

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.123 OF 2005

Friday, this the 9th day of February, 2007

CORAM :

**HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

A.Hussain
Primary School Teacher
Government High School, Minicoy
Union Territory of Lakshadweep
Residing at : Hussain Arappalingothi Noor Manzil
Funhilol Village, Minicoy Island
Union Territory of Lakshadweep : Applicant

(By Advocate Mr. P.V.Mohanan)

Versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti
2. The Director of Education
Directorate of Education
Union Territory of Lakshadweep
Kavaratti : Respondents

(By Advocate Mr. Shafik M.A.)

The application having been heard on 05.02.2007, the Tribunal on 09.02.2007, delivered the following :

ORDER

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

This is the second round of litigation. In the earlier round the prayer of the applicant was for a direction to the respondents to reckon the service rendered by him from 11.08.1973 to 19.08.1976 (untrained period) and the service between 19.08.1976 to 24.07.1978 (training period) as on duty and qualifying service for fixation of pay, terminal benefits and other consequential benefits or in alternative for a direction to consider and dispose of

Annexure A-3 representation on merits. The Tribunal allowed the alternative prayer and disposed of the OA directing the 1st respondent to consider the representation of the applicant in terms of rules and instructions on the subject. In pursuance of the above order dated 07.06.2004, the respondents have passed the impugned order dated 23.08.2004 stating that the request of the applicant for reckoning his past service and training period for the purpose of qualifying service for pension etc. cannot be acceded to.

2. Briefly stated, the applicant was initially appointed as untrained teacher in the pay scale of Rs.80-110 vide Annexure A-1 order dated 16.08.1973 preceded by telegram dated 09.08.1973. The applicant had taken up that post on 11.08.1973. The applicant continued in that post, drew annual increments after completion of every year of service and following his selection for a training course in the Government Teachers Training Institute, Mysore, he was directed to resign from the above post to take up the training course. Telegram dated 18.08.1976 (Annexure A-2) refers. Accordingly, the applicant resigned from the earlier post, took up this training and later on he was appointed as Primary School Teacher, Grade I in the pay scale of Rs.330-560 with effect from 26.09.1978. The applicant claimed ACP on completion of 24 years of service reckoning the period of service from his initial appointment i.e. 11.08.1973 onwards. This claim of the applicant was however, not considered by the respondents. Meanwhile the respondents published a provisional seniority list of Primary School Teachers appointed between February, 1973 and December,



2001 vide Annexure A-4 letter dated 06.10.2003 and the applicant's name figured at item No.148 specifically reflecting his date of entry in government service as 11.08.1973 and date of appointment in the grade also, as 11.08.1973. As the applicant did not get any response to his Annexure A-3 representation he had moved OA 401/04 with the two prayers as already stated, and the OA was decided as aforesaid vide order dated 07.06.2004. The respondents have rejected the claim of the applicant stating that the initial service rendered by the applicant was temporary and hence it could not be included for any purpose. Through the present OA, the applicant has prayed for a direction to the respondents to reckon his services from 11.08.1973 to 19.08.1976 and from 19.08.1976 to 24.07.1978 as duty and qualifying service for fixation of pay, terminal benefits, service seniority etc.

3. The respondents have contested the OA. According to their version the seniority list at Annexure A-4 was only provisional and the final seniority list is Annexure R-2 wherein against the name of the applicant the date of continuation in the present grade and entered into government service have been correctly indicated as 26.09.1978. They have further stated that from the very appointment order at Annexure A-1 it will be clear that the appointment of the applicant in 1973 was only temporary. And, the services of the applicant was terminated. As such, they have prayed for dismissal of the OA.



4. The learned counsel for the applicant submitted that the period to be considered as qualifying service from 1973 to 1978 shall be bifurcated as under :-

(a) Period when the applicant was working as untrained teacher in a regular pay scale from 11.08.1973 to 19.08.1976.

(b) Period spent on training after 1976 which lasted for about a year.

5. In addition to the above, the learned counsel for applicant submitted that the period after the completion of training till his appointment in 1978 would constitute break and the same could easily be condoned under the existing provisions. The counsel further argued that assuming without accepting that the period of training cannot be construed as qualifying service, in any event the period when the applicant had worked against a regular post with a regular pay scale fully deserves to be reckoned as qualifying service and hence the period from 11.08.1973 to 19.08.1976 shall have to be treated as regular and as qualifying service. He had further submitted that a technical resignation for the purpose of undergoing the training cannot be equated with normal resignation to obliterate the past services from reckoning the same as qualifying service.

6. Per contra, the learned counsel for respondents submitted that the applicant's service were rather terminated as could be seen from the service book and it was after the applicant acquired the requisite training that he was appointed in 1978.

7. Arguments were heard and documents perused. It is not in dispute that the applicant was in a regular pay scale from 11.08.1973 to 19.08.1976. It is also not in dispute that there is a Recruitment Rule for the post of non matric untrained teachers carrying a pay scale of Rs.80-110. It is also well within the rules that against higher post, persons appointed in a subordinate post can be allowed to function. In the instant case, the service book clearly reflects that the applicant was appointed as metric untrained teacher in the pay scale of Rs.80-110 and the applicant was offered annual increments as well. The appointment order contains, "posting of untrained Teachers against Matric Trained post " It is common practice that when even against regular posts appointments are made they will be indicated as temporary and by virtue of mere specification in the appointment order as **"temporary appointment"** the character of appointment does not remain temporary. If the authorities meant that the applicant's appointment as metric untrained teacher was purely temporary then there would have been a mention about the duration of such temporary appointment or a specific condition that the appointment shall not confer any right to the applicant for regularisation, seniority etc. No such stipulation is found in the appointment order at Annexure A-1. Nor does the service book reflect that the appointment order was on a purely temporary basis. As regards the contention of the counsel for respondents as to termination of the services in 1976, though the service book indicates that the service was terminated, the same is not on account of any deficiency of the applicant but on account of

his having been selected to attend the training course at Mysore. Hence, appointment from 11.08.1973 to 19.08.1976 is on regular basis and as such in accordance with provisions of Rule 13 of CCS (Pension) Rules, the same can be reckoned as qualifying service by duly condoning the delay between that appointment and the applicant's later appointment. In this connection, reference is invited to a decision of the Apex Court in the case of *Director General, CSIR Vs. K.Narayana Swamy, 1995 (3) SCC 124* wherein it has been held that when the officiating or temporary service is followed without interruption by substantive appointment in the same or another service the qualifying service shall be from the date of initial appointment and where there is a interruption between the two spells of substantive appointment the period of interruption in between shall be treated as automatically condoned. The case falls under latter category.

8. In view of the above, it can be stated that the period of three years from 11.08.1973 to 19.08.1976 shall qualify for pension purposes. However, in so far as the period of training is concerned the same shall not form part of qualifying service and similarly the period from the date of completion of training till the date of appointment to the post of trained teacher, the period shall not be counted as qualifying service.


9. In view of the above, the **OA is allowed in part.** It is declared that the applicant is entitled to count his services on regular basis as untrained teacher from 11.08.1973 to 19.08.1976 as a part



of his qualifying service to be added with his further substantive service from 1978 onwards. The claim to treat the period of training and thereafter till the date of appointment as regular service is rejected. Authorities shall pass suitable orders in this regard, including order condoning the break in service.

10. In the above circumstances, there shall be no order as to costs.

Dated, the 9th February, 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

VS