

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 13 OF 2011

Thursday, this the 13th day of January, 2011.

CORAM:

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

Noorul Hassan U,
Ummaroda House,
Kavaratti Island,
Lakshadweep

... Applicant.

(By Advocate Mr. Arun Raj S)

v e r s u s

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

2. The Secretary (Education),
Department of Education,
Union Territory of Lakshadweep.

3. The Director of Education,
Department of Education,
Union Territory of Lakshadweep,
Kavaratti.

4. The Principal,
District Institute of Education and Training,
Department of Education,
Union Territory of Lakshadweep.

... Respondents.

(By Advocate Mr. S. Radhakrishnan)

The Original Application having been heard on 07.01.2011, this Tribunal on 13.01.2011 delivered the following :

O R D E R

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

This O.A. has been filed by the applicant for the following reliefs :



(I) To call for the records leading to the issuance of Annexure A-1 fresh notification dated 28.12.2010 inviting applications for selection to the post of Lecturer (Teacher Education) Hindi in the District Institute of Education and Training and to quash the same by issuing a writ of certiorari;

(II) To issue a writ of mandamus directing the respondents to make the selection to the post of Lecturer (Teacher Education) Hindi in pursuant to notification dated 23.09.2009 (Annexure A-2 herein) strictly in accordance with the recruitment rules; as directed by this Honourable Tribunal in Annexure A-5 order dated 05.08.2010, which was confirmed by the Hon'ble High Court;

(III) To issue a writ of mandamus directing the respondents to appoint the applicant to the post of Lecturer (Teacher Education) Hindi in the District Institute of Education and Training, Lakshadweep;

(IV) To grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant herein had challenged the select list issued by the respondents for the post of Lecturer (Teacher Education) Hindi by filing O.A. No. 389/2010, which was disposed of with a direction to the respondents to make selection to the post of Lecturer (Hindi) under the DIET, Department of Education, Lakshadweep, strictly in accordance with the Recruitment Rules. The said order was challenged by the selected candidates before the Hon'ble High Court of Kerala in W.P.(C) No. 27432/2010, which was dismissed vide its judgement dated 09.09.2010. The respondents herein issued a fresh notification dated 28.12.2010 for filling up one post of Lecturer (Teacher Education) Hindi either on deputation from among the teachers working under Lakshadweep Administration or by direct recruitment limited to Islanders, which is being challenged by the applicant in this O.A. on the following grounds. The notification dated 28.12.2010 is in blatant violation of the directions of this Tribunal dated 05.08.2010 in O.A. No. 389 of 2010. The selection



contemplated in the said order is pursuant to Annexure A-2 notification dated 23.09.2009 in accordance with the Recruitment Rules and not by the fresh notification dated 28.12.2010. The Hon'ble High Court has approved Annexure A/5 order of this Tribunal. The notification dated 23.09.2009 was never challenged by the applicant. It was only the selection made by the respondents, that was challenged by the applicant. The applicant is the only eligible candidate to be appointed for the post in question strictly following the Recruitment Rules. A fresh notification is issued only to deprive the applicant from getting appointed to the aforesaid post. Neither this Tribunal nor the Hon'ble High Court directed issuance of a fresh notification vide Annexure A-1. The applicant is the sole eligible and qualified candidate to be appointed to the post of Lecturer (Teacher Education) Hindi in pursuance of Annexure A/2 notification dated 23.09.2009, as opined by the legal department in Annexure A-8.

3. We have heard Mr. Arun Raj. S, learned counsel for the applicant and Mr. S. Radhakrishnan, learned counsel for the respondents and perused the records.

4. The operative part of the order in O.A. No. 389/2010 is reproduced as under :

"11. As discussed above, teaching experience is a must for selection to the post of Lecturer (Hindi) in DIET in accordance with the recruitment rules. Although the respondent No. 1 is the competent authority to frame recruitment rules, he or the interview board headed by him cannot go against the notified recruitment rules in selecting candidates. Therefore, the O.A. is allowed to the extent indicated below:



12. Annexure A-10 select list F.No. 2/7/2007-DIET dated 22nd April, 2010, to the extent of selection to the post of Lecturer (Hindi) is quashed and set aside. The respondents 1 to 4 are directed to make selection to the post of Lecturer (Hindi) under the DIET, Department of Education, Lakshadweep, strictly in accordance with the recruitment rules.

13. No order as to costs."

5. It is very clear that this Tribunal had observed that the respondents cannot go against the notified Recruitment Rules in selecting candidates and the said O.A. was allowed to the extent of quashing the selection to the post of Lecturer (Teacher Education) Hindi and directing the respondents No. 1 to 4 to make selection to the said post under DIET, Department of Education, Lakshadweep, strictly in accordance with the Recruitment Rules.. There was no direction to the respondents to make selection to the post of Lecturer (Teacher Education) Hindi pursuant to Annexure A-1 notification dated 23.09.2009. As stated by the applicant, he never challenged the said notification dated 23.09.2009 (which covered many other posts also other than the post of Lecturer (Teacher Education) Hindi). Therefore, there is no violation of the order of this Tribunal, as contended by the applicant.

6. The Hon'ble High Court dismissed the Writ Petition (C) No. 27432/2010 in the following words:

".... All what the C.A.T. said is that even after the amendment experience is not dispensed with and is retained as a required qualification for eligibility for appointment. So much so, we find no ground to interfere with the finding of the C.A.T. Even though petitioner has raised a contention that the 5th respondent does not have the required qualification, we do not think there is any need to consider it because the Tribunal has only ordered fresh selection and it is upto the concerned authority to

✓

consider eligibility and relative merits of all candidates in fresh selection process. The W.P.(C) is, therefore, dismissed."

The Hon'ble High Court held that it is upto the concerned authority to consider the eligibility and relative merits of all candidates in fresh selection process. Accordingly, the respondents initiated fresh selection process to fill up the post of Lecturer (Teacher Education) Hindi under the DIET, Lakshadweep, by notification dated 28.12.2010 (Annexure A-1).

7. The respondents took action for fresh selection by issuing notification dated 28.12.2010 (Annexure A-1) which is perfectly legal. For, the selection process starts with notification of vacancies and invitation of applications. The process of selection gets completed when the select list is finalised. In the instant case, the select list was quashed. The complete process of selection became futile on account of improper application of the Recruitment Rules. There was no compulsion of direction either from this Tribunal or from the Hon'ble High Court to preserve the notification dated 23.09.2009 and proceed again from it. There was only one eligible candidate for consideration for selection. Ideally, as selection involves choice, there should be more than one eligible candidate to make a choice. Therefore, the respondents were at liberty to make another attempt to have more than one eligible candidate, if possible.

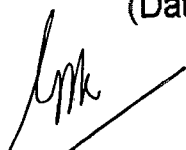
8. The O.A. No. 389/2010 was not allowed in toto. It was allowed to the limited extent indicated in the order. Even if the name of a candidate is included in the select list, he does not get a vested right on the vacant post for which the selection is made. In the instant case, the applicant is



not even in the select list and as such he does not have a right to infringe upon by the issuance of new notification. There is no arbitrariness on the part of the respondents in issuing a fresh notification. The applicant has no case that he is not eligible to apply for the post in response to the new notification. Fresh selection process in its fullest sense is resorted to by the respondents by issuing the impugned notification without taint of arbitrariness, bias or prejudice. The applicant and others, if they so desire, can participate in the fresh selection process which will be strictly in accordance with the Recruitment Rules. Therefore, the contention that the fresh notification was issued only to deprive the applicant from getting appointed to the post does not hold water. We do not find anything illegal, arbitrary or contrary to the directions given to the respondents in initiating fresh selection process. Therefore, interference of this Tribunal in the fresh selection process with notification dated 28.12.2010 is not at all warranted.

8. In the result, the O.A. is dismissed with no order as to costs.

(Dated, the 13th January, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.