

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.1297/98 & O.A.218/99

Tuesday, this the 14th day of August, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.1297/98

1. E.K.Hussain,
Edayakkal House,
Water Supply Labourer,
Androth,
Lakshadweep.
 2. Lavanakkal Syed Mohammed Koya,
Water Supply Labourer,
Androth.
 3. A.Attakoya,
Water Supply Labourer,
Attalada House,
Androth.
 4. P.P.Hussain.
Peon,
Poovinapara House,
Androth.
 5. K.Hussain,
Kunnasada House,
Bukkari,
Androth.
- Applicants

By Advocate Mr TM Abdul Latiff

Vs

1. Union of India represented by
Secretary to Government,
Home Affairs,
Central Secretariat,
New Delhi.
2. Administrator,
Union Territory of Lakshadweep,
Kavaratty.
3. Director of Panchayats,
Administration of Union of Lakshadweep,
Department of Panchayats,
Lakshadweep.

4. Village Deep Panchayat represented
by its Chairperson,
Androth Island,
Lakshadweep.
5. President-cum- Council,
District Panchayats,
Union Territory of Lakshadweep. - Respondents

By Advocate Mr S Radhakrishnan(for R.1 to 3)

O.A.218/99

Havva Kehije,
Typist,
Village(Dweep) Panchayat,
Minicoy Island,
Lakshadweep. - Applicant

By Advocate Mr T.M.Abdul Latiff

Vs

1. Union of India represented by
Secretary to Government,
M/o Home Affairs,
Central Secretariat,
New Delhi.
2. Administrator,
Union Territory of Lakshadweep,
Kavarathy.
3. Director of Panchayats,
Administration of Union of Lakshadweep,
Department of Panchayat,
Lakshadweep.
4. Village(Dweep) Panchayat,
represented by its Chairperson,
Minicoy,
Lakshadweep.
5. President-cum-Council,
District Panchayat,
Union Territory of Lakshadweep. - Respondents

By Advocate Mr PR Ramachandra Menon

The application having been heard on 30.5.2001, the Tribunal
on 14.8.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

These two O.A.s turn on the same facts and issues and
are hence taken up for disposal by this common order.

2. The applicants, five in number in O.A.1297/98 and one in O.A.218/99, originally employed by the Chairman, Island Council, Androth/Minicoy and continued to be engaged in their jobs even after the Island Councils were abolished and the local administration in respect of specified matters was handed over to the Village (Dweep) Panchayat/District Panchayat in pursuance of the Lakshadweep Panchayat Regulations 1994, now apprehend loss of employment on account of retrenchment, consequent to the impugned circular dated 10.8.98 cited as A-12 in O.A.1297/98 and A-1 in O.A.218/99. According to them, the impugned circular, inasmuch as it adversely affects the continued employment of the applicants, is contrary to law and the applicants' service conditions. The applicants also claim eligibility to continue in service even under the provisions of the Industrial Disputes Act. The applicants, therefore, seek relief by way of quashing of A-12/A-1 Circular and a declaration confirming their entitlement for regularisation of their services under the first and second respondents in either case with a direction to regularise their services and grant them consequential benefits including arrears of pay.

3. The facts, as reflected in the O.A.s and reply statements, merit a closer look: But before we do so, it is necessary to point out that in O.A.1297/98 while respondents 1 to 3, viz Union of India, Administrator, U.T. of Lakshadweep and the Director of Panchayats have filed a common reply statement, no reply statement is seen to have been filed by the 4th and 5th respondents viz Village (Dweep) Panchayat

