CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 159 OF 2009
O.A. NO. 171 OF 2009
O.A. NO. 359 OF 2009

FRIDAY this the 5th day of February, 2010

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. **O.A. No. 159 of 2009**

1. Shihabudheen C.A.
Post Graduate Teacher (Political Sciences)
GSSS Amini, Union Territory of Lakshadweep
Residing at Amini

2. Balakrishnan V
Post Graduate Teacher (Economics)
GHSS Kilthan, Union Territory of Lakshadweep
Residing at Kilthan ... Applicants

(By Advocate Mr.P.V.Mohanan)

versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti

2. The Director of Education
Department of Education
Union Territory of Lakshadweep
Kavaratti

3. C Abdul Riyas
Residing at Chekkillam House
Kavaratti

4. Noorul Huda S.M.
Residing at Suhana Manzil
Anthroth Island
Union Territory of Lakshadweep ... Respondents

(By Advocate Mr.S.Radhakrishnan (R2&3)
Advocate Mr.M.R.Hariraj (R-3)
Advocate Mr.Nihad M Basheer (R-4))

2. O.A. No. 171 of 2009

Anish Kumar N.S.
Post Graduate Teacher (Mathematics)
JNSS Kilthan
Residing at Narikuzhiyil Karikkode (PO)
Kottayam District ... Applicant
(By Advocate Mr.P.V.Mohanan)

versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti

2. Union of India represented by Secretary
to Government
Home Department
New Delhi

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

4.. C Abdul Riyas
Residing at Chekkillam House
Kavaratti

5. Noorul Huda S.M.
Residing at Suhana Manzil
Anthroth Island
Union Territory of Lakshadweep ... Respondents

(By Advocate Mr.S.Radhakrishnan (R1 to 3)
Advocate Mr.M.R.Hariraj (R-4)
Advocate Mr.Nihad M Basheer (R-5)
Advocate Mr.R.Ramadas (R-6))

3. **O.A. No. 359 of 2009 :**

Shameema Makkuttathil
Post Graduate Teacher (Malayalam)
J.N. Senior Secondary School, Kadamat
Union Territory of Lakshadweep
Residing at Ramlath Manzil
Androth, Union Territory of Lakshadweep ... Applicant

(By Advocate Mr.T.A.Rajan)

versus

1. Union of India represented by the Secretary
Government of India
Ministry of Home Affairs
New Delhi

2. The Administrator
Union Territory of Lakshadweep
Kavaratti

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

(By Advocate Mr.Sunil Jacob Jose, SCGSC (R-1)
Advocate Mr.S.Radhakrishnan (R2&3)

The applications having been heard on 21.01.2010, the Tribunal on 05.02.10 delivered the following:

ORDER

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

The three O.As having one single issue, all the three are dealt with in this common order. For purposes of reference, it is O.A. No. 159 of 09 is taken as the pilot case.

2. Brief facts: The applicants are aspirants for the post of Post Graduate

Teachers in Higher Secondary Schools in U.T. Of Lakshadweep on regular basis.

3. The Lakshadweep Education Department (Post Graduate Teacher) (Group 'B' Non Gazetted) Recruitment Rules, 1993 provide for 50% by Direct Recruitment and 50% by promotion, and, failing both by deputation including short term contract.

4. By an order dated 06-02-2003, the Government of India had granted approval for creation of 103 teaching posts of which, 8 are at the post graduate teacher level, with the erstwhile pay scale of Rs 6,500- 10,500/-. These posts were thus created by the Administration in March, 2003.

5. Earlier, in 1996 on the basis of certain government of India orders, regularization of ad hoc teachers/contract basis local candidates while services of contract basis non-islanders were terminated. The latter agitated against the same through OA Nos. 486/96 and 778/96 and other related cases which were allowed by the Tribunal and thus, services of these contract basis non islander teachers were also regularized.

6. In so far as the applicants are concerned, when in 2006, the administration contemplated to engage only local candidates, OA No. 163/06 was filed and the Tribunal in MA No. 579/2006 directed that the candidature of the applicants who are not islanders be also considered and thus, by an order

dated 18-07-2006, the applicants were appointed, vide Annexure A-2 and A-3. The contract was to terminate on 31-03-2009.. Later on OA No. 163/2006 was allowed by order dated 21-09-2007 with a direction to the administration to take up the matter of regularization of the services of the applicants and others with the Ministry of Home Affairs by reviewing the Recruitment Rules and it was further directed that till such time final decision is taken, the applicants therein shall be allowed to continue on the terms and conditions stipulated in the contract and the services shall not be dispensed with till such a decision is taken. Annexure A-4 refers. This was challenged by the first respondent in WPC No. 34762/2007 and the High Court by Annexure A-5 order dated 28-11-2007 directed the administration not to terminate the services of the applicants in the OA. According to the applicants, about 60 posts of Post Graduate Teachers are occupied by the mainlanders on contract basis.

7. To cope up with the need for additional teaching staff, the Government of India had, vide Annexure A-6 order dated 7-7-2008 sanctioned 45 posts of Post Graduate Teachers in the Union Territory. Recruitment conditions as stated earlier remained the same.

