

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

OA NO. 269 of 2007.

Dated the 26..th day of June, 2008

C O R A M

HON'BLE GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

T.P. Kunhikoya S/o Sainulabeed,
Trained Graduate Teacher
Government Senior Secondary School,
Kiltan Island,
residing at 'Thiruvathapura'
Kiltan Island PO,
Union Territory of Lakshadweep,
Kavaratti.

Applicant

[By Advocate M/s TC.Govindaswamy, D. Heera, PN Pankajakshan Pillai,
PV Abdul Samad, K.C. Sarala and R. R. Rejitha]

-Versus-

- 1 Union of India represented by the
Secretary to the Govt. of India
Ministry of Human Resources Development
Department of Education
Shastri Bhavan, New Delhi.
- 2 The Administrator,
Union Territory of Lakshadweep
Kavaratti.
- 3 The Secretary, Education,
Union Territory of Lakshadweep
Kavaratti.


Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R -1
By Advocate Mr. S. Radhakrishnan for R 2 & 3

ORDER

[HON'BLE DR. K.S. SUGATHAN,AM]


The applicant is a Trained Graduate Teacher (TGT) with Post Graduate qualification. He is working under the respondent No.2. He is aggrieved by the action of the respondent No.2 in amending the recruitment rules for the post of Asst. Education Officer (Academic), Asst. Headmaster (High School) and Head Master (Senior Basic School) by Notification dated October 10, 2006. By the said notification, the requirement of a post graduate qualification for TGTs who joined service prior to 25.1.1996 was dispensed with for the purpose of promotion. As per the recruitment rules issued in the year 1994, all TGTs were eligible for promotion irrespective of whether they possessed any Post Graduate qualification. The Respondents amended the Recruitment Rules of 1994 by their Notification dated 25.1.1996. This amendment was carried out to make the rules consistent with the guidelines issued by the Ministry of Human Resource Development. As per the amendment made in 1996, only those TGTs who possessed Post Graduate qualification are eligible for promotion. The amendment made in 1996 was challenged by several teachers in OA 585 of 2000 which was dismissed by this Tribunal. The applicants have contended that the order of this Tribunal in OA 585/2000 was confirmed by the Hon'ble High Court and also by the Hon'ble Supreme Court. However, the Respondent No.2 has in the year decided to further modify the recruitment rules to provide for protection to those TGTs who joined service prior to the issue of the amendment on 25.1.2006 and make such TGTs eligible for promotion even if they did not possess the Post Graduate qualification. It is the contention of the applicant that the latest amendment is against the guidelines stipulated by the nodal Ministry, namely the Ministry of Human Resource Development in their communication dated 3.11.1987 and therefore it is liable to be quashed.



2] The Respondent No.2 and 3 have filed a reply statement contesting the OA. No reply has been filed by Respondent No.1. It is stated on behalf of Respondent No.2 and 3 that the Guidelines issued by the Ministry of Human Resource Development on 3.11.1987 also contains a clarification (No.4) to the effect that for those teachers who have completed 18 years service the

requirement of having additional qualification prescribed for the higher post may be waived before being considered for grant of selection grade. The clarification No.10 envisaged that Headmasters of Middle Schools are equated with Post Graduate teachers and therefore it would be necessary for these headmasters to have the same academic qualification as are required for the teaching post with which they are equated. While amending the recruitment rules in 1996, TGTs without post graduate qualification were not protected. Such a protection was required as per clarification No.4. The promotional opportunities of senior incumbents are also required to be protected as per the guidelines issued by the Department of Personnel and Training issued vide OM dated 18.3.1988. The amendment to the rules issued in 1996 was in response to a contempt petition pending in the Tribunal. While making the amendment in 1996, the respondent could not consider the guidelines of the Department of Personnel regarding protection of senior incumbents. The prerogative of the Administration to prescribe the qualification for different posts has been upheld by the Tribunal in OA 585 of 2000. After considering the representations of TGTs who could not improve their qualifications and who were deprived of their promotional channel once for all by the 1996 amendment, the respondent No.2 decided to further modify the rule. The amendment done in 2006 has therefore fulfilled the principle of natural justice also.

3] We have heard the learned counsel for the applicant Shri TCG Swamy, the learned counsel for the Respondent No.1 Shri TPM Ibrahim Khan and also the learned counsel for the respondents No.2 and 3 Shri S.Radhakrishnan. We have also perused the documents on record. The learned counsel for the Respondents No.2 & 3 relied on the following citations to drive home the point that it is the prerogative of the Administration to amend the Rules, as and when required.

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- (1) Rajasthan State Electricity Board Accounts Association, Jaipur
Vs. Rajasthan State Electricity Board & Anr.
(1997) 3 SCC 103
 - (2) V.K. Sood Vs. Secretary, Civil Aviation & Others
(AIR 1993 SC 2285)

- (3) G.N. Nayak Vs. Goa University and Others
(2002) 2 SCC 712)
- (4) The State of Mysore and another Vs. P. Naarasinga Rao,
(AIR 1968 SC 349).

4] The issue for consideration in this OA is whether the amendment to the recruitment rules effected by the respondent No.2 on 10.10.2006 for the post of Asst. Education Officer (Academic), Asst. Headmaster (High School) and Head Master (Senior Basic School) (A/6) is arbitrary, unreasonable and discriminatory. There is no dispute about the basic facts. The TGTs were originally eligible for promotion to the posts included in the impugned orders, irrespective of whether they possessed postgraduate qualification or not. The recruitment rules were amended in January 1996 and the requirement of post graduate qualification was stipulated. This was in accordance with the guidelines issued by the Ministry of Human Resource Development in their letter dated 3.11.1987. The amendment effected in January 1996 was challenged by the affected teachers in this Tribunal as well as in higher judicial forums but without success. The Administration defended the amendment of 1996 right upto the highest the Court. The Respondent No.2 is now citing the ground of 'protecting the promotional opportunity' of those senior teachers who did not have the post graduate qualification for modifying the rule further in the year 2006. In support of the modification incorporated in the year 2006, the respondent No.2 has relied on clarification No.4 in the letter dated 3.11.1987 of the Ministry of Human Resource Development. But it is to be noted that this clarification is in respect of 'Selection Grade'. Selection Grade can be distinguished from promotion. A promotion post is a higher post with a higher grade, whereas a Selection Grade carries only a higher pay without changes in duties and responsibilities (*Lalit Mohan Deb-v- Union of Inaia, AIR 1972 SC 1995*). Therefore, what is applicable to a Selection Grade cannot be *ipso facto* applied to promotion. We are unable to accept the contention of the Respondent No.2 that lack of promotional opportunity to certain employees in the feeder cadre can be a valid ground for diluting the requirement for higher educational qualification prescribed by the Nodal Ministry. The Guideline relied on by the Respondent No.2, namely, the OM dated 18.3.1988 issued by the Department of Personnel is not applicable in this case because it deals with situations where a

new service is formed. Further, the criteria that is prescribed by the said OM relates to 'eligible service' and not educational qualification. We do not agree with the contention of the Respondent that the TGTs have been deprived of all their promotional opportunity. It is open to them to acquire the additional qualification prescribed. If it is a case of stagnation, the respondents can also consider extending the benefits of ACP to such employees.

5] There is no dispute that the Respondent is competent to modify the Recruitment Rule. There is also no dispute that interests of senior employees need to be protected. But the question that is relevant for this case is whether such a protection can be justified by relaxing the educational qualification prescribed by the competent authority i.e. The Nodal Ministry. In their reply dated 9.2.2000 addressed to one of the TGTs (Annexure-7) the Ministry of Human Resource Development (Department of Secondary Education & Higher Education) has categorically stated that the amendment to the Recruitment Rules effected in 1996 was in accordance with the directions of the Ministry. The following extract from the Ministry's letter is very relevant in this matter:


"v(a) The combined Recruitment Rules for the post of Headmaster (SB) School, Assistant Education Officer (A) and Assistant Headmaster Higher School were framed by UT of Lakshadweep in 1994. A Post Graduate qualification was not included in the Rules as an essential qualification for promotion to the above posts. But one Shri M. Koyammakoya, TGT with Post Graduate qualification approached the Hon'ble CAT Ernakulam Bench for inclusion of Post Graduate qualification for the above posts. The Hon'ble CAT in OA No.529/95 dated 6.7.95 ordered this Ministry to dispose of representation of Shri Koyammakoya. In compliance with the orders dated 6.7.95 of the CAT, Ernakulam Bench in OA No.529/95, the representation of Shri Koyammakoya was considered and disposed of by this Ministry with the instruction that Recruitment Rules notified by the Lakshadweep Administration for the above post may be amended to include Post Graduate qualification as an essential qualification.

