

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 79/2006

TUESDAY this the 20th day of March, 2007

CORAM

**Hon'ble Mrs. Sathi Nair, Vice Chairman
Hon'ble Mr. George Paracken, Judicial Member**

- 1 P.Kunhikoya, aged 59 years
S/o Attakoya, Plant Protection Officer,
Androth Island, residing at Androth.
UT of Lakshadweep.
- 2 M.C.Muthukoya, aged 52 years
S/o A.Koyamma,
Agriculture Officer,
Department of Agriculture,
Kadamath Island, residing at Kadamath.
- 3 T.Hameed, aged 58
S/o P.Atta Koya,
Agriculture Officer, Amini Island,
residing at Amini.
- 4 K.I.Abdulla Koya
aged 51 years, S/o late E.P.Mullakoya,
Soil Analyst,
Department of Agriculture,
Kadamath Island, residing at Kadamath.

.Applicants

(By Advocate Mr. P.V.Mohanam)

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- 1 Union of India, represented by its Secretary,
Department of Agriculture, New Delhi.
- 2 The Administrator,
UT of Lakshadweep, Kavaratti.
- 3 The Director of Agriculture,
Directorate of Agriculture,

UT of Lakshadweep, Kavaratti.

- 4 Union Public Service Commission,
represented by its Secretary
Shahjahan Road, New Delhi.
- 5 Dr.C.P.Hazkoya,
Training Associate,
Krishi Vigyan Kendra, ICAR
Kilthan UT of Lakshadweep,
now appointed as Coconut development Officer
Department of Agriculture, Kavaratti)
- 6 The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.Respondents

(By Advocate Mr.Shafik MA (for R.2&3)

Advocate Mr. P.M.Saji,ACGSC (R.1&4) (not present)

Advocate Mr.S.Nirmal Kumar for R.5 (not present)

Advocate Mr. P.Jacob Varghese for R.6)

The application having been finally heard on 5.3.2007, the Tribunal on 20.3.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

By this joint application filed by four officers belonging to the Agriculture Department of Union Territory of Lakshadweep have challenged the Annexure A16 letter dated 7.2.2003 of the Respondent No.1 ie., Government of India, Ministry of Agriculture, Department of Agriculture and Cooperation, New Delhi, by which they have invited applications for the post of Coconut Development Officer in the Administration of the Union Territory of Lakshadweep on promotion/transfer on deputation (including short term contract basis). They have also called in question the appointment of the 5th respondent Dr.C.P.Hamzakoya as the Coconut Development Officer

in the Department of Agriculture, Kavaratti on transfer on deputation in the scale of Rs. 8000-13500 made vide Annexure.A.23 Office Order dated 7.2.2006.

2 The applicants, the present incumbent of the post of Director of Agriculture, UT of Lakshadweep (Respondent No.3) as well as the Respondent No.5 belong to the Department of Agriculture of the Union Territory of Lakshadweep Administration. The recruitment to the post of Coconut Development Officer is governed by the Union Territory of Lakshadweep (Coconut Development Officer) Recruitment Rules, 1991 (Annexure.A2). According to the said Rule the scale of pay of the post is 2200-75-2800-EB-100-4000. The method of recruitment is "by promotion/transfer on deputation (including short term contract) failing which by direct recruitment" and following are the grade from which promotion/deputation/transfer is to be made in the case of recruitment is by promotion/deputation/transfer:

"Promotion/transfer on deputation (including short-term contract).

Officers from the Central/State Governments/ Union Territories/Agricultural Universities or Research Institutions/Councils:-

(a) i. Holding analogous post or
(ii) three years' regular service in posts in the scale of pay of Rs.2000-3500 or
(iii) with 5 years regular service in posts in the scale of pay of Rs. 1640-2900 or equivalent, and

b. Possessing the educational qualifications and experience laid down for direct recruits in Col.8.

2 The Departmental Plant Protection officer with 3

years' regular service in the grade will also be considered and in case he is selected for appointed to the post the same shall be deemed to have been filled by promotion.

(The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed 3 years."

There is also a DPC consisting of the following members:

"Group A Departmental Promotion Committee:

(for considering confirmation)

1 Additional Secretary in charge of the Horticulture Division – Chairman

2 Joint Secretary(Administration and Coordination) - Member

3 Horticulture Commissioner or his nominee of appropriate status – Member

4 Administrator, Lakshadweep Administration or his nominee of appropriate status – Member."

3 Though no formal amendment regarding the revision in pay scales has been carried out in the Recruitment Rules, the post of Coconut Development Officer now carries the revised pay scale of Rs. 8000-13500 and the revised scales of pay of Rs. 2000-3500 and Rs. 1640-2900 are Rs. 6500-10500 and Rs. 5500-9000 respectively.

