

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

DATE OF DECISION: 20.4.1990

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN
AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.54/89 &
ORIGINAL APPLICATION NO.105/89

1.V.P.Bhagiaswari - Applicant in OA 54/89
2.N.C.Soudamini - Applicant in OA 105/89

Versus

1. Union of India rep. by
Secretary to Government
of India, Ministry of
Home Affairs(ALN).
2. The Administrator,
Union Territory of
Lakshadweep, Kavaratti. - Respondents in OA
54/89 and 105/89

M/s KK Usha &
ND Premachandran - Counsel for applicants

Mr.PVM Nambiar,SCGSC - Counsel for respondents

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

Since the facts, circumstances and question of law involved in both these applications are similar, these applications are being disposed of by this common order. The prayers in both these applications are that, the second respondent be directed to absorb the applicants in the posts of Dance Teacher(Classical) now re-designated as Dance-cum-Music Teacher(Folk, as per provisions in the Recruitment Rules in force when the vacancies arose.

The facts as averred in the applications can be briefly stated as follows.

2. The applicant in the OA 54/89 who had passed the Diploma in Bharathanatyam and Mohiniyattam with Ist Class from Kerala Kalamandalam was appointed as a temporary part-time Dance Teacher on a monthly honorarium of Rs.200/- in Government Higher Secondary School, Kavaratti. As by the proceedings dated 22.11.1976 of the Collector cum Development Commissioner, U.T. of Lakshadweep, in 1977 when the Higher Secondary School was abolished, the post in which she was working, was transferred to Government High School, Kavaratti w.e.f. 1.6.1977. Ever since then she has been teaching the students belonging to the islands as well as hailing from the main land, the dances of different varieties. As she had been continuing as a part-time Dance Teacher on a temporary basis for a long time, she made representation before the authorities for ^{her} appointment as full-time Dance Teacher. She was given Annexure-D reply dated 28.9.1983, stating that her request would be considered whenever a full-time post was created. In appreciation of her talents as an Artist and Teacher she was nominated for a period of three years from 1.11.1983 as a member of the General Council of Lakshadweep Sahithya Kala Academy. She was also deputed to participate in the India International Trade Fair, 1983 for performing cultural programme in connection with the celebration of Lakshadweep Day. In 1985 also she was deputed to participate in the cultural programme in connection

with Lakshadweep Day organised in the India International Trade Fair. The students trained by her performed all types of dances including folk dances of Lakshadweep.

The honorarium payable was raised to Rs.750/- per month w.e.f. 1.10.1986 by Annexure-I proceedings dated 31.12.1986.

3. The applicant in OA 105/89 who had passed the S.S.L.C.Examination and a course in Bharathanatyam from the Institution known as Gandhi Seva Sadan at Perur, which is recognised by the Government of Kerala and had also undergone training in Classical dance for a period of three years under Kalamandalam Achutha Warrier and was well versed in folk dances including the folk dances of Lakshadweep, was appointed as part-time Dance-cum-Music teacher on a monthly honorarium of Rs.100/- in the Govt. High School, Kalpeni. By proceedings dated 2.3.1972, while she was continuing as part-time Dance-cum-Music teacher, the honorarium was enhanced to Rs.200/- per month by proceedings dated 16.6.1976 and it was further enhanced to Rs.750/- by proceedings dated 31.12.1986. For the last 10 years she has been working as part-time dance teacher. She has been making representations for regularising her service. To one such representation, she was given a reply dated 5.10.1976(Annexure-D), that the Ministry had been addressed for creation of a post of full-time Dance Teacher, and that her name would be considered as per rules on creation of a post.

