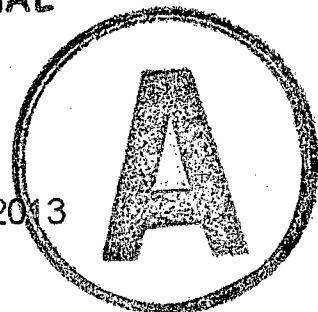


**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos.406/12, 433/12, 554/12 & 564/12

Thursday, this the 03rd day of January, 2013



C O R A M :

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

1. O.A.No.406/12

P.Riazkhan,
Pechattiyoda House,
Kiltan Island, U.T of Lakshadweep.

...Applicant

(By Advocate Mr.V. Rajendran)

Versus

1. Union Territory of Lakshadweep
represented by the Administrator,
Lakshadweep Administration,
Kavaratti – 682 555. U.T of Lakshadweep.

2. Director of Education,
Kavaratti – 682 555. U.T of Lakshadweep.

...Respondents

(By Advocate Mr.S. Radhakrishnan)

2. O.A.No.433/12

1. Muhammed Aboo Salih A.B.,
Azhikkakam Baliyapura,
Andrott Island, Union Territory of Lakshadweep.

2. Shiraz Khalid C,
Chuthakuli House, Kavaratti Island,
Union Territory of Lakshadweep.

3. Abdul Nizar U.C.,
Ukkayye Chetta House,
Kadamath Island, Union Territory of Lakshadweep.

4. Sameer Aouge Bidharuge,
Roshan Bagh, Boduathiri Village,
Minicoy Island, Union Territory of Lakshadweep.

5. Khalid Kiragothi Uthurufarathuge,
Dilush Mahal, Adumagu Village,
Minicoy Island, Union Territory of Lakshadweep.

...Applicants

(By Advocate Mr.V.Rajendran)

V e r s u s

1. Union Territory of Lakshadweep
represented by the Administrator,
Lakshadweep Administration,
Kavaratti – 682 555. U.T of Lakshadweep.
2. Director of Education,
Kavaratti – 682 555. U.T of Lakshadweep.

...Respondents

(By Advocate Mr.S. Radhakrishnan)

3. O.A.No.554/12

Mohammed Riyazath Khan C.P.,
S/o.Koyamma Bappathaiyod,
Cherikkal Puthiyapura House, Androth.

...Applicant

(By Advocate Mr. Anand.S.A.)

V e r s u s

1. Administration of the Union Territory of Lakshadweep
represented by the Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. Director of Education,
Directorate of Education,
Administration of the Union Territory of Lakshadweep,
Kavaratti – 682 555.

...Respondents

(By Advocate Mr. S. Radhakrishnan)

4. O.A.No.564/12

Mohammed Ershad M.P.,
S/o.P Cherikoya,
Madalapura House, Amini Island,
Union Territory of Lakshadweep.

...Applicant

(By Advocate Mr.M.V.Thamban)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. The Secretary (Education),
Union Territory of Lakshadweep,
Kavaratti Island – 682 555.
3. The Director of Education,
Union Territory of Lakshadweep,
Kavaratti Island – 682 555.
4. Ahmed Jawad Hassan T,
Thachery House, Kavaratti Island,
Union Territory of Lakshadweep – 682 555.
5. Mohammed Shafeeq M,
Maral House, Kalpeni Island,
Union Territory of Lakshadweep – 682 556.
6. K.P.Sajeed,
Kakkinipura House, Kavaratti Island,
Union Territory of Lakshadweep – 682 555.
7. The Secretary,
Ministry of Human Resources Development Department,
Sasthri Bhavan, New Delhi – 110 115. ...Respondents

(By Advocates Mr. S. Radhakrishnan [R1-3],
Mr. T.H. Abdul Azeez & V.A.Jamal [R4],
Mr. Joby Cyriac [R-6] and
Mr. Sunil Jacob Jose, SCGSC [R7],)

These applications having been heard on 17th December 2012, this Tribunal on 13.01.13 delivered the following :-

ORDER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

As common facts and issues are involved in these O.As, they were heard together and are disposed of by this common order.

2. The Union Territory of Administration had invited applications for filling

up the posts of Physical Education Teachers vide employment notice dated 21.11.2011. The essential qualification for the post is Bachelor of Physical Education (BPE) or Graduate from a recognized university with Bachelor Degree in Physical Education (BPED) from a recognized university. The desirable qualification is Master Degree in Physical Education (MPED) from a recognized university or Master Degree in Physical Education (MPE) from a recognized university. All the applicants have responded to the said employment notice.

3. The applicant in O.A.No. 406/2012 has B.Com degree from Calicut University and BPED degree from Annamalai University. The applicant in O.A. No. 433/2012 has BPE degree from Calicut University and MPED degree from Annamalai University. Applicant in O.A. No. 554/2012 has BPED degree. He acquired the desired qualification of MPED on 20.12.2011 from the Calicut University, after the cut off date of 15.12.2011 to reach the application to the Director of Education, Union Territory of Lakshadweep, Kavaratti. The applicant in O.A. No. 564/2012 has BPE degree from Calicut University, but no desirable qualification.

4. The applicants in O.A. Nos. 406/2012 and 433/2012 have sought the relief of a declaration that BPED / MPED degree from the Annamalai University is a sufficient qualification for being considered for appointment to the post of Physical Education Teacher in accordance with employment notice dated 21.11.2011 and for a direction to allow them to participate in the selection process / give due weightage in the selection process. The applicant in O.A. No. 554/2012 has sought a direction to count his marks in MPED in

preparing the rank list for the post of Physical Education Teacher. The applicant in O.A. No. 564/2012 has sought the following reliefs:

1. To issue a declaration that the BP.Ed and MP.Ed Degrees issued by Calicut, Kannur, Kerala, Pondichery Universities and Tamilnadu Physical Education and Sports University are not sufficient qualification for the post of PET as those courses offered by the said Universities are not recognized by the NCTE.
2. To set aside Annexure A-2 list in so far as it includes the names of respondents 4 to 6 at Sl.No.1, 2 & 3 or alternatively to delete the marks awarded to the respondents 4 to 6 towards desirable qualifications.
3. To direct the respondent 1, 2 and 3 to publish the select list only after excluding the names of the respondents 4 to 6 by implementing Annexure A-4.
4. To direct the official respondents 1 to 3 to make further proceedings in the matter of selection to the post of PET on the basis of Annexure A-1 only after ascertaining the recognition of the courses referred to in Annexure A-4 from the 7th respondent.
5. To direct the respondents 1 to 3 to appoint the applicant to one of the two post of PET, notified in Annexure A-1.
6. To issue such other further reliefs as this Hon'ble Tribunal may consider deem fit and proper in the facts and circumstances of the case.

5. The applicants in O.A. Nos. 406/2012 and 433/2012 contended that they were fully qualified for being appointed as Physical Education Teacher in terms of employment notice dated 21.11.2011. Their non inclusion in the check list is unjust and arbitrary. Annamalai University is established by an Act of the State of Madras in 1928 and is recognised by the University Grants Commission. The degrees and certificates awarded by it are recognized by the Central Government/State Government and Public Service Commissions. The stand taken by the respondents that the National Council for Teacher Education (NCTE) has not recognized the same is irrational and illogical. The applicants in O.A. Nos. 406/2012 and 433/2012 were given scholarships by

the Lakshadweep Administration itself for their studies at Annamalai University. They were appointed in Government Senior Basic School on the same qualification. Even during March, 2012, students from Annamalai University were appointed by the Administration as Coaches and they are continuing. The applicant in O.A. No. 554/2012 contended that it was not his fault that publication of the result of the examination in MPED taken by him was published only on 20.12.2011, just five days after the last date of submission of the application. He is not liable to be penalised for the delay caused by the University of Calicut. Once the result of the examination is published, it effective from the next day following the last day of the examination. Therefore, the deletion of marks for MPED qualification acquired by him is unsustainable. As the applicant acquired the desirable qualification before the process of selection for the post of Physical Education Teacher has been completed, he is entitled to have the marks for that examination reckoned. The applicant in O.A. No. 564/2012 contended that he is fully qualified for the post of Physical Education Teacher with his qualification of BPE from the Calicut University which does not require any recognition from NCTE unlike BPED/MPED. If ineligible candidates are excluded, he is eligible to be on the top of the select list. Annexure A-4 dated 07.06.2011 in O.A. No. 564/2012 makes it clear that the qualification possessed by the respondents Nos. 4 to 6 therein are not recognized by the NCTE.

6. We have heard the learned counsel appearing for both the sides and perused the records.

7. There is no reply filed by the respondents in O.A. Nos. 406/12, 433/12 and 554/12. The 4th and 6th respondents and the official respondents in O.A. No. 564/2012 have filed their reply statements.

8. The marks obtained by the applicant in O.A. No. 554/2012 in MPED degree were not taken into consideration for the reason that his MPED qualification was acquired on 20.12.2011, after the cut off date for receiving the application as per employment notice dated 21.11.2011. The application with attested copies of certificates with mark lists, proof of age etc. should have been sent so as to reach the Director of Education, Union Territory of Lakshadweep, Kavaratti on or before 15.12.2011 at 05.00 p.m. The cut off date of 15.12.2011 is specified in the employment notice. The result of the MPED examination was published on 20.12.2011. The examination was held in November, 2011. The contention of the applicant is that he is not liable to be penalised for the delay caused by the University of Calicut in publishing the result. There is no inordinate delay in publication of the result by the University. Further contention of the applicant is that once the result is published, it is effective from the next day following the last day of the examination. But in order to count the marks of MPED qualification, the certificate with mark list should have been received by the Director of Education, Union Territory of Lakshadweep, Kavaratti on or before 15.12.2011. Obviously, the applicant could not furnish the same before the stipulated time limit. There is no provision in the employment notice for those awaiting result after writing examination. Hence the respondents have acted strictly in accordance with the employment notice dated 21.11.2011 considering the marks of the applicant in MPED for not having submitted the

copy of mark list in time. There is no merit in the contention of the applicant in O.A. No. 554/2012. Hence, it is liable to be dismissed.

9. As regards O.A. Nos. 406/12, 433/12 and 564/12, the crucial issue is whether the BPED and MPED certificates issued by certain Universities are valid for the purpose of Recruitment Rules for the post of Physical Education Teacher notified on 21.11.2011, even if the BPED/MPED courses are not recognized in terms of NCTE Act and Regulations by Southern Regional Committee – National Council for Teacher Education (SRC-NCTE), Bangalore being the Regulatory and Statutory Body. The letter of NCTE dated 21.01.2011 is reproduced as under :

“It has come to the notice of National Council for Teacher Education (NCTE) that Annamalai University, Annamalai Nagar, Cuddalore, Tamilnadu is offering D.P.Ed (Diploma in Physical Education), B.P.Ed. (Bachelor in Physical Education) and M.P.Ed. (Master in Physical Education) courses.

This is to inform the State Government that Southern Regional Committee, National Council for Teacher Education (SRC-NCTE), Bangalore being the Regulatory and Statutory Body has not granted recognition to the above said courses in terms of NCTE Act and Regulations.

A Public Notice has been issued on 7.1.2011 in leading local News Paper informing general public and students seeking admission to / pursuing the above unrecognized courses of Annamalai University will be doing so at their own risk”.

The above letter is dated 21.01.2011. A public notice in respect of unrecognized courses of Annamalai University was issued on 07.01.2011. There is no contention that the applicants in O.A. Nos. 406/12 and 433/12 and party respondents in O.A. No. 564/12 have joined the unrecognized courses of Annamalai University after January, 2011. The letter or the public notice as above can have prospective effect only, if at all recognition of the

courses by the NCTE is mandatory for the purpose of Recruitment Rules for Physical Education Teacher of Union Territory of Lakshadweep in respect of the employment notice dated 21.11.2011. The competent authorities have to initiate action in terms of NCTE Act in respect of unrecognized courses. It is not fair to jeopardize the prospects for government employment to those who have already undergone the courses ran by the Annamalai University, Calicut, Kannur or for that matter any other University before effective action to implement NCTE Act was taken by the concerned authorities.

10. Now let us examine the qualifications prescribed for Physical Education Teacher in the Recruitment Rules :

“ Essential Qualification : BPE (Bachelor of Physical Education)/Graduate from a recognized university with Bachelor Degree in Physical Education (BPEd) from a recognized university.

Desirable Qualification : Master Degree in Physical Education (MPed) from a recognized university OR Master Degree in Physical Education (MPE) from a recognized university.”

(emphasis supplied)

The degree of BPE, BPEd, MPed should be from a recognized university.. A university is set up by an Act of Parliament or State Legislature. The university derives its recognition from the Act setting it up. Therefore, the recognition of a university is by the Government. What is required is a BPE, BPEd and MPed degree from a University recognized by the State. The degrees conferred by a university are valid for all purposes including employment. In terms of Recruitment Rules what is required is relevant degrees from a recognized university; there is not even a whisper of

recognition of the courses by NCTE in respect of such degrees in the Recruitment Rules. Therefore, we hold that the degrees of BPEd, MPEd etc. in respect of the applicants in O.A. Nos. 406/12, 433/12 and the party respondents in O.A. Nos. 564/12 are valid for the purpose of Recruitment Rules for Physical Education Teacher for which employment notice was issued on 21.11.2011. The respondents are not justified in not reckoning the marks obtained by the candidates in BPEd/MPEd etc. or not including them in the check list at Annexure A-5 in O.A. No. 406/12 as it is not in accordance with the Recruitment Rule. Hence it is illegal. Degree holders from Annamalai University have been appointed by the Union Territory of Lakshadweep as Coaches as late as in the year 2012. Annexure A-6 dated 25.11.1988 in O.A. No. 406/12 is reproduced as under :

"No.F.1-1/88/T.13
Government of India,
Ministry of Human Resource Development,
(Department of Education)
New Delhi, 25th Nov.1988

To
The Registrar,
Annamalai University,
Annamalainagar – 608 002.

Subject : Recognition of Educational Qualifications.

Sir,

I am directed to refer to your letter No.B1/10906/88 dated 9.10.1988 without its enclosures regarding recognition of qualifications for the purpose of employment under the Central Government and to say that the degrees/diplomas awarded by the Universities established by an Act of Parliament or State Legislature, Institutions deemed to be Universities under section 3 of the UGC Act 1956 and institutions of National Importance declared under an Act of Parliament stand automatically recognized for purposes of employment under the Central Government. No formal orders recognizing such degrees/diplomas are necessary to be issued.

Yours faithfully,
Sd/-
(Sd/-) S.C.Anand,
Desk Officer (T)."

The above letter makes it absolutely clear that no formal orders recognizing degrees/diplomas awarded by the Universities established by an Act of Parliament or State Legislature, Institutions deemed to be Universities under section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament are necessary to be issued as they stand automatically recognized for purposes of employment under the Central Government.

11. Having held as above, we would observe that if the Recruitment Rules are not in conformity with the NCTE Act and Regulations, it is for the respondents to revise the Recruitment Rules. It should be done in such a way that those who already obtained degrees based on courses not recognized by the NCTE are not put to disadvantage. If the NCTE Act is not properly implemented, the university students should not be made scapegoats. The applicant in O.A. No. 564/12 has relied on the judgement of Hon'ble High Court of Kerala dated 22.07.2003 in the case of **University of Calicut vs. N.C.T.E.**, 2004 KHC 771. The Hon'ble High Court has held that NCTE Act is applicable throughout India except in J&K. University is bound to keep the standard prescribed by the NCTE. It was also held that "It is for the NCTE to verify whether statutory regulations issued are complied with or not". Inaction or belated or inadequate action on the part of the NCTE in implementing the NCTE Act effectively and in taking appropriate action against Universities and Educational Institutions for violation of provisions of NCTE Act is deprecated. The students who have already undergone courses which are not recognized by the NCTE should not be penalized for the fault of the NCTE. The respondents themselves have sponsored the

study of the applicants in O.A. Nos. 406/12 and 433/12 in the Annamalai University. They have appointed those who took BPED/MPED from Annamalai University as Coaches even in 2012. It will not lie in the mouth of the respondents to say that their marks in BPED/MPED cannot be reckoned. In the circumstances, the said judgement of the Hon'ble High Court of Kerala does not help the applicant in O.A. No. 564/2012.

12. In the result, O.A. Nos. 554/2012 and 564/2012 are dismissed. O.A. Nos. 406/2012 and 433/2012 are allowed. It is declared that BPED/MPED degree awarded by the Annamalai University is a sufficient qualification for being considered for appointment to the post of Physical Education Teacher in accordance with employment notice dated 21.11.2011 issued by the Director of Education, Union Territory of Lakshadweep, Kavaratti. The applicants in O.A. Nos. 406/12 and 433/12 should be allowed to participate in the selection process pursuant to the said employment notice. They should be included in the check list published and they also should be considered for appointment to the post of Physical Education Teacher pursuant to employment notice dated 21.11.2011. Consequential action should be taken by the respondents within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.

(Dated 03rd January, 2013)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.