4 The first applicant has been holding the post of Plant Protection Officer in the scale of pay of Rs. 6500-10500 on regular basis from 1986. He possessed the qualification of degree in Agriculture with a post graduate diploma in Plant Protection and

under the prescribed method of recruitment for promotion and he is eligible to be considered for the post of Coconut Development Officer. The second applicant is Agriculture Officer from the year 1983 and he is in the scale of pay of Rs. 5500-9000 and under the relevant Recruitment Rules, he is eligible for promotion to the post of Plant Protection Officer, the next higher grade in which the applicant No.1 was working. The third applicant is also an Agriculture Officer from 1984 in the scale of Rs. 5500-9000 eligible to be promoted as Plant Protection Officer. The 4th applicant has been working as Soil Analyst who is eligible to be promoted as Agriculture Officer. In case the applicant No.1 was promoted as Coconut Development Officer, there would have been chain promotion and the applicants 2 to 4 would have been the beneficiaries.

5 According to the applicant, the 5th respondent Dr. C.P.Hamza Koya commenced his service in the category of Soil Conservation Assistant on 31.3.1983 in the scale of pay of Rs. 4500-7000. His entitlement for promotion is as Agriculture Officer in the scale of Rs. 5500-9000 and the grade in which he was working was not eligible to be considered for recruitment to the post of Coconut Development Officer. While working as Soil Conservation Assistant, vide Annexure.A3 order dated 1.1.1999, he was appointed as Training Associate (Plant Protection) Krishi Vigyan Kendra (KVK for short), Lakshadweep, Kiltan in the pay scale of Rs.8000-275-13500.

The said order reads as under:



"Sub: Krishi Vigyan Kendra Lakshadweep -
Appointment of Training Associate (Plant Protection) -
orders issued.

Ref: 1 Circular F.No.1/1/98-KVK dated 25.9.98
2 Proceedings of the Selection Committee dated
21.11.99.

Administrator, Union Territory of Lakshadweep is pleased to appoint Dr. C.P.Hamzakoya, Soil Conservation Assistant, Agricultural demonstration Unit, Kavaratti as Training Associate (Plant Protection), Krishi Vigyan Kendra, Lakshadweep, Kiltan in the pay scale of Rs. 8000-275-3500 as per the conditions prescribed in the circular vide reference 1st cited and as recommended by the Selection Committee vide proceedings 2nd cited.

The appointment will be initially for a period of one year with effect from the date of his joining the post and further continuation would be allowed based on the satisfactory performance of the incumbent in the post.

The Director of Agriculture is directed to relieve the individual with direction to join the new post forthwith.

Sd/- Rajeev Talwar
Administrator."

They have also submitted that the appointment of Shri Hamza Koya as Training Associate in KVK was on deputation basis and the respondent Administration allowed him to continue indefinitely on that post and he had completed 6 years service when the normal period of deputation is not more than three years. According to the Annexure A9 letter dated 29.8.2003 from Administration of Union Territory of Lakshadweep also, KVK of Kiltan was established by the ICAR under the Administrative Control of the Union Territory of Lakshadweep. It has been further stated in the said letter that the staff to be recruited under the KVK should be on the strength and

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administrative control of the Lakshadweep Administration.

6 The former incumbent of the post of Coconut Development Officer, Shri Mullakoya was holding the post of Agriculture Officer when he was appointed to that post on deputation basis. During the period of said deputation itself, he was appointed as Training Organizer again on deputation in the scale of Rs. 12000-16500 in KVK (ICAR) on 8.1.99 (Annexure.A8). Since then, the post of Coconut Development Officer was lying vacant and the Assistant Director, Economic Survey was given the additional charge of the same. The applicants submitted that the respondents 1&2 ought to have filled up the post at the relevant time by promoting the then officials in the feeder cadre, failing which by other method prescribed in the recruitment rules. According to them if the method of promotion was resorted to in 1999 or soon after, the first applicant would have been considered for promotion as Coconut Development Officer as he had already been working as Plant Protection Officer w.e.f. 1986 and applicants 2&3 also would have been promoted to the higher posts in the resultant vacancies.

7 In response to the Annexure.A16 letter dated 7.2.2003 inviting applications for appointment to the post of Coconut Development Officer, the first applicant and the 5th respondent have applied and they were also considered along with another candidates Shri K.I.Akbar. After short listing the applicants, Respondent No. 1 vide Annexure.A8 letter dated 3.6.05 informed the applicant and the

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5th respondent that the UPSC have decided to make selection to the post of Coconut Development Officer by holding personal talks with them. The other aspirant for the post, Shri K.I.Akbar, submitted a representation to the first respondent contending that the 5th respondent and those who were on deputation for more than 5 years were not eligible to be considered for appointment again on deputation to the post of Coconut Development Officer. Thereafter, the first respondent directed the second respondent to forward the details of Respondent No.5 and others. Vide Annexure.A19 letter dated 23.3.2005, the second respondent informed the first respondent as under:

"On further scrutiny it is clarified that though the appointment order dated 1.1.99 does not mention about the word **deputation**, for the purpose of promotion to Coconut Development officer, Shri C.P.Mullakoya and C.P.Hamzakoya **shall be considered to be on deputation** as Krishi Vigyan Kendra (KVK) is an autonomous body under th ICAR. Therefore, the sentence "**they are not working on deputation basis**" in my earlier reference may be treated as Null and Void."

Vide Annexure.A20 letter dated 1.7.2005 the UPSC informed the Respondent No.2 that it was not possible for them to consider the application of Shri K.I.Akbar at the belated stage and therefore, he was not called for personal talk. Shri Akbar filed OA 554/05 challenging the proposed selection and appointment of the 5th respondent and seeking a direction to consider his candidature. The Tribunal vide order dated 1.12.2005 in OA 544/04 disposed of the same holding as under:

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"As to the point whether the ineligibility of the respondents advances the case of the applicant, it was already noted that the applicant has gone to great length to prove the ineligibility of the respondents. In fact, it is a pointless exercise. It is gathered from the respondents that a total of six applications from qualified hands were forwarded. R4 is just one of them. It is true that, this Tribunal had granted an interim relief that, if the official Respondents propose to appoint R.4, the same will be kept in abeyance. Nothing is officially known about the final decision on selection. As mentioned above, the Rules envisage the mode of recruitment as promotion/transfer on deputation failing which by direct recruitment. It is possible that the selection authorities could find the R.4 or any one among the other five candidates as the suitable candidate. It is equally possible that none of them is found suitable and direct recruitment could be resorted to. The long and short of it is that the fact of R4 being ineligible does not make the applicant eligible for consideration for promotion much less eligible for promotion because he does not fulfill the eligibility criterion of pay status to start with. For these reasons, we find that the ineligibility of party respondent is irrelevant to adjudicate the present OA."

8 The applicants herein have challenged the appointment of the 5th respondent mainly on the ground that he was not qualified to be considered for appointment on deputation to the post of Coconut Development Officer as per its Recruitment Rules. According to them the Respondent No.5 was only a Soil Conservation Assistant in the scale/grade of Rs. 4500-7000 (revised) in his parent department and according to the Recruitment Rules, his grade did not even come within the feeder categories/grades eligible for consideration. He continued to retain his lien in the parent department in the scale of Rs. 4500-7000 during the entire period of his deputation in KVK, Kiltan as Training Associate (Plant Protection) and he should have been deemed to be a member only in the category/grade of Soil

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Conservation Assistant and not in the analogous scale of Rs. 8000-13500. Since he was on deputation to KVK, Kiltan for over 6 years as against the normal period of deputation for 3 years, he should have been reverted to his substantive post of Soil Conservation Assistant as the Recruitment Rule to the post of Coconut Development Officer itself have stipulated that "period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed 3 years." They have also submitted that the 5th respondent could at best be considered as qualified for appointment as Coconut Development Officer if the said post was notified for appointment by direct recruitment and in any case he is not qualified to be appointed by deputation/transfer as he had already completed more than six years on deputation without any break in the post of Training Associate (Plant Protection).

9 The 1st respondent, ie., the Union of India by its Secretary, Department of Agriculture has stated in its reply that it is not a necessary party to the OA. However, it has submitted that out of the nine applications received for the post of Coconut Development Officer, only three candidates, namely, P.Kunhikoya (the first applicant), C.P.Hamza Koya (Respondent No.5) and one C.P.Mullakoya were found to be eligible for consideration and the UPSC recommended the name of the 5th respondent to the

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Government and accordingly he was appointed to that post.

