

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.Nos. 964/95, 486/96, 778/96, 797/96, 830/96 & 1220/96.

Monday, this the 8th day of December, 1997.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

O.A. 964/95

Sujatha P, W/o V. Rajendran,  
Trained Graduate Teacher,  
Government Senior Secondary School, Minicoy.  
Residing at Vadakkumpat House,  
Kavalappara Post, Shoranur.

..Applicant

By Advocate M/s K.P. Dandapani & Sumathi Dandapani.

Vs.

1. The Director of Education,  
Administration of Union Territory of Lakshadweep,  
Kavaratti.
2. Union Territory of Lakshadweep,  
Kavaratti, represented by its Administrator.
3. Union of India represented by  
Secretary to Ministry of Home Affairs,  
New Delhi.

..Respondents

By Advocate Mr P.R. Ramachandra Menon (R1-2).

O.A. 486/96

T. Kannan, S/o Thankappan,  
Post Graduate Teacher (Physics),  
Government Senior Secondary School,  
Kavaratti.  
Residing at Murali Mahal,  
Panayara P.O., Varkala,  
Thiruvananthapuram- 695 145.

..Applicant

By Advocate Mrs. Sumathi Dandapani.

Vs.

1. The Director of Education,  
Administration of Union Territory of Lakshadweep,  
Kavaratti.

Union Territory of Lakshadweep,  
Kavaractti, represented by its Administrator.

Union of India represented by  
Secretary to Ministry of Home Affairs,  
New Delhi.

..Respondents

By Advocate Mr P.R. Ramachandra Menon for R 1-3.

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OF C.A.T. (PROCEDURE) RULES



of Graduate Assistant in Lakshadweep Administration with effect from the date of Annexure A2, with all consequential benefits, and (ii) to direct the respondents to regularise the applicant at Lakshadweep Administration where she is working.

3. The reliefs sought in O.A.486/96 are (i) to quash A7 and A8 orders and (2) to declare that the applicant is entitled to be regularised as a Teacher.

4. The reliefs sought in O.A.778/96 are (i) to quash Annexure A9 on the basis of which the services of the applicants are being terminated (ii) to declare that the applicants are entitled to be regularised as Graduate Assistants in Lakshadweep Administration and (iii) to direct the respondents to regularise the applicants in their respective places in the Lakshadweep Administration.

5. The reliefs sought in O.A. 797/96 are (i) to quash A7 order on the basis of which the services of the applicant is being terminated, (ii) to declare that the applicant is entitled to be regularised as Graduate Assistant in Lakshadweep Administration with all consequential benefits and (3) to direct the respondents to regularise the applicant in his place in the Lakshadweep Administration.

The reliefs sought in O.A. 830/96 are (i) to quash A6 on the basis of which the services of the applicant is being terminated, (2) to declare that the applicant is entitled to be regularised as Graduate Assistant in Lakshadweep Administration with all consequential benefits and (iii) to direct the respondents to regularise the applicant in his place in the Lakshadweep Administration.



7. The reliefs sought in O.A.1220/96 are (i) to declare that the applicant is entitled for regular appointment as Trained Graduate Teacher under the respondents and to direct the respondents to consider the candidature of the applicant on merit and in accordance with law and appoint her as Trained Graduate Teacher, and (ii) to declare that the applicant is entitled to get relaxation of upper age limit to the extent of services rendered by her as Trained Graduate Teacher under the respondents on contract basis and to consider her on that basis for regular appointment.

8. Applicants in all these applications were appointed as Trained Graduate Teachers in the Union Territory of Lakshadweep on ad hoc basis. Some of them were given ad hoc appointments as Trained Graduate Teachers for 89 days and others were given ad hoc appointment as Trained Graduate Teachers for a period of three months. In some of the appointment orders it is mentioned that the contractual appointment will automatically cease two days' before the commencement of the vacation.

9. Respondents having appointed the applicants on ad hoc basis for 89 days/ three months initially, after a break of very short spell, again appointed them on ad hoc basis and they continued in service. Now, the services of some of the applicants are being terminated, and others except the applicant in O.A.486/96 are afraid that their services will be terminated. The services of the applicant in O.A.486/96 have been terminated with effect from 4.4.96.



10. The services of some of the applicants are being terminated on the ground that they are persons belonging to mainland, since there is direction to terminate the appointment of non-local candidates who have been recruited on contract basis. Others are afraid that their services will be terminated on the same ground. So, it is a case where regularisation is denied to the applicants on the basis that they are 'mainlanders'.

