

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.354 / 2005

Tuesday this the 16th day of January, 2007

CORAM :

**HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

Akbar Ali A,
S/o K.K.Kunhikoya,
Ashathummada House,
Chetlet Island,
Union Territory of Lakshadweep. : **Applicant**

(By Advocate Mr. O.V.Radhakrishnan Sr, M/s K Radhamani Amma,
V.D.Balakrishna Katha, Antony Mukkath)

Versus

1. Director of Education,
Union Territory of Lakshadweep,
Kavaratti.
2. Union of India represented by their
Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. Noufal K,
Residing at 'Mufaz'
Union Territory of Lakshadweep,
Kavaratti.
4. Kunhi CC,
Residing at Cheriyatthechetta,
Union Territory of Lakshadweep,
Amini.
5. Kamal Hussain K.K.,
Residing at Keelakunniakkam,
Union Territory of Lakshadweep,
Amini.
6. Shamsudeen M.K.
Residing at Mayamkakkada,
Union Territory of Lakshadweep,
Andrott.
7. Mehrali C.P.S.
Residing at Paliyath,
Union Territory of Lakshadweep,
Andrott.

8. Anwar K.P.
Residing at kandalath,
Union Territory of Lakshadweep,
Andrott.

9. Nazeemudeen Sayed C.P.,
Residing at Cheriyapandaram,
Union Territory of Lakshadweep,
Amini. : Respondents

(By Advocate Mr. S Radhakrishnan for R.1 & 2)

(By Advocate Mrs K Girija, for R. 7 to 9)

(By Advocate Mr R Sreeraj for R.4,5 &6)

The application having been heard on 2.1.2007, the Tribunal on 16.1.2007 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Shri Akbar Ali, the applicant herein , is aggrieved by his non-selection to the post of Physical Education Teacher(PET) under the Department of Education, Union Territory of Lakshadweep Administration.

2. He is one of the applicants for the said post. Vide A-1 notification dated 28.11.2003, applications were called for by the Director of Education for appointment to five posts of PET, among others. The qualifications prescribed for the said post therein was Graduation with Diploma in Physical Education. The applicant is a holder of a degree of Bachelor in Physical Education(BPE). Vide A-5 notice dated 23.6.2004, a schedule of written tests and interview was announced. Subsequent to the said notice, a list of three qualified candidates,including the applicant was sent to the Headmasters of the High Schools to duly advise them to report before the Directorate(A6). This list also contained names of five



candidates, R-4, R-5, R-7, R-8 and R-9 in this O.A, described as not qualified on the last date of receipt of application. Though the applicant appeared before the Directorate on the appointed date, no written test was conducted. A-7 notice dated 12.7.2004, announced the postponement of the written test and the vacancies were to be re notified and, candidates, who were found eligible as per the earlier notifications (like the applicant) did not have to re-apply. Vide A-8 impugned notification dated 1.9.2004, the Education Department invited applications from qualified persons for appointment to various posts. This included 7 posts of PET and the qualification prescribed was the same as earlier (Graduate with (emphasis supplied) Diploma in Physical Education). The applicant submitted his application along with a covering letter vide A-9. A list of ten qualified candidates, headed by the applicant was released (A-10). A schedule of written tests was announced vide A-11 dated 11.2.2005. The applicant attended the written test, followed by an interview. The performance of the participants was given in a list showing the marks obtained by them (A12). The list had five columns, the 5th column to enter percentages of marks in PDC/Degree/BPED obtained by the candidates. In the case of the applicant, his marks were shown aligned under BPEd, which is a one year certificate course, instead of under Degree. Thereafter, a select list (impugned A-13) was published on 15.4.2005 of seven candidates (the respondents 3 to 9 in this O.A) and the applicant included in the waiting list. According to his claim, he lost the chance of inclusion in the select list, only because of a wrong classification of his qualifications. As per the contention of the



applicant, recruitment to the above post is governed by A-14 recruitment rules published on 4.9.2002 and the post of Physical Education Teacher falls under the category of Trained Graduate Teacher. The educational qualification prescribed for the said post is Graduate with Bachelor of Education or its equivalent with a minimum of 40% marks or 4 years integrated BSc.ED with a minimum of 40 marks. The applicant, having secured 51.9% marks in the degree examination, stands at a higher pedestal, compared to the respondents 9 & 7, who have not secured 40% marks for academic and professional qualifications. Aggrieved by A-8 notification dated 1.9.2004 inviting applications from qualified persons, A-12 list displaying marks obtained by applicant and others and A-13 select list, the applicant has come before this Tribunal.