10 A common reply was filed on behalf of Respondents 2&3. It has been stated that the first applicant was called for personal talks by the UPSC along with four others in the year 1995 but was not selected. Again during the year 2005, he was called for personal talk along with Dr.C.P.Hamzakoya and Shri C.P.Mullakoya. This time also his name was not recommended by the UPSC. He has since been retired from service on 28.2.2006. The 2nd, 3rd and 4th applicants are not eligible for the post of Coconut Development Officer and they will be considered for promotion to the concerned posts, as and when they become eligible and in accordance with their seniority. The respondents have also stated that the staff working in Krishi Vigyan Kendra (KVK) are on the rolls of the Lakshadweep Administration and the service rules of the administration are applicable to them. The appointments to the various posts are made only in accordance with the Recruitment Rules and no favouritism has been shown by the administration. According to Annexure.R.2 D.O letter dated 10.2.1990 from Dr.P.Dass to Shri Rajeev Talwar, Administrator, Lakshadweep, the KVK would function on a net working mode instead of creating infrastructural facilities in one place. The thrust of the KVK programme is proposed to be on Horticulture, Fisheries, Soil Conservation and Freshwater harvesting Conservation of rain water. The staffing pattern of the KVK, Kiltan is as follows:

| S.No. | Post | Payscale | Nos. |
|-------|--|---------------|-------------|
| 1 | Training Organizer in the discipline of horticulture with specialization in Production technology of coconut/post Harvest fish processing technology. | Rs.3700-5700 | One |
| ii | Training Associates (one of the subject areas which will not be filled up by the post at Sl.No.(i) one Plant Protection Specialist (Entomology/Pathology) with experience of working in horticulture crop. One for post-harvest technology with particular reference to coconut, one in fish product development and one in soil and water conservation including rain water management. | Rs.2200-4000 | Five |
| iii | Training Assistants (in the pay scale of instead of which two posts in T.III-3 level will be filled up for field work. | Rs. 1400-2300 | Two |
| iv | Office Superintendent -cum-Operator | Rs. 1640-2900 | One |
| v | Junior Steno-cum-Computer Operator | Rs. 1200-2040 | One |
| vi | Mechanic (for training on management country crafts, preservation of wooden hulls and repair and out-board engine | Rs. 950-1500 | One |
| vii | Supporting Staff | Rs. 750-940 | One |
| | Total | | 12 (Twelve) |

The contribution of ICAR will be towards pay and dearness allowances, cost of some infrastructural facilities and demonstration units as per the specific need of the islands, funds for TA/DA for inter-island movement of the staff for taking up various activities of the KVK and contingencies for taking up the activities of KVK. As per the present funding pattern, the KVK would be funded on 100% basis for a period of five years after which it would be funded on 75:25 basis (the share of the Council will be limited to 75% of the estimated expenditure) and after completion of 10 years it will be

funded on 50:50 basis (the share of the Council will be limited to 50% of the total estimated expenditure). The Lakshadweep Administration had also issued the Annexure.R2(I) order dated 17.7.98 and it was made clear that:

"the staff to be recruited under KVK will be on the strength of the Administration of Lakshadweep and they will be entitled for all privileges and facilities prevalent in the Administration Structure. The Administrative control over the staff employed shall vest in the Administration. Since no provision for incurring expenditure on pension contribution or leave salary contribution from ICAR, no appointment will be made on deputation basis. To the maximum extent Officers/officials of the Department of Agriculture, Fisheries, PWD having required qualifications and experience will be spared to KVK and appointment to the extent of the scale of the KVK structure will be issued. But at any cost the appointment given under KVK will not be counted for any kind of weight age or merit or seniority on and above the seniority list maintained by the Departments for the promotions in the Departmental posts. In all aspects the employees spared to the KVK will also be taken into consideration when the concerned Department are making promotions based on the merit/selection. If the sufficient staff with required qualification are not available in the Department, appointment will be made directly. Though the ICAR has given green signal for the appointments of staff but for all appointments selection board will be constituted with a member from ICAR."

11 The 5th respondent has also filed a reply. He has stated in his reply that since the 1st applicant was retired from service, his claim for promotion has become infructuous. He submits that his selection has been made only in accordance with the Recruitment Rules and not on any extraneous considerations. He has also filed an argument note contents of which are not different from that of his reply affidavit and the reply affidavit of the 2nd respondent.

12 The 6th respondent in the reply submitted that ICAR has

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only prescribed the qualifications, pay etc. of the various posts under its various Krishi Vigyan Kendras, and they provide the necessary funds for their ongoing programmes. They have also submitted that the KVK, Kiltan is directly under the administrative control of the Union Territory and all the staff working there, are on the roll of the Lakshadweep Administration and its service rules are applicable to them.

13 The applicants have filed a rejoinder, in which they have reiterated their contentions in the Original Application. They have also submitted that the superannuation of the 1st applicant will not justify the claim of the 5th respondent for appointment to the post of Coconut Development Officer and if the full facts about the eligible officers for promotion to the post of Coconut Development Officer were made available to the Selection Committee, they would not have selected the 5th respondent.

14 Respondents 2&3 have also filed an additional reply statement in which they have only reiterated their elaborate contentions in their reply statement.

15 We have heard Advocate Shri P.V.Mohanan for the applicants, Advocate Shri.Shafik MA for the Respondents 2&3 and Advocate Shri P.Jacob Varghese for Respondent No.6.

16 The first argument of Shri Mohanan was that the post of Coconut Development Officer has fallen vacant on 8.1.99 with the appointment of its then incumbent Shri Mullakoya as Training

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Organizer in the KVK in the scale of Rs. 12000-16500 and the respondents kept the post vacant over seven years to prevent the applicant and other qualified persons from being considered for appointment at the relevant time. In this regard, he has relied upon the judgment of the Hon'ble High Court of Kerala in **Vaghese and Others Vs. State of Kerala and others, 1981 KLT 458 (FB)**. The relevant part of the said judgment is as under:

"5 A Full Bench of this Court in the decision in *James Thomas V. chief Justice, 1977 KLT 622* has also expressed the view that the general rule is that promotions are to be decided upon with reference to time of occurrence of vacancies and not the time of making the appointments. We think there is considerable force in the view that it is the time of occurrence of vacancy that should be relevant for determining the question of promotion and not the time the order of promotion is passed. The relevant date must be definite and not depending upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for determining the title to such promotion the rule is capable of arbitrary exercise. Even if it is honest exercise that would be arbitrary because the fate of the service career will depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion. The view taken by the Division Bench in *Ravindranath V. Calicut University 1977 Lab. IC. 1127* appeals to us to be the rational view."

He has also relied upon the judgment of the Kerala High Court in **Padmanabhan Nair Vs. Dy. Director, 1991 KLT 337 (FB)** wherein the case of Varghese and others Vs. State of Kerala (supra) was also considered. The relevant paragraph of the said judgment is as under:



"11 When qualifications are prescribed for a promotion post, eligibility for appointment to the post has to be reckoned with reference to the date on which the vacancy arose. If there was a qualified hand, on that date, in the feeder category, he is entitled to be considered for appointment to the post in preference to his unqualified seniors. The date on which the appointment is actually made is immaterial as the title to the appointment arises on the date of occurrence of the vacancy and is not defeated by the acquisition of qualifications by a senior thereafter. If however, none was qualified on that date, the person who first becomes qualified thereafter is entitled to be considered for appointment, if the vacancy continues to remain. That is the effect of the Full Bench decision of this Court in *Varghese v. State of Kerala*, 1981 KLT 458 as also of the decision of another Full Bench in *James Thomas V. Chief Justice*, 1977 KLT 622. It is sufficient to refer to the first of these cases as it refers to the other decision and follows it. In Varghese's case, the specific question as to what should happen in a situation where there was none qualified on the date of occurrence of the vacancy, and a junior became qualified subsequently, arose for consideration. The Full Bench held that it made no difference whether the vacancy existed already or the vacancy occurred after the junior became qualified. If there was a vacancy as and when a person became qualified for being promoted to such vacancy, he would be entitled to be considered for promotion in that vacancy. If there was no vacancy when a person became qualified for promotion and vacancy arose while he was qualified, his case for promotion called for consideration as and when vacancy arose. We extract below the relevant observations of the Full Bench:

The relevant date must be definite and not depending upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for determining the title to such promotion the rule is capable of arbitrary exercise. Even if it is honest exercise that would be arbitrary because the fate of the service career will depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion.

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Shri V.Sivarman Nair, learned counsel appearing for the appellants in these cases submits that the rule of determining the right to promotion of the junior on the basis of qualifications on the date the vacancy occurs will have no application when vacancies are in existence even prior to the date the junior becomes qualified and should be confined to cases where vacancy occurs after the junior gets qualified and before the senior also gets qualified. The Division Bench in the decision adverted to considered the question of filling up of a block of vacancies. We agree with the view expressed therein that it would make no difference whether the vacancies already exist or the vacancies occur after the juniors become qualified. If there is a vacancy as and when a person becomes qualified for being promoted to such vacancy he would be entitled to be considered for promotion in that vacancy. If, there is no vacancy when a person becomes qualified for promotion and a vacancy arises while he remains qualified, as and when such vacancy arises his case for promotion calls for consideration. Therefore, the fact that in these cases there were vacancies available even before respondents 2 to 4 completed their probation would make no difference at all."

17 We see merit in the aforesaid ground and the arguments of Shri Mohanan. It is an admitted fact that the post of Coconut Development Officer had fallen vacant on 8.1.1999. According to the Recruitment Rules for the post, the method of recruitment is "by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. The respondents have resorted to the 2nd method, namely, 'transfer on deputation'. In case persons 'holding analogous posts' were not available, the respondents could have considered the officers with three years regular service in the post and in the scale Rs. 2000-3500 (revised Rs. 6500-10500) or

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officers with 5 years regular service in posts in the scale of pay of Rs. 1640-2900 (revised tors. 5500-9000). For reasons best known to the official respondents no attempt was made in 1999 or any time till 2006 to fill up the vacancy of Coconut Development Officer by making promotions/transfer on deputation from the officers belonging from the eligible categories. Admittedly, the first applicant herein was holding the post of Plant Protection Officer in the scale of Rs. 2000-3500/6500-10500 from the year 1986. When the post fell vacant in 1999 he had already put in more than 13 years of service in the said scale. If the selection to the post of Coconut Development Officer was made at the relevant time when the vacancy occurred, the applicant would have been one of the eligible candidates for consideration to the said post. On the other hand, the 5th respondent was only a Soil Conservation Assistant at the relevant time working in scale of Rs. 1400-2300/4500-7000 till 1.1.1999 ie., when he was appointed as Training Associate (Plant Protection) in KVK, Kiltan. According to the Recruitment Rules he was not even eligible to be considered for the post of Coconut Development Officer as the officers only with the minimum scale of Rs. 1640-2900/5500-9000) with five years service could be considered for that post. The appointment of the 5th respondent was made after 7 years of the occurrence of vacancy of Coconut Development Officer based on the post of Training Associate (Plant Protection) held by him in the KVK in the scale of Rs. 8000-13500 from 1999. The Apex Court in

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Shankarsan Dash V. Union of India AIR 1991 SC 1612 held that though the State is under no legal duty to fill up all or any of the vacancies it has also no license of acting in an arbitrary manner.

The relevant part of the said judgment is extracted below:

"Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

There is nothing on record to show that the Respondents 1-3 have taken any conscious decision at any time between 1999 and 2006 not to fill up the post of Coconut Development Officer for any bonafide reasons. But the fact is that applicants cannot take any advantage for the aforesaid violation of the rule/procedure as they waived their right to be considered for the post of Coconut Development Officer for all those years. Though the applicants were well aware of the fact that the post of Coconut Development Officer had become vacant from 1999, they did not make even a representation to consider them for that post. It is after 7 years and that too only when the 5th respondent was appointed to that post, the applicants have woken up to challenge his appointment and to stake their claim. There is considerable delay amounting to laches in this case. The applicant No.1 has also retired from service on 28.2.2006.

The Apex Court in a recent judgment in **Chairman, UP Jai Nigam &**

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another V. Jaswant Singh & another, 2007 AIR SCW 672 noting the doctrine of laches as stated in Halsbury's Laws of England held as under:-

12 "In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and
- (ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though no waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.

13 In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to

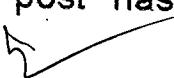
raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence."

18 The next argument of Shri Mohanan was that the 5th respondent was not even eligible to be considered for the post of Coconut Development Officer as he actually belonged to the substantive post/category of Soil Conservation Assistant in the grade/scale of Rs. 4500-7000 in the Department of Agriculture, Lakshadweep Administration and he continued to retain his lien in his parent department against the said post throughout all those years of deputation on the post of Training Associate (Plant Protection) in KVK, Kiltan. Since the appointment of the Training Associate (Plant Protection) in KVK was purely on deputation basis, he should not have been appointed to the post of Coconut Development Officer again on deputation/transfer basis as he has not undergone the mandatory cooling period after the spell of the first deputation period which extended as against the normal prescribed period of 3 years for over six years. He has also contended that the service rendered against the post on deputation could not have been considered as "analogous" post. In this regard, he has relied upon the judgment of the Apex Court in the case of *Ali M.K. And others Vs. State of Kerala and others 2003(11) SCC 632* wherein the Apex Court reiterated the position of law that a person can be said to acquire a lien on a post only when he has been confirmed and made



permanent on that post and not earlier. He has further relied upon the judgment of the Hon'ble High Court of Kerala in *Balakrishnan Nair and others Vs. Ram Mohan Nair and others, ILR 1998(2) 812* and contended that since the 5th respondent was never confirmed or absorbed in the KVK, Kiltan, as Training Associate (Plant Protection) in the scale of Rs. 8000-275-135000 and continued to retain his lien in his parent department. According to him the Respondents 1-3 should not have even considered him for appointment on transfer on deputation basis to the post of Coconut Development Officer.

19 In our considered opinion, there is considerable merit in the above argument of Shri Mohanan. According to the Recruitment Rules for the post of Coconut Development Officer, the method of recruitment is by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. For promotion/transfer on deputation, the first preference is given to the officers from the Central/State Governments/Union Territories/Agricultural Universities/ Research Institutions/Councils holding analogous post. The post of Coconut Development Officer carries the pay scale of Rs. 8000-13500. The 5th respondent was of course, holding the post of Training Associate (Plant Protection) in KVK in the scale of Rs. 8000-13500. However, the question is, just because the 5th respondent was having the same pay scale, whether it could be said that he was holding an "analogous post". Analogous post has not been defined in any Service Rules. The word



"analogous" according to Black's Law Dictionary, has been derived from the Greek Word "ana" (up) and "logos" (ratio) and it means bearing some resemblance or likeness that permits one to draw an analogy. This meaning is of no help in the present case. However, we came across the Government of India, DOP&T OM No.AB 14017/71/89-Estt dated 3.10.89 which prescribed certain procedure to be followed in cases where the appointment is to be made by "transfer" or "transfer on deputation" basis. It read as under:

"Whenever the recruitment rules for a post prescribe 'transfer on deputation/transfer' as a method of filling up the post, they generally contain an entry in column 12 of the standard form of schedule stating inter-alia that the 'transfer on deputation/transfer' shall be made from amongst the officers holding analogous posts on regular basis under the Central/State Governments. This Department has been receiving references from various Ministries/Departments asking for the definition of analogous posts". It has, therefore, been considered appropriate to lay down the following criteria for determining whether a post could be treated as analogous to a post under the Central Government:

- (i) Though the scale of pay of the two posts which are being compared may not be identical, they should be such as to be an extension or a segment of each other, e.g., for a post carrying the pay scale of Rs. 3000-5000, persons holding posts in the pay scale of Rs. 3000-5000 will be eligible.
- (ii) Both the posts should be falling in the same group of posts as defined in the Department of Personnel and Administrative Reforms Notification No.13012/2/87-Estt.(D) dated the 30th June, 1987 viz., Group 'A', Group 'B' etc.
- (iii) The levels of responsibility and the duties of the two posts should also be comparable.
- (iv) Where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the 'post where direct recruitment has

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also been prescribed as one of the methods of appointment in the recruitment rules'.

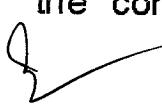
Where promotion is the method of filling up such posts, only those persons from other department's may be brought on transfer on deputation whose qualifications and experience are comparable to those prescribed for direct Recruitment for the feeder grade/post from which the promotion has been made." (emphasis added)

20 The Respondent No.5 in his parent department was only a Soil Conservation Assistant in the scale of pay of Rs. 4500-7000. Above the post of Soil Conservation Assistant, there are two posts (i) Agriculture Officer in the scale of Rs. 5500-9000 and (ii) Plant Protection Officer in the scale of Rs. 6500-10500 which are eligible to be considered for promotion to the post of Coconut Development Officer in the scale of Rs. 8000-13500. In fact the post of Soil Conservation Assistant is not even an eligible category for consideration for appointment as Coconut Development Officer. The post of Coconut Development Officer is admittedly a departmental post. The Recruitment Rule is very clear. When the post of Coconut Development Officer is filled up on promotion/transfer on deputation basis, the officers from Central/State Governments/Union Territories./Agricultural Universities or Research Institutions/Councils holding analogous post should be considered as first preference. The KVK admittedly being a Scheme/Project of the ICAR controlled by the Lakshadweep Administration, the post of Training Associate (Plant Protection) held by the 5th respondent in KVK cannot be equated with the post of Coconut Development Officer and consider

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it as an analogous post in the Central/State Govt. etc. In any case, it is not the case of the respondents that the levels of responsibility and duties of both posts were comparable.

