

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 19/2007.

Monday this the 15th day of June, 2009

C O R A M

**HON'BLE Dr. K.B,S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P.A. Mohammed Zakir Hussain
S/o Kunjikoya Thangal
PGT in Physics
Mahatma Gandhi Senior Secondary School
Androth
residing at Puthiyallath Pura
Androth, Lakshadweep.

.. Applicant

By Advocate M/s M.R. Hariraj, P.A.Kumaran, Vineetha B., K. Sarath
Kumar, Nithin S with Shri M.R. Rajendran Nair, Sr. Advocate

Vs

1 Union of India represented by the
Secretary to Government
Department of education
Ministry of Human Resources Development
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. S. Radhakrishnan

The Application having been heard on 9.6.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is challenging Annexure A-19 order dated 11.12.2006 rejecting his representation for regularisation of his service as Lecturer in Physics/Post Graduate Teacher.

2 The facts in brief are as follows:- The applicant while working as regular Senior Observer at the Observatory, Aminy under the 1st respondent, having sponsored by the Employment Exchange was appointed as Lecturer in Physics in the JN College, Kadamath against the deputation vacancy of Shri Venkitachalam. Consequent to de-linking of Pre-degree courses from the Universities, the colleges were converted into Senior Secondary Schools and all Lecturers in the erstwhile Junior College were continued in the Senior Secondary Schools protecting their pay scales and designations. Though the applicant was designated as Lecturer he was paid only the scale of PGT i.e. Rs. 6500-10500. Shri Venkitachalam on return from deputation, never joined the Teacher post in the School and hence the applicant continued in service without any break. He was paid vacation salary, increment, etc. He made several representations for regularisation of his service which were not responded to. Shri Venkitachalam retired on 31.3.2006 while working as OSD. When the applicant was not given vacation salary in 2006 he submitted representation for regularisation (A-12) which was also not replied to. On re-opening he was asked to wait till clarification came from the 3rd respondent. From 30.3.2006, neither he was permitted to join duty nor was he paid any salary. Hence he approached this Tribunal through O.A. 621/2006 which was disposed of directing the respondents to consider the representation of the applicant. Thereafter, he was engaged on contract

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basis on consolidated remuneration of Rs.7500/- per month whereas he was drawing more than Rs. 17,000/- in the scale of pay of PGT. Hence he filed this O.A. on the grounds that (i) the reason for refusing to grant the claim is not reflected in the impugned order (ii) there is no abolition of the post of Junior Lecturer on retirement of Shri Venkitachalam (ii) the applicant was appointed after a due selection process therefore there is no justification whatsoever in not considering him for regularisation, (iv) it is not justified to change the nature and terms of appointment (v) the necessity of the post is justified by the continuance of the applicant on contract basis (vi) the applicant was treated as a temporary Govt. servant as evident from the notice of termination of service, therefore the termination is not in accordance with the law and (vii) the applicant was appointed after a due process of selection for regular appointment, he is eligible to be appointed in the next arising vacancy.

3 The respondents opposed the O.A. by filing reply statement. They submitted that the applicant was appointed as Lecturer in Physics against the deputation vacancy of Shri Venkitachalam. It was mentioned in the appointment order that it was purely temporary and the services would be terminated at any time without assigning any reason and the appointment was subject to the conditions of CCS (TS) Rules 1965 (A-1). The service of the applicant stood terminated with the retirement of Shri Venkitachalam on 31.3.2006. They also submitted that the applicant was drawing the pay scale of Rs. 6500-10500/- which is the scale equivalent to the pre-revised scale of Junior Lecturers and that the pay scale of Rs.2200-4000 was not extended to the applicant as he was not a party to the Supreme Court cases. Shri Venkitachalam rejoined duty w.e.f. 9.11.2001. They submitted that he could not be posted as Lecturer as the

Lecturer posts were treated as dying cadre and he could not be appointed as PGT without notifying vacancy and conducting a selection. They also submitted that on a written request submitted by the applicant he was appointed as PGT on contractual basis on a consolidated remuneration of Rs. 7500/- on the terms and conditions specified by the respondent.

