

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.560/09 & O.A.No.875/09

Tuesday this the 25th day of January 2011

C O R A M :

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

O.A.No.560/09

Sajitha Beegam C.P.,

D/o.P.Koya,

Permanently residing at Chemmanampally House,
Kalpeni Island, U.T of Lakshadweep.

...Applicant

(By Advocate Mr.M.R.Hariraj)

V e r s u s

1. Union of India
represented by the Secretary to Government of India,
Ministry of Human Resource Development, New Delhi.
2. Administrator,
Union Territory of Lakshadweep, Kavarathi.
3. Director of Education,
Union Territory of Lakshadweep, Kavarathi. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1]
& Mr.S.Radhakrishnan [R2-3])

O.A.No.875/09

Amjed Ahmed K,

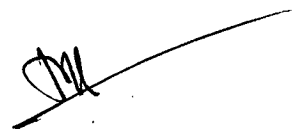
Kaithat House, Androth Island.

...Applicant

(By Advocate Mr.K.B.Gangesh)

V e r s u s

1. The Administrator,
Administration of the Union Territory of Lakshadweep,
Kavaratti.
2. The Director of Education,
Directorate of Education,
Union Territory of Lakshadweep, Kavaratti.



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3. Ashik M.I.,
Melaillam House, Kadmath Island.
4. K.K.Fareed Khan,
UD Clerk, Directorate of Port,
Shipping and Aviation, Kavaratti.
5. K.Zahira Thasneem,
Kehiganduwar, Minicoy Island.
6. Akberali.A,
Ashathummada, Chetlath Island.
7. Sareena Bappathiyoda,
Bappathiyoda, Androth Island.
8. Ahmed Jawad Hassan.T.,
Thachery House, Kavaratti.

...Respondents

(By Advocate Mr.S.Radhakrishnan [R1&2], Mr.Arun Raj.S [R3],
Mr.M.V.Thamban [R4,5&7] & M/s.Abdul Azeez & Amanullah [R8])


These applications having been heard on 25th January 2011 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

Challenge in these O.As pertains to the same selection and hence we dispose of these O.As by a common order. However, the facts being slightly different we refer to the facts of these cases separately.

2. **O.A.No.660/09** :- Annexure A-10 is a notification issued by the 3rd respondent inviting application from qualified local candidates for appointment against the post of Physical Education Teacher. The details of Pay Band, age, qualifications required etc. were thus prescribed. As per Column 6 of the notification qualifications notified are as follows :-



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Essential Qualification :- BPE (Bachelor of Physical Education)/ Graduate from a recognized University with Bachelor Degree in Physical Education (B.PEd.) from a recognized University.

Desirable Qualification :- Master degree in Physical Education (M.PEd.) from a recognized University or Master degree in Physical Education (M.P.E) from a recognized University.

3. The applicant applied for the post pursuant to the Annexure A-10. Six posts were advertised. The applicant is a graduate in the subject of Botany and the degree certificate is produced as Annexure A-2. Subsequently, she also possessed a Master's degree in Physical Education and a true copy of the Master's degree certificate is Annexure A-3. She also completed her M.Phil Degree in Physical Education from Annamalai University and a true copy of the M.Phil Degree certificate is Annexure A-4. It is contended that the applicant is the first woman from UT of Lakshadweep to get Master's Degree and M.Phil in Physical Education. She was also awarded the Rajiv Gandhi National Fellowship for ST candidate in the discipline of Physical Education as evidenced by Annexure A-5. Besides the academic qualification it is stated that the applicant is a reckoned sports personnel also and has bagged several sports prizes from various authorities. Feeling aggrieved by the fact that the applicant is not likely to be considered she approached this Tribunal by filing this O.A. Subsequently, based on the reply statement filed the O.A was amended since the stand taken in the reply statement is that the applicant though possesses a Master's degree does not possess the basic degree which is an essential qualification as prescribed. It is contended by the applicant that she having possessed a Master's degree in Physical Education which is a higher qualification than the essential qualification and, therefore, she



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is entitled to be considered along with others for the posts advertised. Incidentally, it is pointed out that there was an earlier advertisement Annexure A-7 as per which two vacancies were notified and the qualification which is required as per Annexure A-7 for Physical Education Teacher is Graduate with Diploma in Physical Education. The applicant had responded to the said advertisement as well. It was subsequently that the new rules were framed as per which the qualifications were amended and fresh notification as contained in Annexure A-10 was issued soon after the issuance of the new regulations.

4. Even though the applicant would contend that she is fully qualified both as per Annexure A-7 and Annexure A-10, if for any reason it is found that she does not possess any qualification as prescribed in Annexure A-10, she had a further contention that she being fully qualified as against the posts notified in Annexure A-7, those vacancies ought to have been filled up with the prescribed qualification as per the rules then existed. It is contended that the new rules are prospective in nature. Besides the two vacancies notified as per Annexure A-7 one vacancy arose vide Annexure A-8. Thus there were three vacancies and at any rate these three vacancies should have been filled up by considering the applicant possessing the requisite qualification as advertised in Annexure A-7. However, the learned counsel submitted that in case it is found that she is qualified as per Annexure A-10 notification it is not necessary to consider the alternate argument and it will be sufficient if she is declared entitled to be considered as against the vacancies of Annexure A-10 notification.

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5. The respondents in their reply affidavit would contend that the Annexure R-2(b) is the new rule which came into force on 20.2.2009 and as such all the vacancies are to be filled as per the new notification. The applicant possesses a Master's degree in Physical Education but does not possess the essential qualification of a degree in B.P.E (Bachelor of Physical Education)/Graduate from a recognized University with Bachelor degree in Physical Education (BPED) from a recognized University. For the same reason it is contended that the applicant is possessing only a Master's degree in Physical Education and, therefore, not even qualified as against Annexure A-7 notification.

6. By an interim order one seat was kept unfilled. Pursuant to the selection process a select list was prepared against which five were appointed. The prayer in the O.A is to quash Annexure A-10 and Annexure A-13. Annexure A-10 being a notification issued and Annexure A-13 a select list and for a declaration that the applicant is entitled to be considered for appointment to the post of Physical Education Teacher and direct the respondents to consider her for appointment to the post with due regard to her qualifications.

7. We have heard Shri.M.R.Hariraj, learned counsel appearing for the applicant and Ms.Deepthi, learned counsel appearing for the respondents No.2&3. At the outset we may state that even though the O.A was amended seeking to include a larger prayer to quash Annexure A-13 select list none of the selected candidates were arrayed as

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parties. Therefore, in case the relief to quash Annexure A-13 is to be granted necessarily that will affect those in the select list and without they being made parties, it will not be possible to grant this relief. Since the applicant contends that she is entitled to be considered as against Annexure A-10 we shall now consider the said contention.

8. This Court as per Annexure A-9 order passed in O.A.354/05 dated 25.4.2008 had occasion to consider as to whether a degree in Physical Education fulfills the education qualification for the post of Physical Education Teacher as against the qualification of diploma notified in the advertisement. It was submitted that as per the Recruitment Rules the requisite qualifications are a Bachelor degree and Diploma in Physical Education and the applicant therein possesses a composite degree cum diploma in Physical Education awarded by the Lakshmibai National College of Physical Education, Thiruvananthapuram, therefore, satisfies the requirement of both degree and diploma in Physical Education. After due consideration of the rival contentions between the parties a Co-ordinate Bench of this Tribunal held that the applicant possesses the requisite qualification and consequently a declaration was made in his favour. It is contended that the said order has not become final since a WPC has been filed and pending. The Apex Court in Jyoti K.K and others Vs. Kerala Public Service Commission and others reported in JT 2002 (Suppl.1) SC 85 held that if a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. Thus the

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qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. The rule do not disqualify per se the holders of higher qualifications in the same faculty. Placing reliance on the said decision the applicant would contend that she is fully qualified for the post as advertised in Annexure A-10. In this connection, we may refer to Annexure A-10 notification. We have already referred to Annexure A-10 notification as per which the available essential qualification and desirable qualification are notified. Admittedly, the applicant possess even the desirable qualification. A desirable qualification is always to extend preference to those candidates who possess those qualification, the desirable qualification being of higher qualification than the essential qualification so prescribed. As per Annexure A-10 though essential qualification is a degree in Physical Education, a Master's degree in Physical Education being higher qualification possessed, it has to be held that the applicant possessed the requisite qualification for being considered against the post advertised. Hence the stand taken by the respondents is contrary to the decision of the Apex Court and non consideration of her application against the notified vacancies is clearly arbitrary and illegal.

9. In view of the above declaration, it is not necessary to quash Annexure A-10 nor Annexure A-13 except to direct the respondents to consider the case of the applicant by the same Select Committee as far as possible and then rank the applicant accordingly. After consideration of her

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application award proper rank and recast the select list Annexure A-13 accordingly. In case the applicant happens to be one among the first six candidates, necessarily the authorities will proceed to consider her for appointment and pass appropriate orders. In view of the above declaration it has now become unnecessary to consider the alternate arguments advanced by the applicant. The Original Application No.560/09 is thus allowed.

10. **O.A.No.875/09** :- The applicant's seeks a declaration to the respondents that they are liable to complete the selection process for the post of Physical Education Teacher strictly in accordance with Annexure A-3 order giving due weightage for essential qualification, desirable qualification, experience and higher qualification as specified therein. The applicant is aggrieved by Annexure A-1 select list for the post of Physical Education Teacher. In that according to the applicant his experience possessed has not been properly valuated and marks awarded. It is contended that as per the notification issued, it was specifically stated that the selection of the candidates will be purely on academic merits of the applicants while also giving consideration to the applicant's higher qualifications and experience for the job. It is, therefore, contended that so long as experience possess is not properly valuated by awarding suitable marks the selection conducted is contrary to the notification issued Annexure A-2.



11. The respondents would contend that as per the regulations Annexure R-1(a) produced along with the reply statement only basic essential qualification and desirable qualification are prescribed. Noway it is mentioned that any marks will be awarded for higher qualification or experience as the case may be. Therefore, while awarding the marks the qualification as required, namely, essential qualification and desirable qualification were duly considered and marks awarded.

12. We have heard both the sides. Admittedly, the regulations do not contain any experience to be possessed as an additional qualification. Only academic qualifications are prescribed both essential and desirable. Therefore, it cannot be said that while conducting the selection marks are to be awarded separately for experience. Hence, if the selection is conducted consistence with the regulations it cannot be said that non awarding of marks to the experience possessed is arbitrary or illegal. Undisputedly, the applicant's qualification possessed having been valuated by the Selection Committee has given him proper rank it cannot be said that the selection in anyway suffers from any infirmity or illegality. It is also contended that as per Annexure A-3 (1) (i) (b) up to 15% of the marks of the total marks may be assigned to desirable qualifications/experience/higher qualifications taking into account the provisions of Recruitment Rules. The applicant contend that the Selection Committee ought to have awarded marks for experience. But the respondents rightly pointed out that this 15% of the marks to be awarded for desirable qualification or experience or higher qualification is subject to

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the provisions of the regulations. So long as the regulations does not provide for any experience to be possessed as a qualification, the respondents were right in not awarding the marks. Besides the applicant is also not producing any experience certificate along with the application.

13. In this circumstances, we find no merit in the contentions raised in Original Application No.875/09 and the same is dismissed accordingly.

(Dated this the 25th day of January 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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