were three. According to the procedure for filling up all the Group 'C' and 'B' posts by direct Recruitment as published by the respondents vide Annexure A-1 order dated 5/9/2005, there shall be a written test carrying 160 marks and an interview carrying 40 marks. The 160 marks allotted for written test has further been earmarked separately for questions on subject concerned, General English with 80 marks each and for General Awareness with 40 marks each. Out of the total marks of 40 for interview,

10 marks have been earmarked for better academic qualifications and 30 marks for the personality test. Another condition was that the candidates who secure a minimum of 45% marks in the written test will only be called for interview. The number of candidates for interview are also limited as per the normal zone of consideration for DPC in the case of Group 'B' and 'C' posts which is as under:-

S.No.	No. of Vacancies	To be called for interview
1	1	5
2	2	8
3	3	10
4	4	12
5	5 & above	Twice the number of vacancy plus 4

2 There were 22 candidates including the applicant who had applied for the post of TGT (Malayalam). Out of them, 21 turned up for the written test but only 5 of them have secured 45% marks and became eligible to be called for interview. Unfortunately, the applicant was not among the five successfuls.

3 The grievance of the applicant in this OA is only against the condition for the candidates to secure 45% marks in the written test to make them eligible to be called for interview. The applicant's first ground in support of her grievance is that when the zone of consideration for three candidates is 10 as already fixed, limiting the number of candidates to be called for interview at 5 was illegal and in violation of the conditions laid down Annexure A-1 circular itself. Second ground is that fixation of minimum percentage of 45 marks for written test was arbitrary and without any basis. Thirdly, fixing the minimum marks of 45% for both Malayalam and Science subjects adversely affected the Applicant. Her contention is that even though she has secured less marks than the minimum required, she should also have been called for the interview.



4 While this OA was pending in this Tribunal, seven other applicants have filed OA-556/2006. They are aggrieved by the decision of the respondents in cancelling the entire recruitment process itself including the written test held during 8/4/2006 to 10/4/2006 in connection with the recruitment to the post of TGTs and Primary School Teachers (PST). Applicants 1 to 5 were candidates for the post of TGT and applicants 6 & 7 were candidates for the post of Primary School Teachers (Degree + B.Ed.) and (PDC + TTC), respectively. They have participated in the written test and all of them came out successful and their roll numbers were published in the notification dated 1/6/2006. The applicants allege that the authorities have cancelled the written test as some of their favoured candidates could not secure the minimum 45% marks in the written test so that they could also be called for interview and ultimately selected. Respondents' Department had even sought clarification from the Administrator whether the names of the candidates who secured 40% to 45% could be included in the select list and interviewed but the Administration firmly advised them that only candidates who have secured 45% in the written test only needs to be called for interview as the stipulation regarding marks has already been fixed by the Annexure A 1 order. Accordingly, interview in respect of the short listed candidates was fixed for 13-6-2006/14-6-2006. However, the interview was not held as scheduled. Later on, vide the Annexure A-6 order dated 15/7/2006, the Administration cancelled the entire recruitment process including the written test already held on 8/4/2006 to 10/4/2006 in connection with recruitment of the Teachers. Aggrieved by the aforesaid Annexure A-6 cancellations, the applicants submitted representations to the second respondent, namely, the Administrator, Union Territory of Lakshadweep. However, no action was taken on their representations so

far and hence they have approached this Tribunal.

5 The grounds taken by the applicant in this OA is that the Annexure A-6 order is illegal, arbitrary and violative of Article 14 and 16 of the Constitution and it was issued to sabotage the selection already initiated, and to grant appointment to certain favoured persons through the subsequent lists. They have also submitted that it is settled law that once the machinery of selection is set in motion, it cannot be brought to a grinding halt unless there is illegality in the constitution of the Selection Board or any such other palpable illegality which vitiates the entire selection proceedings. In the present case, there is no such illegalities or even any incurable irregularity in the selection proceedings.

6 The respondents in their reply has submitted that the cancellation of the written test held on 8/4/2006 and 10/4/2006 was in order to follow the guidelines for selection of candidates for various categories of Teaching posts such as PST, TGT and PGT issued by the National Council for Teacher Education (NCTE), New Delhi according to which the marking system was different from the one adopted by them earlier. According to the NCTE guidelines, copy of which has been annexed with the reply as Annexure R-1, for selection of teachers, 40% of marks has to be awarded for academic and professional qualifications, 50% marks for pre-recruitment written test and 10% marks for personal interview.

7 The respondents has also submitted that on receipt of complaints and representations from the candidates, the second respondent constituted a committee to look into the allegations made against the pre-recruitment test conducted for the selection of teachers in April 2006. The Committee after examining all the aspects, reported that the 1st respondent had followed Annexure A-1 guidelines issued by the

Administration dated 5/9/2005 for the recruitment of teachers for the written test held in April, 2006, they have already been following the Annexure R-1 NCTE guidelines for the recruitment of the teachers from the year 2005. Hence there was no reason for going back to the old procedure. As per Annexure R-1 guideline, 40% marks is to be awarded for academic and professional qualifications, 50% marks for pre-recruitment written test and 10% marks for personal interview. On the basis of the report of the Committee, the respondents cancelled the written test conducted in April 2006 and decided to conduct the test again as per the NCTE guidelines. They have also submitted that the grounds taken by the applicant for challenging the action of the respondents are not tenable as the applicants have merely participated in the selection and they have neither been selected nor have even been put in a select list. Even if they are included in the select list, it would not have given them any right much less any indefeasible right to challenge the action of the Respondents as held by the Hon'ble Supreme Court in many cases that the candidates who have undergone a selection do not have no right to approach any judicial forums against the decision of the Government to cancel the selection already made for valid reasons.

8 The applicants in their rejoinder submitted that as far as Union Territory of Lakshadweep is concerned, the Administrator appointed by the President of India is having full powers to frame rules in respect of all the departments in the Administration including the Department of Education. Accordingly, the guidelines for recruitment of post issued vide order dated 5/9/2005 by the Administrator was accepted by the Department of Education. Thereafter, the Recruitment Board had conducted the Written Test strictly in accordance with the aforesaid guidelines and the same shall



be honoured by the Education department. As per the NCTE guidelines, 40% marks are awarded to the academic and professional qualifications, 50% marks for pre-recruitment written test and 10 marks for personal interview. But the guidelines followed by the Respondents provides for 45% marks for academic qualifications which is higher than the percentage fixed by the NCTE. Had there been any other instructions/guidelines to be followed, the Department of Education should have communicated it to the Recruitment Board before commencement of the recruitment process. Therefore, the latest instructions of the Administrator is binding on the Department.

9 We have heard Ms.K.M.Ammu Beevi for Mr.E.S.M.Kabeer in OA-453/2006, Mr.N.Nagaresh in OA 556/2006 for the respective applicants and Mr.Shafik M.A for the respondents in both the O.As.

10 In our considered view, the respondent No.1 i.e. Director of Education, followed the procedure which was prescribed and communicated by the Respondent No.2 i.e. the Administrator. The reason for the cancellation of the test already conducted was that there was yet another guidelines issued by the NCTE. When the respondents have already initiated the recruitment process and it was at the completion stage, it was not appropriate for them to cancell the examination for the only reason that they wanted to follow a different guideline. It is not the case of the Respondents that there was any irregularity in the examination already conducted. It is only the question of selecting one of the guidelines which was in vogue, and which was prescribed by the Respondent No.1 and the other by the NCTE. Even a comparison of the two guidelines would show that there is hardly any substantial difference between them.

Q The total marks prescribed in the Annexure A1 guideline is 200. Interview

carries 40 marks which is 20%. Out of this only 30 marks are allotted to personality test. Balance 10 marks are for better academic qualifications. 80 marks were allotted to subject concerned which is 40%. Marks earmarked to General English, etc and General Awareness are 40 marks each which is 20% of the total marks in each case. As per the Annexure.R.1 guidelines, the total marks is 100 and interview carries 10% as against 20% according to the Annexure.A1 guidelines. While the entree test according to Annexure.A1 guideline carries 80% marks, the Annexure.R.1 guidelines provide for 50%. The Annexure.R.1 guidelines provides for 40% marks for the academic and professional qualifications. Though the appreciation of the merits and demerits of the two schemes is not within the domain of this Tribunal, the justification for abandoning the selection process at its fag end, is of great concern particularly when the selection is related to the posts of teachers. It has been often emphasised by the Apex Court and various other courts that the posts of teachers cannot be kept vacant for a long time as the real sufferers are the student community. Moreover, the cancellation of the test also would adversely affect the candidates who have qualified in the written test. In such cases, some of them even become over-aged and render themselves ineligible for participating in any further tests. It is seen that the selection process for appointing the teachers had been initiated by the Respondents way back in December 2005 for the vacancies which have arisen much earlier. After the recruitment process was almost over, the Respondents cancelled it on 15/7/2006, without taking immediate recourse to the Annexure.R1 guidelines by taking any steps to fill up those vacancies. This is not an appreciable situation. In the interest of the student community, the vacant posts of the teachers should have been filled up without such avoidable

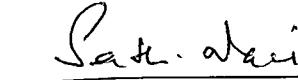
delay. Since there was no irregularity in the selection and it was only a matter of preferring one procedure over the other, we do not consider that the cancellation of the test itself, in the given facts and circumstances was the right thing for the Respondents to do. The Respondents should have completed the selection process already initiated in terms of the Annexure A1 guideline and the teachers should have been recruited and appointed at the earliest, in the best interest of the students. Thereafter, they could have followed the Annexure R1 guidelines for the next selection. The attempt on the part of the respondents to initiate the recruitment procedure afresh will only result in further delay in the selection of the teachers and their eventual appointments. We, therefore, order that the selection procedure initiated in terms of the Annexure A1 guideline which is already at its fag end shall be completed at the earliest and at any rate within two months from the date of receipt of a copy of this order and the candidates finally selected shall be appointed expeditiously. The OA 556/2006 is accordingly allowed.

11 As far as OA-453/2006 is concerned, since the applicant has not secured the minimum qualifying marks of 45% in the written test to be eligible for interview, she has no valid case at all and therefore the same is dismissed. There shall be no orders as to costs.

Dated this the 11th day of December, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

abp


SATHI NAIR
VICE CHAIRMAN