4. While these two applicants were working as part-time Dance Teachers, as per the proceedings of the second respondent dated 1.8.1985, five posts of Dance Teachers (Classical) on a pay scale of Rs.425-15-560-EB-20-640 were created. On 3.9.1987 the second respondent issued the Recruitment Rules for the post of Dance Teacher (Classical) in the Education department of the U.T. of Lakshadweep. The scale of pay was revised to Rs.1400-40-1800-EB-50-2300. The educational qualification prescribed for direct recruitment was S.S.L.C or equivalent with a certificate issued from an institution recognised by Central/State Government conducting courses in Classical dance like Bharathanatyam, Mohiniyatam, etc.; experience in teaching Classical dances being shown as desirable qualifications. However, these qualifications were not made applicable for appointment otherwise than direct recruitment. The method of recruitment was shown as by absorption/recruitment from candidates already serving under the Administration on part-time basis with at least 4 years service, failing which by direct recruitment. In view of the above Recruitment Rules, the applicants in both these applications were fully qualified to be absorbed as full-time Dance Teachers. But subsequently the second respondent issued a Corrigendum dated 24.11.1988 modifying the designation and mode of recruitment of the posts created under notification dated 1.8.1989. By the corrigendum the designation of the posts of Dance Teacher (Classical) was changed to Dance-cum-Music Teacher (Folk).

and the scale of pay was reduced to Rs.950-20-1150-E8-25-1400. The mode of recruitment provided in the 1987 Recruitment Rules laying down that existing part-time Dance Teacher will first be considered for absorption, was done away with. When the applicants came to know that the five posts of Dance-cum-Music Teacher were being filled on a regular basis, they made representations requesting the authorities to absorb them in the posts as per the provisions contained in the Recruitment Rules which were prevalent at the time when the vacancies were created. As the representations made by the applicants did not evince any response, when the applicants came to know that the respondents were taking steps to fill up the posts resorting to direct recruitment without considering their claims, the applicants have filed this application praying that the respondents may be directed to absorb the applicants in the posts of Dance Teachers created by the proceedings dated 1.8.1985 in terms of the Recruitment Rules dated 3rd September, 1987.

5. In the reply statement, the respondents have admitted that five posts of regular Dance Teacher(Classical) with a pay scale of Rs.425-640 were created in 1985, and that Recruitment Rules for filling up of those posts were issued in 1987. But it is contended that on account of the demand from the public for giving encouragement to learning the folk dance, the Administrative Advisory Council resolved that folk dance should be introduced as a subject in schools, and that for this purpose the five posts of Dance

Teacher(Classical) created in 1985 which were not filled should be converted into the posts of Dance-cum-Music Teacher(Folk) on a pay scale of Rs.950-1400. It was also resolved that the re-designated posts are to be filled according to the Recruitment Rules already in existence for the posts of Dance-cum-Music Teacher(Folk). The respondents therefore contend that the applicants are not entitled to be considered for appointment to these redesignated posts and therefore, as the vacancies of Dance Teacher(Classical) are not in existence now, the applicants are not entitled to be appointed to these posts as claimed by them.

6. We have heard the arguments on either side and have also carefully perused the documents produced.

7. It is an admitted fact that for more than a decade the applicants in both these cases had been working as part-time Dance Teachers. It is also further admitted and is borne out from the documents Annexure-D in OA 54/89 and Annexure-D in OA 105/89, that the applicants would be considered for appointment to the post of full-time Dance Teacher when vacancies are created. It is further admitted that five posts of Dance Teachers(Classical) on a full-time basis were created. This is evident from Annexure-3, the proceedings of Administrator, U.T. of Lakshadweep dated 1.8.1985. The fact that the Recruitment Rules for filling up these five posts of Dance Teacher(Classical) were issued on 3rd Sept. 1987 is also admitted and is evident from Annexure-K in OA 54/89. From the Recruitment Rules dated

3rd Sept. 1987, it is evident that the method of recruitment was at the first instance by absorption of candidates serving on part-time basis and by direct recruitment only on failure of the same. Column 12 in the Recruitment Rules relates to method of recruitment reads as follows:

"By absorption/recruitment from candidates already serving under the Administration on part time basis with at least 4 years service as above failing which by Direct Recruitment failing both by Transfer on deputation from similar grades from Central /State services."

