

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**OA NO.208 of 2006.**

*MONDAY* this the 16th day of June, 2008

**CORAM**

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

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

1 Dr. Hussain Ouge S/o late Ali Heukagothi  
Veterinary Assistant Surgeon  
Department of Animal Husbandry  
Kavarathi  
residing permanently at Boduathri Village PO  
Minicoy Island  
U.T. Of Lakshadweep

2 Dr. P.P. Attakoya S/o Pathade Abusala Haji  
Veterinary Assistant Surgeon  
Department of Animal Husbandry  
Kadamath  
residing at Puthiyapura  
Kadamath-683 559

3 Dr. A.A. Mohammed S/o Ibrahim  
Veterinary Assistant Surgeon  
Department of Animal Husbandry  
Minicoy  
residing at Aougothiathirige,  
Minicoy-682 559

Applicants

By Advocate M/s M.R. Hariraj, P.A. Kumaran, Vineetha B, James Abraham,  
Abani P, K.R. Avinash

Vs.

1 Union of India represented by the Secretary  
Department of Animal Husbandry and Dairying  
Ministry of Agriculture,  
New Delhi.

2 The Administrator  
Union Territory of Lakshadweep  
Kavaratti.

Respondents.

By Advocate Mr. P.A. Aziz for R-1

By Advocate Mr. S. Radhakrishnan for R-2

**ORDER**

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

There are three applicants in this OA. They were initially appointed on ad hoc basis as Veterinary Asst. Surgeons (VAS) by the second respondent. They joined service on 18.3.1986, 18.6.1986 and 4.6.1984 respectively. In August 1988 their adhoc appointments were terminated and they were appointed on contract basis. The contractual appointments have been continued since then for two decades with technical breaks of one day at the end of each term. The applicants have been seeking regularisation of their services. In the year 1996 because of shortage of qualified veterinary doctors in the islands the second respondent recommended to the first respondent the regularisation of the applicants. The first respondent however rejected the recommendation in September 2000. The applicants thereafter approached this Tribunal in OA-1049 of 2000. This OA was disposed of with a direction to consider the representations of the applicants. The first respondent however rejected the representation in May 2001 on the ground that the UPSC was not consulted at the time of the initial appointment of the applicants. The rejection of their representation was challenged by the applicants in OA-500 of 2001 which was disposed in March 2003 again permitting the applicants to make further representation to the respondent No.1. The respondent again rejected the representation on 3.2.2004 on the same ground i.e. absence of consultation with the UPSC. It was also stated that the applicants were not found suitable by the UPSC in the selection process. The rejection of the representation was again challenged through OA-114/2004. While disposing of this OA the Tribunal directed the respondent to consider further representations to be made by the applicants and also the fact that the applicants have been working for more


● than two decades on ad hoc basis. However the representations made by the applicants pursuant to the directions of this Tribunal in OA 114/2004 were rejected by the respondent No.1 by their order dated 24.2.2006. This rejection is under challenge in this OA.

2 The respondent No.2 has filed a reply statement. It is contended in the reply that the Lakshadweep Administration recommended the regularisation of the applicants because of the shortage of qualified veterinary doctors in the islands. The UPSC had issued notification to fill up the vacant posts of veterinary doctors in the Union Territory seven times during the period from 1979 to 1994. Out of 22 candidates selected by the UPSC, only five local candidates are continuing on regular basis. By and large it is noticed that candidates selected from outside the territory are not willing to work in these islands because of isolation and hardship. The Administration is therefore left with no alternative but to utilise the services of these applicants on contract basis. There are 13 posts of veterinary doctors in the islands, but only five posts are filled up on regular basis. There is a veterinary unit in each of the ten islands. It is necessary to have qualified doctors to man these units especially in the context of potential threat to the livestock due to diseases. The Administration has notified these vacancies several times and the UPSC also conducted selection process. The applicants were not selected as they obtained lower rank in the selection process.

3 We have heard the counsel for the applicants Mr.M.R.Hariraj, the learned counsel for respondent No.1 Shri PA Aziz and the learned counsel for the respondent No.2 Shri S.Radhakrishnan. We have also perused the records carefully.