11. According to respondents, the applicants were appointed purely on contract basis under the terms and conditions specified and governed by the Contract Appointment Rules and they having voluntarily accepted to abide by the terms and conditions of appointment orders before joining the post in question, they cannot violate the rules after joining the service. Respondents also say that inhabitants of Lakshadweep are recognised as Scheduled Tribe under the Constitution. It is further stated that keeping in view the human angle, the guidelines issued by the Government of India provide that mainlanders who are appointed to such posts on ad hoc basis can be considered for regularisation on completion of two years of service in the event of candidates from Local Employment Exchange being not available.

12. In O.A.486/96 in one of the impugned orders, A7 dated 21.3.96 it is stated that the post in which the applicant has been appointed is a reserved one for ST candidate. It is not known whether the applicant belongs to ST. From A7 it appears that the applicant in O.A.486/96 is not a ST candidate for the reason that it is stated therein that the post in which he has been appointed is a post



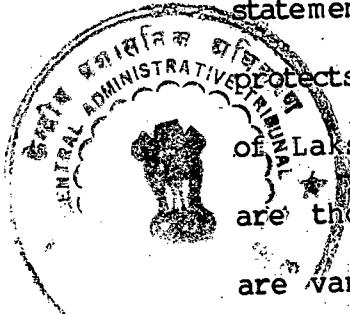
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14. The question now to be considered is whether it is open to the respondents to appoint Teachers on ad hoc basis for 89 days/three months, to appoint them again on ad hoc basis after a break of very short spell and terminate their services on the ground that they are 'mainlanders'.

15. According to respondents, various orders issued to appoint the residents of Lakshadweep Islands alone in Group C and D employment are fully protected under Article 16(4) of the Constitution of India. Article 16(4) of the Constitution says that:

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

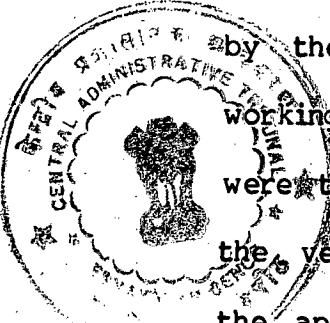
So, no doubt, the State is empowered to make any provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. The question is whether the State has made any provision for such reservation by invoking of Article 16(4) of the Constitution reserving Group C and D employment exclusively to the residents of Lakshadweep. What is stated in the reply statement is that Article 16(4) of the Constitution completely protects the various orders issued to appoint the residents of Lakshadweep Island in Group C and D employment. What are those various orders is not known. To say that there are various orders is only vague. If there are various orders



reserved for ST. If it is a post reserved for ST candidate, it is not known how the applicant was given ad hoc appointment initially and was allowed to continue by giving ad hoc appointment after a break for a very short spell.

A2, the order of appointment, does not say that the applicant was appointed in a post reserved for ST candidate. In the reply statement also there is no such contention raised.

13. In the said O.A. it is stated that the Central Board of Secondary Examination commenced on 12.2.95, that the applicant on information will have to report to the School before that date, that if there is any change in the conduct of the examination, he need report for duty in the School only on 28.2.95, and that this information was orally given to the applicant from the Office of the first respondent. In the reply statement it is stated that the version of the applicant that his service was terminated from 14.2.95 to 16.2.95 and informed him to join duty before 12.2.96 on which date CBSE examination commenced and it was so informed orally are false. The applicant has not stated in the O.A. that he was informed to join duty before 12.2.96 on which date CBSE examination commenced. What is stated in the O.A. is that CBSE examination commenced on 12.2.95. A3 dated 14.12.95 says that the services of the applicant are terminated for a period of two days from 14.12.95 afternoon to 16.12.95 afternoon as per the terms and conditions of the contract appointment. So, it is very much evident from A3 issued

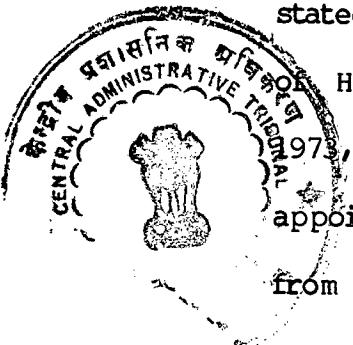


by the Headmaster of the School where the applicant was working, that he was working till 14.12.95 and his services were terminated only for a couple of days thereafter. So, the version of the respondents in the reply statement that the applicant's version that his service was terminated from 14.2.95 to 16.2.95 is false cannot be accepted for a moment.

