

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.265/2009

Friday this 26th day of March, 2010

CORAM:

**HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Hassan Sabiyavaludoruge,
S/o. K.S.Ismail, aged 30 years,
residing at Falessery Village,
Minicoy Island -682 559,
Lakshadweep.

.. Applicant

By Advocate : Ms.Jebi Mather for M/s. Dandapani Associates

vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti Island-682 555.

2.Union Territory of Lakshadweep,
Kavaratti -682 555,
Represented by the Secretary(Education).

.. Respondents

By Advocate : Sri S.Radhakrishnan

The Application having been heard on 23.03.2010, the Tribunal on delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMBER:

Aggrieved by the drawing up of the amended Recruitment Rules dated 18.2.2009 published in the Lakshadweep Gazette Vol.XLIV.59 dated 20.2.22009, the applicant has filed this Original Application. The applicant has prayed in the O.A. that the post of Physical Training Instructor which was continued till the formulation of the present Recruitment Rules may also be included as a post

(Signature)

inviting applications in the Education Department. Further the applicant prays that the qualification prescribed for the Physical Education Teacher may be amended so as to include Higher Certificate in Physical Education issued by the Lakshadweep Public Schools.

2. The brief facts of the case are that the applicant is a native of Minicoy island and belongs to Scheduled Tribe community. The applicant was working temporarily as Physical Training Instructor on completing his Higher Certificate course in physical education in the Public Schools of Lakshadweep Administration. He was working as such would reveal from Annexure A3. However after his period of temporary engagement as Physical Training Instructor on amendment of the Recruitment Rules, the respondents now prescribed the qualification for Physical Education Teacher as BPE(Bachelor of Physical Education)/Graduate from a recognized University with Bachelor Degree in Physical Education(B.PEd.) from a recognized University and as per the amended Recruitment Rules, the post of Physical Education Teacher has been upgraded and there was no post of Physical Training Instructor. Further as per Annexure A9 Recruitment Rules published by the Department of Home Affairs of the Govt. of India applicable to Lakshadweep Island contains both the posts of Physical Training Instructor as well as Physical Education Teacher with pay scale of Rs.130-5-160-8-200-8-256-8-280-10-300 and Rs.170-10-290-EB-15-380 respectively. By the publication of the amended Recruitment Rules the post of Physical Training Instructor has been abolished so that the applicant was prejudiced and may not be qualified to apply for the post of Physical Education



Teacher. Hence the applicant has filed this Original Application.

3. The O.A. has been admitted by this Tribunal and notice has been ordered to the respondents and in pursuance of the receipt of notice issued, a reply statement has been filed for and on behalf of the respondents. The main ground urged in the reply statement is that till 2009 and the publication of the amended Recruitment Rules, there was some engagements of candidates as Physical Training Instructors, but as per Annexure R2(a) decision of the Govt. of India, Ministry of Education and Culture (Dept. of Education), New Delhi, the post of Junior Teachers like the Junior Craft Teachers, Junior Physical Education Teachers, Junior Language Teachers, Junior Domestic Science Teachers, Junior Music Teachers and Junior Dance Teachers were abolished and all the posts were upgraded with revision of the pay scales from Rs.425-16-560-EB-20-640 to Rs.440-20-500-EB-25-700-EB-25-750 and the qualifications were also changed for appointment to such senior upgraded posts. Hence on the basis of the decision taken by the Govt. of India, the present amended Recruitment Rules dated 18.2.2009 has been drafted and published and the qualification, method of appointment etc. of the teachers in this category has been revised. Hence the claim of the applicant is not allowable and if the applicant is also qualified to be appointed in the above post of Physical Education Teacher he can apply for the post. Apart from the above stand, it is further stated in the reply statement that now after the publication of the notification and issue of Annexure R2(a), no post of Physical Training Instructor exists in the Department. At the same time it was mentioned that he was appointed earlier by the Parent Teachers

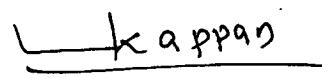


Association in one school as Physical Training Instructor. Hence the O.A. has to be dismissed.

4. We have heard the counsel appearing for the parties and also perused the documents produced before this Tribunal. Admittedly prior to Annexure A10 notification, the recruitment rules followed in the Department rather in the Lakshadweep Administration and Union Territories was that of Annexure A9. In Annexure A9 it could be seen that the qualification prescribed for the post of Physical Training Instructor and the pay scale of Physical Training Instructor were also continued along with the post of Physical Education Teacher. But after the amendment brought to the Recruitment Rules, the post of Physical Training Instructor has been abolished with a view to upgrade all the posts of Junior Teachers like the Junior Physical Education Teacher, Junior Craft Teacher, Junior Music Teacher etc. If so, the Lakshadweep Administration has got the power to amend the Recruitment Rules and also to prescribe the qualification for such posts which they have created by amending the Recruitment Rules. That by itself may not amount to infringement of any of the fundamental rights of the applicant to get an appointment to any post if he is qualified for the post. Admittedly the applicant is not having the prescribed qualification as per the amended Recruitment Rules. If so, the O.A. is devoid of any merits and it stands dismissed without any order as to costs.

/njj/


(K. GEORGE JOSEPH)
MEMBER(A)


(JUSTICE K. THANKAPPAN)
MEMBER(J)