21 Further, it is an admitted position that KVK is a scheme/project of the ICAR, New Delhi which is a society registered under the Societies Registration Act, 1880. The ICAR meets the entire expenditure for running the KVKs. The KVK set up at Kiltan Island is one such project. It is very much on record that the 5th respondent was working in KVK, Kiltan as Training Associate (Plant Protection) in the scale of Rs. 8000-13500 on deputation basis. Vide Annexure.A.19 letter dated 23.3.2005, the second respondent has clarified that his appointment was on deputation basis. Further, it was made clear, as observed in Annexure.A13 minutes of the meeting held on 24.6.05 to review the appointment of staff of KVK that at any cost the appointment given under KVK will not be counted for any kind for merit or seniority on and above the seniority list maintained by the department for the promotions in the departmental post. Similar clarifications have also been made by the 2nd respondent vide the Annexure.R2(1) Order dated 17.7.98. The employees spared to the KVK are appointed from different departments of the Lakshadweep Administration and initially they are appointed for a period of one year and their services are extended further subject to their suitability. They are also considered when the concerned departments make the promotions based on the



merit/selection. In the Annexure.A3 appointment letter of the 5th respondent as Training Associate (Plant Protection) in KVK, Kiltan, admittedly the Respondent No.2 has purposely avoided in stating that his appointment was on deputation. This is evident from their own submissions that it was because the ICAR have not made any provision for incurring expenditure on pension contribution or leave salary contribution, the appointment was not described as "appointment on deputation". The administration have, therefore, treated those who have been spared to work in KVK on transfer basis. Generally, transfer is made between two comparable posts. It is quite obvious that a person holding the post of Soil Conservation Assistant in the scale of pay of Rs. 4500-7000 cannot be transferred and posted as Training Associate (Plant Protection) in the scale of Rs. 8000-13500. The staff pattern of the KVK including the Training Organizer in the scale of pay of Rs. 12000-16500, 5 Training Associates in the scale of Rs. 8000-13500 etc. is such that the appointments to the aforesaid posts are made initially for a period of one year and they are continued subject to satisfactory performance of the incumbents. The Government employees can work in autonomous body either on transfer or on deputation for a specific period normally for three years, which, in any case does not exceed 5 years. According to the instructions issued by the Department of Personnel & Training, Government of India, tenure of deputation/foreign service is as under:



8.1 The period of deputation/foreign service shall be subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the Recruitment Rules.

8.2 The Administrative Ministry/borrowing organization may grant extension beyond this limit up to one year, after obtaining orders of their Secretary 9 in the Central Government and Chief Secretary in the State Government) equivalent level officer in other cases where such extension is considered necessary in public interest.

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8.6 For computing the total period of deputation/foreign Service, the period of deputation/foreign service in another ex-cadre post(s) held preceding the current appointment without break in the same or some other organization shall also be taken into account."

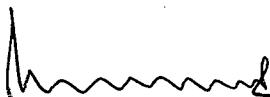
The Apex Court in ***State of Punjab and others Vs. Inder Singh and others (1997)8 SCC 372*** has clearly held that after the expiry period of deputation, the employee has to come back to his parent department to occupy the same position. The relevant part of the said judgment is extracted below:

The concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent Department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who

controls the Service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent department's and working there as Constables or Head Constables as the case may be."

22 In view of the aforesaid settled position regarding deputation, we hereby hold that the appointment of the 5th respondent Dr. C.P.Hamzakoya as Coconut Development Officer, Department of Agriculture, Kavaratti in the Union Territory of Lakshadweep is contrary to rules, invalid and void ab initio. Accordingly, we quash and set aside the Annexure A23 Office Order dated 7.2.2006. The Respondents 2&3 are directed to issue necessary orders cancelling the appointment of the 5th respondent immediately. They are further directed to fill up the vacancy of Coconut Development Officer strictly in accordance with the provisions of the Recruitment Rules. There shall be no order as to costs.

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Dated this the day of March, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

S.

Sathi Nair
SATHI NAIR
VICE CHAIRMAN