4 The issue for consideration in this OA is whether the applicants have made out a case for issue of a direction to the respondents to regularise

● their services. The facts of the case are not disputed. It is not in dispute that the vacancies of veterinary doctors have remained unfilled for many years inspite of the efforts made by the UPSC through all-India selection. The respondents have drawn our attention to the unwillingness of the candidates from the mainland to serve in these remote islands. This reality cannot be brushed aside.. The respondents ought to have considered relaxation of the relevant rule to facilitate the provision of essential services to the people. Rules have to be made or amended to facilitate the provision of services to the people, when required. The respondents have rejected the recommendation of the second respondent citing the relevant rules, but have not been able to find a solution to the problem of non-availability of qualified doctors in the islands. There are 37 islands in Lakshadweep, out of which 10 are inhabited. Each inhabited island is miles away from another, separated by sea and with limited and seasonal accessibility. There is therefore full justification for a vet doctor in each of the inhabited island. A doctor posted in one island cannot discharge the work of another island. Such an arrangement is feasible in the mainland; a doctor attached to a dispensary can look after the work of a neighbouring dispensary. That is not possible in the islands which are separated by miles of open sea. Therefore there is every justification that all the 13 posts are filled. The representations of the applicants, made at the instance of the Tribunal, were rejected mechanically three times without considering the facts of the case and the non-availability of vet. Doctors in the islands. The learned counsel for the applicant has relied on a recent judgment of the Hon'ble Supreme Court in which the issue of regularisation of daily rated workers was adjudicated (U.P. State Electricity Board vs. Pooran Chandra Pandey & others Civil appeal No.3765 of 2001 decided on 9.10.2007). The following extracts from the judgment of the Apex Court in that case is



relevant here:

"16 We are constrained to refer to the above decisions and principles contained therein because we find that often Uma devi's case (supra) is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University (supra) and Bharat Petroleum Corporation Ltd. (supra), a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Uma devi's case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devi's case (supra) inapplicable to the facts of that case.

17 In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-a-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board in the same manner and position. Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularisation of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read Uma devi's case (supra) in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment not even of the Supreme Court, can violate the Constitution.

X X X X X X X X X X X

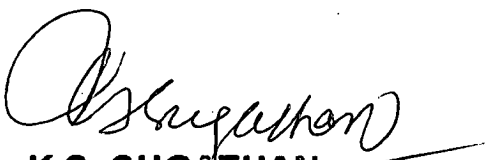
19 In the present case many of the writ petitioners have been working from 1985 i.e. They have put in about 22 years service and it will surely not be reasonable if their claim for regularisation is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularisation and are made to face the same selection which fresh recruits have to face."

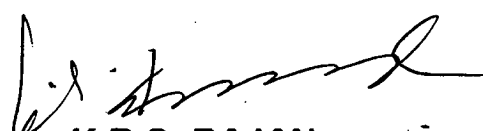
5 We have perused the reasons cited by the respondent No.1 in its order dated 24.2.2006. It is stated in the said order that comparison made by the applicants with the case of Dr. Cheriya Koya, Homeo doctor, who was regularised by the Ministry of Health and Family Welfare is not valid because the issue involved therein was relaxation of qualification. After carefully going through the order passed by the Ministry of Health dated 2.6.1995 (A11), we are unable to agree with the abovesaid contention of the respondent. Dr. Cheriya Koya was regularised in a Group A post which comes within the purview of the UPSC. So, besides relaxation of qualification, the requirement of consultation with UPSC was also relaxed.

Dr. Cheriyaakoya was recruited through the Employment exchange. The present applicants were also recruited through Employment Exchange. The applicants fulfil the eligibility criteria in regard to educational qualification. The only relaxation required is in regard to consultation with the UPSC. We are of the considered view that there is more than sufficient justification to relax this condition in respect of the applicants. They have continued to provide their services for nearly 20 years now. The Administration also require their services because qualified doctors from the mainland are not willing to serve in the islands. The yardstick adopted in regularising the services of Dr. Cheriyaakoya, Homeo doctor, is squarely applicable in this case. Not applying the same yardstick would mean discrimination, which is the ground on which the Apex Court allowed the civil appeal in the case supra.

6 For the reasons stated above, the OA is allowed. It is declared that the applicants are entitled to be regularised from the date of their initial appointment with consequential benefits. The respondent No.1 is directed to issue necessary orders regularising the services of the applicants from the date of their initial appointment with consequential benefits, within a period of three months from the date of receipt of copy of this order. No costs.

Dated 16<sup>th</sup> June, 2008.

  
**K.S. SUGATHAN**  
**ADMINISTRATIVE MEMBER**

  
**K.B.S. RAJAN**  
**JUDICIAL MEMBER**

Kmn