

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA Nos 205/2006 & 226/2006

MONDAY THIS THE 21ST DAY OF AUGUST, 2006

C O R A M

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

O.A.No. 205/2006

Mohammed Hussain K.
Koodat House, Androth
Lakshadweep.

Applicant

By Advocate Mr. N. Nagaresh

Vs.

- 1 Administrator
UT of Lakshadweep
Kavaratti.
- 2 Director of Education
UT of Lakshadweep
Kavaratti.

Respondents

By Advocate Mr. Shafik M.A.

O.A. 226/2006

M.I. Abdul Kareem
Mela Illom
Chetlat Island
UT of Lakshadweep.

Applicant

By Advocate Mr. N. Nagaresh

Vs.

- 1 Administrator
UT of Lakshadweep
Kavaratti.
- 2 Director of Education
UT of Lakshadweep
Kavaratti.

Respondents

By Advocate Mr. Shafik M.A.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in these OAs are aggrieved by the non-consideration of their candidatures for selection to the posts of Primary School teachers. Since the facts and circumstances and the reliefs prayed for in both the OAs are similar they were heard together and are being disposed of by this common order.

2 The applicants in both the OAs are natives of Lakshadweep Islands and belong to Scheduled Tribe. The applicants passed SSLC and Pre Degree but could not score 40% marks in the Pre Degree examination. They were sent for Teachers Training Course (TTC) by the Lakshadweep Administration and successfully completed the course scoring more than 50% marks. The 2nd respondent notified 17 vacancies of Primary School Teachers in Annexure A-5. The applicants submitted applications for the post but were not called for test or interview. The second respondent has published a list of unqualified candidates in which the applicants' names have figured (Annexure A-7) and hence these applications. The following reliefs are sought for:

"(i)to declare that the applicant is entitled to be considered for selection for appointment as Primary School Teacher against the vacancies notified in Ann A5 in relaxation of Annexure A2 Recruitment Rules.

(ii)To direct the respondents to consider the candidature of the applicant for selection and appointment as Primary School Teacher.

(iii)To set aside Ann A2 Recruitment Rules to the extent they prescribe 40% minimum marks in SSLC and Pre Degree for appointment as Primary School Teachers and to the extent they make non TTC/TCH holders eligible for the post as also A7 list.

(iv)And to pass such other appropriate directions or orders this Hon Tribunal may deem fit, just and proper in the facts and circumstances of the case."

3 The applicants have contended that as per the Recruitment Rules, 1962, 40% minimum marks in the SSLC or Pre Degree was not a criterion for appointment as Primary School Teacher. The qualifications now prescribed by the respondents are unsustainable as they are in conflict with the qualifications prescribed by the NCTE in its Annexure A-3 regulations. Therefore to the extent they are not in consonance with the A-3 regulations of the NCTE they are null and void. Further, in a place like Lakshadweep, where the native population is 100% Scheduled Tribe, the fixation of an additional qualification of 40% marks with an increase in 5% over the pass marks of 35%, is violative of the constitutional mandates for SC and ST candidates. It is also contended that even after amendment to the Recruitment Rules, the respondents have relaxed the Rules in favour of non Pre-Degree candidates having SSLC and TTC when the Rule mandates that TTC holders should also pass Pre Degree for appointment as Primary School Teachers and in such circumstances it is only fair that candidates like the applicants who have Pre Degree and TTC should be given relaxation in respect of 40% marks insisted for Pre Degree.

4 The respondents have stated that the applicants are candidates aspiring for selection to the posts of Primary School Teachers in the Dept of Education, Lakshadweep and as per the existing Recruitment Rules, the candidates should have 40% in the qualifying examination in the Senior secondary level and 40% marks in TTC for the posts of Primary School Teacher. The applicants did

not have 40% marks in the +2 examination and they were not considered for selection. By virtue of being STs, the Administration had sponsored them for the TTC course for the reserved quota and getting educational concessions does not confer any rights for employment. The Recruitment Rules for Primary Teachers were framed in 1963 and had to be revised in line with the guidelines of the National Council of Teacher Education(NCTE). The NCTE has stipulated 45% marks for qualifying examination and consequently the provision of at least 40% marks by the Department was unavoidable. The Rules were amended in 2002, as such, the applicant was very much aware of the facts before joining the course. The schools in Lakshadweep are following Kerala and CBSE pattern. Primary school Teachers are required to teach primary and upper primary classes from 1 to 7 and it is necessary to have qualified teaching staff to improve the standards in the schools. It is further averred that the prescription of 40% marks has already been challenged in a number of Original applications from 2003 onwards and the Tribunal has upheld the said prescription of 40% as minimum marks for eligibility as per order in OA 384/03, 415/03 and 439/03 which decision was followed in OA 383/03. The orders in OAs 384/2003, 415/03 & 439/03 were challenged before the Hon'ble High Court in Writ Petitions 4180/05, 5980/05 & 6073/05 which was also dismissed as per judgement dated 30.3.06 (Annexure R-5). The order in OA 383/03 was also challenged before the High Court in Writ Petition No7555/05 and the same was also dismissed upholding the

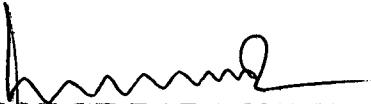
decision of the Tribunal.

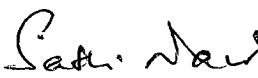
5 No rejoinders have been filed.

6 When the matter came up for hearing, it was brought to our notice that the pending Writ Petitions in the matter have also been dismissed by the Hon'ble High Court on merits by order dated 4.7.2006 in W.P.(C) No. 7555/2005. The counsel for the applicant also agreed that in the wake of these subsequent developments, these applications have no legs to stand on.

7 On consideration of merits, in the instant cases also the challenge to the Recruitment Rules is not sustainable as there can be no assurance that the Rules will remain the same for ever. The academic qualifications for various teaching posts have an important role in determining the quality of education and as rightly observed by the respondents, the candidates have to fit into the Recruitment Rules and the Rules are not required to be changed to suit the requirements of the candidates. Therefore, following the decisions in our earlier orders referred above and the ratio of the judgement of the Hon'ble High Court in WP(C) No. 7555/2005, these Applications are also dismissed.

Dated 21.8.06


GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN