

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.585/11 & O.A.No.1052/11

.....*Wednesday* this the ..*17th*..... day of July 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

O.A.No.585/11

N.P.Mohammed Kasim,
S/o.Koyakidave.K.K.,
Assistant Education Officer,
District Panchayat, Kavarathy.
(on transfer as Assistant Headmaster, GSSS, Minicoy)
Residing at Neelathupura House, Androth,
Union Territory of Lakshadweep.

...Applicant

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavarathy – 682 555.

2. The Director of Education,
Directorate of Education, Kavarathy – 682 555.

...Respondents

(By Advocate Mr.S.Radhakrishnan)

O.A.No.1052/11

A.T.Abdulla Koya,
S/o.Koya, Assistant Headmaster,
Dr.K.K.M.K.G.S.S.S., Kalpeni Island,
Union Territory of Lakshadweep.
Residing at Fathima Manzil, Kalpeni Island.

...Applicant

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavarathy – 682 555.

2. The Director of Education,
Directorate of Education, Kavarathy – 682 555.

...Respondents

(By Advocate Mr.S.Radhakrishnan)

These applications having been heard on 5th July 2013 this Tribunal on 17th July 2013 delivered the following :-

ORDER

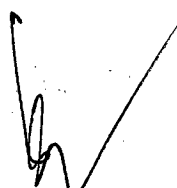
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

As the aforesaid O.As have identical legal issue, these two are dealt with by this common order.

2. For the purpose of reference O.A.585/11 has been taken up as the leading case.

3. The applicants are Post Graduate having been inducted into the services of the respondents as Trained Graduate Teachers well before 1996. They were promoted on adhoc basis vide order dated 24th May 2007 at Annexure A-1. The applicants had been continuing to hold the said post on adhoc basis since then. Later on, by order at Annexure A-2 the applicants in O.A.585/11 stood transferred to Minicoy. By Annexure A-11 order dated 8.6.2010 both the applicants in the said O.As stood promoted as Post Graduate Teachers on regular basis. However, the applicants did not accept the promotion and requested the Department to keep the said promotion order in abeyance. Both of them requested for regularization in the post that they have been holding. However, the regularization has not taken place so far. The applicants have moved these O.As challenging Annexure A-3 and Annexure A-11 orders and seeking the following reliefs :-

1. To declare that the applicant has been deemed to have been appointed on regular basis in the cadre of Assistant Education Officer (Academic)/Assistant Headmaster, GHS/Headmaster, Senior Basic School on a pay scale of Rs.6500-200-10500/- with effect from 24.5.2007 with all consequential benefits.



2. To direct the respondents to enforce Annexure A-2 proceeding dated enabling the applicant to continue in the post of Assistant Headmaster, GSSS Minicoy or equivalent post of Headmaster/Assistant Education Officer.

3. To call for the records leading to Annexure A-3 and set aside the same in so far as it reverts the applicant to the post of Trained Graduate Teacher Malayalam and promoted and transferred as Post Graduate Teacher, Dr.K.K.M.K.GSSS Kalpeni.

4. To call for the records leading to Annexure A-11 and set aside the same in so far it reverts the applicant from the post of AEO to the post of Trained Graduate Teacher (Malayalam) and promoted as Post Graduate Teacher and posted as Dr.K.K.M.K.GSSS Kalpeni.

5. To declare that the applicant is deemed to be promoted as Post Graduate Teacher (Malayalam) with effect from 2003, the date of acquisition of Post Graduate qualification.

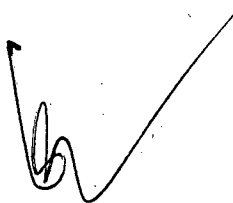
6. Any other appropriate order or direction as deem fit in the interest of justice.

