

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 75 OF 2008

.....*MONDAY*....., this the 27th day of *JULY*, 2009.

CORAM:

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

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

1. Shri. Koya P.,
Primary School Teacher,
Government Junior Basic School,
Minicoy.

2. Muhammed Koya K.,
Primary School Teacher,
Senior Basic School,
Agathi

... Applicants

(By Advocate Mr. S. Krishnamoorthy)

versus

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.


2. The Director,
Department of Education,
Union Territory of Lakshadweep
Administration, Kavaratti.

3. The Secretary,
Department of Education,
Administration of Union Territory
of Lakshadweep, Kavaratti.

4. Recruitment Rule Amendment Committee
rep. by the Chairman, Administrative of
Union Territory of Lakshadweep,
Kavaratti.

5. C.P. Fathahnddin, Head Master,
Government Junior Basic School,
Amini.

6. Smt. C.V. Azhari Beegam,
Primary School Teacher (Deemed H.M.),
Government Girls High School,
Kavaratti, Lakshadweep.



7. K. Mohammed Hassim, Head Master,
Junior Basic School, Kadmat,
Lakshadweep.

... Respondents

(By Advocate Mr. S. Radhakrishnan (R1-4)
Advocate Mr. K.I. Mayumkutty Mather (R6))

The application having been heard on 22.07.2009, the Tribunal on 22-07-09 delivered the following:

ORDER

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

The two applicants in this O.A. were appointed as Primary School Teachers way back in 1987-89 and according to them, they have not seen a single promotion in their career so far. As per the Seniority List vide Annexure A2, the 1st applicant stands at Sl. No. 157 and the 2nd at 323. Earlier the Recruitment Rules provided for promotion to the post of Head Master from among the Primary School Teachers without insisting on any higher qualifications. However, with effect from 04.09.2002 by virtue of revised Recruitment Rules, the post of Head Master is filled in by two modes as hereunder :-

1. 50% of the vacancies by promotion from the grade of Primary School Teacher.
2. 50% of the vacancies by promotion from the grade of Primary School Teachers having B.A. B.Ed / B.Sc. B.Ed / B.Sc. Ed.

2. According to the applicants, if the above mode of recruitment is followed, junior most Primary School Teachers having B.Ed degree would steal a march over Senior Primary School Teachers without the said B.Ed degree. Thus possibly individuals at Sl. No.484, 485, 486, 490, 491, etc., would be getting their promotion first under the 50% quota and the other Primary School Teacher like the applicants would have to stagnate. The

applicants have penned a representation vide Annexure A5 and earlier they filed O.A. No. 413 of 2007 which is disposed of by Annexure A6 order dated 27.06.2007 giving a direction to the respondents to dispose of the representation preferred by the applicants. The respondents have vide Annexure A9 disposed of the representation inter alia stating as under :-

"Whereas, in response to the summons for personal hearing, served on the applicants vide letter F.No. 36/19/2007-Edn. dated 01.12.2007, the applicants themselves appeared before the undersigned at 12.30 hours on 15/12/2007, and after carefully considering the presentation of facts by the applicants in the person and the averments made in the O.A. No.413/2007 and the points raised in the representation dated 08.04.2007 and the written brief submitted by the applicants as well as the Department of Education on the issue, the undersigned is pleased to order that the process to fill up the vacant post of Headmaster of Junior Basic Schools will be taken up as per provision contained in the existing Recruitment Rules since the legal position is that, posts are to be filled as per eligibility conditions prescribed in the rules in force at the time of occurrence of the vacancies and that possibility of effecting any amendment to the existing Recruitment Rules to the posts of Headmaster of Junior Basic Schools under this Administration shall be referred to the Recruitment Rules Amendment Committee of this Administration for detailed examination and submission of recommendation on a manner. The representation dated 08.04.2007 of the applicants is disposed of accordingly."

3. In addition to the above, the respondents have issued Annexure A8 Office order dated 15.01.2008 promoting 05 Primary School Teachers as Headmasters. The said order has also been challenged along with the Annexure A9 in this O.A. The prayer of the applicants in this O.A. is as under :-

" (a) To quash Annexure A9, order issued by the 1st respondent;

(b) To quash Annexure A8, Promotion order issued by the 2nd respondent;

(c) To quash clause No.12(2) of Schedule I of Annexure A3 to the extent it prescribes that 50% of the vacancy of Headmaster shall be filled by promotion from among the Primary School Teachers having B.Ed. Degree;

(d) To direct the respondents 1 to 3, to promote the Applicants in the existing vacancy of Headmasters in Junior Basic School, instead of their Juniors like the 5 to 7 respondents;

(e) To direct the respondents 1 to 3 to promote the Applicants in the existing vacancy of Headmasters in Junior Basic Schools under the 1st respondent, cancelling the promotion order in Annexure A8 Order."