(b) In this connection this Ministry had issued letter No.5-180/86-UT-1 dated 12.8.97 revising the pay scales of different categories of teachers in pursuance of the National Commission on Teachers recommendations. The revised pay scales for Post Graduate teachers and the Headmasters of Middle School (Senior Basic School) i.e. (Rs.1640-2900) became identical. It was, therefore, essential for the post of Headmaster (Senior Basic School) and

other equivalent post having the same pay scale, to have Post Graduate qualification. Accordingly, Post Graduate qualification was prescribed as essential for promotion to the post of Headmaster (Senior Basic School), Assistant Education Officer (A) and Assistant Headmaster High School. Accordingly, the UT of Lakshadweep amended the Recruitment Rules for the above posts in Jan., 1996 by issuing the notification No.18/30/89-Edn. dated Jan, 1996."

6] We have considered the citations relied on by the learned counsel for the Respondents No. 2 and 3. In 1997 (3)SCC 103, the issue involved was whether the provision of a separate quota for those with higher qualification was violative of Articles 14 and 16 of the Constitution. The Apex Court had held that provision of such quota is not violative of Articles 14 and 16 of the Constitution. In the present case the facts are different. No quota has been prescribed for those with higher qualification. What has been done is to prescribe a "cut off" date. Those who joined before that "cut off" date is exempted from having the higher qualification. As the facts are different the finding of the Hon'ble Apex Court in that case cannot be applied to the present case.

7] In AIR 1993 SC 2285 the Apex Court held that " Rules prescribing method of recruitment and qualifications made under proviso to Article 309 are statutory and cannot be impeached on the ground that they prescribe tailor-made qualifications to suit particular individual or are discriminatory." In the present case the issue is not about prescription of a qualification. The issue concerns the prescription of "cut off" date for possession of higher qualification. In that view of the matter, the finding of the Apex Court in this case also cannot be applicable to the present case.




8] In AIR 2002(2) 712, the Apex Court observed that the court would not be justified in adopting a legalistic approach and proceed on technical view of the matter without considering the intention of the University laying down the condition of eligibility since it is for the University to decide what kind of research would be adequate to qualify for professorship." Here again, the issue involved was not about any cut off date for possession of higher

qualification but the issue was whether pre-doctoral research would be counted towards ten years experience prescribed. In that view of the matter also this case cannot be compared with the present case under consideration.

9] In AIR 1968 SSC 349, it was held that classification of two grades of Tracers- one for Matriculate Tracers with higher pay scale and another for Non-matriculate Tracers with lower pay scale was not violative of Article 14 or 16 of the Constitution. This case also does not deal with the issue of a cut-off date for possessing a higher qualification. However, the observations of the Hon'ble Supreme Court in the same judgment on the question of 'reasonable classification' are very relevant for consideration of this OA.

"Article 14 does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question."

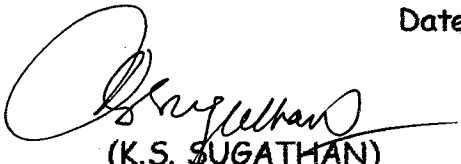


10] In the above observation, the Hon'ble Supreme Court has laid down two tests for deciding whether the classification can be considered reasonable. The first test is to establish that there is intelligible differentia which distinguish persons or things grouped together from others who were left out of the group. The facts of the present case fulfil the requirement of this criteria in so far as the group of teachers who joined prior to 25th January, 1996 is clearly distinguishable from the grade of teachers who joined after 25.1.1996, the date on which the Recruitment Rules were amended. The second test is to see whether the differentia in question has a reasonable relation to the object sought to be achieved by the Rule in question. The facts of this case cannot be said to fulfil this test. The object of prescribing higher qualification is to ensure higher academic standard. That objective cannot be achieved if the requirement is diluted on the basis of the "cut off" date and teachers without such qualification are given promotion in large numbers.

11] It is our considered view that having regard to the purpose for which higher educational qualification is prescribed, the classification of the feeder cadre into two groups with reference to a cut-off date cannot be construed as 'reasonable'.

12] For the reasons stated above, OA is allowed. The amendment to the col.12 of the recruitment rule effected by the Notification dated 10.10.2006 is quashed and set aside. The Respondents are directed to effect promotions on the basis of the Col.12 of the rule as amended by Notification dated 25.1.1996. No costs.

Dated the 26th June, 2008.


(K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER