

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 536 of 2000

Tuesday, this the 18th day of June, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. S. Baby Girija,
W/o Vijayan,
Trained Graduate Teacher (Terminated),
Government High School, Minicoy,
Union Territory of Lakshadweep,
residing at Meenakshi Mandiram,
Ilabhagam, Nedumkanda, Kadakkavoor.Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. The Director of Education,
Administration of UT of Lakshadweep,
Kavarathi.
2. Union Territory of Lakshadweep,
represented by its Administrator,
Kavarathi.
3. Union of India represented by the
Secretary to Ministry of Home Affairs,
New Delhi.
4. Headmaster, Government High School,
Minicoy, Union Territory of LakshadweepRespondents

[By Advocate Mr. P.R. Ramachandra Menon]

The application having been heard on 18-6-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant, aggrieved by A-10 order dated 30-3-2000 issued by the 1st respondent rejecting the applicant's request to allow her to continue in service on adhoc basis and to regularize her service after two years of working as Trained Graduate Teacher (TGT for short) and A-11 order dated 30-3-2000

issued by the 4th respondent discharging her from the present engagement as TGT with effect from 30-3-2000, has filed this Original Application seeking the following reliefs:-

- "i. To quash Annexure A10 and A11.
- ii. To declare that the applicant is entitled to be regularized in service as a TGT and to direct the respondents to consider regularization of services of the applicant on the basis of the selection already made and to appoint her on a regular basis/regularise her services in accordance with law, if necessary by relaxing the age limit.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application."

2. According to the averments of the applicant in the Original Application, she was selected for the post of TGT under the Lakshadweep Administration and was appointed as a Graduate Assistant in the pay scale of Rs.1400-2600 on 25-8-1986 by A-2 order and again by A-3 order dated 27-9-1988. She further claimed that she was again employed for three months in the Government High School, Kalpeni, during 1990-91 and thereafter, she was not considered for appointment. The applicant approached this Tribunal in OA No.321/94 seeking for a declaration that she was entitled to be considered for regular appointment as TGT and for a declaration that she was entitled to get relaxation of upper age limit to the extent of the service rendered by her as adhoc TGT. The said OA was disposed of by A-4 order dated 21-12-1994 permitting the applicant to make a detailed representation setting out her case and directing the 1st respondent to take a decision as expeditiously as possible. Pursuant to A-4 order of this Tribunal, the applicant filed A-5 representation dated 12-1-1995. According to the applicant, when regularization was denied she again approached this Tribunal in OA No.1220/96. This OA and certain other connected OAs were heard together by



this Tribunal and A-6 order dated 8-12-1997 was passed directing the respondents to take steps to fill up the vacancies in which the applicants were appointed as Teachers on adhoc basis and allowing the Teachers who were holding that posts on adhoc basis to remain in that posts till the vacancies were duly filled up. The applicant being not satisfied with the order of this Tribunal filed OP No.2864/98 in the Hon'ble High Court of Kerala for a direction to the respondents to consider regularization of her appointment/appointment on the basis of the selection already made. The OP was disposed of by the Hon'ble High Court of Kerala with a direction that the applicant may be continued in service on adhoc basis if there was any job requirement and if she was otherwise eligible and further that the question of regularization could be taken up only if she rendered two years continuous service, by A-7 judgement dated 6-11-1999. The applicant filed A-8 representation dated 19-1-2000 to the 1st respondent pursuant to A-7 judgement, followed by A-9 representation dated 1-3-2000. She received A-10 reply dated 30-3-2000, followed by A-11 order dated 30-3-2000 issued by the 4th respondent. Alleging that A-10 was highly illegal, unjust, arbitrary and unreasonable and relying on A-6 order of this Tribunal in OA No.964/95 and connected cases dated 8-12-1997 stating that several persons appointed on contract basis like the applicant had been regularized in service, the applicant has filed this Original Application seeking the above reliefs.

3. Respondents 1 to 4 filed reply statement resisting the claim of the applicant. According to them, the applicant was appointed as Graduate Assistant on contract basis for a period of three months against a leave vacancy during 1988, in which it was clearly stated that the appointment was purely on contract basis for a period of three months. However, she was



permitted to continue till the end of the academic year due to the academic exigencies. She was relieved on 23-3-1989, the day of closure of the school for summer vacation. She was again appointed as Graduate Assistant on contract basis for a period of three months and posted to Government High School, Kalpeni during 1990. She was discharged from service after the period. In 1992, when similar appointments were made, the applicant's name was not sponsored by the Employment Exchange due to overage and so, she was not considered. R-1 is the Recruitment Rules for the post issued on 1-7-1994. According to respondents, the applicant has no right to continue beyond the specified period of appointment in accordance with the terms and conditions of the contract appointment. While OA No.1220/96 was pending, the applicant was appointed on contract basis from September, 1997 till 31-3-1998 and she was discharged on 31-3-1998. The applicant challenged A-6 order of this Tribunal in the Hon'ble High Court of Kerala by filing an OP. Her grievance was that the direction of a fresh selection contained in the order of this Tribunal was illegal and unwarranted. In accordance with the directions of the Hon'ble High Court of Kerala by A-7 judgement dated 6-11-1999 the applicant was continued in service on adhoc basis. The applicant's case was carefully considered by the 2nd respondent and accordingly, A-10 order was issued. Respondents resisted all the grounds raised by the applicant.

4. Heard the learned counsel for the parties.


5. Learned counsel for the applicant drew our attention to A-6 order of this Tribunal and submitted that this Tribunal had specifically directed the question of relaxing the qualification of minimum age prescribed for appointment to the posts of TGTs and in respect of the applicant, this Tribunal



had come to the conclusion that the applicant was a victim of the system of adhoc appointment. Viewed in this light, A-10 order was not in accordance with the directions of this Tribunal. The reason given in A-10 that the applicant was a single person and was not a class for not granting the age relaxation was not in accordance with the directions of this Tribunal. As originally the applicant was not given regular appointment on account of she being overaged and that decision having been found illegal, there was justification in granting age relaxation to the applicant.

6. Learned counsel for respondents submitted that the specific directions of this Tribunal in A-6 order was to fill up the posts of TGTs in accordance with the Rules and allow all the Teachers, who were working on contract basis, to apply and to continue them till the posts were filled up on regular basis. In fact, the applicant was not satisfied with this order and hence, she approached the Hon'ble High Court of Kerala for a direction to quash the order of this Tribunal and for a direction to conduct a regularization test. The Hon'ble High Court of Kerala had not modify the order of this Tribunal. So, the applicant does not have any legal right to claim the reliefs in this Original Application and the Original Application was liable to be dismissed.

7. On a careful consideration of the submissions made by the learned counsel for the parties and the rival pleadings and after meticulously going through various documents annexed thereto, we are of the considered view that the applicant has not made out a case for the reliefs sought for by her.



8. The applicant is basing her claim on A-6 order of this Tribunal. We are of the view that paragraphs 24 to 26 of A-6 order are relevant in this context and they read as follows:-

"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 direct 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 adhoc 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 adhoc basis to remain in those posts till the vacancies are duly filled up. The Teachers who are now working on such adhoc 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 adhoc appointment."

9. It is evident from paragraph 24 reproduced above that the applicant, in OA No.1220/96 sought for a declaration that she was entitled to get relaxation of upper age limit to the extent of services rendered by her as a TGT under the respondents. This Tribunal, in paragraph 26, directed the respondents to fill up the vacancies of TGTs under them in accordance with the relevant rules and the Teachers who were working on adhoc basis had to apply for being considered for appointment regularly. As far as the applicant is concerned, the further direction was that the respondents may consider sympathetically in her case the question of relaxing the qualification of minimum age prescribed also.



10. A-7 judgement of the Hon'ble High Court of Kerala reads as under:

"Heard.

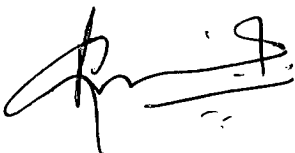
2. This Original Petition is disposed of taking into account the special features existing. On the basis of the interim order, the petitioner is continuing in service. Only hurdle on her regularization is the absence of two years continuous service. It is also pointed out by the learned counsel for the respondents that she is beyond the permissible age limit. The Tribunal appears to have taken a sympathetic view in the matter considering the backgrounds of the case.

We direct that the petitioner may be continued in service on an ad hoc basis if there is any job requirement and if she is otherwise eligible. The question of regularization can be taken up only if she renders two years continuous service.

Original Petition is disposed of accordingly."

11. We note from the above that the Hon'ble High Court also had not been given any relief to the applicant. It only upheld the order of this Tribunal and had not given the reliefs sought for by her in the Original Petition. It had been specifically held by the Hon'ble High Court of Kerala that the question of relaxation could be taken up only if she rendered two years of continuous service. This itself would indicate that she had not completed two years of continuous service on the date of A-7 judgement.

12. From the details given in the reply statement and the submissions of the learned counsel for respondents, we find that the applicant had worked for about 3 months in 1988, 6 months in 1989 and thereafter, she had not worked till 1997-98. Her case was sympathetically considered when OA No.1220/96 was pending before this Tribunal for contract appointment. Even in 1992 itself, her case was not considered because she was overaged.



13. Even in OA No.1220/96 her prayer was only to give her relaxation of age to the extent of services put in by her on adhoc basis. Her request had been considered by the respondents and A-10 order had been passed. A-10 order reads as under:-

"Smt. Baby Girija, Meenakshi Mandiram, Kadakkavoor, who was engaged as Trained Graduate Teacher on contract basis for specific period and was discharged from the said engagement on completion of the said specified period, had filed OP No.2864 of 1998-S before the Hon'ble High Court of Kerala to allow her to continue in service and to regularize her service as T.G.T. on regular basis. The said OP has been disposed of by the Hon'ble High Court of Kerala on 6.11.99 with the direction that the petitioner may be continued in service on ad-hoc basis if there is any job requirement and if she is considered eligible and further that the question of regularization can be taken up only if she renders two years continuous service. In the representation cited Smt. Baby Girija has requested to allow her to continue in service on ad-hoc basis, atleast with effect from 6.11.99 the date of the judgement and to consider for regularization in service on the date of completion of 2 years service on ad-hoc basis, if necessary by relaxing the age limit.