4. Respondents have contested the O.A. According to them, vide Annexure R1(a), the Recruitment Rules for the post of Headmaster etc., were amended and number of Primary School Teachers were promoted as Headmasters. Subsequently, the 1994 Rule was amended in 1996 incorporating Post Graduate qualification for the post of Headmaster, Senior Basic School / Assistant Headmaster, High School / Assistant Education Officer (Academic) which put an end for promotion for trained Graduate Teacher with B.Ed. The post of trained Graduate Teacher carries pay scale of Rs.5500-9000 vide Annexure R1(a). Though promotions could not be made, provisions have been made for placing the Primary School Teachers at higher pay scale after completion of certain number of years of service as could be seen vide Annexure R1(d). As regards revised Recruitment Rules, the prescription of qualification is justifiable, correct and not arbitrary.

5. One of the private respondents (R6) has filed her counter.
6. With the above, pleadings having been completed the case was listed for final hearing when counsel for the applicant and official respondents advanced their arguments.
7. Counsel for the applicant contended that by the revised recruitment Rules, the senior Primary School Teachers who are numbering hundreds have to wait in queue for a substantial number of years to get their promotion under the 50% promotion quota, whereas, B.Ed teachers who have joined a few years ago are getting promotion under their 50% promotion quota. This is arbitrary and discriminatory. It has also been argued that the Guidelines provide for certain extent of experience for promotion, whereas the same has been totally ignored while framing the recruitment rules. He has also submitted that in fact even the past vacancies (which arose anterior to the date of publication of the revised recruitment Rules) are being filled up under the provisions of the revised rules, which is thoroughly illegal.
8. Counsel for the respondents at the very outset clarified that no vacancy that existed prior to the revision of the Recruitment Rules had been filed on the basis of the revised Recruitment rules. submitted that there is absolutely no arbitrariness in revising the rules and again, the following cases would go to show that judicial review is not permissible in respect of prescription of qualifications for recruitment or promotion, which is the sole prerogative of the executive: -

*(a) V.K. Sood v. Secy., Civil Aviation, 1993
Supp (3) SCC 9, wherein it has been held,
"Suffice to state that it is settled law*

that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission."

(b) *State of M.P. v. Dharam Bir*, (1998) 6 SCC 165, wherein the observation of the Apex Court is "32. "Experience" gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government."

(c) *O.P. Lather vs Satish Kumar Kakkar* (2001) 3 SCC 110, wherein, the Head note states, "qualification fixed by competent authority, held, not subject to judicial review".

9. Arguments were heard and documents perused. We take judicial note of the submission made by the counsel for the respondents that no vacancy that arose prior to introduction of the revised recruitment rules had been filled up on the basis of the revised recruitment rules. Such vacancies shall have to be filled up only on the basis of the Rules that existed at the time of occurrence of vacancies. Decision of the Apex Court in the case of *Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284, wherein the Apex Court has clearly held, "We have not the slightest doubt that the posts

which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules." refers. The contention of the counsel for the applicant is that there cannot be a class within a class i.e. within promotion quota there should not be divisions. If the ratio of direct recruitment and promotion is provided for, the same is understandable but providing 50% quota for teachers without B.Ed Qualifications and 50% for teachers with B.Ed qualifications, make the non-B.Ed teachers to wait eternally, while the recently joined B.Ed teachers get promotion in no time. First, it is to be seen whether such prescription of ratio within promotion quota is arbitrary or discriminatory. In the case of *Nageshwar Prasad v. Union of India*, 1995 Supp (4) SCC 718, the facts are that the amended Rules provided for promotion to the post of Assistant Engineer on 50:50 basis from amongst those holding a degree in Engineering with three years' experience and those possessing a diploma with 7 years' experience of service in the lower grade. The rules further provide that if the regular number of suitable eligible officers are not available from a particular category, i.e. degree-holders or diploma-holders, for filling in the vacancies allocated to be filled by promotion from the said category the appointing authority may fill in all or any of the vacancies by promotion of suitable eligible officers from the other category, subject to the condition that the overall promotion of vacancies to be filled from among the officers of either category shall be maintained in accordance with the quota prescribed in the preceding sub-rule. The diploma-holders are recruited in big numbers in the group C category below Assistant Engineers and since the sanctioned posts in the immediately next higher category of Assistant Engineers are limited in number, a large number of them stagnate and do not get even a single promotion. Their chances of promotion are further reduced because of the quota rule limiting their upward movement to 50 per cent only.

That was the grievance against the quota rule with which they approached the Central Administrative Tribunal, Hyderabad, by way of an application, Original Application No. 262 of 1986. The challenge was both to the prescription of different periods of experience for degree-holders and diploma-holders as well as to the prescription of the quota of 50 per cent for degree-holders and 50 per cent for diploma-holders. Dealing with this challenge the Tribunal held that the prescription of quota as 50% prescribed has to be held invalid and the prescription of different cadre of service for graduates held valid. The Apex Court has held in this matter as under:-

2. The learned counsel for the appellants contended before us that the question is squarely covered by three decisions of this Court reported in (1) Roop Chand Adlakha v. DDA, (2) Govt. of A.P. v. P. Dilip Kumar and (3) P. Murugesan v. State of T.N.. However, the learned counsel for the diploma-holders placed reliance on the decision of this Court in Mohd. Shujat Ali v. Union of India. He particularly relied on the observations made in that case. We have examined these decisions and we may also state that the decision in Shujat Ali case was considered in all the three cases with particular reference to the observations on which the learned counsel for the appellants has placed reliance in the first and the last cases. We are, therefore, of the opinion that the decisions on which the learned counsel for the appellants placed reliance cannot be distinguished on the observations made in Shujat Ali case to which our attention was drawn by the learned counsel for the diploma-holders as those very observations were explained in para 24 of Roop Chand case and para 16 of Murugesan case. We are also not impressed by the submission that 50 per cent quota rule is violative of Articles 14/16 of the Constitution. The prescription of the quota rule is obviously to ensure that in the immediate promotion cadre there is a fair mix of both degree-holders and




diploma-holders because the vertical movement from that stage and upwards in the hierarchy is restricted to degree-holders and if they are not available in sufficient number in the feeding channel the said channel would be virtually dry and sufficient number of degree-holders would not be available for promotion to the next higher cadre. The efficacy of diploma-holders has been recognised up to a particular stage in the hierarchy and thereafter it is realised that for manning higher posts a degree in Engineering is a must. We, therefore, do not see how prescription of the 50 per cent quota is in any manner arbitrary.

3. We, therefore, agree with the submission of the learned counsel for the appellants that the impugned decision of the Tribunal striking down the 50 per cent quota rule is clearly inconsistent with the ratio of the three decisions of this Court on which counsel for the appellants placed reliance. We, therefore, allow these appeals and set aside the order of the Tribunal striking down the quota rule. We may also state that at the time of admission of these appeals we had indicated that pending disposal there will be stay of reversion and all promotions will abide by the result of these appeals. It would be for the authorities to give effect to the said interim order of this Court consistent with this decision.

4. Before we part we must, however, observe that if the contention of the learned counsel for the diploma-holders that there is large-scale stagnation and the majority of the diploma-holders have to retire without securing a single promotion in their entire service career is correct, the authorities concerned should look into the matter and redress their grievance in this behalf.

10. The above decision holds in all the four squares to the fact of this case. As such, we have no hesitation to hold that the recruitment rules cannot be held to be arbitrary. The O.A. has, therefore, necessarily to be

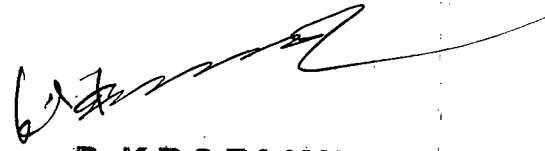


rejected. At the same time, as observed in para 4 of the above decision, if the applicants stagnate without any promotion for a substantial period, the respondents may look into the matter and redress the grievance of the applicants and others similarly situated. In addition, as committed by the respondents, vacancies upto 31.08.2001 shall be filled up under the unamended provisions of Recruitment Rules only. No cost.

Dated, the 27th JULY, 2009.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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