4 The applicant filed rejoinder and the respondents filed additional reply statement.

5 We have heard learned counsel for the parties and perused the records.

6 The argument of the learned counsel for the applicant is that the applicant was appointed after a due selection process having been sponsored by the Employment Exchange, he was continuing as a Junior Lecturer in the Higher Secondary School and that post was not declared as a dying cadre and that the existence of post of PGT in Physics is evident from the appointment of the applicant on contract basis, hence, he is eligible to be regularised in that post. The learned counsel for the respondents on the other hand argued that the appointment of the applicant to the post of Lecturer in Physics was against a temporary deputation vacancy of Shri Venkitachalam, that the post of Lecturer was declared as dying cadre, the post ceased to exist on the retirement of Shri Venkitachalam on 31.3.2006 and subsequent appointment of the applicant was on contract basis. Hence, the service of the applicant cannot be regularised.

7 We see that the applicant was appointed to the post of Lecturer in Physics vide Annexure A-1 dated 28.4.1997 which is extracted below:

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Shri Mohammed Zakir Hussain, P.A. Puthiyallath Pura House, Andrott a candidate introduced by the District Employment Exchange, Kavaratti is appointed as Lecturer in Physics on a scale of pay of Rs. 1640—6—2000-EB-6—2360-EB-60-2600-75-2750-EB-75-2900 plus usual allowances admissible to the Lakshadweep Administration employees from the time to time and posted at J.N. College, Kadmat against a deputation vacancy of Shri K.R. Venkitachalam, Lecturer.

He is informed that his appointment is purely temporary against a deputation vacancy and the same shall not confer on him any claim for regular appointment in the post. His service will be terminated at any time without assigning any reason. His appointment will also be terminated on joining of regular incumbent after his deputation period. The appointment is further subject to the conditions of the CCS(TS) Rules, 1965.

The Principal, J.N. College, Kadmat is requested to report the date of joining of the individual to the Director of Education in due course specifying forenoon/afternoon.

It is clear from above that the applicant was appointed on a purely temporary post of Lecturer in the scale of Rs. 1640-2900 against a deputation vacancy of Shri K.R. Venkitachalam. It is also mentioned therein that his appointment is subject to the conditions of CCS (TS) Rules, 1965.

8 Consequent on the de-linking of Pre-degree courses from the University of Kerala, the Junior Colleges were converted into Senior Secondary Schools and all the Lecturers in the erstwhile Junior Colleges were continued in the Senior Secondary Schools protecting their pay scales and designations and declared it to be a dying cadre. The service of the applicant was liable to be terminated in October, 2001 the date of return of Shri Venkitachalam from deputation. But the respondents posted Shri Venkitachalam as OSD and thereby the service of the applicant was allowed to be continued. In fact, the notice of termination of service of the applicant was served on the applicant which was later withdrawn as per

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Annexure A-6 order which is extracted below:-.

"The notice under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 issued vide Order F.No. 18/10/94-Edn(1) dated 27.11.2001 to Shri P.A. Mohammed Zakir is hereby withdrawn."

The respondents have not explained the reason for withdrawal of the notice of termination and continuance of the applicant after October, 2001. The stand of the respondents is that the post of Lecturer in Physics held by Shri Venkitachalam ceased to exist on his retirement on 31.3.2006 in compliance of the judgment of the Hon'ble Supreme Court.

9 There is no iota of doubt that the applicant was initially appointed to the post of Lecturer in the scale of Rs. 1640-2900 revised to Rs. 6500-10500 which is the scale of pay of Lecturers in Junior Colleges. The respondents on one side allowed the applicant to continue in the post of Lecturer even after the termination of his temporary service but denied the scale of pay of that post. They say that the post would cease to exist on the retirement of the incumbent - which is applicable to the post of Lecturer only and not PGT. What emerges from the above is that the applicant though appointed as Lecturer was working as a PGT and the respondents continued the services of the applicant as there was need for a PGT in Physics even after the retirement of Shri Venkitachalam, as presumably, no recruitment for regular selection could be done in the absence of sanctioned posts of PGT. It was submitted that 45 posts of PGT were sanctioned only in 2008, after protracted correspondence with the Ministry. Therefore, the applicant never got an opportunity to take part in a regular selection for recruitment.

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10 The respondents have relied on the decision of this Tribunal in O.A. 732/2005. The operative portion of the order of the Tribunal is extracted below:

"We have heard the learned counsels and gone through the pleadings carefully. It is clear that only two posts were notified on 7.8.2002 and the selection in which the applicant participated culminated in the appointment of two candidates against those vacancies. The applicant was only a waitlisted candidate. Annexure A2 order issued only appointed her against a deputation vacancy which by its very nature lasts only till the deputationists reports back and there can be no claim against such a vacancy. Again on a request from her she was appointed on adhoc basis against a transfer vacancy by Annexure A4 order and she was continuing on the basis of interim orders of this Tribunal. It is therefore obvious that her later adhoc appointments were not related to the original selections in 2002 as the applicant has made out. The department conducted selections against regular vacancies in 2004 and 2005, but the applicant did not apply for the posts and continued in the adhoc status of TGT. Since she was not appointed against a regular vacancy but only on a purely temporary and adhoc basis she cannot be regularised against that post. There is no right for a waitlisted candidate to be appointed against any other posts which was not included in the selection in which she participated. It would amount to providing a backdoor entry and extending the life of a select list which has ceased to be valid. The prayer in the application is devoid of any merit. OA is dismissed."

Though the applicant therein was appointed against a deputation vacancy and one of the reliefs prayed for was for regularisation of services, the facts are different. In that O.A. there was a notification for filling up two posts of TGT and the applicant in the waiting list was appointed on adhoc basis against a deputation post which was extended on different occasions. On return of the deputationist, the service of the applicant was terminated which was challenged in the O.A. The applicant in the present case was sponsored through Employment Exchange and was appointed on temporary basis against a deputation post, but continued in that capacity even after the return of the incumbent from

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deputation. The services of the applicant were terminated only on the superannuation of the incumbent. The case of the applicant is distinguishable.

11 We find that in O.A. 163/2006 a Division Bench of this Tribunal held as follows:

"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."

The applicants in the aforesaid O.A. were Post Graduate Teachers working in Higher Secondary Schools in the Union Territory of Lakshadweep on contract basis who sought to regularise their services with consequential benefits. In the case of the applicant in the present O.A. earlier he had continuously functioned for a substantial period against deputation vacancy and after break up of about 10 months continued to function, though on contract basis. Thus, the benefits available to the applicants in the above O.A. cannot be denied to this applicant. Of course, by accepting disengagement of his services against a deputation vacancy, the applicant is deemed to have acquiesced to forego the benefit of service against the vacancy he held when he was disengaged. That period cannot be counted for any purpose such as

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fixation of pay, etc. save for age relaxation. In view of the above, we are of the view that this O.A can be disposed of on the same lines as the order in O.A. 163/2003.

12. Applicant has prayed for quashing of Annexure A-19 communication whereby his request for regularisation has been rejected. In view of our decision vide preceding paragraphs, applicant's past services can be taken into account only for age relaxation. However, with a view to secure ends of justice, invoking provisions of Rule 24 of the CAT Procedure Rules, we feel it appropriate that the orders passed in OA No. 163/2003 may be followed in this case as well and corresponding directions given, notwithstanding the fact that the same are not the exact reliefs sought by the applicant. As this case also warrants review of Recruitment Rules for regular appointments of qualified personnel, the department may consider review of the same and till such time, such a review takes place and a decision arrived at, the applicant shall be allowed to continue on contract basis with attendant terms and conditions thereof. The respondents shall also permit the applicant to compete in the regular selection, if any, to be held for recruitment to the post of PGT Physics, if he is otherwise eligible, granting age relaxation to the extent of the services rendered from 7.7.97 to 31.03.2006. Ordered accordingly. No costs.

Dated 15th June, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


K.B.S. RAJAN
JUDICIAL MEMBER

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