

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 87 OF 2010

Friday, this the 12th day of August, 2011

CORAM:

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

Razeena T.I
Thekkila Illam House
Kiltan, Union Territory of Lakshadweep

... Applicant

(By Advocate Mr. S.Sujin)


versus

1. Education Officer
Union Territory of Lakshadweep
Kavaratty – 682 555
2. The Director
Education Department
Union Territory of Lakshadweep
Kavaratty – 682 555
3. Union Territory of Lakshadweep
represented by the Administrator
Union Territory of Lakshadweep
Kavaratty – 682 555
4. Union of India
represented by Secretary
Ministry of Home Affairs
New Delhi
5. Sabira U.P.H.
Androth Island
Union Territory of Lakshadweep
6. Beebi Jazeena N
Alangamad (H)
Kavaratti Islander
Union Territory of Lakshadweep
7. Pyarijan P.P.
Pathumapada (H)
Kavaratti Island
Union Territory of Lakshadweep

... Respondents

(By Advocate Mr.S.Radhakrishnan (R1-3)
Advocate Mr.MVS Nampoothiry (R-4)
Advocate Mr.M.V.Thamban (R-6)

The application having been heard on 12.08.2011, the Tribunal on the same day delivered the following:



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


The applicant, an Islander of Lakshadweep who is the aspirant for the post of Trained Graduate Teacher (Chemistry) responded to the notification Annexure -1 issued by the Director of Education, Lakshadweep inviting application for the same. A written test was conducted for the purpose of short listing the candidates and the applicant is at Sl.No.2 in the list of short listed candidates. Subsequently, interview was held and the final selection list was published. The applicant was not selected and in preference the party respondents 5 & 6 were selected and the 7th respondent was included in the wait list. Aggrieved by such circumstances, the applicant has filed this OA challenging the selection conducted by Respondents 1 to 3 and seeking to quash the rank list, Annexure A-2 and for a direction to publish the rank list strictly in accordance with the Recruitment Rules by giving ranking on the basis of academic merit alone.

2. The grounds urged in support of the relief sought for are that (i) the advertisement clearly states that the selection of the candidate will be purely on academic merit of the applicants, while also giving consideration to the applicants experience for the job and higher qualifications. But contrary to this, a written test was conducted as part of the procedure for selection. Hence selection is bad in law. It is also contended that the party respondents are not Scheduled Tribe and they have not enclosed any certificate to prove their caste. Hence the selection of the party respondents is bad.



3. Respondents 1 to 3 have filed the reply statement. It is averred that the notification issued by the Department stating that the selection will be purely on academic merit in the qualifying examination is a mistake. As a matter of fact, such prescription contained in the notification is contrary to the Recruitment Rules. As per Recruitment Rules for the post in question, it is provided for constituting a Selection Committee for appointment to the post in question and selection has to be held after conducting a written test and interview and only in cases where the Recruitment Rules otherwise provide for selection based on academic merit alone, that no test or interview is conducted. In this case, there is nothing in the Recruitment Rules as per which the selection is made solely on the academic merit of the candidate. At any rate, the procedure adopted for conducting the written test in no way will prejudice the right of the candidates including the applicant nor is it violative of Article 14 and the method adopted is fair method. It is also contended that Group 'C' and 'D' posts are reserve for Islanders / local candidates and not for Scheduled Tribe. In so far as the post in question are not reserved post for any ST and the party respondents 5 & 6 were selected based on the performance in the written test and interview and based on the academic qualification they possess, there is no relevance as to whether they are ST or not. In such circumstances, they support the selection as valid in law and not liable to be interfered with.

4. The party respondents have also taken similar stand and also produced the relevant Recruitment Rules along with the reply statement. It is also contended that the applicant had participated in the process of selection and hence estopped from challenging the same after finding that she is not selected.



5. We have heard the parties. Admittedly the applicant participated in the process of selection without demur and only when she is not selected, she has come up with an OA challenging the process of selection as bad in law. She has no case that she came to know about this only after appearing in the written test. She has applied with reference to the notification. So if her contention is true nothing prevented her from challenging the procedure when written test was notified. After she appeared in the test and interview and when she finds that she is not selected she cannot come forward and challenge the procedure. She is estopped by her conduct as held by the Apex court in (2202) 6 SCC 127, **Chandra Prakash Tiwari & Ors vs. Shakuntala Shukla & Ors.** The relevant portion is as under :-

32. "In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhawan pertaining the doctrine of Estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Parkash Shukla (Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., [1986] Supp. SCC 285)* a Three Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a Petition challenging the said examination would not arise.

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently

contend that the process of interview was unfair or there was some lacuna in the process."

6. Apart from that, the Recruitment Rules provides for a written test and interview as per Clause 12 of the Recruitment Rules. Annexure R-6(a) is the copy of the Recruitment Rules produced by the party respondents. If a selection is conducted contrary to the Recruitment Rules, it will be in violation of the said rules. Merely because the advertisement otherwise provided will not save it, what will prevail is the Recruitment Rules and not the notification. Further they have not relaxed the rule of procedure rather they conducted a test and interview uniformly to all candidates alike. Thus there is no arbitrariness infringing Article 14 of the Constitution of India. Thirdly, the post is not earmarked for Scheduled Tribes alone so long as applicants are Islanders they are entitled to compete in the selection. If that be so, the fact that party respondents are not Scheduled Tribes is totally irrelevant. The 6th respondent has however, produced the caste certificate.

7. In the light of what is stated above, there is no illegality in the selection for the post of Trained Graduate Teacher (Chemistry) in the Lakshadweep Administration.

8. We find no merit in the OA and the same is **dismissed**. No costs.

Dated, the 12th August, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS