

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO:216/2006.
DATED MONDAY THIS THE 26TH DAY OF MARCH, 2007.**

**CORAM:HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

1 Zulfikar Ali
Kunnagalam House,
Kiltan Island
Lakshadweep.
2 Irshad Beegum N.P.
Neelathpura House,
Androt Island,
Lakshadweep. Applicants

By Advocate Mr.N.Nagaresh

V/s.

1 Union of India,
represented by its Secretary,
Department of Education,
Ministry of HRD,
New Delhi.
2 Administrator,
Union Territory of Lakshadweep,
Kavaratti.
3 Director of Education,
Union Territory of Lakshadweep,
Kavaratti. Respondents

By Advocates

Mr.Varghese P.Thomas (R-1)
Mr.Shafik M.A. (R 2&3)

The application having been heard on 26.3.2007 the Tribunal delivered the following on the same day:

Hon'ble Mrs. Sathi Nair, Vice Chairman

(ORDER)

The applicants are aggrieved by the refusal of the respondents to consider the candidature of the applicants for selection for regular appointment to the post of Fisheries Teacher. A notification was issued on 23rd April, 2005 inviting applications in the prescribed form from qualified persons for appointment of Fisheries Teacher. The Qualifications required are as under:

"Graduate in Fishing Science
Or
B.Sc Degree having Zoology and Chemistry as main subject and successfully undergone the recommendation course in Fisheries Education at CIFE, Bombay."

2 The respondents have submitted that the Education Department disqualified the applications submitted by the applicants in view of the existing Recruitment Rules for the post of Fisheries Teacher. The applicants are permanent inhabitants of Lakshadweep Islands and belong to Scheduled Tribe Community. The first applicant holds a B.Sc Degree issued by the University of Calicut with Zoology as Optional Main subject, Sericulture as Vocational subject and Chemistry and Botany as subsidiaries and has also undergone Reorientation Course in Fisheries Education at the Central Institute of Fisheries Education (CIFE) Mumbai from 2/5/2003 to 9/5/2003, 5/5/2004 to 11/5/2004. The second applicant

also holds B.Sc Degree from University of Calicut with Zoology as main Optional Subject and Chemistry and Botany as Subsidiary subjects and has also undergone the Reorientation Courses conducted by CIFE Mumbai from 15/9/2004 to 21/9/2004 in Pearlculture, 4/10/2004 to 11/10/2004 in Aquaculture Engineering and 3/11/2004 to 9/11/2004 in Disease of prawn diagnosis & control.

3 The applicants submitted their applications for the post of Fisheries Teacher and requested the respondents to consider their candidature with regard to the Order of the Tribunal in OA-385/2003 dated 17/3/2004 (Annexure A-6) wherein an identical issue was decided and it has been held that the qualification was prescribed for the Fisheries Teacher without conducting a scientific study and, therefore, relaxation can be granted to the candidates, who have the degree of B.Sc with Zoology as main subject and Chemistry and Botany as subsidiaries, as contemplated in the notification and the respondents were also given liberty to amend the provisions that prescribe an almost unattainable qualification in the Recruitment Rules in consultation with an expert body on the subject so that aspiring candidates from Lakshadweep Islands will have the benefit of sending their applications for the vacant posts of Fisheries Teacher. The said judgment has not been challenged before the High Court of Kerala and has hence attained finality. The respondents informed that they would consider the issue and decision would be taken, no further steps were taken and the applicants were informed that they were disqualified in view of the existing Recruitment Rules for the posts and were not allowed to

appear in the Written test and Interview for the post of Fisheries Teacher and hence the applicants have approached this Tribunal. They have sought the following reliefs:-

- i) set aside Annexures A5 and A7 to the extent they prescribe unattainable qualifications of B.Sc with both Zoology and Chemistry as Main subjects, for direct recruitment to the post of Fisheries Teacher.
- ii) direct the respondents to consider the candidature of the applicants for recruitment as Fisheries Teacher in pursuance of Annexure A7 Notification, in relaxation of Annexure A5 Rules and permit them to compete in the Written Test/Interview scheduled to be held on 10/4/2006 or on any other deferred date;

AND

- iii) issue such other appropriate direction or order this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case.

