

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.341/2009

CORAM: Friday this the 5th day of March, 2010

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

Sayed Mohammed Irfan.P.P.,
S/o Cheriya Koya Thangal,
Puthiya Veed, Androth Island,
Union Territory of Lakshadweep.

.. Applicant

By Advocate : Sri P.K.Madhusoodhanan

vs.

1. The Director of Education,
Administration of Union Territory of Lakshadweep,
(Directorate of Education), Kavarathi-682555.
2. Union Territory of Lakshadweep,
represented by the Administrator,
Union Territory of Lakshadweep, Kavarathi.
3. Hajarommabi .P.,
D/o.Nallakoya, Pattakkal House,
Androth Island, Union Territory of Lakshadweep. ..Respondents

By Advocate: Sri S.Radhakrishnan (R1-2)
Mr.Mohammed Niyas V.P.(R3)

ORDER

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

The applicant, aggrieved by the non-selection and the appointment of Post Graduate Teacher(Botany) in pursuance to Annexure A1 notification has filed this Original Application. The applicant further prayed for a direction to the respondents 1 and 2 to make appointment to the above

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post as per law and as per advertisement. He also prayed for as a further relief to issue a direction to the first respondent to appoint him as the Post Graduate Teacher(Botany), if he is found eligible and suitable. The short facts which are necessary to decide the Original Application are as follows.

2. By Annexure A1 notification the first respondent invited applications to the post of Post Graduate Teachers in various subjects including Botany. The qualification fixed as per Annexure A1 notification dated 31.01.2009 is that:-

"(A) Master's Degree in the subject concerned
(B) Degree or recognised Diploma in Education
OR
3 years Experience of teaching intermediate or higher classes.
OR
5 years Experience teaching in high school classes."

In pursuance to the above notification the applicant filed an application, he being a Post Graduate M.Sc in Botany and having B.Ed Degree. However the first and second respondents have taken steps to appoint the third respondent as Post Graduate Teacher in Botany as she is having Master's Degree in 'Plant Science'(in brach 'Plant Studies'). Hence the applicant filed a representation as Annexure A4 resisting the attempt of the Department to appoint the third respondent or to appoint anybody who is not having Master's Degree in Botany. Since the said representation has been considered and the Department wants to continue the selection process by giving the selection to the third respondent, the applicant has filed this Original Application. The Original Application has been admitted

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by this Tribunal and notice has been ordered to the respondents, both the official respondents as well as the party respondent on 1.6.2009. On the same day this Tribunal made an interim order to the effect that "appointment, if any, made pursuant to Annexure A1 notification will be subject to the outcome of this O.A.". However not satisfied by the interim order passed by this Tribunal the applicant filed M.A.No.676/09 for a direction to the respondents either to maintain status quo or not appoint the third respondent as Post Graduate Teacher in Botany till the disposal of the O.A. However by the order dated 25.08.09 this Tribunal dismissed the said M.A. as infructuous on the ground that the interest of the applicant has already been protected at the time of admission of the Original Application.

3. On receipt of the notice from this Tribunal a reply statement has been filed for and on behalf of the respondents 1 and 2, the official respondents, taking the stand that the qualification prescribed in Annexure A1 notification is Master's Degree in the subject concerned and B.Ed Degree or recognised Diploma in Education and the method of selection will be purely on academic merit of the applicants and also giving consideration to the higher qualification and experience for the post. The further stand taken in the reply statement by the official respondents is that nine candidates applied for the post, out of whom seven candidates have taken their Degree in M.Sc(Plant Science) and two including the applicant who possessed their M.Sc in Botany and the dictionary meaning of the term 'Botany' is 'Plant Science'. Further it is stated in the

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reply statement that the certificate issued by the Calicut University dated 25.5.2005 clarifies that M.Sc (Plant Science)Degree course offered by the University of Calicut is recognised as equivalent to M.Sc.(Botany) for the post of Post Graduate Teacher(Botany) by the Academic Council and the Syndicate of the Calicut University. Hence the selection now made by the Department is in accordance with the notification and Master's Degree in the subject concerned means Master's Degree in the Study of Plants and all the 7 applicants applied including the third respondent are having Master's Degree in Plant Science(M.Sc.) . M.Sc.Botany and M.Sc. in Plant Science are equivalent and the syllabus of both the studies are almost the same and hence the respondents are justified in accepting M.Sc. in Plant Science or Master's Degree in Plant Science as equal to that of Master's Degree in Botany, as one and the same. The reply statement further relies on the judgments of the Apex Court reported in (2002) 6 SCC 252; State of Rajasthan vs. Latha Arun and (2002)2 SCC 712; G.N.Naik vs. Goa University. On receipt of the reply statement the applicant has filed a rejoinder reiterating the stand taken in the O.A. and further stated that M.Sc(Botany) and M.Sc(Plant Science) are not the same as evident from Annexures A5 and A6 as well as Annexure R3(c), the further documents produced by the applicant along with the rejoinder.

4. The third respondent also filed a reply statement taking the same stand of respondents 1 and 2 and further it stated that the study of Plant Science in her M.Sc Degree course is the same as that of M.Sc. Degree in Botany and the selection now made by the Department in favour

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of the third respondent is justifiable and the letters issued by the University of Calicut describing M.Sc.(Botany) and M.Sc.(Plant Science) are one and the same, rather Botany M.Sc. is equal to that of M.Sc.(Plant Science). The third respondent further filed a additional reply statement on receipt of the rejoinder filed by the applicant and produced Annexures R3(d) to R3(g). In these documents also the third respondent has tried to establish that the true copies of the syllabus M.Sc.(Plant Science) approved by the Board of Studies in Botany (PG) issued by the Calicut University are one and the same and the two courses M.Sc.(Botany) and M.Sc.(Plant Science) are differently maintained by the Calicut University.

5. We have heard the counsel appearing for the applicant Mr.P.K.Madhusoodhanan and Sri S.Radhakrishnan appearing for respondents 1 and 2 and Shri V.P.Mohammed Niyas appearing for the third respondent. We have also perused the relevant documents produced before this Tribunal.

6. On an anxious consideration of the contentions raised by the counsel appearing for the parties, the question to be considered is that whether the stand taken by the respondents are justifiable and the applicant is entitled for any relief from this Tribunal. Admittedly Annexure A1 notification prescribed the qualification for appointment to Post Graduate Teachers on various subjects including that of Botany. The qualifications prescribed in Annexure A1 for applying to the posts notified are that of Master's Degree in the subject concerned and B.Ed.Degree in

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teaching or Diploma in teaching experience etc. Before considering the question, we have to see the intention or the impact of Annexure A1. A reading of Annexure A1 would show that the official respondents want to appoint Post Graduate Teachers in various subjects such as Hindi, Malayalam, English, Physics, Chemistry, Zoology, Botany etc. and the qualification is fixed as Master's Degree in the subject concerned which means that a candidate who has Master's Degree in the subject concerned. In the present O.A. we have to consider with that of subject Botany. Botany is a subject relating to study of plants. Further it can be seen that from the dictionary meaning of the term 'Botany' as derived from the New Shorter Oxford Dictionary at page 264 as "The science of the structure, physiology, classification and distribution of plants", which means that any study of plants can be considered as study of the science of plants. But the question is that whether a course being conducted by a University approved or recognized by an authority as a qualifying course is that of Master's Degree in the subject concerned, i.e., either in Botany or in Plant Science. It is the prudent man to consider what is Botany or it not be Botany. But he has to see that a Degree or Master's Degree is that of a course of Botany. This too be in accordance with the Recruitment Rules. Recruitment Rules prescribes a qualification of Master's Degree in the subject concerned, means the subject of Botany. Subject of Botany may be different from one course to another or the divisions of study of plants which would depend on the course or the syllabus being approved by the Academic Council or the Syndicate of a particular University. But by that itself does not mean that the