3. The main reliefs sought for are the following:

- i) Quashing of A-8, A-12 and A-13.
- ii) Declaration that the cancellation of A-7 by A-8 and the re-notification of the vacancies is unconstitutional.
- iii) Direction to proceed with the selection process as per A-1.

4. The following grounds are relied upon.

- i) The impugned select list A-13 is based upon improper listing of marks in the A-12 mark list, where the applicant's marks were taken to be those obtained in BPED; this is a one year course, whereas he has obtained Bachelor of Physical Education Degree which



is a 3-year course.

- ii) Respondents 7&9 have obtained less than 40% marks in the Degree, which is against those prescribed under the recruitment rules.
- iii) Respondents 4,5, 7, 8 & 9 were declared as not having qualified on the last date of receipt of application as per A-6 fax message. The re-notification of the selection process was a device to ensure their selection.
- iv) There was no authority vested with the respondents concerned, to order such re-notification.

5. Both the official and party respondents oppose the application. According to the official respondents,

- i) The recruitment rules applicable in this case are R-1 rules published on 17.7.63 and not A-14, relied upon by the applicant Sl.No.11 in R1relates to the post of PET and the qualification prescribed is Graduate with Diploma in Physical Education. There has been no amendment to the above rules. As against the above requirement, the applicant possesses only a Bachelor of Physical Education Degree and hence is not eligible.
- ii) In view of such ineligibility, inclusion of his name in A-6, A-10, A-12 and A-13 is a consistent and regrettable mistake. The applicant is not entitled to be conferred with any right based upon such a mistake



iii) The selection process is governed by R-2 guidelines issued by the Director of Education under approval of the Administrator.

iii) The applicant's qualification can either be taken as a Degree or a qualification in Physical Education, but not both. The interview board took the Degree of BPE as graduation and awarded 51.9 marks for the same. The column for professional qualification was assigned nil value in his case.

iv) The applicant did not seek the cancellation of A-6 notification and, having participated in the selection process, he cannot be heard to object the same.

6. The party respondents make the following points, in addition:

- i) They are all well-qualified for the post, for which they have been selected; more specifically R-7, 8 & 9, are graduates apart from having obtained M.P.E./ B.PEd.
- ii) There was no challenge from the applicant, against the cancellation of A-6 and re-notification of vacancies by A-8; having participated in the process, the applicant is estopped from questioning the results.

7. Heard the Senior counsel for the applicant and the counsel for the respondents and perused the documents.

8. First point to be decided is what is the prescribed qualification for the post of PET. According to the applicant, the qualifications are those prescribed in the recruitment rules as



contained in A-14. Particular reference is made to the schedule containing various parameters, fixed under the recruitment rules for the post of TGT, like educational qualifications, pay scale etc. According to the applicant, PET falls under the category of TGT. He would later rely upon the fact that a minimum of 40% in each degree(Graduation and Degree of B.Ed.) or in the equivalent course of Bsc.Ed. has been prescribed. Respondents stoutly oppose this averment relating to the qualification, by referring to the fact that the qualifications for the post of PET are given in R-1 document (or R-8(a)). This document is the recruitment rules issued by the Administrator vide notification dated 17th July 1963, in respect of certain listed posts, of which the one under consideration is given the Sl.No.11. The educational and other qualifications required for direct recruits is given as Graduation with Diploma in Physical Education. The recruitment rules relied upon by the applicant shown in A-14 are in fact, in supersession of the provisions for 3 posts. It is instructive to note that in some of the posts, the prescribed educational qualifications include alternative equivalent qualifications along with the main qualifications. Such equivalence is not contemplated for the post of PET under consideration. It is equally relevant to note that the qualifications mentioned above is also what is prescribed in the two notifications, inviting applications for the above post. The third important point to note is that the qualification prescribed is actually a set of two qualifications-one of Graduation and another of Diploma in Physical Education Hence, it is found unambiguously that the educational and other qualifications prescribed for the post of



Physical Education Teacher under the Recruitment Rules is Graduation with Diploma in Physical Education,

9. Next point to be decided is whether the applicant possesses the said qualifications. It is a matter of record that the applicant has the qualification of Bachelor of Physical Education conferred by the University of Kerala as stated in his OA. This should be contrasted with the requirements of a Graduation and Diploma in Physical Education under the recruitment rules. *Prima facie*, it should be held that he is not in possession of the prescribed set of two qualifications. During the course of argument, the learned Senior Counsel was canvassing for a position that the applicant's qualification was, in fact, a composite qualification consisting of both the elements of Graduation and Diploma (as stated in the rejoinder also). A bare reading of his degree certificate does not disclose any such composite nature of the qualifications. Reliance is placed on by him on A-15, A-16 and A-17 documents to sustain this claim. A-15 document is a letter from the UGC dated 23.1.1961, addressed to the Secretary to the Government of India and Principals, conveying the decision of the UGC that the **Degree holders from Maharani Lakshmi Bhai College of Physical Education**, Gwalior(emphasis supplied) may be treated at par with holders of the Post Graduate Diploma in Physical Education **for the purpose of appointment as directors of Physical Education or Physical Instructions in Universities and colleges.**(emphasis supplied). A-16 is the letter of the Ministry of Education addressed to all the State Governments and Union Territories. A suggestion



(not a directive) has been made therein that the Degree holders from the Lakshmi Bhai College of Physical Education, Gwalior (which has been set up by the Government of India and is non(sic) affiliated to Shivaji University Gwalior) may be treated at par with the holders of Post Graduate Diploma in Physical Education for the purpose of appointment as Directors of Physical Education or Physical Instructors in Universities and colleges. It also elaborated an implication that the BPE degree holders should be treated at par with those who hold a BA Bsc and B.com Degree plus a Diploma in Physical Education. A-17 document was issued by the Government of India in the Ministry of Education and Youth Services on 14.12.1970, reiterating the treatment to be given on the lines indicated above to the holders of BPE from Lakshmi Bhai College of Physical Education, Gwalior. According to the claim of the applicant, the Lakshmi Bhai National College of Physical Education, Thiruvananthapuram is an offshoot of the college in Gwalior referred to above and he, having graduated from the former is entitled to the treatment given to the graduates thereof as contemplated in A-15, A-16 and A-17 documents. It must be said at the outset that the accent in respect of three documents referred to above is squarely and only on the Gwalior college, and it is applicable for the purpose of appointment to certain specific posts; it has not been extended to any other college like the one from which the applicant graduated and the one which he claims to be an offshoot of the Gwalior college. Second point to be noted is that the references mentioned above are only in the nature of suggestions at best. These references have no self executing



power, unless duly acted upon by the authorities concerned. Such due action should comprise of amendment to the recruitment rules concerned. The said rules as regards the Lakshadweep Administration is the ones in R1 made in 1963. It is no one's case that amendments have indeed been carried out, to incorporate the suggestions. The rules were indeed amended, as seen in the rules relied upon by the applicant, but they are related to some other set of teaching staff. This would mean that the suggestions contained in A15-A17 were before the authorities concerned, even when the recruitment rules were first made, or subsequently. So long as the said rules have not been amended, there is no sustainable claim allowable to the applicant about the composite nature of his qualification. This is, of course, assuming that the qualification, he possesses from the LakshmiBhai college is covered by the directives in A-15-17. We are not convinced that they do cover the college where he graduated from. Lastly, in so far as no equivalent qualifications have been prescribed for the present post, his claim of such equivalence lacks force. Under these circumstances, we find that the applicant does not posses the prescribed qualifications.

10. Next point to be decided is whether the applicant is entitled to be considered for selection based on any other criterion. One of the points raised by the applicant is that none of the selected candidates possesses the required qualifications of a Diploma in Physical Education.



11. In the impugned order A-12 names of respondents R-3 to R-9 are found along with that of the applicant. The qualifications of the respondents, apart from their basic degree, is BPED in all cases except R-6 and R-7. In their cases, the qualification is MPEd. Obviously, BPED is Bachelor of Physical Education and MPEd is Master of Physical Education. Presumably both of them are Degrees. Confirmation in this regard is available only in the case of R-9 vide A-20 document. Extrapolating this presumption to other cases, all the respondents have basic degrees along with a Bachelor or Masters Degree as the case may be. These may be qualifications higher than a Diploma. But none of the respondents possesses the prescribed qualification of basic graduation and Diploma in Physical Education. Viewed in this sense, they, along with the applicant, should be held to be ineligible from the point of view of the qualifications prescribed in the recruitment rules. It is significant to note that R-4, R-5, R-7, R-8 and R-9 were found not to be qualified vide A-6 in terms of the prescribed qualifications. It is inexplicable as to how they became qualified during the next round. So, it should be presumed that the respondents are as ineligible as the applicant though for different reasons. But, such ineligibility does not make the applicant ipso facto eligible. Certain other points have been raised by the applicant about the non-operation of estoppel, incorrect tabulation of his marks etc. When the primary condition of prescribed educational qualifications has not been fulfilled by the applicant, we find other issues as raised above do not merit any adjudication.

A handwritten signature in black ink, appearing to read 'S. J. S.' followed by a stylized line.

12. The next question arises as to how to treat the selected respondents. It has been fairly conceded by the respondents that despite lack of qualification of the applicant, he was included in A-6, A-10, A-12 and A-13 but by mistake. In the past, they had considered and selected some ineligible candidates having BPE as pointed out by the applicant in his rejoinder. The administration had considered candidates with BPE qualification for the post of Physical Education Teacher in the absence of candidates with graduation and BPEd. Some candidates, with BPE qualifications, were earlier appointed (despite the prescription in the recruitment rules to the contrary). Such recruitment proved precedents to consider the candidature of the applicant. It was submitted by the respondents during the argument stage that relaxations were made for considering candidates with other-than-required qualifications. But they(the respondents) were unable to produce any document, evidencing such relaxation being given by competent authorities . The learned Senior counsel for the applicant intervened to point out that the recruitment rules furnished by the respondents contained a provision for relaxation only in respect of upper age limit and of marital status and of nothing else.If, indeed any relaxations have at all been made by the authorities concerned, it is not under any provisions of the Recruitment Rules. This would merely and sadly underline the tendency of the administration, in not strictly adhering to the provisions of recruitment rules and in not amending them duly to meet emerging contingencies. The question still remains about the qualifications of the respondents which are not identical to the prescribed ones. A similar question was dealt with by the



Hon. Apex Court in two cases considered together – 2003(3) SCC 541 Civil Appeal No.1726-28 of 2001 and 2003(3) SCC 548 Civil Appeal No.3897 of 2001, both decided on 5.3.2003. In the first case, the question agitated was the treatment to be given to B.Ed. Candidates who responded to a job advertisement which had prescribed Teachers Training Certificate(TTC). The Hon. Kerala High Court in a Single Bench decision had ruled that B.Ed candidates were not eligible under the terms of the advertisement. This was upheld by the Division Bench of the Hon. High Court. But certain additional orders passed by the Division Bench were challenged before the Apex Court. While deciding on such additional matters, the Hon. Apex Court upheld the judgment of the Single Judge. In the second case, an identical issue came up for decision in relation to B.Ed degree holders seeking recruitment to the post of Assistant Teachers in Delhi Municipal Corporation Primary Schools. There again, the advertisement specified only TTC as the essential qualification. One of the arguments advanced by appellants, who were B.Ed degree holders, was that for several years, candidates with B.Ed degree were considered and appointed. Repelling this argument, the Hon. Apex court observed, “8. *The last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any., Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the BEd candidates and we are told that was*



so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and BEd are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as BEd qualification is concerned, in the connected appeals (CA-s Nos.1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that BEd qualification cannot be treated as a qualification higher than TTC degree is totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from BEd category and very few from TTC category. Whether for the aforesaid reasons, BEd qualification can also be prescribed for primary teachers is a question to be considered by the vacancies advertised as eligible. In our view, the Division bench of the Delhi High Court was fully justified in coming to the conclusion that BEd candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any BEd candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal."

13. From the above it is apparent that the above selection of the



respondents are not in tune with the law laid down by the Apex Court as above. But the question remains on the action to be pursued. It is a matter of record that all the respondents have joined duty and must have acquired civil rights ever since such joining. Any action prejudicial to their interests should be taken only following the principles of natural justice. Action should be pursued by the respondents to duly review the selection and appointment of the respondents following principles of natural justice.

14. In sum we find

- i) the educational and other qualifications prescribed for the post of Physical Education Teacher under the Recruitment Rules is Graduation with Diploma in Physical Education
- ii) the applicant does not possess the prescribed qualifications ,
- iii) no other circumstances exist to warrant a favorable consideration to his candidature
- iv) none of other candidates possesses the required qualification and no evidence is available for due exemption from the RR and rectification action including review of such recruitment is called for on the part of the respondents.

15. Based upon the above findings, the O.A is disposed off with the following orders:

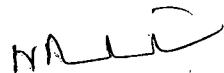
- i) the applicant has no sustainable case and hence is not entitled to any reliefs
- ii) The respondents shall verify whether any, some or all the selected candidates, who are respondents are



ineligible from the point of view of prescribed qualifications and, in case of non-possession of such qualifications, they shall take rectificatory action allowed under the rules including possible review of such appointments by following the principles of natural justice. Such action should be completed within a period of six months from the date of receipt of a copy of this judgment.

16. The O.A is disposed of as above. No costs.

Dated, the 16th January, 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

trs

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 354 of 2005

Friday, this the 25th day of April, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

Akbar Ali A,
S/o. K K Kunhikoya,
Residing at Ashathummada House,
Chetlet Island,
Union Territory of Lakshadweep. Applicant.

(By Advocate Mr. O.V. Radhakrishnan (Sr.) with M/s. K Radhamani Amma, V.D. Balakrishna Kartha, Antony Mukkath)

v e r s u s

1. Director of Education,
Union Territory of Lakshadweep, Kavaratti.
2. Union of India represented by
The Administrator,
Union Territory of Lakshadweep, Kavaratti.
3. Noufal K,
Residing at 'Mufaz',
Union Territory of Lakshadweep, Kavaratti.
4. Kunhi C.C.,
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8. Anwar K.P.,
 Resding at Kandalath,
 Union Territory of Lakshadweep, Andrott.

9. Nazeemudeen Sayed C.P.,
 Residing at Cheriyapandaram,
 Union Territory of Lakshadweep, Amini ... Respondents.

(By Advocates Mr. S. Radhakrishnan for R1-2, Mrs. K. Girija for R7 to R9 and Mr. R. Sreeraj for R4 to R6).

The application having been heard on 21.04.08, this Tribunal on 25.4.08 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This OA was earlier decided vide order dated 16-01-2007, in the following terms:-

“14. In sum, we find :

- (i) the educational and other qualifications prescribed for the post of Physical Education Teacher under the Recruitment Rules is Graduation with Diploma in Physical Education;
- (ii) the applicant does not possess the prescribed qualifications;
- (iii) no other circumstances exist to warrant a favourable consideration to his candidature; and
- (iv) none of other candidates possesses the required qualification and no evidence is available for due exemption from the RR and rectification action including review of such recruitment is called for on the part of the respondents.

15. Based upon the above findings, the O.A. is disposed of with the following orders :

- (i) The applicant has no sustainable case and hence is not entitled to any reliefs.



(ii) The respondents shall verify whether any, some or the selected candidates, who are respondents are ineligible from the point of view of prescribed qualifications and, in case of non-possession of such qualifications, they shall take rectificatory action allowed under the rules including possible review of such appointments by following the principles of natural justice. Such action should be completed within a period of six months from the date of receipt of a copy of this judgement."

2. It would thus be seen that the order is of two parts, one with the finding that the applicant does not possess the prescribed qualifications and the other that the private respondents have also not got the prescribed qualifications.

3. While there was no review application from the side of the Applicant, private respondents have filed RA 6 and 7 of 2007 praying for review of the order of the Tribunal as the same contained errors apparent on the face of record, inasmuch as, it was not the case of the applicant that the private respondents do not possess the qualifications for the post of Physical Education Teachers and even otherwise, the finding that the private respondents do not have the qualifications is not based on records, as they do have the qualifications prescribed for the said post.

4. The Review Application was allowed and the original order dated 16-01-2007 recalled. The case was posted for hearing.

5. Brief facts of the case are as under:-

✓ (a) Shri Akbar Ali, the applicant herein, is aggrieved by his non-selection to the post of Physical Education Teacher (PET) under

the Department of Education, Union Territory of Lakshadweep Administration.

(b) He is one of the applicants for the said post. Vide A-1 notification dated 28.11.2003, applications were called for by the Director of Education for appointment to five posts of PET, among others. The qualifications prescribed for the said post therein was Graduation with Diploma in Physical Education (BPE). Vide A-5 notice dated 23.6.2004, a schedule of written tests and interview was announced. Subsequent to the said notice, a list of three qualified candidates, including the applicant was sent to the Headmasters of the High Schools to duly advise them to report before the Directorate (A/6). This list also contained the names of five candidates, R-4, R-5, R-7, R-8 and R-9 in this O.A, described as not qualified on the last date of receipt of application. Though the applicant appeared before Directorate on the appointed date, no written test was conducted. A-7 notice dated 12.7.2004, announced the postponement of the written test and the vacancies were to be re-notified and, candidates, who were found eligible as per the earlier notifications (like the applicant) did not have to re-apply. Vide A-8 impugned notification dated 1.9.2004, the Education Department invited applications from qualified persons for appointment to various posts. This included 7 posts of PET and the qualification prescribed was the same as earlier (Graduate with (emphasis supplied) Diploma in Physical Education). The applicant submitted his application along with a covering letter vide A-9. A list of ten qualified candidates, headed by the applicant was released (A-10). A schedule of written tests was announced vide A-11 dated 11.2.2005. The applicant attended the written test, followed by an interview. The performance of the participants was given in a list showing the marks obtained by them (A-12). The list had five columns, the 5th column to enter percentages of marks in PDC/Degree/BPED obtained by the candidates. In the case of the applicant, his

marks were shown aligned under BPEd, which is a one year certificate course, instead of under Degree. Thereafter, a select list (impugned A-13) was published on 15.4.2005 of seven candidates (the respondents 3 to 9 in this OA) and the applicant included in the waiting list. According to his claim, he lost the chance of inclusion in the select list, only because of a wrong classification of his qualifications. As per the contention of the applicant, recruitment to the above post is governed by A-14 recruitment rules published on 4.9.2002 and the post of Physical Education Teacher falls under the category of Trained Graduate Teacher. The educational qualification prescribed for the said post is Graduate with bachelor of Education or its equivalent with a minimum of 40% marks or 4 years integrated B.Sc.ED with a minimum of 40 marks. The applicant having secured 51.9 % marks in the Degree examination, stands at a higher pedestal, compared to the respondents 7 & 9, who have not secured 40% marks for academic and professional qualifications. Aggrieved by A-8 notification dated 1.9.2004 inviting applications from qualified persons, A-12 list displaying marks obtained by applicant and others and A-13 select list, the applicant has come before this Tribunal.

(c) The main reliefs sought for are the following :

- (i) Quashing of A-8, A-12 and A13;
- (ii)Declaration that the cancellation of A-7 by A-8 and the re-notification of the vacancies is unconstitutional;
- (iii)Direction to proceed with the selection process as per A-1.

(d) The following grounds are relied upon :

- (i) The impugned Select list A-13 is based upon improper listing of marks in the A-12 mark list, where the applicants marks were taken to be those obtained in BPEd; this is

a one year course, whereas he has obtained Bachelor of Physical Education Degree which is a 3 years course;

(ii) Respondents 7 & 9 have obtained less than 40% marks, which is against those prescribed under the recruitment rules;

(iii) Respondents 4, 5, 7, 8 and 9 were declared as not having qualified on the last date of receipt of application as per A-6 fax message. The re-notification of the selection process was a device to ensure their selection.

(iv) There was no authority vested with the respondents concerned, to order such re-notification.

(e) Both the official and party respondents oppose the application. According to official respondents :

(i) The recruitment rules applicable in this case are R-1 rules published on 17.7.63 and not A-14, relied upon by the applicant. Serial No. 11 in R-1 relates to the post of PET and the qualification prescribed is Graduate with Diploma in Physical Education. There has been no amendment to the above rules. As against the above requirement, the applicant possesses only a Bachelor of Physical Education Degree and hence is not eligible.

(ii) In view of such ineligibility, inclusion of his name in A-6, A-10, A-12 and A-13 is a consistent and regrettable mistake.

(iii) The selection process is governed by R-2 guidelines issued by the Director Education under approval of the Administrator.



(iv) The applicant's qualification can either be taken as a Degree or a qualification in Physical Education, but not both. The interview Board took the Degree of BPED. as Graduation and awarded 51.9 marks for the same. The column of professional qualification was assigned nil value in his case.

(v) The applicant did not seek the cancellation of A-6 notification and having participated in the selection process, he cannot be heard to object the same.

6. The party respondents make the following points, in addition :

(i) They are well qualified for the post, for which they have been selected; more specifically R-7, 8 & 9 are Graduates apart from having obtained M.P.E./BPED.

(ii) There was no challenge from the applicant against the cancellation of A-6 and re-notification of vacancies by A-8; having participated in the process, the applicant is estopped from questioning the results.

7. Counsel for the applicant argued that once the order of the Tribunal has been recalled, it reaches the stage anterior to the stage of hearing and as such, the entire issues are at large and hence, on the basis of the pleadings the case should be argued afresh, including as to whether the applicant possesses the qualifications or not. For, once the order is recalled, the findings rendered in the order do not exist. In fact, the applicant was permitted after the review application was allowed to file additional documents and private respondents had filed their objections to the same.

[Signature]

8. Counsel for the respondents argued that the review having been filed by the private respondents manifesting the error apparent on the face of record, and the applicant having accepted the findings against him which is evident as he had not filed any review application, the applicant cannot be permitted to argue his case to establish that he possesses the requisite qualifications. Findings as rendered in the original order with regard to his non-possession of qualifications should remain in tact.

9. Counsel for the applicant however, argued that for rendering substantial justice, the case should be reheard afresh as there is no legal bar for the same and no rule exists that once the review application is allowed and the order recalled, the hearing should be confined only to the matter in respect of which there is error apparent on the face of records. He has submitted that as per the Recruitment Rules, the requisite qualifications are a bachelor degree and diploma in Physical Education. The applicant possesses a composite degree cum diploma in Physical Education, awarded by the Lakshmibai National College of Physical Education, Thiruvananthapuram. That this satisfies the requirement of both degree and diploma in Physical Education is evident from the following orders:-

(a) Annexure A-15 order dated 23rd August, 1961 purportedly issued by the University Grants Commission, whereby it has been held that the degree holders from Maharani Lakshmibai College of Physical Education, Gwalior, may be treated at par with holders of the post Graduate Diploma in Physical Education for the purpose of appointment



as Directors of Physical Education or Physical Education Instructors in Universities and Colleges.

(b) Annexure A-16 order dated 26th November, 1968 from the Ministry of Education, Government of India, addressed to all Educational Secretaries of the States/Union Territories, reiterating the fact that the B.P.E. Degree holders from the Lakshmibai College of Physical Education should be treated at par with those who hold a B.A., B.Sc., B.Com. Degree plus a Diploma in Physical Education and should not be required to possess an additional B.A., B.Sc./B. Com Degree for purpose of Employment as Directors of Physical Education or on similal other posts.

(c) Annexure A-21 order dated 17-02-1989 issued by the Ministry of Human Resources Development, Government of India, addressed to All the Education Secretaries of all the State Governments/U.Ts, University Grants Commission and Registrars of all Universities, holding that since LNCPE, Trivandrum has been established by the Government of India, the degree holders from LNCPE, Trivandrum, affiliated to Kerala University, Trivandrum should be treated at par with the holders of Postgraduate Diploma in Physical Education for the purpose of appointment as Teachers in Physical Education in School/Directors of Physical Education or Physical Instructors in Universities and colleges or on similar other posts as had been done in the case of LNCPE, Gwalior.

(d) Annexure A-11 order dated 5th July, 2007 from the Ministry of Youth Affairs and Sports, Government of India, addressed to the Educational Secretaries of all State Governments/Union Territories and the Registrars of all Universities, reiterating the contents of order dated 17th February, 1989 (Annexure C above).



10. Counsel for the respondents including that of Private respondents argued that the scope of Review is limited and the applicant cannot be permitted to let in additional documents. As the documents relied upon by the applicant have not been filed at the time of filing of the OA, these documents be not taken into account while arriving at the decision. In so far as their cases are concerned, the counsel argued that all of them possess the requisite qualifications, as understood by the official respondents and as such, the issue should be clinched holding that the private respondents do have the requisite qualifications. The end result in that case would be that the O.A. should be dismissed.

11. Arguments were heard and documents perused. The fundamental question that arises for consideration is whether the applicant could be permitted to argue the matter with regard to that finding of the Tribunal, which has gone against him, when he had not chosen to file any review against that order. True, the applicant himself has not filed any review petition. Yet, in order to avoid miscarriage of justice, he is entitled to make submission to substantiate his case. For, even after giving one opportunity, if the earlier findings should hold good, the same would be incorporated in the fresh order. The counsel is absolutely right in his submission that once the earlier order is recalled, without any condition that the matter would be heard only with particular reference to the errors apparent on the face of records, the matter is at large and the case has to be fully heard. In fact, on the basis of the facts and circumstances of a



case, on the review application being allowed, the matter could be even referred to a larger Bench. (See 2004 (4) SCC 661).

12. Again, the reliance placed by the applicant in support of his case is a bunch of orders of the Government. Some of them have been addressed to the Union Territories and they are expected to have knowledge of the same even without compelling the applicant to make them available.

13. Thus, it is to be seen whether on the basis of the documents produced, the applicant has the requisite qualification and if he has, to what extent he is entitled to the reliefs.

14. The documents go to prove that the applicant does possess the requisite qualifications. Had these been made available at the time of earlier hearing, the finding in respect of his possessing or non possessing of the qualifications would have been different. It is to be held that the applicant possesses the requisite qualifications.

15. This takes us to the next stage. To what extent this findings affect the right of the private respondents. In fact the earlier findings that the private respondents do not have the qualification having already been recalled, the issue need not be considered here as it is for the respondents to satisfy themselves about the possession of qualification by the private respondents.

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16. Once it is held that the applicant possesses the qualifications, marks are to be re-allotted as for possession of degree and diploma, as done in respect of other cases. Once such a mark is given for the qualifications, then the case of the applicant has to be compared with those of others to find out whether he comes on merit compared to others. If so, he should be considered for appointment.

17. This calls for a review of the entire selection by the respondents, and while doing so, the respondents shall afford the requisite marks for qualification to the applicant and then compare his merit position.

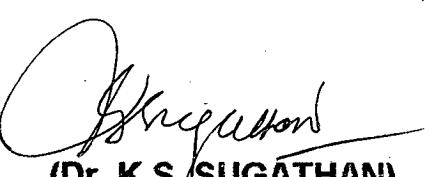
18. Consequently, the OA is allowed in the following terms. It is declared that the applicant fulfils the educational qualifications for the post of Physical Education Teacher. His case should, therefore, be reviewed in regard to the marks for qualification taking his qualification as graduation and diploma in Physical Education and on review of the total marks obtained by him, the same be contrasted with the marks of others and in case the applicant comes in merit, he be offered the appointment. It is not exactly known, whether the one vacancy directed to be kept alive without being filled up, vide order dated 25-05-2005 still remains unfilled. If so, there should be no problem in accommodating the applicant, in case he comes within the merit list. If not and if some one has already been posted against that vacancy, in that event, the one who has been selected with marks less than the applicant may have to be issued with an order of termination. That may be done, after due notice to the individual



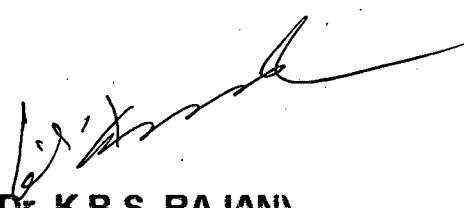
concerned. It is for the respondent to accommodate such a person against any other vacant post, if they so desire. However, the seniority of the applicant in the event of his appointment should be on the basis of his merit in the selection.

19. The entire drill be completed within three months from the date of communication of this order. No costs.

(Dated, the 25th April, 2008)



(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.