

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 552/2008

this the 25th day of August, 2009

C O R A M

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

Ameera Bin Mohammed C.N.
D/o Pookkutty Mohammed Koya
Baithul Ameen, Kavaratti Island
U.T. Of Lakshadweep

Applicant

By Advocate Mr.C.S. Manu

Vs.

- 1 The Administrator
 U.T. Of Lakshadweep,
 Kavaratti.
- 2 The Secretary (Administration)
 U.T. Of Lakshadweep,
 Kavaratti.
- 3 The Secretary (Service)
 U.T. Of Lakshadweep,
 Kavaratti.
- 4 The Secretary (Education)
 U.T. Of Lakshadweep,
 Kavaratti.
- 5 Selection Board for Recruitment
 for the post of IDance Teacher (Classical)
 Department of Education
 U.T. Of Lakshadweep,
 Kavaratti.
- 6 The Director
 Department of Education
 U.T. Of Lakshadweep,
 Kavaratti.

Respondents

By Advocate Mr. S. Radhakrishnan

The Application having been heard on 19.8.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant seeks for a direction to the respondents to complete the process of selection for appointment to the post of Dance Teacher (Classical) by conducting practical test pursuant to written test conducted on 8.4.2006.

2 The short facts are that the applicant a native of Kalpeni island possess certificate from Kerala Kalamandalam having undergone one year intensive training in Mohaniyattam classical dance. She states that she is the first lady from Lakshadweep who has undergone training in classical dance. She has registered her name with the Employment Exchange, Kavaratti. She has experience as Guest Dance Teacher in the Govt. High School, Kavaratti. The Department notified the post of Dance Teacher for recruitment (A-9). According to the applicant, only three candidates appeared in the written test, she secured the highest mark among the three candidates. The Department is bound to conduct a practical test for the successful candidates. Till now, neither the practical test was conducted nor the post was filled up. In the above circumstances, applicant submitted several representations. She came to know that the department is of the view that none of the candidates had qualified the written test. The applicant submitted that having got 33 marks out of 60, it cannot be said that she failed in the written test. Hence she filed this O.A. to direct the respondents to conduct the practical test and appoint the applicant with retrospective effect. The main grounds urged by the applicant are that she secured more than the minimum mark fixed for the written examination, and the failure of the department to conduct practical test is illegal and contrary to the norms relating to recruitment.

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3 The respondents in their reply statement submitted that the written test was conducted in English and General Awareness covering 80 marks only and none out of the three candidates who appeared in the written test including the applicant has secured the minimum mark of 45% (R1-a). In the circumstances, they have not proceeded to conduct the practical test. They submitted that the applicant attended the written test using the Booklet containing questions for 80 marks and not 60, in the information obtained by the father of the applicant under the Information Act the total marks of written test was wrongly given as 60 instead of 80 and that the applicant secured only 41.25 % marks. They relied on the decision of the Apex Court in Dhanjay Maliki V. State of Uttaranchal (2008(2) KLT 969(SC) holding that

"....having unsuccessfully participated in the process of selection without any demur,candidates are estopped from challenging selection criterion inter alia that advertisement and selection with regard to the requisite educational qualification were contrary to rules."

4 The applicant filed rejoinder stating that the written test was conducted for 40 marks each in English and General Awareness and not in the subject of classical dance. She further stated that she is not challenging the selection procedure but insisting for the procedure to be followed and completed as per Annexure A-14. She further submitted that the procedure for selection to various posts including that of Dance teacher has been amended by order dated 28.4.2007 and that now the selection can be made on the basis of educational qualification/experience.

5 We have heard the parties and have gone through the pleadings.

6 There is no dispute regarding the qualification or experience of the applicant to be appointed as a Dance Teacher. The dispute is regarding the conduct of the written test. According to the orders/instructions on

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recruitments and appointments in force at the relevant time in the U.T. Of Lakshadweep, there shall be a written test for all Group-C & B posts, the total marks shall be 200, out of which 160 shall be for written test and 40 for interview. Out of the total marks of 160 for written test, 80 marks are to be earmarked for questions on the subject concerned including trade test, if any, 40 marks for General English, and 40 marks for General Awareness. It is further stipulated that only the candidates who secure a minimum of 45% marks in the written examination will be called for the interview. In the case of recruitment to the post of dance teacher in question, which was conducted as per notice dated 5th December, 2005, the department has not conducted the written test on the subject. In the notification dated 6.12.05, vacancies were notified for teachers to handle various subjects including Dance. For other subjects like Maths., Chemistry etc. it is presumed that written tests would have been conducted for 160 marks. In a similar manner written/trade test for the remaining 80 marks should have been conducted to ascertain whether the candidates could secure the minimum qualifying marks out of 160 to enable them to attend the interview for which 40 marks are allocated. To examine this issue, further, the recruitment rules for Dance teacher was called for from the respondents. This was duly produced. The mode of recruitment is not specified. Therefore, it is a moot question whether a written examination in English and General Awareness is mandatory for, those who take dance and music classes. However, Rule 5 of the said Recruitemnt Rules show that the Administrator has the power to relax any of the provisions excepting Rule 4. Accordingly, the written tests and interviews for recruitment to Group-C and D posts have since been dispensed with. Therefore, we are of the considered view that the recruitment process has not been completed.

7 In this view of the matter, we dispose of the Application with the following direction:



(i) The respondents shall complete the recruitment process of Dance Teacher pursuant to Annexure A-9 notice with the conduct of written examination on the subject of Dance.

(ii) Interview shall be conducted as stipulated in the instructions on recruitment and appointments in Lakshadweep dated 5th September, 2005.

(iii) All the three candidates who attended the written test shall be called for the written test on the subject.

8 The O.A. is disposed of as above. No costs.

Dated 25th August, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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