represented by Chairperson and the President, District Panchayat respectively. However, in respect of O.A.218/99, a common reply statement, verified and signed by the Secretary to the Administrator, U.T. of Lakshadweep is seen to have been filed not only on behalf of the 1st, 2nd and 3rd respondents as in the case of O.A.1297/98 above, but also the 4th and 5th respondents being the Panchayat authorities. Out of the 5 applicants in O.A.1297/98 Shri E.K.Hussain and Shri A.Attakoya were appointed on daily wages of Rs.30/- under the Island Council for the day-today running and maintenance of water supply and sanitary installation as per A-1 order dated 24.3.94 of the Chairman, Island Council, Androth. As per A-2 order dated 9.8.94, Shri Lavanakkal Syed Mohammed Koya was appointed as Labourer on daily wages under the scheme of running and maintenance of water supply sanitary installations under the Island Council, Androth in the place of one U.Pookunhikoya whose name was removed consequent to his appointment as Jail Warder. The expenditure on account of wages of the above three applicants was to be made out of the funds released by the P.W.D. The applicants, Shri PP Hussain and Shri K.Hussain are seen to have been appointed by the Chairman, Island Council, Androth as per orders dated 1.3.94 and 22.3.94 respectively in pursuance of separate decisions taken by the Members of the Island Council. The expenditure on account of wages pertaining to these two employees were proposed to be drawn by the Chairman, Island Council, Androth from the Island Council Fund.

4. The applicant in O.A.218/99, Smt. Havva Kehija claims to have been appointed as Typist on a consolidated salary of

Rs.1500/- per month by the Chairman of the Island Council, Minicoy with effect from 1.6.93, in pursuance of the Resolution of the Island Council. By way of evidence supporting the letter of appointment, A-2 is furnished which is a certified copy of what is stated to be the page 414 of the resolution register. A-3 is purported to be a true copy of the Resolution regarding enhancement of the applicant's consolidated monthly salary from Rs.1500/- to Rs.1800/- with effect from 1.12.94.

5. It is considered profitable at this stage to look into the historical background of the Island Council. The Lakshadweep Island Councils were established under the Lakshadweep Island Councils Regulation 1988, promulgated by the President of India for the establishment of Island Councils in the U.T. of Lakshadweep. The Island Councils had been entrusted with several functions which local self Government bodies generally attended. The matters assigned to the Island Councils are specified in Schedule III to the regulations with reference to Section 28. Upkeep, maintenance, improvement etc. of roads execution, maintenance, repair work, management etc. of any institution on behalf of the Government are some important subjects entrusted to the council. The Government would place the necessary funds for this purpose at the disposal of the Council. Under Section 24 of the Regulations, the Administrator had the power to appoint an Executive Officer who should be a Government servant. Section 27 dealt with appointment of officers and employees by the Island Council. Section 27 reads:

"The Island Council may appoint such officers and employees and in such number as may from time to time be considered necessary:

Provided that it shall not create any post not already provided for in the budget except with the previous approval of the Administrator."

As per R-2 order dated 28.1.92, the Administrator of U.T. Lakshadweep sanctioned the following posts for the Island Councils of Androth and Minicoy:

- | | | |
|----|--|-------------------|
| 1. | Executive Officer
Grade.I Group-C
- one each | Androth & Minicoy |
| 2. | U.D.Accountant
- one each | Androth & Minicoy |
| 3. | Peon - one each | Androth & Minicoy |

The expenditure on account of the post sanctioned above was debitable to the Plan Expenditure budget. The Council had the freedom to employ other staff as was found necessary under proper sanction or approval from the Administration.

6. It is now pertinent to have a look at the changeover from Island Council to Village/Panchayat system: the Island Council Regulation 1988 was repealed with the promulgation of the Lakshadweep Panchayats Regulation 1994 in April 1994 (hereinafter referred to as Regulation) and the Village(Dweep) Panchayat/District Panchayat came into being. Under the new self Government dispensation also similar but more definite provisions were incorporated in the Regulation and rules provided in the Lakshadweep Panchayat (Service) Rules, 1997 with regard to officers and staff to be appointed. Section 38 of the Regulation deals with the appointment of officers and employees of the Panchayat. Section 37 makes definite regulations regarding the status of the Panchayat employees as distinct from the employees of the administration, their initial strength, the Dweep Panchayat's competence to alter the class, cadre and number of posts with the Administrator's

approval. The said Section is quoted below:

"37. (1) For the purpose of bringing about uniform scale of pay and uniform conditions of service of persons employed in the discharge of functions and duties of panchayats, persons shall be employed in connection with the affairs of panchayats and they shall be distinct from the persons employed in connection with the affairs of the Administration.

(2) The persons employed in connection with the affairs of the Panchayats (hereinafter referred to as panchayat employees) shall consist of such classes, cadres and posts and the initial strength of officers and employees in each such class and cadre shall be such, as the Administrator may, by order from time to time determine:

Provided that nothing in this sub-section shall prevent a district panchayat from altering, with the previous approval of the Administrator, any class, cadre or number of posts so determined by the Administrator.

(3) In addition to the posts referred to in sub-section(2) a panchayat may have such other posts as the Administrator may by general or special order determine. Such posts shall be called 'deputation posts' and shall be filled in accordance with the provisions of this Regulation.

(4) The Administrator may make rules regulating the mode of recruitment either by holding examination or otherwise and conditions of service of persons appointed to the panchayats and the powers in respect of appointments, transfer and promotion of officers and employees in the panchayats and disciplinary action against such officers or employees."

Section 38 lays down that the expenditure towards pay and allowances and other benefits available to Panchayat employee serving for the time being under any Panchayat shall be met out of the respective Panchayat's own funds. Funds are to be provided to the Panchayat for implementation of the scheme and for payment of salary and allowances to employees posted by the Administration on transfer to the Village(Dweep Panchayat) and each Panchayat is bound to send monthly, quarterly and

yearly statements of expenditure incurred by it. The Regulation strictly prohibits reappropriation of funds received under a specific scheme or programme or under Salary Head, or for any purpose without the prior orders of the Administrator. There are several other restrictions imposed by the Administrator and the concerned departments for incurring expenditure at the Panchayat level. One UD Accountant and one Peon each have been sanctioned and redeployed under the Androth and Minicoy Panchayats respectively [vide R-6(11)]. A Panchayat servant is defined under the Rules to be the staff appointed by the Panchayat against a post with specific scale of pay or consolidated pay to be paid from the Panchayat funds. Regarding creation of posts, competent authority to create posts and the appointing authority also specific rules have been provided. These are:

"4. Creation of Posts:-

No post shall be created -

- (a) unless funds to meet salary of post is provided in the Budget Estimate of Panchayat concerned;
- (b) without the consent of the Administrator;
- (c) unless there exists extreme necessity and sufficient justification for the post.

5. Competent authority to create the posts:-

(1) The authority competent to create posts shall be declared by the Administrator by a notification to be published in the Official Gazette.

(2) Such authority shall create the post required after satisfying the conditions laid down in clause (a) to (c) under rule 4 in consultation with the Chairperson of Village (Dweep) Panchayat concerned if post to be created is for Village (Dweep) Panchayat.

6. Appointing authority:-

(1) All the appointments to the posts created for Panchayat under rule 5 shall be made by the appointing authority in accordance with the recruitment rules.

(2) The rules of recruitment shall be made by the District Panchayat and they shall be got approved by the Administrator before publication."

Regulation 88 which is a Repeal and savings provision, no doubt, confers continued legal validity on anything duly done or any action taken including any appointment or delegation made etc. under the Island Council Regulation.

7. Apparently, it was noticed by the Administration of the U.T. that several Panchayats had been violating the regulations and rules with regard to appointment or employment/engagement of persons to carry out certain jobs. Many Panchayats were found to have made their own appointments according to their convenience and these appointments did not have the sanction of the Administration for the specific categories of work entrusted to the Panchayat in the scheme of things which recognised them to be self governing bodies. The violation of the rules and regulations and the consequent misapplication of funds placed at the disposal of the Panchayat for developmental schemes were a matter of grave concern and time and again the Administration had been advising the local self Government bodies to desist from diversion of funds allocated by the Administration for developmental purposes towards salary and other incidental expenditure on account of unauthorised appointments. It would appear that it was under the above circumstance that the

impugned circulars were issued by the third respondent. The employees, who were under threat of losing their jobs and who were not receiving their salaries on account of the Administration's alleged interference by way of the prohibitive circular which is impugned herein, have filed these applications seeking the relief referred to above.

8. We have considered the rival pleadings on record and the contentions put forward by Shri T.M.Abdul Latiff, counsel for the applicants, and Shri PR Ramachandra Menon and Shri S Radhakrishnan, counsel for the respondents.

9. The learned counsel for the applicants reiterates the grounds and contentions forming part of the pleadings in the O.A.s. The learned counsel strenuously argues the cases canvassing for the proposition that the applicants who were originally appointed by the Island Council of Androth/Minicoy and continue to be engaged by the Island(Dweep Panchayat) merit protection of employment. It could not be argued that there was no regular sanctioned post against which the applicants were appointed. Since the impugned circular (A-12 in O.A.1297/98 and A-1 in O.A.218/99) would have the effect of denying the applicants their right to livelihood, the constitutional provisions as per Article 16/21 were violated, it is urged. That the applicants' total service exceeded three years was a relevant criterion in deciding the matter of their regularisation. Further, there were no regular recruitment procedure applicable to them. In this connection,

learned counsel would place reliance on the decision of the Apex Court in Arun Kumar Rout and others Vs State of Bihar and others, AIR 1998 SC, 1477 wherein the claim of certain persons though not appointed by following the due procedure, was upheld on account of their satisfactory service, requisite qualifications and their having been appointed against sanctioned posts. Counsel would, therefore, plead for quashing the circular A-12/A-1 and an order declaring their entitlement of regularisation and directing the respondents to regularise them as regularly recruited persons and grant them all consequential benefits.

10. In the reply statements and the further arguments putforward by the learned counsel for the respondents, it is highlighted that even when the Lakshadweep Island Council Regulation 1988 was in force, the Council could appoint only duly approved number and categories of employees. The Council could not create posts not already provided for. The posts sanctioned for Island Councils of Androth and Minicoy were one Executive Officer Grade-I, one U.D.Accountant and one Peon each. No other posts were created till 1995 and the position was the same even after the Village(Dweep) Panchayat which substituted the Island Council came into being. If any appointment was made by the Island Council Chairman as per the wage employment programme or under the District Rural Development Agency (i.e. DRDA), the Lakshadweep Administration cannot be held answerable for such appointments. Even if those workers known by fancy

designations such as Work Supervisor, Store Supervisor, Driver, Clerical Assistant, Peon etc. continued after the formation of the District and Village Panchayat set up on the basis of the Lakshadweep Panchayat Regulations 1994, there was no provision for continuation or creation of such posts without the approval of the Administrator. The impugned A-12/A-1 circular of the Director of Panchayat was issued when the Administration noticed continued violation of the regulations and misuse of authority and unauthorised diversion of sanctioned funds for retaining the irregularly employed staff under different designations. . The circular was also necessitated due to the U.T. Administration's apprehension that if unauthorised recruitment and deployment of staff in violation of the well defined parameters were continued, it (the U.T. Administration) would find itself burdened with unwarranted and recurring expenditure on that account. The applicants are not casual labourers coming within the Casual Labourer (Grant of Temporary Status and Regularisation) Scheme 1993 of the Government of India, it is urged.

11. It has been further pleaded in O.A.218/99 and reiterated by the learned counsel for respondents that the Tribunal has no jurisdiction to entertain the matter as Village (Dweep) Panchayat under whom the applicants seek continued and regularised appointment, is a local self governing body which would not come within the purview of the Tribunal's jurisdiction.

12. We have carefully perused the pleadings and other material on record. We have also given our anxious

consideration to the rival submissions. We find that in both these O.A.s under consideration, the applicants were originally engaged by the Island Council of Androth/Minicoy. They might have continued to be engaged subsequently by the succeeding local self Government body, namely, the Village (Dweep) Panchayat of Androth/Minicoy. The Chairpersons of the respective Island Council might have, with or without proper authority from the Councils, issued what are purported to be appointment orders and the subsequent service certificates. We have good reason to reject the same as those do not reveal the applicants' nexus with the Administration of U.T. of Lakshadweep in order that they might have a cause of action before us. The applicants have not adduced any evidence to show that they were appointed against any posts sanctioned or approved by the Lakshadweep Administration: in the light of the provisions in the regulations briefly surveyed above. The case law cited by the applicants' counsel viz Arun Kumar Rout & others Vs State of Bihar & others, AIR 1998 SC, 1477, turns on facts which are clearly distinguishable. Apart from having long service and the requisite qualification, the persons in the cited case were appointed against sanctioned posts. In the case on hand, the applicants were not employed against any posts sanctioned by the administration and that would make all the difference. The Island Council or the Chairpersons, as the case may be, for reasons best known to them, seem to have accommodated these people. They might rightly come under the wage employment programme as a poverty alleviation measure under the DRDA or they might have been employed since the