8. The first respondent, by Annexure A7 notification invited applications from **"local candidates"** for appointment against 23 sanctioned posts of Post Graduate Teachers. The grievance of the applicants is that since the local candidates are all Scheduled Tribes, the condition that applications are invited from local candidates would mean 100% reservation which is impermissible. The

same affects the fundamental rights of the applicants. Challenge is not only for the same but also that the Administrator lacks jurisdiction in creating Group B Non Gazetted posts and Class I post, nor he is empowered to fix the methodology of selection.

9. Thus the applicants have sought for quashing of Annexure A-7 notification; for a direction to the respondents to consider the candidature of the applicants pursuant to Annexure A-7.

10. By Misc. Application No. 253 of 2009, private respondent sought himself to be impleaded which was permitted by order dated 30-03-2009.

11. Official respondents in their reply, inter alia stated as under:-

> "2. Lakshadweep is a group of islands classified as a Union Territory without Legislature, controlled by the Central Government and administered by an Administrator appointed by the President of India, under Article 239 of the Constitution. Since 1st November, 1956 various categories of posts under the Administration were filled up with suitable candidates from mainland as the Lakshadweep Administration Secretariat was functioning in a building located in Beach Road at Calicut in Kerala and sufficient educationally qualified local candidates were not readily available then. It will also be pertinent to report that at that point of time there were no High Schools other than one or two elementary schools and 99% of local guardians were neither financially sound enough nor willing to take their wards for further studies beyond elementary classes, at mainland schools."

12. As local candidates were not getting adequate opportunity for

appointment for various posts, a local committee was constituted under the Administration, viz., Home Minister's Advisory Committee and one of the issues was as to non availability in the islands of job opportunities as there is absolutely no scope for establishment of any small or large scale industries due to the peculiar geographical isolation of the islands from the mainstream of the country. Thus a conscious decision was taken by the Government of India to restrict the appointments to the posts in the islands only with local candidates. Annexure R 1(a) letter dated 3rd July 1975 in this regards reads as under:-

> "2. In pursuance of the decision taken in the meeting of Home Minister's Advisory Committee held on December, 1973, the Administrator shall, in future, make appointments to posts in the Island by deputation of persons from the mainland as far as possible, wherever local candidates are not available. Whenever this is not possible only then should resort be taken to make ad-hoc appointment from outsiders, for specified periods, with express terms that the appointment is ad-hoc and may be terminated at any time without assigning any reason. As and when necessary such appointments may be renewed on the expiry of each period on the same terms and conditions. No deviation should be made from these instructions without the approval of the Central Government."

13. The above order was subjected to a challenge before the High Court, which had held as under vide order dated 08-07-1980 in OP No. 3329/1978.

> "As a matter of policy, in view of the peculiar situation of the Island and backwardness of the natives there, and the economic and other conditions prevailing in the Island, the Government of India by Ext.P5 (order passed by the Ministry of Home Affairs dated 3/7/75) directed the Administrator not to appoint persons from the mainland excepted on deputations and only in cases where local candidates were not available. The appointment of any person from the mainland was to be

strictly on ad-hoc basis and he was liable to be terminated without notice and without assigning any reason. Ext. P5 is thus a bar against appointing persons from the mainland when candidates in the island are available. The petitioners who had been appointing on ad-hoc basis had no right to continue in the post once their terms of appointment are expired. Even during those terms they were liable to be terminated without notice and without assigning any reason.

2. Shri. Nayanar, counsel for the petitioners, contends that Ext.P5 is violative of Article 14 & 16 of the Constitution. This contention cannot be accepted. It is well met by the respondents in what they say in para 10 of the counter affidavit. I have no doubt that this is a case where reasonable classification, based on the special needs of the people of the locality, has been made.

3. In the circumstances, the complaint against termination of service of these petitioners is unsustainable".

14. The above decision was taken up in appeal before a Division Bench of the High Court, but the same was dismissed.

15. In respect of Group C and D posts, on the basis of the orders of the Government of India, the Departmental heads who were delegated with the powers of appointing authority for Group C and D posts in their respective departments were issued necessary instructions, vide Annexure R1(b).

16. Respondent No. 3 has filed his reply. His contention mainly is crystallized in para 6 to 9 of the counter, and the same is as under:-

"6. The situation in Union Territory of Lakshadweep is very special and warranting special action. The educational facilities are abysmally below the requirement. Even today there is no facility for higher studies and the students of the islands have to rely on institutions in the main land for their higher studies. The remoteness of the islands, coupled with the economic backwardness hinder the development of the islands in general. The exposure received by a student of the islands is very negligible when it is compared with the students from the mainland. The number of qualified local candidates are thus very low.

7. Further, there is no private enterprise at all in the Islands. Only employment opportunity available is under the Government. Due to the remoteness and economic conditions, a large percentage of population in the islands find it impossible to seek employment outside the islands. The result is acute shortage of employment opportunities for even the very little number of qualified local candidates. Unlike the citizens of mainland, who can cross the State Borders with comparative ease due to the advancement of transportation and communication, a candidate from the islands find it extremely difficult to travel and take employment outside.

8. Apart from these physical barrier, there is also huge mental barrier due to the lower standard of education and mental exposure available to the citizens from Islands. The said mental and educational set-back put them in a very disadvantageous position when pitted against the citizens from the mainland.

9. It is therefore necessary to provide maximum employment opportunity to the islanders within the islands. It is in this context, the committee of the Home Ministry decided in 1973 to restrict the appointments to the posts under the Lakshadweep Administration to the Local candidates, opening them to others only if qualified local candidates are not available. On the pretext of legal or technical equality, the real and tangible prior inequality cannot be ignored. The rule of equality under Article 14 and 16 takes in its fold all the measures for attaining equality and protective discrimination."

17. In their additional reply, the first and second respondent have submitted as under:-

> "6. In view of the special and specific circumstances that exist in the Union Territory of Lakshadweep, it was decided that the posts under the Administration would be offered only to those from the islands. This is not a reservation under Art. 16(4) in favour of the Scheduled Tribes. This has to be seen and understood as a special dispensation, under Art.16 (1) itself. Articles 14 and 16(1) takes in its fold all efforts to equalize, otherwise unequal classes. A candidate from island does not get the educational and mental exposure of a candidate from the mainland, and he also does not have equal quantity and quality of employment opportunity. Pitting him equal to the persons from mainland thus amounts to treating unequals as equals and is therefore, violative of the principles of equality."

18. Counsel for the applicant made available the full text of Annexure R1 (a) and the same is as under:-

> "Sub:- Appointment of Kum. Omana Varghese as a Laboratory Technician on a regular basis-
>
> With reference . to your letter No.3/13/73-DMHS dated November, 11,1974 on the subject noted above, I am directed to say that since Kumari Omana Varghese has already been regularized in the post of Laboratory Technician, termination of her service would be illegal.
>
> 2. In pursuance of the decision taken in the meeting of Home Minister's Advisory Committee held on December 1, 1973, the Administration shall, in future, make appointments to posts in the Island by deputation of persons from the mainland as far as possible, wherever local candidates are not available. Whenever this is not possible only then should resort be taken to making adhoc appointments from outsiders, for specified periods, with express terms that the

appointments is ad-hoc and without assigning any reasons. As and when necessary such appointments may be renewed on the expiry of each period on the same terms and conditions. No deviation should be made from these instructions without the approval of the Central Government."

19. Counsel for the applicant started his arguments by reference to Annexure A-6 and A-7. Annexure A-6 is the sanction for creation of certain posts of teachers, while Annexure A-7 is the impugned notification calling for applications from the local candidates. Thereafter, he has taken the Tribunal to Art. 239(1) of the Constitution, which as it stood originally and after amendment to it reads as under:-

> *"239 (1). Subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State:"*
>
> And on amendment:
>
> *"239. Administration of Union Territories.—(1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an Administrator to be appointed by him with such designation as he may specify."*

20. The counsel straightway referred to the case of Indian Express Newspapers (Pvt) Ltd vs Union of India (1986) 1 SCC 133 on the above point to state that that powers derived by the administrator of the Union Territory are derived from the President of India.

21.. Vide notification dated 18-09-1990, the Administrator had been conferred with the powers to frame Recruitment Rules. And, under the aforesaid

powers, the Administrator framed Post Graduate Teachers (Group B-Non Gazetted) Recruitment Rules, 1993 which came into effect from 27-11-1993. The rules clearly specify that the post is a Group B Non gazetted and the service is Central Civil Services, with pay scale of Rs 1640 – 2900. This was amended by notification dated 18-03-2000 whereby the pay scale was specified as Rs 6,500 – 10,500 and the status of the post i.e. Group B Non Gazetted remained unaltered.

22. The counsel then referred to letter dated 19/22 October, 2001 which was in fact added to the rejoinder in OA No. 359 of 2009.

23. Counsel for the applicant argued that in so far as the notification impugned herein, it restricts invitation of application only from local candidates and in Lakshadweep Islands, as many as 90% of the residents are classified as 'scheduled tribes' and as such, in so far as the posts advertised, impliedly it meant that there would be 100% reservation for the Scheduled Tribes, which *directly encroaches upon the Constitutional provisions of Art. 14 read with 16(1)* of the Constitution. For, according to the counsel, the lone exception to Art. 16 (1) is Art. 16(4) and various judicial pronouncements go to show that such a reservation all put together cannot exceed 50% of the posts.

24. Thus, according to the counsel for the applicant, the administrator cannot have any independent power to frame any rules or put forth any conditions of recruitment and in all his actions, he has to act within the framework

of the Constitution of India and in so far as reservation is concerned, since more than 50% reservation is not contemplated in any of the provisions, the notification, whereby reservation to Scheduled Tribes of Lakshadweep Islanders has been made 100%, is unconstitutional and hence is liable to be quashed. And, the applicants and similarly situated should be permitted to apply for the posts concerned.

25.. In this regard, the counsel relied upon the following decisions:-

> *"(a) **Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421,*** wherein the Apex Court has held:*
>
> ***15.** The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.*
>
> .....
>
> ***21.** The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.*

(b) ***Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217***, wherein it has been held:

431. *For these very reasons, it will also have to be held that so far as "backward classes" are concerned, the reservations for them can only be made under clause (4) since they have been taken out from the classes for which reservation can be made under Article 16(1). Hence, Article 16(4) is exhaustive of all the reservations that can be made for the backward classes as such, but is not exhaustive of reservations that can be made for classes other than backward classes under Article 16(1). So also, no reservation can be made under Article 16(4) for classes other than "backward classes" implicit in that article. They have to look for their reservations, to Article 16(1).*

....

