

# CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 163 OF 2006

Dated the 21<sup>st</sup> day of September, 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

1. Shihabudheen CA,  
S/o CM Aboobacker,  
Post Graduate Teacher (Political Science),  
MGSS Anroth, Union Territory of Lakshadweep,  
Residing at Anroth.
2. Surabhi A.R.  
D/o Ramakrishnan,  
Post Graduate Teacher (Geography),  
MGSS Anroth, Union Territory of Lakshadweep,  
Residing at Anroth.
3. Satheesh C.K.  
S/o CV Krishnan,  
Post Graduate Teacher (Geography),  
MGSS Anroth, Union Territory of Lakshadweep,  
Residing at Anroth.
4. Sudheesh KB,  
S/o Bhuvanendran,  
Post Graduate Teacher (Commerce),  
MGSS Anroth, Union Territory of Lakshadweep,  
Residing at Anroth.
5. Balakrishnan V,  
S/o Kunhikannan,  
Post Graduate Teacher (Economics),  
MGSS Anroth, Union Territory of Lakshadweep,  
Residing at Anroth.

6. Shona, P.K.  
D/o Kunhimon TK,  
Post Graduate Teacher (Geography),  
Government Senior Secondary Schyool, Kavaratti,  
Union Territory of Lakshadweep,  
Residing at Kavaratti.

.. Applicants

[By Advocate: Ms Rosamma Joseph for Sri PV Mohanan )

-Versus-

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

... Respondents

[By Advocates: Mr Shafik, MA )

This application having been heard on 10<sup>th</sup> September, 2007  
the Tribunal delivered the following -

### ORDER

(Ms. Sathi Nair, Vice Chairman):


This application has been filed by Post Graduate Teachers working in Higher Secondary Schools in the Union Territory of Lakshadweep on contract basis seeking the following reliefs:

- (i) To direct the respondents to regularize the services of the applicants as Post Graduate Teachers in the Department of Education, Union Territory of Lakshadweep with all consequential benefits; (ii) to direct the respondents to grant vacation salary to applicants; (iii) to direct the respondents not to terminate the service of the applicants as

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Post Graduate Teacher in Union Territory of Lakshadweep and/or issue any appropriate directions to the respondents that may deem fit in the interest of justice.

2. According to the applicants, the Lakshadweep Education Department (Post Graduate Teacher Group-B) (Non Gazetted) Recruitment Rules, 1993 as amended by notification dated 18.3.2000, prescribes the method of recruitment as 50% of the vacancies by Direct Recruitment, 50% of the vacancies by promotion and failing both by deputation including short term contract. The applicants have averred that they were selected by a duly constituted selection Board against regular post sanctioned by the Government of India and appointed on contract basis which is also a method of recruitment in the Recruitment Rules. Since the applicants are holding regular posts in the cadre continuously they are entitled to be treated as holders of regular posts. It is further submitted that Government of India, Ministry of Personnel and Pension, New Delhi vide letter No.U.14016/12/94-ANL dated 19.1.96 directed the Administrator to regularize the adhoc appointments of those non local persons, who have put in more than two years of continuous service with Lakshadweep Administration as teachers, subject to the conditions that they are otherwise eligible in all respects in terms of the Recruitment Rules of the said post. The Administration by order dated 4.4.1996 and 4.5.98 regularised services of teachers who hailed



from the Island, however, orders were issued terminating the services of non local persons, who were recruited as teachers on contract basis, which order was annulled by the Tribunal in OA 486 and 778 of 1996 and related cases and accordingly by Annexure/10 order the respondents had regularized all such teachers' appointment on contract basis. The applicants herein, who were appointed as Post Graduate Teachers also claim that they are entitled for similar treatment and regularization of their services as per direction of the Ministry of Home Affairs letter dated 19.1.96. The applicants have also alleged discrimination on the ground that as they hail from mainland they are being appointed on contract basis, though they are qualified to be appointed on regular basis.

3. Reply statement has been filed by the respondents denying the averments made in the application. It is submitted that the applicants were engaged as Post Graduate Teachers purely on contract basis on a consolidated remuneration of Rs.7500/- per month in the Senior Secondary Schools in Lakshadweep for a period up to Ramzan holidays of 2005 or till a regular appointment is made. As per the terms and conditions in Annexure-R/1 to R/3, which are accepted and signed by the applicants, such appointment will not confer on them any claim for regular employment. The statement of the applicants that they were posted against regular vacancies has been denied by the

respondents and have further submitted that 16 posts of Post Graduate Teachers created by the Ministry for the Senior Secondary Schools at Minicoy & Kavaratti were filled up by way of promotion from Trained Graduate Teachers or by direct recruitment as Post Graduate Teachers. In the year 2005, the Lakshadweep Administration upgraded four existing High Schools into Higher Secondary Schools and started Kerala Pattern Humanity Groups in the existing Senior Secondary School at Kavaratti. Consequent on de-linking of Pre degree course from the Universities 34 posts of lectures were created for erstwhile Junior Colleges at Androth and Kadamath Islands and the posts of lecturers falling under Group-A category with pay scale of Rs.8000-13500/- become vacant the Administration is not empowered to fill them unless converted as 'Post Graduate Teacher' by the Ministry as it is a dying cadre (Annexure-R/4). The respondents have also submitted the method of Recruitment as prescribed in Recruitment Rules is 50% of the vacancies by Direct Recruitment, 50% of the vacancies by promotion and failing both by deputation and the words 'including short term contract' are not available in the Rules and these words have been inserted by the applicants to mislead the Tribunal. Though 8 posts of Post Graduate Teachers were created in 2003, four posts were already filled up by direct recruitment and now no sanctioned posts are lying vacant. They also denied that the instructions issued by the



Government of India in pursuance of the orders of the Tribunal in OA Nos.486/96 and 778/96 for regularization of the trained Graduate teachers on adhoc basis are not applicable to the applicants herein as they are not being engaged against a created and/or sanctioned post in the cadre of Post Graduate Teachers. It is further submitted that Lakshadweep is a small Union Territory with the a population of 60,595 and the entire ethnic population of Lakshadweep has been classified as Schedule Tribes. The fragile ecology of the islands with a dispersed population in small scattered islands necessitated special treatment in employment matters, as there is no scope for setting up big industries in the Island to create employment opportunities. The entire educated youths, who are entirely Schedule Tribes, are looking towards the Administration for jobs. The Government of India has, therefore, taken a decision that as far as possible, group-C and D posts will be given to the ethnic native of Lakshadweep. The respondents have also brought to our notice that the OA No.229/2005 filed by similarly placed Post Graduate Teachers was dismissed by this Tribunal by order dated 31.3.2005 finding that the applicants were contract employees and they do not have any subsisting legal right to continue in the posts.

4. No rejoinder has been filed by the applicants. However, they filed MA Nos.445/06 and 446/06 seeking stay of operation of the Annexure-A/11 notification dated 28.4.2006 issued for

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fresh contract appointment and for a direction to the respondents to appointment them as Post Graduate Teachers in the vacancies notified on contract basis in the senior secondary schools in the Union Territory of Lakshadweep, pending disposal of the original application as their services have been terminated on 31.3.2006 after closure of the schools on vacation.

5. Respondents have filed reply to the Misc. applications stating that as the contractual period of appointment of the applicants had already expired on the date of closure of the school, fresh selection process was necessary to consider appointment on contract basis in accordance with the Rules to fulfill the needs of the schools. However, as per order of the Tribunal in MA No. 579/06, the respondents were directed to consider the candidature of the applicants again afresh and they have been appointed on contract basis as per terms and conditions stipulated in the contractual appointment in pursuance of the notification dated 15.6.2006 till regular appointment is made.