Village (Dweep) Panchayat authorities considered it expedient to give employment to them. It probably might have offered some succour by way of daily rated wages to the unemployed local persons. It might have, and we hazard a guess that it has happened in this case, that the local self governing bodies with local socio-political affiliations and compulsions have allowed these wage-earners to work under them for a considerably long period without any legal or administrative backing. A perusal of the Island Council Regulation 1988 and the subsequent Village (Dweep) Panchayat Regulations, 1994 and the rules framed thereunder, as discussed earlier in this order, would make it clear that the Administration held itself responsible for specified number and categories of employees only. If a local self Government body employed any person or persons otherwise and allowed them to stay, it should be at their risk and cost and not at the expense of the Administration of the U.T. of Lakshadweep. Such employment/engagement would not, ipso facto, confer any constitutional right on the concerned persons as Government employees inspite of the designations they were accorded by the local self government bodies. It is significant to note that the so-called appointment orders contain no information with regard to any sanction or approval of the Lakshadweep administration regarding such appointments. There is nothing to show that such posts are provided for in the budget. The case of the applicant in O.A.218/99 is more curious inasmuch as A-2, which is purported to be a true copy of the resolution of the Island Council contains no details as to the members

present, or their signature, resolution No. etc. There is no formal appointment order at all. The service certificate issued by the Chairperson of the Village (Dweep) Panchayat of Minicoy does not also state whether the employee concerned continued in the service of the Panchayat under any authority. The applicants cannot seek any protection under Regulation 88 of the Lakshadweep Panchayats Regulation either since their initial engagement, if at all, under the Island Councils was not authorised or approved by the Administration. The provisions of the Industrial Disputes Act also would not come to the rescue of the applicants and in any case, we see no reason to address ourselves to that issue since, according to us, the applicants have failed to show that they are employees of the Administration of the U.T. of Lakshadweep. We find no scope to look into their alleged grievance as their employment/engagement does not have any proximate connection with the Lakshadweep Administration. Neither the Panchayat authorities (respondents 4 and 5) nor the applicants have shown how the posts created/retained in addition to those sanctioned by the Administration could be considered regular. As matters stand, the Administration of U.T. of Lakshadweep has no accountability as far as the matter of regularisation of the applicants are concerned. The anxiety of the U.T. Administration to prevent misapplication of funds granted to the Village/District Panchayat for developmental purposes towards expenditure on account of wanton appointments of staff against posts neither created nor sanctioned nor approved is legitimate. A-12 circular referred to in O.A.1297/98 and A-1 referred to in O.A.218/99 seeking to put an end to such

unauthorised expenditure of central funds warrants no interference. It is, however, for the Administration and the relevant concerned (Dweep) Panchayat authorities to decide on the regularisation of the expenditure incurred so far in whatever manner deemed just and fair.

13. For the reasons stated above, the interim orders in these cases are vacated and the applications are held to be not maintainable in law and are accordingly dismissed. We find it proper not to order any costs in these cases.

Dated, the 14th August, 2001.

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

trs

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

O.A.1297/98

1. A-1: True copy of the appointment order of the 1st and 3rd applicants with No.a/6/94-IC(A) dated 24.3.94 by the Chairman, Island Council, Androth.
2. A-2: True copy of the appointment order of the 2nd applicant with F.No.1/6/94-IC(A) dated 9.8.94 by the Chairman, Island Council, Androth.
3. A-12: True copy of the Circular passed by the third respondent Director of Panchayats, Kavaratty with No.2/1/96-DOP/714 dated 10.8.98.

O.A.218/99

4. A-1: True copy of the Circular passed by the 3rd respondent with No.2/1/96-108/714 dated 10.8.98.
5. A-2: True copy of the page No.414 of the resolution relating to the applicant's original appointment.
6. A-3: True copy of the page No.478 of the Resolution relating to the applicant's original appointment.
7. R-2: True copy of the order F.No.4/2/92-PCS dt.28.1.92 issued by the 2nd respondent.
8. R-6: True copy of the order F.No.4/2/97-DOP(2) dt.17.7.98 issued from the 2nd respondent.