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17. With regard to the contention of the responder that the applicants were appointed on contract basis under the terms and conditions specified and they having accepted the terms and conditions once, they cannot violate the same after joining the service, it is to be remembered that Article 16(1) of the Constitution guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) guarantees that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. Article 16(3) says that nothing in Article 16 shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union territory, prior to such employment or appointment. So, prescribing any requirement as to residence within a State or Union Territory prior to such employment or appointment can only be by the Parliament by making a law to that effect. No law made by the Parliament as to the requirement of any residence within the Union Territory of Lakshadweep is brought to our notice.

Respondents rely in the letter dated 3.7.75 issued by the Ministry of Home Affairs, Government of India wherein it is stated that in pursuance of the decision taken in the meeting

 Home Minister's Advisory Committee held on December 1, 1973, in future the Lakshadweep Administration shall make appointments to posts in the island on deputation of persons from mainland as far as possible, wherever local candidates are not available and whenever this is not possible, only

or at least one order, those orders or the one order should be specifically mentioned and produced. No order by the State invoking Article 16(4) of the Constitution is produced. That being so, the respondents cannot resist the O.A. claiming protection under Article 16(4) of the Constitution of India.

16. Respondents rely in the ruling in State of Kerala vs N.M. Thomas (AIR 1976 SC 490) wherein it has been held regarding reservation under Article 16(4) that if a State has a large number of backward class of citizens which constitute 80 per cent of the population and the Government in order to give them proper representation, reserve 80 per cent of the jobs for them it cannot be said that the per centage of reservation is bad and violates the permissible limits of clause (4) of Article 16. The question of permissible limit of reservation arises only if the reservation is made by the State invoking Article 16(4). Since there is no material to show that Article 16(4) of the Constitution has been invoked and reservation has been made for the residents of Lakshadweep either exclusively or to any extent, this ruling has no application here. Another ruling relied on by the respondents is Indra Sahani vs. Union of India (AIR 1993 SC 477) wherein it is stated that while with regard to the reservation, 50 per cent shall be the rule, some relaxation in this strict rule may become imperative. This ruling also does not apply here for the very same reason stated already. Respondents also rely in Rangachari's case (AIR 1962 SC 36), State of Jammu & Kashmir Vs Trilokinath Khose (AIR 1974 SC 1) and Akhilabharatiya Soshit Karmacha Sangh Vs. Union of India (AIR 1981 SC 298). These rulings also do not apply here for the very same reason.



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then should resort to making ad hoc appointments from outsiders for specified periods. This is not a law made by the Parliament resorting to Article 16(3) of the Constitution.

18. In the letter dated 19.1.96 issued by the Ministry of Home Affairs, Government of India, it is stated that the government has approved regularisation of ad hoc appointments of non-local persons who have put in more than two years of continuous service with the Lakshadweep Administration as Trained Graduate Teachers, subject to the condition that they are otherwise eligible in all respects in terms of the Recruitment Rules of the said post (Emphasis supplied). Since the appointments of the applicants were only ad hoc for 89 days/three months and after very short spell of break, they were again given ad hoc appointments, there can never be more than two years of continuous service for any of the applicants.

19. In Basheshar Nath Vs. Commissioner of Income-tax, Delhi and Rajasthan and another (AIR 1959 SC 149) it has been held that:

"It seems to us absolutely clear, on the language of Art.14 that it is a command issued by the Constitution to the State as a matter of public policy with a view to implement its object of ensuring the equality of status and opportunity which every Welfare State, such as India, is by her Constitution expected to do and no person can, by any act or conduct, relieve the State of the solemn obligation imposed on it by the Constitution. Whatever breach of other fundamental right a person or a citizen may or may not waive, he cannot certainly give up or waive a breach of the fundamental right that is indirectly conferred on him by this Constitutional mandate directed to the State."



So, the stand of the respondents that the applicants having accepted the appointments subject to the terms and conditions of the appointment orders cannot violate those terms cannot be upheld.