The matter has been examined in detail and it is observed that Smt. Baby Girija does not fulfil the eligibility criteria for appointment to the post of T.G.T. as per the Recruitment Rules invouge. According to the Recruitment Rules, the prescribed age limit is between 18-30 years. The date of birth of applicant is 11.2.1962 and she is now more than 38 years of age. As per the Recruitment Rules invogue, power to relax the provisions of the Recruitment Rules vests with the Administrator, U.T. of Lakshadweep and the relaxation can be granted with respect to any class or category of persons. Apparently, therefore, there is no provision to grant age relaxation in individual cases. As such, the Administrator has ordered that it will not be proper to grant any age relaxation in favour of the applicant.

In view of the position stated above, the request of Smt. Baby Girija to allow her to continue in service on ad-hoc basis and to regularize her service after two years with effect from the date of the abovesaid judgment cannot be acceded to. Smt. Baby Girija is discharged from the present engagement as TGT on contract basis with effect from 30th March, 2000. The Headmaster, Govt. High School, Minicoy will relieve her accordingly and report compliance to the Directorate of Education, Kavaratti.

This issues with the approval of Administrator."



14. Learned counsel for the applicant referring to the reasons given by the respondents for rejecting her request for grant of relaxation of age submitted that even if the applicant was only one individual, she had to be treated as a class by herself being a person who, because of the policy of the regularisation of islanders and because of the continued engagement of mainlanders on adhoc basis she had become overaged and she had to be treated as a class by herself. Her case should not be treated as an individual's case for relaxation of age. Learned counsel for respondents submitted that the total service put in by the applicant at various points of time was less than two years and just by working for such short spells with the respondents the applicant does not get any right for regularization giving age relaxation. If the case of the applicant alone was considered for relaxation of age, treating her as a class as submitted by the learned counsel for the applicant, that will give rise to many more such requests of people who had worked for short spells on adhoc basis and would put a financial strain on the administration.

15. We find substance in the submissions made by the learned counsel for the respondents. Relaxation cannot be claimed as a matter of right. Further, even in A-6 order this Tribunal had given the directions to the respondents on sympathetic consideration rather than on any legal right and hence, we are of the view that the applicant cannot claim relaxation in age as a matter of right. The only direction to the respondents was to consider the case of the applicant for relaxation of minimum age sympathetically. In this view of the matter we cannot fault the respondents for what they had stated

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in A-10 order dated 30-3-2000 treating the applicant as an individual and stating that there is no provision for relaxation of age in individual cases.

16. In the result, we do not find any merit in this Original Application and we hold that the applicant is not entitled for the reliefs sought for.

17. Accordingly, we dismiss this Original Application with no order as to costs.

Tuesday, this the 18th day of June, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Ak.

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Gazette Notification dated 17.7.63 published by the 3rd respondent.
2. A-2: True copy of the order of appointment F.No.18/66/86.Edn dated 25.8.86 issued by Education Officer for and on behalf of 1st respondent to the applicant.
3. A-3: True copy of the order of appointment F.No.18/66/86-Edn, dated 27.9.88 issued by the Education Officer(For 2nd respondent) to the applicant.
4. A-4: True copy of the order in OA 321/94 dated 21.12.94 of the Central Administrative Tribunal.
5. A-5: True copy of the representation dated 12.1.1995 submitted by the applicant to the 3rd respondent.
6. A-6: True copy of the judgement in OA 1220/96 dated 8.12.1997 on the file of this Hon'ble Tribunal, Ernakulam Bench.
7. A-7: True copy of the judgement dated 6.11.1999 in OP 2864/98 of the Hon'ble High Court of Kerala.
8. A-8: True copy of the representation dated 19.1.2000 submitted by the applicant to the 1st respondent.
9. A-9: True copy of the representation dated 1.3.2000 submitted by the applicant to the 2nd respondent.
10. A-10: True copy of the Order No.F.No.18/9/2000-Edn/Estt, dated 30.3.2000 issued by the 1st respondent.
11. A-11: True copy of the Order F.No.1/68/99.2000-HSM(1), dated 30.3.2000 issued by the 4th respondent.

Respondents' Annexures:

1. R-1: True copy of Lakshadweep Administration Education Department (Group C Posts) Recruitment Rules 1994 issued as per Notification No.18/18/92-Edn. dated 30.3.94 published in the Lakshadweep Gazette dated 1.7.94 issued by the 1st respondent.
2. R-2: True copy of Letter No.U-14016/12/94-ANL dated 19.1.96 issued by the Govt. of India, Ministry of Home Affairs, New Delhi.
3. R-3: True copy of the Order No.1/7/96 dated 10.3.97 issued by the Govt. of India, Ministry of Home Affairs, New Delhi.

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