Though the posts were created in 1985 and the Recruitment Rules were issued in September, 1987, the respondents did not take steps to fill these posts. A reading of the Recruitment Rules (Annexure-K) in OA 54/89 especially Col. 12 to the schedule thereof would make it clear that the posts of Dance Teacher (Classical) were meant to be filled up by absorbing persons already serving under the Administration on a part-time basis and only on failure thereof by Direct Recruitment or on deputation. It appears that the representations made by the applicants in these two cases have weighed with the authorities in providing in the Recruitment Rules that the primary way of filling up of the vacancies would be by absorbing those working on a part-time basis. There is no contention for the respondents that either of the applicants in these two cases is not eligible to be appointed to the posts created in the year 1985, as per the Recruitment Rules of 3rd Sept. 1987. It is a well established principle recognised by the Courts that the vacancies should be filled in accordance with the Recruitment Rules prevalent at the time when the vacancies arose. Though the vacancies

were created in 1985, the Recruitment Rules for filling up of these vacancies, even according to the contention of the respondents were framed in 1987. So these vacancies should have been filled by the respondents adopting the Recruitment Rules issued for filling up of these vacancies. The respondents however issued a Corrigendum on 24.11.1988 modifying the Administrators proceedings dated 1.8.1985. A copy of this Corrigendum is at Annexure-M in OA 54/89. It runs as follows:

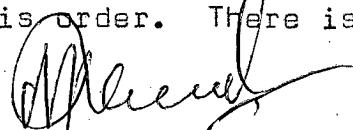
"In partial modification of Administrator's proceedings referred to above, five posts of Dance Teacher(Classical) created as per proceedings cited on a pay scale of Rs.425-15-560-EB-20-640 is converted and redesignated as Dance cum Music Teacher(Folk) on a pay scale of Rs.950-20-1150-EB-25-1400 with immediate effect."

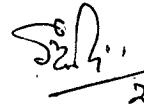
On the basis of this corrigendum, the respondents contend that the vacancies of Dance Teacher(Classical) created on 1.8.1985 are no more in existence, and that these vacancies are to be filled by the Recruitment Rules for the Dance-cum-Music Teacher(Folk). We are not in a position to accept this contention of the respondents. As mentioned earlier, it is evident from the Recruitment Rules dated 3.9.1987, that the Administration had intended to absorb the eligible persons serving as part-time Dance Teacher (Classical) as full-time Dance Teacher(Classical). This benefit due to the eligible persons on account of their long service cannot be taken away by keeping the vacancies unfilled for a long time and issuing a corrigendum converting the posts to another category of posts. This action is

highly arbitrary and unsustainable. The practice of keeping temporary employees on a temporary basis indefinitely and terminating their services at the sweet will and pleasure of the employer is an outmoded practice which is against the spirit of the directive principles of state policy enshrined in our Constitution. This practice has been deprecated by various High Courts and Supreme Court in a catena of decisions. Even in the case of Casual Labourers, the Supreme Court has in several decisions (1987-2-AIR-2342 SCC Supl. '87-Page 658) directed the departments concerned to evolve schemes for regularisation of their services. The action of the respondents in converting the posts which are really created for regularising the services of the persons like the applicants to posts to which the applicants could not be appointed is against the principles laid down by the Supreme Court in the above said decisions and also against the national policy contained in several Government instructions. Therefore, we are of the view that the respondents are not entitled to deny the applicants in these cases the benefit of absorption/appointment to the post of full-time Dance Teachers(Classical) in terms of the Recruitment Rules issued on 3rd September, 1987. In terms of the Interim Orders made by us in these cases, two posts have been kept unfilled. Therefore, we are convinced that the interest of justice demands a direction to be issued to the respondents to consider the applicants in these two cases for absorption/appointment to those two posts of Dance Teacher(Classical) created by the notification dated 1.8.1985 in accordance with the

Recruitment Rules (Annexure-K) in OA 54/89.

8. In the conspectus of the facts and circumstances, we allow applications OA 54/89 and OA 105/89. The second respondent is directed to consider the applicants in these two cases for absorption/appointment to the posts of Dance Teacher(Classical) created by the proceedings of the Administrator, U.T. of Lakshadweep dated 1.8.1985 in accordance with the Recruitment Rules dated 3rd Sept., 1987 (Annexure-K) in OA 54/89 as if the Corrigendum issued by the Director of Education, U.T. of Lakshadweep F.No. 18/54/87 Edn. dated 24.11.1988 did not take effect in so far as two posts are concerned. If the applicants are found eligible and are selected as per the Recruitment Rules aforesaid, they should be appointed to those posts. The action in the above lines should be completed within a period of two months from the date of communication of this order. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

20.4.1990

All communications should
be addressed to the Registrar,
Supreme Court, by designation,
NOT by name.
Telegraphic address :-
"SUPREMECO"

D. No. 1264/90/XI A

SUPREME COURT
INDIA

Dated New Delhi, the 3rd February, 1993

FROM

Vinod Kumar, B.A., B.G.L.,
Assistant Registrar.

TO

The Registrar,
Central Administrative Tribunal,
Ernakulam Bench, Ernakulam.

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 16885 & 16886 OF 1990.

WITH

INTERLOCUTORY APPLICATION NOS. 1 & 2
(Applications for Stay after notice)

Union of India & Anr.

... Petitioners

Versus

V.P. Bhatiaswari & Anr.

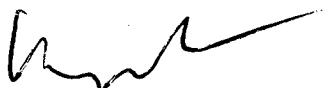
... Respondents

Sir,

In continuation of this Registry's letter of even
number dated the 22nd January, 1991, I am directed to forward
herewith for your information and necessary action a certified
copy of Order dated the 25th January, 1993 of this Court
made in the above matter.

Please acknowledge receipt.

Yours faithfully,


ASSISTANT REGISTRAR

1/2/93
So (S)





IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

423563

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 16885 -
16886 OF 1990.(Petitions under Article 136 of the Constitution of India
No. of 1991
for Special Leave to Appeal from the judgment and order
dated the 20th April, 1990 of the Central Administrative
Tribunal at Ernakulam in O.A. Nos. 54 and 105 of 1989)

WITH

INTERLOCUTORY APPLICATION NOS. 1 & 2
(Applications for Stay after notice)

Certified to be a true copy

1. Union of India through
Secretary to Govt. of India
Ministry of Home Affairs (ALN)
2. The Administrator,
Union Territory of Lakshadweep.,
Kavaratti.

Assistant Registrar (Judl.)
... 1993
Supreme Court of India

... Petitioners

Versus

1. V.P. Bhagawari } C/o M/s Sukumaran & Usha
2. N.C. Soudamini } Advocate,
} Providence Road, Cochin-18.

25th January, 1993

CORAM:

HON'BLE MR. JUSTICE J.S. VERMA
HON'BLE MR. JUSTICE S.P. BHARUCHAFor the Petitioners : Mr. KTS Tulsi, Addl. Solicitor General
(M/s B.K. Prasad, R.P. Srivastava and
Ms. A. Subhashini, Advocates with him)

For Respondents No. 1 : Mr. N. Sudhakaran, Advocate.

THE PETITIONS FOR SPECIAL LEAVE TO APPEAL ALONGWITH
THE APPLICATIONS FOR STAY above-mentioned being called
on for hearing before this Court on the 25th day of January,
1993, UPON perusing the record and hearing counsel for
the appearing parties above-mentioned, THIS COURT DOETH
ORDER that the Special Leave Petitions above-mentioned
be and are hereby dismissed and consequent upon the

- 2 -

dismissal of the aforesaid Special Leave Petition, this Court's Order dated the 14th January, 1991 passed in Interlocutory Application Nos. 1 & 2 above-mentioned stands vacated;

AND THIS COURT DOETH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Lalit Mohan Sharma, Chief Justice of India at the Supreme Court, New Delhi, dated this the 25th day of January, 1993.


(C.L.CHAWLA)
DEPUTY REGISTRAR (JUDL.)

93
(18)

CP(C) 62/93 M/s Sukumaran & Usha for applicant
in OA 54/89 Mr. NN Sugunapalan, by proxy.

X
p. 20

Counsel for the respondents seeks three weeks' time to file a reply statement on the CP(C) with a copy to the learned counsel for the petitioner.

Ab List for further directions on 29.4.93.

AVH)

Ab
(SPM)

29.3.93

29-4-93
(27)

Ms. Bhargavi
Mr. PSC Madhusudhan

The learned Counsel for the respondents seeks 2 weeks time to file a statement.
(List for further directions
on 29.6.93)

M
(AHT)

Ab
SPM

(23) M/s Sukumaran & Usha
Mr NN Sugunapalan

Call on 28.6.93.

R
R Rangarajan
A.M

C
C Sankaran Nair (J)
V.C

Ab

9.6.93

(10) M/s Sukumaran & Usha
Mr MVS Namboothiri, ACGSC

Learned counsel for the petitioner submits that the order ^{dated} ~~fixes~~ ^{according to his judgment} the effective date of appointment as from 11.7.90, which is not in accordance with the directions of this Tribunal in the Annexure-A judgment. From a Reading of the judgment, it reveals that the applicant is entitled to fixation of pay from the date of appointment or atleast from the date of status-quo order issued by this Tribunal on 27.1.89.

3/18/93
OS Street

Respondents may clarify the position by filing an additional statement. This should be done within a period of three weeks. Post on 21.7.93.



R Rangarajan
A.M



N Dharmadhan
J.M

28.6.93

21.7.93 : Ms. Bhargavi re/M/s Sukumaran & Usha
(6) Mr. MVS Namboothiri

Petitioner alleges disobedience of the orders dated 20.4.90 in O.A.54/89. The direction was to consider the case of the petitioner for appointment to a post of Dance Teacher (Classical) created by proceedings of the Administrator dated 1.8.85. It is now reported that petitioner has been appointed to one of these posts. However, counsel for petitioner submits that the order should be given effect from an earlier date. If so, petitioner may raise her grievances before the competent authority for appropriate consideration of an earlier date. We see no reason to entertain the application for Contempt. Dismissed. No costs.

20/7/93
OS Street


R. Rangarajan
A.M

Chettur Sankaran Nair (J)
VC

2-1-91

CCP-1/91 in OA-54/89

(9)

NVK & AVH

Ms Shakeela proxy counsel for the petitioner
Mr PK Madhusoodhanan proxy counsel for SCGSC

Re 2/1/91
The counsel for the respondents seeks time to file a statement. He may do so within 2 weeks time.

Call on 17.1.91.

Wk

2.1.91

*Memo of appearance
for respondent
has been filed
by Mr N. N. Sugunapalan
SCGSC on 2/1/91*

SPM & AVH

Mr Bhagavi for petitioner(proxy)
Mr NN Sugunapalan for respondents

The learned counsel for the respondents states that on SLP, the Hon'ble Supreme Court has passed an order of stay. This is disputed by the learned counsel for the original applicant.

Accordingly list for further direction on 30.1.91.

2/1/91

17-1-91

30-1-91

SPM & AVH

Ms Shakeela for petitioner
Mr PK Madhusoodhanan for SCGSC

The learned counsel for the respondents has produced a copy of the order of the Hon'ble Supreme Court dated 14.1.91 in SLP No.16885-86 of 1990 in which it has been directed that "...the two vacancies shall be kept unfilled till further orders". In view of the order, the CCP be listed for further direction 1.4.91.

2/1/91

30-1-91

SPM & AVH

Ms. Shakeela for petitioner
Mr. PK Madhusoodhanan for respondents

At the request of the learned counsel for the petitioner, call on 4.4.91

2/1/91

4-4-91
(14)

SPM & AVH

Ms Shakeela for petitioner
Mr NN Sugunapalan for respondents

ORDER

In view of the stay order passed by the
Hon'ble Supreme Court in SLP-16885-86 of 1990, the
CCP is closed and the notice discharged.



(AV HARIODASAN)
JUDICIAL MEMBER



(SP MUKERJI)
VICE CHAIRMAN

4-4-1991