6. We have heard Ms Rosamma Joseph for Mr PV Mohanan and Mr Shafik, MA for respondents. Both the sides reiterated the averments made in the application as well in the reply statements. The respondents submitted that the applicants have no legal rights to interfere and or to continue in the contract appointment as it is well settled law that contract labourers have no subsisting legal right to continue in the post and Courts cannot regularise such

appointments. Learned counsel further stressed on the point that conditions of Union Territory of Lakshadweep being special, the natives of the Island have to be given special preference as per the policy in operation on directives from the Government of India. The people from the Island are coming forward and acquiring higher education and coming forward for employment and, therefore, regularization of Mainlanders in such posts would seriously hinder the job prospects of the people of the Island. On the other hand, the counsel for the applicants maintained that though the appointments of the applicants were termed as 'contract', they have gone through a regular selection process and have been continuously working in their respective schools and the short and artificial break on completion of 89 days cannot be treated as break in service as they were continuing in service, hence, they deserve to be regularised.

7. We have given serious consideration to the contentions advanced by the respective parties. The factual details of the engagements of the applicants on contract, as given below have been admitted by the respondents.

(i) The 1<sup>st</sup> applicant was selected and appointed as PGT (Political Science) and by proceedings dated 15.10.2003 he was posted on contract basis till regular appointment is made against the post. (ii) The 2<sup>nd</sup> applicant was appointed as PGT (Geography) on contract basis wef 16.8.2004 on consolidated remuneration of

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Rs.7500/-. After 89 days of duty she was granted one day break and reappointed as Post Graduate Teacher; (iii) the 3<sup>rd</sup> applicant was appointed wef 15.7.2005 on contract basis and his appointment is extended till 31.3.2006 or till regular appointment is made against the post; (iv) the 4<sup>th</sup> applicant was appointed on contract basis w.e.f. 23.7.2005 and his appointment was extended till 31.3.2006 or till regular appointment is made against the post; (v) the 5<sup>th</sup> applicant was appointed wef 6.8.2005 on contract basis and his appointment is extended till 31.3.2006t or till regular appointment is made against the post; and (vi) the 6<sup>th</sup> applicant was appointed wef 21.7.2005 on contract basis and her appointment is extended till 31.3.2006 or till regular appointment is made against the post. In the reply filed by the respondents in MA No. 446/06 and as per Annexure R/13 dated 18.7.2006, the applicants have been again engaged on contract basis till regular appointments are made. A contract as mentioned in the order of appointment has also been executed between the parties.

8. Prima facie, it appears that the contract appointment of the applicants cannot be taken note of as it subsists only during the period of contract agreed upon and does not confer any legal rights on the applicants to claim regularization in those posts, as rendered by the recent judgment of the Hon'ble Supreme Court in Umadevi's case. There are certain undercurrents in this case, which require to be considered before the claim of the applicants

can be determined as purely contract employment and thrown out. First of all, the applicants have contended that the appointments were on short term contract basis as provided in the Recruitment Rules, though the respondents deny the same, copy of the Recruitment Rules has not been produced by either side. If appointment by contract basis is provided for in the Recruitment Rules, but the Government of India's instruction permit such appointments to be made against already sanctioned posts; and if the same has been resorted to after both the channels of direct recruitment and promotion are exhausted, they can be allowed to continue and to be absorbed in regular posts, in accordance with the Rules. The respondents have not denied that the applicants have been appointed after a due selection process. This fact is also confirmed by the subsequent notification issued at Annexure-A/10 by the respondents calling for applications from the open market. It is seen that all the procedures prescribed for selection by direct recruitment are being followed by the respondents before making these appointments.

9. The judgment in Umadevi's case is with reference to appointments made as purely adhoc and stop gap arrangements for a short period to carry out the work and also those made in violation of the mandatory provisions of the statutes without following the due process of selection as recognized by the relevant rules. It has been held that such appointees have no right

to claim regularization of their services. The appointments of the applicants herein squarely do not fall into any of these categories mentioned above and there is confusion and or perplexity regarding the status of the posts against which the applicants have been appointed. The reply statement of the respondents is rather confusing as in para 9 thereof it has been stated that the applicants are not appointed against any created/sanctioned posts as all these posts have already been filled up prior to their appointment on contract basis, but in para 10 it has been submitted that against 8 posts of Post Graduate Teachers created on 5.3.2003 only four posts were filled up by direct recruitment. Annexure-R/6 series of orders have been annexed in support of their contention, which only show that four Post Graduate Teachers in the subjects of Biology, Chemistry, Hindi and Malayalam have been appointed. It is seen the applicants are engaged in other subjects like Geography, Political Science, Commerce, Economics, Mathematics and Statistics. From the particulars of the 1<sup>st</sup> and 2<sup>nd</sup> applicants, as mentioned in para 7, it is evident that they had been appointed from 2003 and 2004 itself and were being continued and, therefore, it can be reasonably concluded that the need for these subjects existed, but the respondents were not in a position to get adequately qualified persons from the Island to man these posts and therefore, they are utilizing the method of contract appointments

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of Mainlanders to fill up these posts. In fact, if the statement of the respondents that there are no posts of teachers in these subjects is to be believed, the question arises how they can upgrade the High Schools to Higher Secondary Schools without making any provision for teaching these subjects, thereby putting the future of the students at stake.

10. In fact, according to us, the judgment in Umadevi's case has to be perceived in the present scenario prevailing in the Island. These posts have to be manned by such contract appointees from the Mainland indefinitely till the people from the Island acquire higher educational qualifications to become eligible to seek employment against such posts. Such contract teachers will never be able to give their best to their teaching functions, with the Damocles' Sword of termination hanging above their heads. This cannot be the intention of the Government as the Government has to protect the interest of those who are seeking employment as well as the interest of the student community as a whole. Though the respondents have resorted to such a method, they have not enclosed any positive directions to that effect from the Ministry of Home Affairs, Government of India, except the letter dated 19.1.2006 (Annexure-R/7), which has been issued in the context of regularization of trained graduate teachers and it is not a policy decision applicable to all and at all times. Even in this letter, it is stated that "in case suitable local candidates are not


available, further action may be taken in terms of instructions contained in this Ministry's letter No.U.14011/ 8/76-ANL dated 14.12.1977". This instruction appears to have not been followed. We get the impression that it is not a mandatory direction, but only provides for regularization to be given in deserving cases. We are, therefore, of the considered view that keeping in view the fact that more and more Islanders want to acquire the higher educational qualifications, necessary facilities for such courses and adequate numbers of teacher's posts have to be provided in the educational institutions available in the Union Territory of Lakshadweep itself. It would be suicidal in the interest of the Islanders themselves to shut out the entry of Mainlanders ~~on~~ a regular basis to crucial posts of Post Graduate Teachers etc. on the ground that only Islanders can be appointed in these posts. In fact, it is a question, which needs consideration as to which comes first; unless more and more people get qualified themselves they can not come into the job market. Therefore, such a policy is self defeating. The recruitment Rules will have to be looked into from this point of view. Of course, providing adequate safeguards for the Islanders in such appointments is necessary, but till such qualified Post Graduates became available from the Islands, a more liberal approach would have to be adopted.

11. We are, therefore of the considered view that the Union Territory Administration shall take up the matter with the

Ministry of Home Affairs as had been done in the case of Trained Graduate Teachers in 1998, for taking a policy decision in the matter to consider the appointment of those Post Graduate Teachers, who have been continuously working for a period of more than two years on a regular basis, even if their initial appointments were made on contract basis. The Recruitment Rules may also be reviewed to enable regular appointment of qualified personnel irrespective of nativity at least for some time more, in the context of our observations above. Till such consideration is made and a final decision is taken, we direct that the applicants herein shall be allowed to continue on the terms and conditions as stipulated in the contract and their services shall not be dispensed with till such a final decision is taken.

12. With the above directions, the original application is disposed of. No costs.

Dated 21<sup>st</sup> September, 2007.

  
(George Paracken)  
JUDICIAL MEMBER

  
(Ms Sathi Nair)  
VICE CHAIRMAN

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