20. In Union of India and others Vs. Sanjay Pant and others

(AIR 1993 SC 1365) it has been observed thus:

"6. The Tribunal allowed the O.A. on the following reasons: In two cases viz., M. Palaniappan (1987) 3 Serv LJ 611(CAT-Cal) and Smt. Rita Kumari (O.A.1221/89 dated 23.11.1990) the Tribunal has already held that termination of ad hoc appointee on the ground of not being a local candidate is illegal. These decisions were followed and applied in P.G. James (1990) 2 Cal LT 89 (Tribunal) where it was held that refusal to offer regular appointment on the said ground is illegal. These cases conclude the issue in this case. Moreover, the requirement of residence in a particular territory (in this case, Union Territory of Andaman and Nicobar Islands) is opposed to Article 16(2). Under Article 16(3) only a law made by the Parliament can impose such a restriction or requirement, as the case may be. Admittedly, Parliament has not made any such law. Accordingly, the O.A. was allowed and it was declared that the respondent shall be deemed to have been appointed to the post of Statistical Assistant in a regular capacity with effect from 8.4.1987 (the date on which he was offered an ad hoc appointment) and that his seniority should be determined accordingly.



"7. The learned counsel for the appellants contended that the requirement of being a local candidate for the purpose of employment, in the case of Andaman and Nicobar Administration was a provision made under clause (4) of

Article 16 of the Constitution and is, therefore, not hit by clause (3) or (2) of Article 16 of the Constitution. The learned counsel, however, could not place before us any order, notification or other proceeding not even the Circular dated 12.9.1980 (sic) struck down in Palaniappan providing that for employment in Andaman and Nicobar Administration, the candidate should be a 'local candidate'. Only two letters, viz., the letter from the Government of India bearing Reference No.14011/6/77-A&N addressed to the Chief Commissioner, Andaman and Nicobar Administration and the letter No.U-14011/10(S.11)/79 A&N dated 14.2.1984 from the Government of India, Ministry of Home Affairs addressed to the Chief Secretary, Andaman and Nicobar Administration, have been placed before us. We have carefully perused the same. Neither of them provides that only a 'local' candidate shall be entitled to be appointed in respect of any or all posts in the Andaman and Nicobar Administration or that only local candidates will be preferred in the matter of such appointment. In such a situation, the question whether they can be justified with reference to clause (4) of Article 16 does not arise. We must say that the appellants have not laid the factual foundation for the argument raised by them before us. This argument, it may be noted, was not raised before the Tribunal."

21. In Rattan Lal and others Vs. State of Haryana and others (1985 (3) SLR 548) wherein the facts are more or less identical. It has been held by the Apex Court that:

"The Government appears to be exploiting this situation. This is not a sound personal policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14



and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer."

22. In Rabinarayan Mohapatra Vs. State of Orissa and others

( 1991) 2 SCC 599) it has been held thus:

"6. The Validation Act has been enacted by the Orissa Legislature with the obvious object of granting relief to those members of teaching community who are being exploited for years together by keeping them in short spell appointments like 89 day-appointments as here with one day break and in the process denying them their rightful dues and other service benefits. In spite of repeated deprecations by this Court the practice continues to be followed by various State Governments in the country. Under the Constitution the State is committed to secure right to education for all citizens. Bulk of our population is yet illiterate. Till the time illiteracy is effaced from the country the resolution enshrined in the Preamble cannot be fulfilled. Education is the dire need of the country. There are neither enough schools nor teachers to teach. Insecurity is writ large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set up effective and efficient it is necessary to do away with ad hocism in teaching appointments. An appointment on 89 days basis with one day break deprives a teacher of his salary for the period of summer vacation and other service benefits, is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field upto December 31, 1984. The State of Orissa will do well to consider the cases of all those who have completed one year or more as ad hoc teachers after



December 31, 1984 and come out with a scheme or any other appropriate measure to regularise their services."

23. In Indra Sawhney and others Vs. Union of India and others (1992 Supp (3) SCC 217, page 548, para 508) while dealing with the question whether reservations in the form of preference instead of exclusive quota should not be resorted to in the teaching profession in the interests of the backward classes themselves, it has been held thus:

"Education is the source of advancement of the individual in all walks of life. The teaching profession, therefore, holds a key position in societal life. It is the quality of education received that determines and shapes the equipment and the competitive capacity of the individual, and lays the foundation for his career in life. It is, therefore, in the interests of all sections of the society - socially backward and forward - and of the nation as whole, that they aim at securing and ensuring the best of education. The student whether he belongs to the backward or forward class is also entitled to expect that he receives the best possible education that can be made available to him and correspondingly it is the duty and the obligation of the management of every educational institution to make sincere and diligent efforts to secure the services of the best available teaching talent. In the appointments of teachers, therefore, there should be no compromise on any ground. For as against the few who may get appointments as teachers from the reserved quota, there will be over the years thousands of students belonging to the backward classes receiving education whose competitive capacity needs to be brought to the level of the forward classes. What is more, incompetent teaching



would also affect the quality of education received by the students from the other sections of the society. However, whereas those coming from the advanced sections of the society can make up their loss in the quality of education received, by education at home or outside through private tuitions and tutorial classes, those coming from the backward classes would have no means for making up the loss. The teachers themselves must further command respect which they will do more when they do not come through any reserved quota. The indiscipline in the educational campus is not a little due to the incompetence of the teachers from whatever section they may come, forward or backward. It is, therefore, necessary that there should be no exclusive quota kept in the teaching occupation for any section at all. However, if the candidates belonging to both backward and forward classes are equal in merit, preference should be given to those belonging to the backward classes. For one thing, they must also have a 'look into' the teaching profession as in other professions. Secondly, in this vital profession also, the talent, the social experience and the new approach and outlook of the members of the backward classes is very much necessary. That will enrich the profession and the national life. Thirdly, it will also help to meet the complaints of the alleged step-motherly treatment received by the students from the backward classes and of the lack of encouragement to them even when they are more meritorious. Hence, in the teaching profession, it is preference rather than reservation, which should be resorted to under Article 16(4) of the Constitution. A precaution, however, has to be taken to see that the selection body has a representation from the backward classes."



24. In O.A.1220/96 there is prayer to declare that the applicant is entitled to get relaxation of upper age limit to the extent of services rendered by her as Trained Graduate Teacher under the respondents on contract basis for the purpose of considering her candidature for regular appointment.

25. In Rattan Lal and others Vs. State of Haryana and others(1985 (3) SLR 548) the Apex Court directed the State Government to consider sympathetically the question of relaxing the qualifications of maximum age prescribed for appointment to the posts in cases of those who have been the victims of ad hoc appointment.

26. Accordingly, A7 and A8 orders in O.A.486/96, A9 order in O.A.778/96, A7 order in O.A. 797/96 and A6 order in O.A.830/96 are quashed and we direct the respondents to take immediate steps to fill up in accordance with the relevant rules the vacancies in which the applicants were appointed as Teachers on ad hoc basis and are now working/were working and allow all those Teachers who are holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The Teachers who are now working on such ad hoc basis, if they have the prescribed qualification, may also apply for being appointed regularly in those posts. The respondents may also consider sympathetically the question of relaxing the qualification of minimum age prescribed for appointment to the post of Trained Graduate Teachers in the case of the applicant in O.A.1220/96 who has been the victim of the system of ad hoc appointment.

27. The Original Applications are accordingly disposed of.

No costs.

Dated the 8th of December, 1997.

Sd/-  
S K GHOSAL  
ADMINISTRATIVE MEMBER

Sd/-  
A M SIVADAS  
JUDICIAL MEMBER

CERTIFIED TRUE COPY  
Date ..... 12.12.97 .....

Deputy Registrar



List of Annexures:

B.A. 964/95

1. Annexure A-2: Order F.No.18/19/93-Edn. dated 30/6/94 of the 1st respondent issued to the applicant.

B.A. 486/96

2. Annexure A-2: Copy of Order,F.No.18/30/93-Edn(Part)dated 16/8/95 of the 1st respondent issued to the applicant.

3. Annexure A-3: Order F.No.1/23/90-GHSK dated 14/12/95 issued by the 1st respondent to the applicant.

4. Annexure A-7: Order F.No.18/30/93-Edn. (Part) dated 21/3/96 issued by the 2nd respondent to the applicant.

5. Annexure A-8: Order F.No.1/23/90-GHSK dated 4/4/96 issued by the Headmaster, Government High School,Kavaratti, to the applicant.

B.A. 778/96

6. Annexure A-9: Order F.No.18/30/93-Edn issued by the first respondent on behalf of the second respondent, dated 3/7/96 to the applicants.

• B.A. 797/96 Order F.No.18/38/93-Edn.issued by the first

7. Annexure A-7: respondent on behalf of the second respondent, dated 3/7/96 to the applicant.

B.A. 830/96

8. Annexure A-6: Order F.No.18/38/93-Edn.issued by the first respondent on behalf of the second respondent, dated,3/7/96 to the applicant.