446. *These observations will also show that the test of comparable backwardness laid down in Balaji[12] has not been and is not to be, understood to mean that backwardness of the other backward classes has to be of the same degree as or identical in all respects to, that of the Scheduled Castes and the Scheduled Tribes. At the same time, the backwardness is not to be measured in terms of the forwardness of the forward classes and those who are less forward than the forward are to be classified as backward. The expression "backward class of citizens", as stated earlier, has been used in Article 16(4) in a particular context taking into consideration the social history of this country. The expression is used to denote those classes in the society which could not advance socially and educationally because of the taboos and handicaps created by the society in the past or on account of geographical or other similar factors. In fact, the expression "backward classes" could not be adequately encompassed in any particular formula and hence even Dr Ambedkar while replying to the debate on the point stated as follows:*

"If Honourable Members understand this position that we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as 'backward' the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of

introducing the word 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word 'backward' has been used.

... Somebody asked me: 'What is a backward community'? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government". (CAD, Vol. 7, p. 702)

***447.** It will have, therefore, to be held that the backwardness of the backward classes other than the Scheduled Castes and Scheduled Tribes who are entitled to the benefit of the reservations under Article 16(4), need not be exactly similar in all respects to the backwardness of the Scheduled Castes and Scheduled Tribes. That it is not necessary that the social, educational and economic backwardness of the other backward classes should be exactly of the same kind and degree as that of the Scheduled Castes and the Scheduled Tribes is recognised by the various provisions of the Constitution itself since they make difference between the Scheduled Castes and the Scheduled Tribes on the one hand, and other "socially and educationally backward classes" or "backward class of the citizens" on the other. What is further, if the other backward classes are backward exactly in all respects as the Scheduled Castes and Scheduled Tribes, the President has the power to notify them as Scheduled Castes and Scheduled Tribes, and they would not continue to be the other backward classes. The nature of their backwardness, however, will have to be mainly social resulting in their educational and economic backwardness as that of the Scheduled Castes and the Scheduled Tribes.*

***810.** While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote*

areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

(c) R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745, wherein it has been held:

8. *The quoted observations clearly illustrate that the rule of 50% a year as a unit and not the entire strength of the cadre has been adopted to protect the rights of the general category under clause (1) of Article 16 of the Constitution of India. These observations in Indra Sawhney case are only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre-strength, by itself ensures that the reservation remains within the 50% limit. Indra Sawhney case is not the authority for the point that the roster survives after the cadre-strength is full and the percentage of reservation is achieved.*

(d) Post Graduate Institute of Medical Education & Research v. Faculty Assn., (1998) 4 SCC 1 wherein it has been held:

33. *In Trilok Nath Tiku v. State of J&K it has been held by this Court that where the percentage of reservations is not reasonable, having regard to employment opportunities of the general public to the cadre of service in question, the population of the entire State, the extent of their backwardness and the like, the interference by the Court against unreasonable reservation is called for."*

26. The counsel for the applicant further submitted that it is understandable if Group C and D posts are filled up by local candidates, whereas, in so far as group B posts are concerned, the same have to be filled up by throwing open the same to all others as well. It is for this reason that the Public Service Commissions conduct the selection and where exemption is granted from the selection being held through Public Service Commission, then

also, the opportunity should be available to all, though there could be reservation within the permissible limit, whereas in the instant case, though the post is one of Group B non Gazetted, the same is sought to be filled up by local candidates, which means, 100% reservation for Scheduled Tribes, which is impermissible under the law declared by the Apex Court and further the Administrator does not enjoy any such power.

27. In the case of OA No. 359 of 2009, Counsel for the applicant in that OA while endorsing the submissions made by the counsel in the other O.A. further submitted that in so far as the applicant therein is concerned, she, having married to a native of Lakshadweep, is eligible to apply for the said post, even when the condition of local candidates remained in the notification.

28. Counsel for the respondents referred to the history and background of the natives of the Island, the geographical separation, the absence of other avenues, save the government service and fishing trade, the traditional backwardness and also the ground reality that even if there be any selection from mainland, there have been occasions that people have declined to take over the post due to various adverse conditions of life in the islands. It is the submission of the counsel for the official respondents that in so far as the notification is concerned, it is totally silent about the reservation. All that it states is that applicants must be local candidates. As such, the question of reservation etc., does not apply. In so far as the infringement to the equality clause is concerned, the counsel further submitted that the Islands have certain special features and

some of them are as under:-

(a) No one could step into the islands, save with a special permit to be given by the Administration.

(b) No one could buy any piece of land in the Islands, save the natives of the islands.

(c) There are no other avenues of private employment as no one is permitted to have any establishment in the islands. As such, the government employment is the lone avenue for the local candidates.