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Recruitment Rules provides such different divisions of studies of the same subject, but only prescribes a Degree or a Master's Degree in Botany. Hence *prima facie* Annexure A1 would indicate that a Master's Degree in Botany means a Master's Degree in Botany subject, not in any subject branch of Plant Science. Plant Science may include the study of plants and which cannot be interpreted as equal to that of subject Botany. Even if such interpretations can be given, it should have been given in Annexure A1 notification itself. If so, the case of the applicant is that any selection be made in pursuance to Annexure A1, shall be from the candidates having Master's Degree in Botany as the post is that of the Post Graduate Teacher in Botany and not in Plant Science. In this context the counsel for the official respondents relies on two judgments of the Apex Court. In Latha Arun's case(cited *supra*)in which the Apex Court considered the question of eligibility qualification for an admission in the General Nursing and Midwifery and Staff Nurse Course. In the above case, in the notification it was stated that the candidates should have passed first year of the three years degree course or 10+2 and the candidates with Science subjects(Biology, Chemistry, Physics) would be given preference. At the same time a candidate having a pass in the 12th class is equal to that of the qualification prescribed by the notification or not. The Department had admitted that a pass in 12th class with Science subject as equivalent to that of the qualification prescribed in the notification and the Court said that it is left to the authority to decide the admission treating the qualification as equivalent. But the case in hand it is not the question of equivalency but depends on interpretation being given



to the notification where the qualification has been fixed and the post to which appointment is to be made is Post Graduate Teacher In Botany. Hence the principle laid down by the said case is not applicable in the case on hand. In the same manner in G.N.Naik's case also, the question considered by the Apex Court was whether a course can be considered as equivalent to that of the qualification prescribed by a University and the Apex Court held that it is also the authority to give the selection on the basis of the subsequent amendment made to the essential qualification. In the case on hand there is no such amendment being made in the qualification. So these two cases cannot be interpreted in favour of the respondent. Further it has to be noted that the counsel for the third respondent relies on Annexures R3(d) to (g) issued by the Calicut University showing the syllabus of the course of M.Sc. In Plant Science as equal to that of M.Sc. in Botany. Here also we are afraid whether we will be justified in giving a verdict to equalize M.Sc.in Botany with M.Sc. in Plant Science. It is an admitted fact that the Calicut University is conducting M.Sc. Botany and M.Sc. in Plant Science as distinctly and differently . If so, we will not be justified in equalizing Master's Degree in Botany with that of Master's Degree in Plant Science division. That apart as we have already held in the previous paragraph that the authorities are relying on the Recruitment Rules where the prescribed qualification is that of Master's Degree in Botany , i.e., Master's in the subject concerned and the post is that of Botany Post Graduate Teacher and not Post Graduate Teacher in Plant Science. Unless the Recruitment Rules are amended or notification is issued to that effect any selection made beyond the



prescribed qualification contained in Annexure A1 notification is irregular and illegal. The counsel for the applicant also relies on the judgment of the Apex Court reported in 2008(3) SCC 724 in Madan Mohan Sharma and another vs. State of Rajasthan and others. In the above judgment the Apex Court held that once an advertisement had been issued on the basis of a circular obtaining at that particular time, the effect would be that selection process should continue on the basis of the criteria which are laid down and it cannot be on the basis of the criteria which has been made subsequently. Further in the same judgment it is held that amendment of the rules made during the pendency of the advertisement which was prospective cannot be made retrospective so as to make the selection on the basis of the rules which was subsequently amended. Even if the Department wants to prescribe Post Graduation in Plant Science as also a qualification, they should have given a subsequent correction in the notification and that is not done in the case on hand. Apart from the above, the applicant has got a case that the authorities are biased in deviating from the qualification prescribed in Annexure A1 and selecting the third respondent for appointment in detrimental to the applicant. It has been stated in the reply statement that the applicant, though is a Post Graduate or having a Master's Degree in Botany he has only got 55% marks and that by itself shows that the selection made by the respondents is with a pre-conceived notion and the applicant is prejudiced with that selection now made. If so it is only proper for this Tribunal to hold that the selection and appointment shall be in accordance with Annexure A1 notification and if any selection is made otherwise become void and we are inclined to set aside



such selection. Accordingly we do so. In short, for the reasons stated in this order and the law laid down, the O.A. stands allowed to the extent applicable, without any order as to costs.



**(K.GEORGE JOSEPH)
ADMINISTRATIVE MEMBER**

**(JUSTICE K.THANKAPPAN)
JUDICIAL MEMBER**

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