4. As a matter of fact, earlier the Recruitment Rules (Annexure A-4) to the post of Assistant Education Officer (Academic)/Assistant Headmaster High School/Headmaster Government Senior Basic School notified by F.No.18/36/89-Edn. dated 9.12.1994 was amended by the Lakshadweep Administration vide F.No.13/30/89-Edn. dated 25.1.1996 (Annexure A-5) adding Post Graduation qualification for promotion to the post of Assistant Headmaster and other analogous post. This was challenged before the Tribunal in O.A.585/00 which was disposed of by order dated 16.7.2001 upholding the amendment order issued by the Administrator, dated 25.1.1996. Annexure R-1(a) refers. The Education Department again amended the aforesaid Recruitment Rules dated 25.1.1996 by notification dated 10.10.2006 giving the provision for promotion to the Trained Graduate Teachers who were in service prior to 25.1.1996 (without Post Graduation) with 10 years of regular service/Trained Graduate Teachers with Post Graduate qualification and having 8 years of regular service.

Annexure A-7 refers. The applicants in O.A.585/11 challenged the same in O.A.269/07 which was allowed vide order dated 26.6.2008 (Annexure A-8). According to the said order the amendment dated 10.10.2006 amending the column 10 of the Recruitment Rules was quashed and set aside and the respondents were directed to effect promotions on the basis of column 12 of the Rules as amended by notification dated 25.1.1996. This order of the Tribunal was challenged by the respondents as well as other private petitioners (Trained Graduate Teachers without Post Graduate qualification and who received promotion to the post of Assistant Headmaster by order dated 31.10.2008). A stay order was passed by the Hon'ble High Court in these two Writ Petitions No.31869/08 and Writ Petition No.24218/08. On account of the stay granted, the applicants' case for regularization was not considered.

5. When the case came up for hearing, counsel for the respondents submitted that the aforesaid 2 Writ Petitions 31869/08 & 24218/08 were considered by the Hon'ble High Court which allowed the Writ Petitions setting aside the order dated 26.6.2008 in O.A.269/07. The operative portion of the said judgment reads as under :-

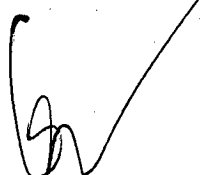
"17. Having regard to the factual circumstances involved in the case, it could be seen that the qualification for a higher post as prescribed in the Rules was 5 years in the teachers' training grade. It is by virtue of a circular issued by the Government of India that the Lakshadweep Administration adopted the qualification of Post Graduate degree for the promotion post from teacher's grade. It is taking into consideration the local requirement and the experience of the teachers in a particular grade that the impugned amendment came to be issued. It could be seen that those teachers having 10 years experience and appointed prior to 25/01/1996 were treated differently as there was no insistence that they should have obtained Post Graduate degree for the purpose of promotion, whereas in respect of persons who are appointed after 25/01/1996, for getting promotion Post Graduate degree was made mandatory.



18. Going by the law laid down by the Supreme Court in *V.K.Sood (Supra)* and *R.Iyyaswami (Supra)*, we do not think that this Court will be justified in interfering with the rule making process. The contention that the classification made is discriminatory cannot be accepted on account of the fact that in so far as persons in the feeder category appointed prior to 25/01/1996 are concerned, two years additional experience is prescribed for them to be promoted to the next higher post whereas in respect of post graduate teachers appointed after 25/01/1996, the experience required is only 8 years. Therefore to a certain extent, it could be seen that the respondent had considered the relevancy of a post graduate degree and the experience gained by teachers who are appointed prior to 25/1/1996 and had formulated a procedure whereby those teachers who do not have a chance to obtain a post graduate degree are not completely ruled out from being promoted. Their right to get appointment to a promotion post was also considered and they were to acquire more experience than the other teachers who were appointed after 25/01/1996. Going by the said standard adopted by the 1st respondent, we are of the view that there is no discrimination to persons who have become teachers after 25/1/1996.

19. In that view of the matter we are of the opinion that the order passed by the Tribunal is liable to be set aside. In the result, these writ petitions are allowed and the order in O.A.No.269 of 2007 of the Central Administrative Tribunal, Ernakulam is quashed."


6. Counsel for the applicant submitted that notwithstanding the decision of the High Court which has uphold the amendment already made by the Administration in 2006, insofar as the applicants position as Assistant Education Officer is concerned, the same can be regularized with retrospective effect from the initial date of their adhoc promotion since two vacancies subsists in the line of Assistant Education Officer. Such regularization is permissible in accordance with the paragraph 47 in the case of **Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715** of the Constitution Bench of the Apex Court.



7. Counsel for the respondents, on the other hand, submitted that the applicant had two avenues for promotion. One is the direct line from Trained Graduate Teachers to Post Graduate Teachers and the other is as Assistant Headmaster/Assistant Education Officer etc. They were granted promotion on regular basis as Post Graduate Teacher which they declined on the ground that their claim is for regularization of Assistant Education Officer. This has to be done only in accordance with rules vide Annexure A-4. Counsel further submitted that insofar as regularization is concerned, the same shall be only when regular vacancy is existed. The applicants are not entitled to get the reliefs as they were not appointed against any regular vacancy basis.

8. Counsel for the applicant in its oral rejoinder submitted that the fact that the applicants had been retained as Assistant Education Officer for years together should mean that vacancies were available and as such they should be regularized from the respective dates of initial adhoc promotion.

9. Arguments were heard and documents perused. There are two streams available to the Trained Graduate Teachers for their progression. The main stream is promotion from TGT to PGT and the other stream is from TGT to Assistant Headmaster/Headmaster/Assistant Education Officer. Initially the applicants were promoted on adhoc basis as Assistant Education Officer and this order was passed by the Administrator without any reference to recommendations of any DPC. Again the promotion was stamped as adhoc only. In contradiction to the same, the impugned order clearly reflected that the promotion of the applicants as PGT were on the



recommendations of the DPC. The applicants have themselves chosen not to avail of that promotion. They now insist that they should be regularized as Assistant Educational Officer by being posted against the existing two vacancies and since they have been continuously officiating though on adhoc basis as Assistant Educational Officer, their adhoc period should also be regularized from the initial date of their promotion as Assistant Educational Officer. It is in regard to such regularization of the adhoc period that the counsel has referred to the Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra's case supra. Non availing of promotion as PGT is the choice of the applicants. Neither the Tribunal nor the Department can insist to take over that post. Promotion on regular basis to the post of Assistant Educational Officer depends upon availability of vacancies. Here again, promotion has to be considered not only of the applicants but also other eligible similarly situated persons. From the record it is seen that the earlier promotion on adhoc basis was not by way of conducting a DPC with a zone of consideration etc. If against the existing or future vacancy the applicants are considered for promotion as regular Assistant Educational Officer and if the same is in continuation of their adhoc promotion, the respondents should take into account the decisions of the Apex Court in the following cases and consider the case of the applicants for regularization of the adhoc period since the applicants have been functioning as Assistant Educational Officer for a substantial period of more than six years.

(a) **Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715** the Apex Court has held as under :-

"47. To sum up, we hold that:
(A) X X X X X X X X

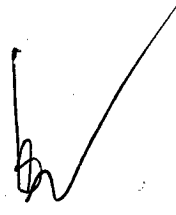
(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

(b) Rudrakumar Sen Vs. Union of India (2000) 8 SCC 25
the Apex Court has held as under :-

"16. The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the Rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to be "fortuitous". In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stopgap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

17. In Oxford Dictionary, the word "ad hoc" means for a particular purpose; specially. In the same dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyar's Law Lexicon (2nd Edn.) the word "ad hoc" is described as: "For particular purpose. Made, established, acting or concerned with a particular (sic) and or purpose." The meaning of word "fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God".



19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

10. In view of the above, these applications are disposed of with a direction to the respondents to ascertain whether there are vacancies on regular basis to the post of Assistant Educational Officer and if so, whether the applicants fall within the consideration zone. If on selection along with other eligible candidates the applicants are found to be eligible and suitable for promotion as Assistant Educational Officer that promotion be granted in the said post and regularization of their adhoc services be also considered as per the decisions of the Apex Court in the aforesaid two cases. Since the promotion is based on the availability of the vacancies about which the Tribunal is not clearly informed, no time limit is fixed for compliance of the order of this Tribunal. No costs.

(Dated this the 17th day of July 2013)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

asp



Dr. K.B.S. RAJAN
JUDICIAL MEMBER