4 The main grounds raised by the applicants are that the Annexure A5 and A7 to the extent they prescribe an unattainable qualification for appointment to the post of Fisheries Teacher, is irrational and that the Annexure A5 Rules, 1990 prescribe B.Sc. Degree having both Zoology and Chemistry as Main subjects and successfully undergoing the Reorientation Course conducted by CIFE, Bombay as qualifications for appointment as Fisheries Teacher. No University in India conduct a B.Sc Course where both Zoology and Chemistry as main subjects. The Tribunal has already held that the qualification was prescribed for the Fisheries Teacher without conducting a scientific study and, therefore, relaxation can be granted to the candidates, who have the degree of B.Sc with Zoology as main subject and Chemistry and Botany as subsidiaries, as contemplated in the notification and the respondents were also given

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liberty to amend the provisions that prescribe an almost unattainable qualification in the Recruitment Rules in consultation with an expert body on the subject so that aspiring candidates from Lakshadweep Islands can have the benefit of sending their applications for the vacant posts of Fisheries Teacher.

5 The respondents in their reply statement have averred that the Education Department disqualified the applications submitted by the applicants in view of the existing Recruitment Rules for the post of Fisheries Teacher as the applicants are possessing graduation with Zoology main, Chemistry and Botany as subsidiaries but not Zoology and Chemistry as main. There are some Universities which offer two or three mains subjects in B.Sc Degree Courses. The Regional Institute of Education Mysore offers Degree courses in Science with 3 main subjects viz. Physics, Chemistry and Mathematics as well as Chemistry, Botany and Zoology. The department has submitted a proposal for amendment of the Recruitment Rules of Fisheries Teacher. But some candidates who are eligible for the post as per the existing Recruitment rules submitted representations to the Administrator, requesting to give one more chance to those candidates by conducting the interview for the post as per the existing Recruitment Rules. The Administrator has decided to give one or more chance to the candidates eligible for the post as per the existing Recruitment Rules. Again they have averred that the department has initiated action for amending the Recruitment Rules of all categories of teachers including the Fisheries Teacher, and while amending the

Recruitment Rules of the Fisheries Teacher, the Department is obliged to consider the Tribunal's directions in OA-385/2003 to remove unattainable Educational Qualifications from the Recruitment Rules and shall do so in consultation with an expert of the subject. The applicants do not possess Zoology and Chemistry as main in their B.Sc. Degree course as prescribed in the existing Recruitment Rules for the posts and therefore they have no legal right to submit application for consideration for appointment to the posts of Fisheries Teacher. The reliefs granted by the applicants as decided in OA-385/2003 dated 17/3/2004 are applicable to the applicants therein and cannot be granted to others.

6 We have heard Mr.N.Nagaresh and Mr.Shafik M.A. learned counsel for applicant and respondents 2 & 3 respectively

7 During the hearing, the counsel for respondents submitted that he agrees that the matter is covered by the order of Tribunal in OA-385/2003 and that the applicants were permitted to appear in the written test and interview as per interim direction in order dated 5/4/2006 of this Tribunal. Learned counsel for applicants submitted that the selections are yet to be done for the post of Fisheries Teachers due to pendency of this OA. None appeared for the official respondent no.1.

8 It is apparent from the pleadings that the applicants are also persons with similar qualification and have also undergone fisheries course and had applied for the post as the applicants in OA-385/2003. The issue has already been gone into in detail by a Bench of this Tribunal, which after making a detailed study of availability of such qualification in various

Universities and noticing that the power to relax the qualifications of the Recruitment Rules vests with the respondents and power of amending the Recruitment Rules is not the power of the Tribunal and it has stated so in paras 11 and 12 of judgment in OA-385/2003.

11. Now, the question comes before us whether this Tribunal, in such circumstances, is justified in interfering the matter or not. In this case, we notice with concern that though six number of vacancies for the post of Fisheries Teacher are available only one post was filled up during the past 13 years which clearly gives an indication of doubt that no Universities in India are imparting such a course. The respondents in the additional reply statement stated that University of Mysore is imparting B.Sc. Degree in Zoology and Chemistry as main subjects. As against this argument, the applicant has produced a copy of the certificate issued to one Ms. Suhrabi E to show that the University of Mysore is imparting the Degree of Bachelor of Science Education for five years with Chemistry, Zoology and Botany as major subjects and not the B.Sc Degree having Zoology and Chemistry as main subjects. In these circumstances, we are unable to accept the contention of the respondents that the University of Mysore is imparting the Degree course prescribed in the Recruitment Rules of Fisheries Teacher. It is also admitted by the respondents that no candidate with such qualification was appointed for the post in question in these years. The respondents have only stated in the reply statement that the qualifications have been finalised as per the recommendations of the "Vocational Education and Manpower Development" Project of the Department of Ocean Development, Government of India, for those who studied the vocational curriculum in Marine Fisheries for VII, IX and X. The respondents failed to produce before this Court to show that any of the Universities in India is imparting the B.Sc. Degree having Zoology and Chemistry as main subject. It appears to us that no scientific study has been conducted in prescribing the aforesaid qualification for the post of Fisheries Teacher.

12. The fact that the applicant and other similarly placed candidates have undergone reorientation course on Fisheries Education in CIFE, Mumbai, is an indication that a candidate having B.Sc. Degree with Zoology as main subject and Chemistry and Botany as subsidiaries, is also competent to undergo that reorientation course, which has a direct bearing on oceanographic studies. On analysing the entire gamut of the events, it is clear that atleast in the entire Universities

situated in South India, the Degree of B.Sc having Zoology and Chemistry as main subject is not imparting. It is also evident from the certificate submitted on behalf of the applicant that the University of Mysore is imparting the Degree of Bachelor of Science Education (five years course) having Zoology, Chemistry and Botany as major subjects and not the degree course as specified in A/1 and A/2 Notifications. In these circumstances, we are of the considered view that the qualification was prescribed for the Fisheries Teacher without conducting a scientific study and, therefore, relaxation can be granted to the candidates, who have the degree of B.Sc. With Zoology as main subject and Chemistry and Botany as subsidiaries, as contemplated in clause 5 of the A2 notification. Accordingly, we hold that the applicant is entitled to relaxation in the qualification prescribed in view of the circumstances narrated above."

9 Learned counsel for applicant placed reliance on 2007 2SCC

265 State of Kerala V/s. Unni (Sinha J) and contended that

30. The principles on which constitutionality of a statute is judged and that of a subordinate legislation are different.

34. Unreasonableness is one of the grounds of judicial review of delegated legislation. Reasonableness of a statute or otherwise must be judged having regard to the various factors which, of course, would include the effect thereof on a person carrying on a business.

10 We are therefore in total agreement with the earlier judgment of this Tribunal dated 17/3/2004 and direct the respondents to consider the case of the applicants for appointment as before in relaxation of the rules with regard to qualifications prescribed.

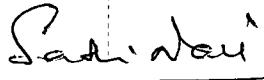
11 We also direct that this exercise shall be completed in six weeks and the above direction shall be applicable in respect of all candidates who apply with such identical qualification viz. Degree in Zoology with Chemistry and Botany as subsidiaries without having to approach the Tribunal again till the Recruitment Rules are amended in

accordance with the directions in Annexure A6. In this regard, we also refer to the recommendations of the 5th Pay Commission in para-126.5 which reads as under:-

"126.5 We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S.Elias Ahmed and Others Vs. UOI and Others (O.A.Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C.Ghosh vs. UOI, (1992) 19 ATC 94 (SC) dated 20/7/1988, K.L.Sherperd vs. UOI (JT 1987(3)SC 600), abid Hussain vs UOI (JT 1987 (1)SC 147) etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

12 OA is allowed accordingly. No costs.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

abp