

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 464/08

THIS THE 3rd DAY OF DECEMBER, 2008

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1 Dr. B. Sabeer S/o Mohammed Koya
Bandayam House,
Agati Island
Lakshadweep

2 Dr. C.P.Abdul Kabeer S/o late K.I.Syed Shaikh Koya
Cheriyapurakkadu House
Kalpeni Island
Lakshadweep.

Applicants

By Advocate M/s P.K.Ibrahim, K.P.Ambika, Thomstine K.Augustine & Gopakumar C.N

Vs

1 The Administrator
Union Territory of Lakshadweep
Kavaratti
Lakshadweep.

2 The Director (Animal Husbandry)
Department of Animal Husbandry
Union Territory of Lakshadweep
Kavaratti.

3 Union of India represented by the Secretary
Ministry of Agriculture
Department of Animal Husbandry & Dairying
Krishi Bhavan,
New Delhi.

Respondents

**By Advocate Mr.S. Radhakrishnan for R 1 & 2
Advocate Mr. TPM Ibrahim Khan, SCGSC for R3**

The Application having been heard on 5.11.2008 this Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISSTRATIVE MEMBER

**This Original Application is filed against A-11 and A-12 circulars
calling for appointment of Veterinary Assistant Surgeons on contract /**

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deputation basis despite availability of the rank list of deputation drawn on the basis of selection conducted as per earlier notification.

2 The brief facts are as follows. Applicants are graduates in Veterinary Sciences & Animal Husbandry belonging to Lakshadweep Island. As per the extant Recruitment Rules, appointment to the post of Veterinary Assistant Surgeon in the Lakshadweep Islands is to be made by direct recruitment failing which by transfer on deputation. The 1st respondent invited applications vide Annexure A-2 notification dated 18.4.2005 for appointment on deputation against the vacancies of Veterinary Surgeons. The applicants who were working under the Govt. Of Kerala were selected and their services were placed at the disposal of the 3rd respondent vide order dated 17.1.2007 (Annexure A-3). Instead of appointing the applicants, the first respondent continued to engage others on contract basis extended from time to time with one day's artificial break on conclusion of 89 days without any due regard to the Recruitment Rules. The contract employees continued in service without being eligible to hold the post on the strength of various orders in a series of litigations. The applicants challenged one of the judgments of the Tribunal in O.A. 208/06 before the Hon'ble High Court of Kerala. The Hon'ble High Court stayed the direction to regularise the service of the contract employees. It is submitted that the respondents instead of appointing the applicants on deputation have now invited applications for appointment on contract basis (A-11). They also invited separate applications for appointment on deputation by notification dated 16.7.08 (A-12) while the rank list based on an earlier selection is in force. The applicants being aggrieved by Annexure A-11 and A-12 notifications, are forced to approach this Tribunal having left with no other alternative remedy.



3 The respondents have controverted the averments in the O.A. They have denied the issuance of Annexure A-12 notification inviting application for filling up the post of Veterinary Assistant Surgeons on deputation basis. They have submitted that Annexure A-11 notification was published to fill up the vacant post of Veterinary Assistant Surgeons on contract basis on a fixed remuneration as a stop gap arrangement for a period of 89 days only till the regular candidates join duty, in public interest considering the undue delay in filling up the posts and in view of global threat of out break of various dreaded diseases in the country. They have admitted that the applicants had applied for the post on deputation basis and as per the provisions contained in column 14 of the existing Recruitment Rules consultation with UPSC is necessary and accordingly the details of the candidates responded have been submitted to the UPSC for concurrence and the UPSC turned down the proposal by Annexure R-1(c) letter. They submitted that those Veterinarians appointed on contract basis are continuing on the strength of court directions. The Department has taken series of efforts to fill up the vacancies of Veterinary Assistant Surgeons on direct recruitment since 1999. But the process of amendment of Recruitment Rules is delayed by one or other reasons. After 1994, UPSC could not conduct any interview/test. The applicants were not selected by the Administration for direct recruitment but the department sent their candidature to the UPSC for selection and concurrence. The UPSC found that though the Recruitment Rules were notified way back in 1991 these were not reviewed even after the 5th CPC. They found that the Recruitment Rules are not in conformity with the guidelines contained in DOPT's OM dated 25.5.1998. They said that the appointment on deputation basis would have been permissible only if after due amendment and notification of Recruitment Rules the regular process of Direct

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Recruitment would have failed to provide adequate candidates. Therefore the Commission emphasised amendment of the Recruitment Rules at the earliest and then approach the Commission with a fresh proposal for direct recruitment. Therefore, the appointment of the applicants on deputation could not be done. Inter alia the respondents have submitted that the second applicant had worked as Veterinary Assistant Surgeon on deputation basis for more than three years since 1997. Under these circumstances the respondents prayed for dismissal of the O.A. with costs.

4 We have heard the learned counsel on both sides.

5 The learned counsel for the applicants argued that the non-appointment of the applicants results in not completing the process of recruitment commenced by the respondents. In support he relied on the judgment of the Hon'ble Supreme Court in Bhagwan Parshu Ram College Vs. State of Haryana (AIR 1999 SCW 4807). In the case relied on by the learned counsel of the applicants the facts are entirely different. In that case the respondent No. 4 applied to the post of Principal pursuant to an advertisement by appellant NO.1. The Selection Committee constituted in terms of Rule 7 of the Haryana Affiliated Colleges Rules 1993, selected respondent NO.4. However, the Managing Committee did not issue any letter of appointment to respondent No.4 and at that stage he approached the Hon'ble High Court challenging the denial of appointment. The Hon'ble High Court on examination of the matter came to the conclusion that the selection had been done in accordance with the relevant Rules applicable and the reasons assigned by the appellants as to why he could not be appointed are arbitrary and not germane to the point. On that basis the High Court allowed the writ petition and directed respondents to

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appoint respondent No.4 as Principal of the college. That order was challenged before the Hon'ble Supreme Court in civil appeal and the Hon'ble Supreme Court dismissed the appeal holding that ***the decision of the appellants not issuing a letter of appointment to respondent NO. 4 results in not completing the process of recruitment commenced earlier by them. The direction issued now by the High Court only ensures the completion of process of selection by appointing respondent No.4. In that view of the matter, the High Court was right in issuing the direction.*** In the case on hand, there is no selection of the applicants in accordance with the Recruitment Rules. The UPSC was insisting on amendment of the Recruitment Rules as the existing Recruitment Rules are not in conformity with the guidelines contained in DOPT instructions. After due amendment and notification of Recruitment Rules, if the direct recruitment fails, then only the Administration can resort to the "failing which" clause for appointment on deputation. Therefore, the applicants are not similarly situated like the applicant in the case relied on by the learned counsel of the applicants.

6 On the other hand, the learned counsel for the respondents submitted that assuming for arguments sake that the applicants were selected for the post, even then they do not have a right to be appointed and no direction can be issued to appoint them to the existing vacancies. The learned counsel relied on the following decisions of the Hon'ble Supreme Court in support of his argument:

- (i) In State of UP V. Rajkumar Sarma and Others (2006)3 SCC 330, the Apex Court held that even if vacancies remain unfilled, selectees cannot claim appointment.



(ii) In State of M.P.V. Sanjay Kumar Pathak (2008)1SCC 456 the Apex Court held that selected candidates do not have a legal right even if there is a vacancy. The prayers of the applicants are therefore, unsustainable.

(iii) In Kerala Agricultural University V. Gopinathan Unnithan (1996 (1) KLT 344) a Division Bench of the the Kerala High Court held that a Court cannot issue a mandamus directing authorities to make appointment of candidates included in the select list.

(iv) In Vinodan T. V. University of Calicut, (2006)4 SCC 726 the Apex Court held that even if vacancies exist it is open to the authority concerned to decide how many appointment should be made. Persons included in the select list do not thereby acquire a right to get appointment.

(v) In All India SC/ST Employees Association Vs. A. Arther Jean (2001) 6 SCC 380 the Apex Court held that inclusion in the panel of selected candidates does not confer any indefeasible right even against existing vacancies.

(vi) In T.N. Administrative Officers' Association and another Vs. Union of India (2000) 5 SCC 728 the Apex Court held that even when there is a vacancy the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up.

7 The filling up of the post of Veterinary Assistant Surgeons in the Animal Husbandry Department of the Lakshadweep Administration is governed by Annexure A-1 Recruitment Rules notified on 12.3.1991. As per column 11, the method of recruitment is by direct recruitment "failing which" by transfer on deputation. Under Col. 14 consultation with UPSC is necessary while making direct recruitment and selecting an officer for appointment on deputation. The department invited application for appointment on deputation vide Annexure A-2 notification dated 18.4.2005. They had submitted the details of the candidates to the UPSC for concurrence. In the opinion of the UPSC appointment on deputation was possible only if, after due amendment & notification of Recruitment Rules the regular process of Direct Recruitment have failed to provide adequate candidates. Hence, the UPSC returned the proposal of

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the Lakshadweep Administration to fill up the post of Assistant Veterinary Surgeon on deputation basis under "failing which" clause by letter dated 24.10.2007 Annexure R-1(c). The amendment of the Recruitment Rules as directed by the UPSC, is in progress. Unless the the Recruitment Rules are amended and notified and the regular process of direct recruitment fails to provide adequate candidates, the process for appointment by deputation cannot be resorted to. Thus the question of appointment of the applicants on deputation basis arises only after the amendment of the Recruitment Rules and if direct recruitment fails. The list submitted by the respondents is **not a panel** of selected candidates prepared in accordance with the observation of the UPSC. It is the list of candidates who applied for appointment on deputation pursuant to the notification on 18.4.2005 (Annexure A-2). Hence Annexure A-2 notification dated 18.4.05 inviting application for filling up of the vacancies by deputation itself is not a valid notification in the eye of law.

8 We are in full agreement with the argument advanced by the learned counsel for the respondents that the applicants have no indefeasible right to be appointed on deputation. We also cannot find fault with the administration for making appointments on contract basis as the Administration is finding it difficult to manage without sufficient number of Veterinary Surgeons. Though the amendment of the Recruitment Rules is in the final stage and even if direct recruitment is resorted to, it will take further time and left without any remedy the Administration has decided to fill up the vacancies on contract basis.

9 Viewed in the light of judgements of the Hon'ble Suupreme Court and facts of the case, the applicants do not have a legal right to be

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appointed on deputation. The prayers of the applicants are therefore not sustainable. The O.A. lacks merit, it is therefore dismissed. No costs.

Dated 3rd December, 2008


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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