

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 342 OF 2010

Monday..., this the 12th day of December, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Fareeda Beegum K
Fisheries Inspector
Directorate of Fisheries, Fisheries Unit
Kavaratti, Union Territory of Lakshadweep

Applicant

(By Advocate -- Mr.N Haridas & Mr.P.N Sasidharan)

Versus

1. Union of India, represented by its Secretary
Ministry of Human Resources and Development, New Delhi
2. Administrator, Union Territory of Lakshadweep, Kavaratti
3. Director of Fisheries, Directorate of Fisheries
Kavaratti, Union of Territory of Lakshadweep
4. Jafer Hisham T, Thattampokkada House
Androth Island, Union Territory of Lakshadweep
5. Jabbar B., Bankil House, Kadmath
Union Territory of Lakshadweep

- Respondents

(By Advocate – Mr.Pradeep Krishna, ACGSC for R1
Mr.S Radhakrishnan, R 2 & 3
Mr.M.R Hariraj for R 4 & 5)

The application having been heard on 7.12.2011, the Tribunal on
12/12/11 day delivered the following:

ORDER

HON'BLE MR.JUSTICE P.R RAMAN, JUDICIAL MEMBER

1. The applicant had applied for the post of Fisheries Officer pursuant to a notification issued (Annexure A-3) by the 3rd respondent. Both 4th & 5th respondents also applied pursuant to the notification. Two vacancies were



notified. Based on the qualification and experience possessed, 4th & 5th respondents were appointed. Aggrieved by the non selection of the applicant and impugning the selection of 4th & 5th respondents, the present application is filed for the following relief:-

- “ i) Issue an order calling for the records leading to Annexure A4 Select List of the Fisheries Officer and quash the same holding that the selection made to the post of Fisheries Officer, is illegal and in derogation of Rules;
- ii) Declare that the applicant is an eligible and qualified candidate to the post of Fisheries Officer on the basis of her higher marks in B.Sc. (Zoology) Examination than Respondents 4 & 5 and therefore she was to be preferred against them;
- iii) Declare that the procedure followed for the selection Respondents 4 & 5 taking into account the marks and experience certificates produced by them, is illegal and unsustainable especially in view of the findings of this Hon'ble Tribunal as well as the Hon'ble High Court of Kerala as per Annexures A5 & A 6;
- iv) Direct Respondents 2 & 3 to appoint the applicant to the post of Fisheries Officer in the Fisheries Department;
- v) Direct the 2nd respondent to consider and pass appropriate orders on Annexure A7 Representation within a time limit that may be fixed by this Hon'ble Tribunal; ”

2. The qualifications to be possessed by the candidate as notified is as follows:-

“ Essential: Diploma in Fisheries Science of the C.I.F.E., Mumbai

OR

Graduate in Fisheries Science/Graduate in Science with Zoology as main subject with 2 years experience in Fisheries Field.

Age: Between 18-30 years.

Note: (Relaxable for Government Servants SC/ST candidates, Ex-servicemen and other special categories of persons in accordance with the instructions/orders issued by the Government of India from time to time. The crucial date for determining the age limit shall be the last date stipulated for receipt of application). The last date



stipulated for receipt of application for the post of Fisheries Officer/Superintendent in the said Notification was 15.09.2008). "

3. According to the applicant, she is a graduate with Zoology as main subject and she has secured 67.3% marks, where as the 4th & 5th respondents are less meritorious considering the marks obtained by them in the qualifying examination. It is also her case that she possessed the requisite experience of 2 years on the date of selection. In other words it is impliedly admitted that she does not have the requisite experience as on the date of notification i.e; 29.07.2008. However, she contends that the 4th respondent also do not possess the requisite experience. According to her in the previous appointment when the 4th respondent was selected, he did not have the requisite experience and there was a challenge to the selection which culminated in Annexure A-5 judgment in O.A No.349/2006. This Tribunal held that the experience certificates produced by the 4th respondent cannot be counted as the requisite experience for the post of Fisheries Officer, advertised on 16.02.2006 as the experience gained by him was not even before the Selection Board while interviewing him. However, two years experience being an essential requirement and since the 4th respondent did not possess the requisite experience, his appointment was set aside. The Hon'ble High Court of Kerala in Writ Petition No. 36410/07 filed against the said judgment confirmed the view. According to the applicant when the Tribunal's judgment was set aside, the second notification was issued against which the selection is made now. Therefore the experience he possessed during the period when the first selection was conducted having been set aside, cannot be counted for any purpose as per the orders of this Tribunal and Hon'ble High Court of Kerala. It is also submitted that in view of the observations made by this Tribunal as well as the Hon'ble High Court of Kerala, experience certificates of 5th respondent



cannot be counted.

4. In the reply statement filed by the 4th and 5th respondents, they justified the selection and appointment of 4th and 5th respondents on the premise that the experience cannot be excluded merely for the reason that his earlier appointment was found illegal by this Tribunal as well as Hon'ble High Court of Kerala. Counsel for the 4th & 5th respondents relied on (1979) 1 SCC 168 in the case of Ram Sarup Vs State of Haryana & others and (2011) 5 SCC 464. It is also pointed out that as against the 5th respondent, no specific allegation is alleged or made out.

5. Counsel for the applicant submits that the qualification possessed by the 5th respondent is not from a genuine institution. The official respondents however maintained their stand that the selection and appointment of 4th and 5th respondents are justifiable. The counsel for the applicant averred that there was no written test or interview in the process of selection and hence the selection is to be vitiated. Counsel for the respondents submitted that by virtue of the circular of Lakshadweep administration only when the Recruitment Rules provide for a separate selection procedure, such written test or interview is required to be held or otherwise based on the academic qualification and experience, the selection can be made, which is fully justified.

6. We have heard the counsel for the parties and perused the documents. The points raised for our consideration are:-

1. Whether the experience possessed by the applicant should be as on date of notification or as on the date of consideration for selection?



2. Whether the experience of one year and 6 months possessed by the 4th respondent could be excluded for the mere reason that his appointment earlier was found illegal?

7. In respect of the first question is concerned, it is well stated law that the qualification and experience as prescribed should be possessed by a candidate as on the date of the notification unless otherwise specified in the notification. In this case it is not otherwise stated in the notification that a candidate needs qualification prescribed as on the date of consideration by the selection committee, therefore as per the general law, qualification possessed as a matter of fact vide Annexure A-5 order passed, this Tribunal has taken a view that it should be on the date of notification, which has already been upheld by the Hon'ble High Court of Kerala in its judgment vide Annexure A-6. Therefore following that judgment it is held that the qualification and experience prescribed as essential qualification should be possessed by a candidate as on the date of the notification.

8. As regards the second point whether the experience of one year and 6 months possessed by the 4th respondent could be excluded for the mere reason that his appointment earlier was found illegal. Admittedly, the 4th respondent has acquired the experience based on the appointment earlier made and earlier appointment has been set aside on the finding that there is an illegality. In that appointment he did not possess the requisite experience. Thus the experience possessed by him was not satisfied and therefore it was found to be an illegal appointment. Whether the experience possessed by him could be counted for any other purpose is raised for consideration.



9. As regards the second issue under consideration, admittedly he has completed the requisite experience after he was appointed, though irregularly. Whether the experience he gained during the period of irregular appointment could be considered for regularization of his service, we need only refer to the decision of the Apex Court in *Ram Sarup vs. State of Haryana and Others*; (1979)1 SCC 168. That was a case where the appellant before the Apex Court was appointed as Labour-cum-Conciliation Officer. While so, an order was passed by the Government reverting him to the post of Statistical Officer on the ground that the appellant was not qualified to be appointed as Labour-cum-Conciliation Officer under the relevant rules as he did not satisfy the required experience of five years of the working of Labour Law as Labour Inspector, Deputy Chief Inspector of Shops or Wage Inspector. Challenging the reversion order the appellant approached the High Court of Haryana. That petition was dismissed by the Single Judge which was confirmed in appeal by the Division Bench. Thereupon the appellant took up the matter in appeal before the Apex Court. The Apex Court found that the appointment of the appellant to the post of Labour-cum-Conciliation Officer was clearly in breach of Rule 4, clause (1) of the Punjab Labour Service (Class I and II)Rules,1955. But then it considered the question as to what was the effect of breach of clause (1) of Rule 4 of aforesaid rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularized as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. The Apex Court took the view that the appointment of the appellant was irregular only for want of possessing the requisite experience but it took notice of the fact that he worked as Labour-cum-Conciliation Officer from January, 1968 and that is a post higher than



that of Labour Inspector or Deputy Chief Inspector of Shops or Wage Inspector. Even though it is an irregular appointment the experience gained by him working of Labour Laws in the post of Labour-cum-Conciliation Officer must be regarded as sufficient to constitute fulfillment of the requirement of five years' experience provided in the rules, the Apex Court held. Therefore the appointment of the appellant became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. Accordingly the reversion order was set aside and the appeal was allowed.

10. In Droupati Kaivartya vs. State of Chattisgarh and Ors., the Chattisgarh High Court in a similar matter, held as follows:-

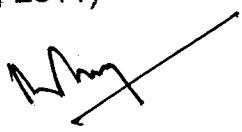
" Taking experience of a person on a particular post and his/her nature of appointment on the said post are two different geneses. They cannot be co-related with each other so as to destroy the validity and importance of each other. It is a matter of common sense that even a person who has not been validly appointed, but has worked with interest, care and caution and devotion on a particular post will get experience of that post irrespective of the fact that his/her appointment was technically invalid in the eyes of law. Experience is a kind of property which a person gains out of repeated/continuous exercise which he/she undertakes during the course of assignment of a particular work, it is a process of gaining knowledge by doing and seeing things practically and it has got no nexus with the validity of his/her appointment for the said work and on the ground of procedural illegality in the appointment, his/her appointment may be cancelled, but cannot be said that he/she has not gained experience of the said work when admittedly, he/she has worked on the particular post for which the appointment was initially made."

Therefore from the above legal position, it is clear that though initially his appointment was irregular for want of requisite experience, once he has

completed and earned the necessary experience in the post he held, though irregularly, he is entitled to be regularized in the said post. The appointment at best can only be irregular and the moment he acquires the requisite experience, his appointment is liable to be regularized. Even though the learned counsel appearing for the applicant cited the decision of the Apex Court in Union of India and another vs. Kartick Chandra Mondal and Another; (2010)2 SCC 422, more particularly to paragraph 25 of the said judgment to contend that absorption erroneously made cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. We do not think that the said decision has a bearing on the issue now under consideration. The 3 Judge Bench decision of the Apex Court in 1979(1)SCC 168, to which reference is already made in the earlier paragraph, squarely applies in the factual situation of the case and as such, we find no merit in this O.A. and accordingly, the same is dismissed. No order as to costs.

(Dated, this the 12th day of December, 2011)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE PR RAMAN
JUDICIAL MEMBER

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