29. The counsel further stated that in so far as the 1975 letter is concerned, though it may be with reference to a particular individual, the policy is uniform and common and the same was subjected to legal validity before the High Court in O.P. No. 3329/78-K and the constitutional validity has been upheld in that judgment. The said judgment reads as under:-

> " The petitioners are working as school teachers in one of the Lakshadweep Islands. They had originally gone from the mainland, seeking employment in the Island. They were appointed on an ad-hoc basis. They had no right to continue in the posts beyond the period fro which they were appointed I ma told that these petitioners are the wives of men who had from the mainland and are now employed in the Island. As a matter of policy, in view of the peculiar situation of the Island and the backwardness of the natives there, and the economic and other conditions prevailing in the Island, the Government, The Government of India by Ext.P.5 directed the Administrator not to appoint persons from the mainland except on deputation and only in cases where local candidates were not available. The appointment of any person from the mainland was to be strictly on ad hoc basis and he was liable to be terminated without notice and without assigning any reasons. Ext.P5 is thus a bar against appointing persons from the main land when candidates in the Island were available. The petitioners who had been appointed on ad hoc basis had no right to continue in the posts once their terms of appointment had expired. Even during those terms they were liable to be terminated without notice and without assigning reasons.
>
> 2. Shri Nayanar, counsel for the petitioners, contends that Ext.P5 is violative of Articles 14 and 16 of the Constitution. This contention cannot be accepted. It is well met by the

> respondents in what they say in para 10 of the counter – affidavit. I have no doubt that this is a case where reasonable classification, based on the special needs of the people of the locality, has been made."

30. Counsel for the private respondent fully endorsed the submission of the counsel for the official respondents. He has stated that the natives of the islands are those who are born and brought up, having their education and thus, by matrimonial relationship, the condition of local candidate cannot be fulfilled. This is in reply to the submission of the counsel for the applicant in OA No. 171/09. It has also been submitted that if the mainlanders are permitted to compete with the islanders the latter would, in view of lack of exposure to society, sink into oblivion. "There can be no race between the tortoise and the hare irrespective of whoever may win".

31. Arguments were heard and documents perused. The following legal questions arise out of this O.A.

> "(a) Whether the issue of notification is beyond the powers conferred by the provisions of Art. 239 of the Constitution?
>
> (b) Whether the stipulation "local candidates" in the notification is to be held as unconstitutional as it is alleged to mean 100% reservation to the Scheduled Tribes since 90% of the natives of Lakshadweep Islands belong to Scheduled Tribes and as per the Government orders, as also the Supreme Court decisions, reservation cannot be more than 50% of the posts.
>
> (c) Whether the peculiar features of Lakshadweep islands could permit such a stipulation for the reasons explained by the official respondents in their reply, vide Paragraphs 6 to 9 extracted above."

32. At the outset, it is to be made clear that as held by the Apex Court in

Kailash Chand Sharma v. State of Rajasthan,(2002) 6 SCC 562, while *the need to generate better employment opportunities to the people of rural backward areas is fully appreciated and an affirmative action in this regard is not ruled out, any such action should be within the framework of constitutional provisions relating to equality.*

33. First as to the powers of the Administrator. True, he derives the power only from the provisions of Art.239 of the Constitution of India. *Under Article 239 of the Constitution of India the Union Territories are administered by the President of India acting through an administrator to be appointed by him. But this does not mean that the Union Territories become merged with the Central Government. They are centrally administered but they retain their independent entity.(see* ***Chandigarh Admn. v. Surinder Kumar,(2004) 1 SCC 530.*** Also see ***Satya Dev Bushahri v. Padam Dev,(1955) 1 SCR 549, 553,*** wherein the Apex Court has held:

> *"The President who is the executive head of the Part C States is not functioning as the executive head of the Central Government, but as the head of the State under powers specifically vested in him under Article 239. The authority conferred under Article 239 to administer Part C States has not the effect of converting those States into the Central Government. Under Article 239, the President occupies in regard to Part C States, a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part B States. Though the Part C States are centrally administered under the provisions of Article 239, they do not cease to be States and become merged with the Central Government."*

34. The above could well be discerned from the provisions of the General Clauses Act as well which provides as under:-

"3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

(8) Central Government shall —

(*a*) * * *

(*b*) in relation to anything done or to be done after the commencement of the Constitution, mean the President;

and shall include—

(*i*) in relation to functions entrusted under clause (1) of Article 258 of the Constitution to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

* * *

(*iii*) in relation to the administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution."

35. The President having empowered the Administrator to frame the Rules and the Recruitment Rules having been framed, there is absolutely no doubt that the Administrator does enjoy the requisite power to frame the Recruitment Rules.

36. The question is whether the notification containing the words, "local candidates" is violative of the constitutional provisions.

37. Though the counsel for the applicant laid emphasis over the provisions of Art.16(4) and that in the event of reservation being provided to local candidates, who are 90% Scheduled Tribes, the same cannot exceed 50% as per the extant rules, as also confirmed by the decisions of the Apex Court, the notification does not reflect anything about such reservation. That by limiting selection only from among the local candidates may lead to nearly the entire

selection from out of the Scheduled Tribes as 90% of the population of Lakshadweep Islands belong to Scheduled Tribes is only an incidental consequence. In that event, the question congeals into, as to whether the stipulation "local candidates" offend the general clause of equality enshrined in Art. 14 and 16 of the Constitution.

38. To answer the above question, it is to be seen whether permitting the mainlanders to compete with the islanders would result in unequals being treated as equals and if so whether the same offends the equality clause. Any attempt at giving weightage to the rural candidates should be backed up by scientific study and considerations to constitutional guarantee of equality (see Kailash Chandra Sharma vs State of Rajasthan, *supra).*

39. In State of Kerala v. N.M. Thomas, (1976) 2 SCC 310, the Apex Court has held as under:-

> *"**24.** Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved."*

40. In the above judgment it has also been held, "*Equality of opportunity admits discrimination with reason and prohibits discrimination without reason.*"

41. Hon'ble Mr. Justice V.R. Krishna Iyer in his own inimitable style, in the case of **N.M. Thomas** (supra) held as under:-

> *"The true test is, what is the object of the classification and is it permissible? Further, is the differentia sound and substantial and clearly related to the approved object? I agree this is virgin ground, but does not, for that reason alone, violate, equality. My conclusion is that the genius of Articles 14 to 16 consists not in literal equality but in progressive elimination of pronounced inequality. Indeed, to treat sharply dissimilar persons equally is subtle injustice. Equal opportunity is a hope, not a menace.*
>
> ***145.** Jurisprudence, to be living law, must respond to the bhangi colony and the black ghetto intelligently enough to equalise opportunities within the social, political and economic orders, by making up for long spells of deprivation. Hence, if a court is convinced that the purpose of a measure using a suspect classification is truly benign, that is, that the measure represents an effort to use the classification as part of a program designed to achieve an equal position in society for all tribes and groups and communities, then it may be justified in permitting the State to choose the means for doing so, so long as the means chosen are reasonably related to achieving that end. The distinction would seem to be between handicaps imposed accidentally by nature and those resulting from societal arrangements such as caste structures and group suppression. Society being, in a broad sense, responsible for these latter conditions, it also has the duty to regard them as relevant differences among men and to compensate for them whenever they operate to prevent equal access to basic, minimal advantages enjoyed by other citizens. In a sense, the theory broadens the traditional concept of "state action" to require government attention to those inequalities for which it is not directly responsible, but which nevertheless are concomitant features of the existence of the organized State. I quote- from Harvard Law Review — 1968-69. Vol. 82, excerpts from 'Developments in the Law — Equal Protection':*
>
> *"A State might, for example, decide to give some racial groups an exemption from qualification examinations or establish a racial credit on such examinations to that often given to veterans. (pp. 1105-96) (emphasis, mine)*
>
> * * *
>
> *Where racial classifications are being used ostensibly to*

remedy deprivation arising from past and continuing racial discrimination, however a court might think it proper to judge the measures by a less stringent standard of review, possibly even the permissive or rationality standard normally used in constitutional appraisal of regulatory measures.

* * *

Moreover, even if racial classifications do have some negative educative effects, the classifications may be so effective that they should be instituted despite this drawback. If the measures succeed in aiding blacks to obtain opportunities within the social, political and economic orders that have formerly been denied to them, they may be worth the cost of emphasizing men's differences. It may be that the actual participation of blacks in positions alongside whites will ultimately prove to have the most important and long-lasting educative effect against discrimination. (p. 1113)

* * *

Hence, if a court is convinced that the purpose of a measure using a racial classification is truly benign that is, that the measure represents an effort to use the classification as part of a program designed to achieve an equal position in society for all races, then it may be justified in permitting the State to choose the means for doing so, so long as the means chosen are reasonably related to achieving that end."

149. *I end my opinion of concurrence with the learned Chief Justice with the admonition, induced by apprehension and for reasons already given, that no caste, however seemingly backward, or claiming to be derelict, can be allowed to breach the dykes of equality of opportunity guaranteed to all citizens. To them the answer is that, save in rare cases of 'chill penury repressing their noble rage', equality is equality — nothing less and nothing else. The heady upper berth occupants from "backward" classes do double injury. They beguile the broad community into believing that backwardness is being banished. They rob the need-based bulk of the backward of the 'office' advantages the nation, by classification, reserves or proffers. The constitutional dharma, however, is not an unending deification of*

'backwardness' and showering 'classified' homage, regardless of advancement registered, but progressive exercising of the social evil and gradual withdrawal of artificial crutches. Here the Court has to be objective, resisting mawkish politics. But, by that standard, as statistically shown to us in this case, harijan ***have-nots have 'miles to go' and so long, the administration has 'promises to keep'****, (emphasis supplied)"*

42. It is well settled that while Article 14 prohibits discrimination and requires that all persons subjected to any legislation shall be treated alike, **it does not forbid classification for implementing the right of equality guaranteed by it provided the classification is based on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that the said differentia has a rational nexus to the object sought to be achieved by the said legislation**. Of course, the classification must not be arbitrary but must be based on some distinct qualities and characteristics peculiar to the persons included in the group and absent from those excluded and those peculiarities must have a reasonable nexus to the object proposed to be achieved. In other words, the doctrine of classification evolved by the courts permits equals to be grouped together and does not permit unequals to be treated by the same yardstick. Differential treatment becomes unlawful if it is arbitrary and not based on rational relation with the statutory objective. The emphasis is not only on de jure equality but also on de facto equality. (***State of Sikkim v. Surendra Prasad Sharma, (1994) 5 SCC 282***)(emphasis supplied) To cite an example, as held in the case of ***Jagadish Saran (Dr) v. Union of India, (1980) 2 SCC 768, "19.*** *If the State, for*

example, seeks to remove the absence of opportunity for medical education of adivasis or islanders who have no inclination or wherewithal to go to far-off cities and join medical colleges, by starting a regional university and medical college in the heart of such backward region and reserves a high percentage of seats there to "locals" i.e. students from that university, it cannot be castigated as discriminatory. What is directly intended to abolish existing disparity cannot be accused of discrimination.".

43. In the instant case, it is of employment opportunity and the entire posts are sought to be filled up by the locals.

(Also see ***Om Kumar v. Union of India,(2001) 2 SCC 386,*** where the Apex Court has held : " 66. *....in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority."*

44. In ***State of Rajasthan v. Rajendra Kumar Godika, 1993 Supp (3) SCC 150,*** the Apex Court has held as under:-

> ***"6.*** *We may, however, observe that it would be advisable for the State Government to lay down more clearly its policy for the future to avoid even the semblance of treating unequals as equals for the purpose of promotion, in consonance with the well-known maxim that 'justice should not only be done but should also be seen to be done'.*

45. Again, in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1996) 1 SCC 642*, the Apex Court has held:

> *"it may be stated that equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. (See Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union)"*

46. *Also in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217*, the Apex Court has held:

> ***"146.** The basic policy of reservation is to off-set the inequality and remove the manifest imbalance, the victims of which for bygone generations lag far behind and demand equality by special preferences and their strategies. Therefore, a comprehensive methodological approach encompassing jurisprudential, comparative, historical and anthropological conditions is necessary. Such considerations raise controversial issues transcending the routine legal exercise because certain social groups who are inherently unequal and who have fallen victims of societal discrimination require compensatory treatment. Needless to emphasise that equality in fact or substantive equality involves the necessity of beneficial treatment in order to attain the result which establishes an equilibrium between two sections placed unequally."*

47. In a comparatively recent case of *M. Nagaraj v. Union of India,(2006) 8 SCC 212*, the Apex Court has after referring to the interse relationship between Art.16(1) and 16(4-a) held,

> *"Therefore, in each case, a contextual case has to be made out depending upon different circumstances which may exist State-wise".*

The Apex Court further held in this case:

> *"Equality has two facets— "formal equality" and "proportional equality". Proportional equality is equality "in fact" whereas formal equality is equality "in law". Formal equality exists in the rule of law. In the case of proportional equality the State is expected to take affirmative steps in favour of disadvantaged sections of the society within the framework of liberal democracy. Egalitarian equality is proportional equality."*

48. It is with the above decisions in head and Constitution at heart we have to deal with the subject matter in this case.

49. A look at the geographical situation, the culture tradition, literacy, economic condition of the natives of Lakshadweep Islanders is very much essential here. Though in brief the respondents in their counter brought out the same, for the purpose of adjudication of this OA some elaboration is justified. Unlike in the mainland, where there has always been demarcation of individual properties, even earlier, there was no demarcation of any individual property in the islands. The Apex Court in ***Dy. Collector, Minicoy v. Navadigothi Mohd., (1996) 10 SCC 266***, observed as under:-

> *"But on examination of the materials on record and the history of the bundle of rights which the inhabitants of these Islands were enjoying, it is crystal clear that there was no demarcation of any individual property. The villagers through their Mooppans were initially getting some remuneration for collecting and stacking coconuts. In course of time they got the right to pluck coconuts from the trees but no specific individual had any specific right over any specific tree and it was a case of collective right of collection and enjoyment of the fruits through their Mooppans. Mooppan was acting as the trustee and was equally distributing the usufruct of the coconut trees. At no point of time either the Mooppans or any individual villager had an iota of right over the land or the coconut trees standing thereon."*

50. Today, other than islanders, none could hold any property in the islands. There are no public or private enterprises/establishments in the islands. Avenues as available in the mainland are not there in the islands. Public employment and fishing are the only avenues available to the islanders. Educationally, the islanders cannot be said to be highly qualified. Their exposure being comparatively less, they cant be a match to the mainlanders. Socially they are backward. Even in medical facilities the islands are lagging far behind. The Apex Court in the case of ***Common Cause, A Regd. Society v. Union of India, (1998) 9 SCC 367***, observed:

> *"There is no Blood Bank (licensed or unlicensed) which undertakes the task of collecting, testing and storing blood in the Union Territory of Lakshadweep and the blood transfusion is being made only in emergency cases accepting blood from the relatives and friends after proper testing."*

51. It is trite that even in respect of administration or legislation, special provisions have been made in respect of Union Territories, vide Art. 240 of the Constitution. Art. 240 of the Constitution states as under:-

> "240. (1) The President may make regulations for the peace, progress and good government of the Union territory of—
> (*a*) the Andaman and Nicobar Islands;
> (*b*) the Laccudive, Minicoy and Amindivi Islands;
> (*c*) Dadra and Nagar Haveli;
> (*d*) Goa, Daman and Diu;
> (*e*) Pondicherry:
>
> Provided that when any body is created under Article 239-A to function as a legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from

the date appointed for the first meeting of the legislature.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any existing law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory."

52. After referring to the above provisions, the Apex Court in the case of ***T.M. Kanniyan v. ITO,(1968) 2 SCR 103*** stated as under:-

*" **3.** Regulation No. 3 of 1963 was made by the President in the exercise of the power conferred on him to make regulations for the peace, progress and good government of the Union territories. The contention that under Article 240 the President can make regulations limited to the subject of law and order only cannot be accepted. The grant of legislative power to make laws, regulations or ordinances for British dependencies has long been expressed in the common form of that of making laws, regulations or ordinances for "peace and good government" of the territory or similar objects such as "peace, order and good government", "peace, welfare and good government" and "peace, progress and good government" of the territory. Instances of this common form of grant of legislative power to legislatures and authorities in India are Section 42 of the Indian Councils Act, 1861, Sections 71, 72, 80-A of the Government of India Act, 1915, Section 72 of the Ninth Schedule and Section 92(2) of the Government of India Act,1935. Such a power was held to authorise the utmost discretion of enactment for the attainment of peace, order and good government of the territory and a court will not enquire whether any particular enactment made in the exercise of this power, in fact, promotes those objects, Riel v. Queen, Chenard and Co. v. Joachim Arissol. **The words "peace, order and good government" and similar expressions are words of very wide import giving wide discretion to the authority empowered to pass laws for such purposes,** Attorney-General for Saskatchewan v. Canadian Pacific Ry. Co., King Emperor v. Benoari Lal Sarma- In Jogendra Narayan Deb v. Debendra Narayan Roy Sir George Rankin said that **the words have reference to the scope and not to the merits of the legislation.** In Girindra Nath Banerjee v. Birendra Nath Pal, he said that "**these words are used because they are words of the widest significance and it is not open to a court of law to consider with regard to any particular piece of legislation whether in fact it is meritorious in the sense that it will conduce to peace or to good government.** It is sufficient that they are words which are intended to give, subject to the*

restrictions of the Act, a legislating power to the body which it invests with that authority". Article 240 of the Constitution confers on the President a general power of making regulations for the peace, progress and good government of the specified Union territories. In exercise of this power, the President may make a regulation repealing or amending any Act made by Parliament or any existing law which is for the time being applicable to the Union territory. The regulation when promulgated by the President has the same force and effect as an Act of Parliament which applies to that territory. The President can thus make regulations on all subjects on which Parliament can make laws for the territory."

53. Referring to the difference between the powers of the President with reference to administration of Union Territory qua that of States, the Apex Court has in the aforesaid case of T.M. Kanniyan held:

> "The Union territories are centrally administered through the President acting through an administrator. In the cabinet system of Government the President acts on the advice of the Ministers who are responsible to Parliament."
>
> The Apex Court further goes to hold:
>
> ***6.*** *..... By the express words of Article 240, the President can make regulations for the peace, progress and good government of the specified Union territories. Any regulation so made may repeal or amend any Act made by Parliament and applicable to that territory. When promulgated by the President the regulation has the same force and effect as an Act of Parliament applicable to that territory. This general power of the President to make regulations extends. to all matters on which Parliament can legislate. ..... We are satisfied that the proviso to Article 240(1) on its true construction does not fetter the power of the President to make regulations for any of the Union territories specified in Article 240(1) including Pondicherry as long as no legislature is created for the territory."*

54. The above words of the Apex Court would mark the distinction between the status of a State and Union Territories and in so far as the powers of the Administrator, the same are derived from the powers of the President, duly delegated to him.

55. What art. 14 and 16 forbid is hostile discrimination and not reasonable classification. See (*N.M. Thomas supra*). Prescription of certain conditions, such as 'local candidates alone may apply' may not be viewed as unconstitutional for, on the basis of ground reality of marked difference in the socio-economic lives between the mainlanders and islanders, the Lakshadweep Administration which has powers under Art. 239 and 240 of the Constitution, has chosen to ensure that employment opportunities to the locals who have no other scope or avenues of employment are not depleted. Such a stipulation of inviting applications from local candidates is not uncommon, especially with reference to Union Territories, as could be seen in the case of ***Union of India v. B. Valluvan,(2006) 8 SCC 686,*** wherein, the advertisement read as under::

> *"Applications are invited from the eligible local candidates for the post of Pharmacist under the A&N Health Department, Port Blair"*

56. The post is one of teaching. The locals do well understand the behaviour, idiosyncrasies and other habits of the students more than others. True, letting outsiders to be brought in is like letting fresh air to come in and the suffocation may disappear. But if the locals move out for their studies and be back to their native land and work, the effect would not be different. As on date, allowing the mainlanders to compete with the islanders would not be appropriate, as the disadvantaged group may not be able to compete with the open category people (see *A.P. Public Service Commission v. Baloji Badhavath, (2009) 5 SCC 1).* Of course, from

amongst the natives, the administration should suit the most able to meet the functional responsibilities assigned to them.

57. Provision existing for classification, with a purpose sought to be achieved, we do not find any unconstitutionality in the prescription of local candidates alone being eligible for the post of PGT.

58. As regards the contention of the applicant in O.A. No. 359/09 that the applicant is a spouse of Islander, it is for the respondents to consider the entitlement and take a suitable decision. Decision in the case of Mrs. Valasamma Paul vs Cochin University, (1996) 3 SCC 545 may be referred to in this regard.

59. The O.As are therefore, dismissed. Respondents may go ahead with the appointment of local candidates and may disregard the case of the applicants.

(Dated, the 5th February 2010)

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS