

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.1023/2012,
Original Application No.253/2013,
Original Application No.361/2013
& Original Application No.181/00051/2014

Thursday..... this the *15th*..... day of October 2015

C O R A M :

HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

O.A.No.1023/2012

1. K.M.Hidayathulla, S/o.M.P.Muthu Koya,
Post Graduate Teacher (Political Science),
Government Girls Senior Secondary School, Androth.
Komalam Mayapura House, U.T of Lakshadweep,
Androth Island.
2. Mohammed Abdul Nazer K, S/o.B.Koya,
Post Graduate Teacher (History),
Government Girls Senior Secondary School, Androth.
Kundhathalam House, Androth.
3. Mohammed Bakher M, S/o.Shaik Koya,
Post Graduate Teacher (Economics),
Mahatma Gandhi Senior Secondary School, Androth.
Mathil House, Androth, U.T of Lakshadweep.

...Applicants

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Home Affairs,
North Block, New Delhi - 110 012.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti - 682 555.

...Respondents

(By Advocates Mr.N.Anilkumar, Sr.PCGC [R1]
& Mr.S.Radhakrishnan [R2])

O.A.No.253/2012

1. Mohammed Kassim.P.S.,
S/o.Hameed KCP,
Post Graduate Teacher (Commerce),
Government Senior Secondary School, Amini.
Pudiyarambickal House, Androth Island.
2. Mohammed Hussain M.M.,
S/o.Hamza,
Post Graduate Teacher (English),
Government Senior Secondary School, Amini.
Moular Manzil, Amini.
3. Abdul Jabbar C,
S/o.Hamza.B.C.,
Post Graduate Teacher (Arabic),
Government Senior Secondary School, Amini.
Chamayam House, Amini Island.
4. Sayed Mohammed Koya M,
S/o.Cheriya Koya,
Post Graduate Teacher (Political Science),
Jawaharlal Nehru Senior Secondary School, Kadmath.
Monakkal House, Amini Island.

...Applicants

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Home Affairs,
North Block, New Delhi – 110 012.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

...Respondents

(By Advocate Mr.S.Radhakrishnan [R2])

O.A.No.361/2013

1. Raheemabi.P.,
D/o.Sayed Mohammed Koya Thangal,
Puthalam (H), Androth Island, Lakshadweep – 682 551.
2. Nasarulla.D.,
S/o.P.P.Ahmed,
Darussalam (H), Agatti Island, Lakshadweep – 682 553.

3. Asadulla.P.,
S/o.P.Ummerkoya,
Puthiya Pattiniyoda (H),
Agatti Island, Lakshadweep – 682 553.
4. Mohammed Ali.K.C.,
S/o.Nader Koya A.C.,
Kittan Chetta (H),
Agatti Island, Lakshadweep – 682 553.
5. Ummul Kuluse.B.D.,
D/o.Abdul Kader Koya (late),
Baithudheen (H),
Agatti Island, Lakshadweep – 682 553.
6. Ummer Farook T.K.P.,
S/o.Kunhi Koya MI,
Thek Keelapura (H),
Agatti Island, Lakshadweep – 682 553.
7. Sharafudeen D.,
S/o.M.K.Ummerkoya,
Darivinoda (H), Agatti Island,
Lakshadweep – 682 553.
8. Mohammed Azaharudheen.K.M.,
S/o.Muthukoya M.P.,
Komalam Mayapura (H),
Androth Island, Lakshadweep – 682 551.
9. Ali Akber M.,
S/o.Muthkoya.C.H. (Late),
Maydan (H), Chethlath Island, Lakshadweep – 682 554.
10. Nisamudheen.C.N.
S/o.Muthukoya.M.K.,
Cheriyann Nallal (H),
Kalpeni Island, Lakshadweep – 682 557.
11. Yahiya Khan M.I.,
S/o.Sayed Ashraf,
Mela Illam (H), Kilthan Island, Lakshadweep – 682 558.
12. Haseena.K.A.,
S/o.Mohammed M.,
Karangothi Athirige (H),
Minicoy Island, Lakshadweep – 682 559.

13. Mahsoom Ali.C.H.,
S/o.Mohammed.A.,
Chekithiyoda (H), Chethlath Island,
Lakshadweep – 682 554.
14. Asrudheen P.,
S/o.Sayed Ali (Late),
Pandal (H), Kadamath Island, Lakshadweep – 682 556.
15. Abdul Jaleel P.P.,
S/o.Pookoya T.,
Pallichapura (H), Amini Island, Lakshadweep – 682 552.
16. Haleema Beegum K.I.,
D/o.Zamarath M.K.,
Kadapuratha Illam,
Kavaratti Island, Lakshadweep – 682 555.

...Applicants

(By Advocate M/s.Lal K Joseph & Ziyad Rehman)

V e r s u s

1. Union of India,
Ministry of Human Resource Development,
Department of School Educational Literacy,
EE 15 Section, New Delhi,
represented by its Secretary.
2. The Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi – 110 001.
3. National Commission for Scheduled Tribes,
6th Floor, "B" Wing, Loknayak Bhavan,
Khan Market, New Delhi – 110 003.
4. The Director of Education,
The Union Territory of Lakshadweep,
Kavaratti – 682 555.
5. The Union Territory of Lakshadweep,
Kavaratti – 682 555
represented by its Administrator

...Respondents

(By Advocates Mr.Brijesh [R1-3]
& Mr.S.Radhakrishnan [R4-5])

O.A.No.181/00051/2014

● Najeema Mumthaz.M.,

D/o.Shaikoya,

Post Graduate Teacher (Political Science),

G G S S S Kavarathy.

Mammel House, Kalpeni Island,

U.T of Lakshadweep.

...Applicant

(By Advocate Mr.P.V.Mohanani)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Home Affairs,
North Block, New Delhi – 110 012.

2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

...Respondents

(By Advocates Mr.Thomas Mathew Nellimoottil, Sr.PCGC [R1]
& Mr.S.Radhakrishnan [R2])

These applications having been heard on 18th September 2015 this Tribunal on 15th October 2015 delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

Since the issue involved in these cases are identical in nature they are disposed of by this common order.

2. The applicants herein are presently working as Post Graduate Teachers (PGT) in various schools on contract basis under the Lakshadweep Education Department and have been discharging the duties and responsibilities attached to the post. The pupils' strength and work load warrant the retention of the applicants as regular Post Graduate Teachers in the school. There was sufficient students' strength in each school to

maintain the teachers. It is therefore submitted that they are entitled to be treated as holders of regular posts in the cadre, though appointed on contract basis. Claiming regularization, the applicants filed representations on various occasions but nothing fructified.

2.1 It is submitted that the applicants were selected by the duly constituted Selection Committee in terms of Recruitment Rules and appointed as Post Graduate Teachers on contract basis on consolidated remuneration. The selection was made by notifying the vacancies in Lakshadweep Times. They were selected and appointed on contract basis up to the closing date of Ramzan holidays or till regular appointment is made, whichever is earlier. On reopening of the schools after Ramzan recess every year, the applicants were selected and appointed by duly constituted Selection Committee till the commencement of Ramzan holidays in the succeeding year. They are continuing in service as Post Graduate Teachers in respective schools. The students strength warrants creation of sufficient Divisions in each standard. The contract appointees had been teaching classes uninterruptedly from the date of their appointment and therefore they are eligible to be treated as regularly recruited Post Graduate Teachers with all attendant benefits including time scale of pay and other attended benefits with effect from the date of their appointment on contract basis. This Tribunal had occasion to consider the issue of regularization of Post Graduate Teachers who were recruited on contract basis by orders like Annexure A-9 in O.A.No.163/2006. On consideration of entire aspect, this

Tribunal directed the respondents to consider the regularization of Post Graduate Teachers who were appointed on contract basis. The Administration filed Writ Petition No.34762/2005 challenging the said order of this Tribunal and the same is pending consideration before the High Court of Kerala. By interim order dated 28.11.2007 the High Court of Kerala directed the U.T Administration not to terminate the service of the applicants therein except to accommodate the regular hands.

2.2. Learned counsel for the applicants submit that pending the above O.As a notification dated 25.4.2014 was issued for effecting contract appointment for the academic year 2014-2015 and a check list for contract engagement for the year 2014-2015 was prepared. Up to the notification in 2014 and all earlier notifications for selection to the post of Post Graduate Teacher, the selection criteria for engagement on contract basis is 80% weightage of marks for academic qualification (70% for PG + 30% for B.Ed.) 5% weightage for higher qualification – (a) NET/SET – 1 mark, (b) M.Ed. - 1 mark, (c) M.Phil. - 1 mark and (d) Phd. - 2 mark. 10% marks for teaching experience, that is 1 mark for each year of teaching experience (maximum 10 marks) 5% for performance weightage. It is based on above selection criteria that the applicants and other contract appointee were selected and appointed from 2005 and 2009 onwards. This criterion was in vogue for quite a few years. Consequent on the grading systems introduced in academic qualification, students are getting higher marks in academic qualification enabling them to score higher percentage of marks in different

subjects in Post Graduation Courses. Thus the students passing out from the Institutions recently are in better position and scoring higher marks, steal a march over the applicants and similarly placed contract appointees. Succinctly mapped out, the applicants who had passed Post Graduate Degree years back cannot be treated at par with the fresh Post Graduate candidates coming out in the institution. The total posts notified for the posts of Post Graduate Teacher (Political Science) are 11, History 8 and Economics 12. The selection criteria fixed is 90% weightage of the marks for the academic qualification, 2.5% marks for teaching experience and 2.5% for performance weightage. The fixation of 90% weightage mark for academic qualification and fixation of 2.5% mark for teaching experience, which is disadvantaged to existing contract appointees, will tilt the balance and the chances of the existing appointee for selection on contract basis is very limited. It is impossible to acquire higher academic percentage of marks so far as the existing teachers are concerned. There is no reasonable nexus for the objects sought to be achieved in reducing the percentage of the marks from 10% to 2.5% for teaching experience. This reduced percentage for teaching experience is fixed with a view to weeding out the existing teachers for selection and appointment on contract basis. Succinctly stated the applicants and similarly placed Post Graduate Teachers are required to perform something which is impossible to be performed. Therefore, the enhancement of 90% weightage marks for academic qualification and reduction from 10 to 2.5% marks for teaching experience is arbitrary. Pursuant to notification dated 23.2.2015 a check list was

prepared on 20.4.2015 in which 1st applicant in O.A.No.1023/2012 (PGT – Political Science) is included as Sl.No.19 against 11 vacancies and the 3rd applicant (PGT – Economics) is included as Sl.No.13 against 12 vacancies. Therefore the aforesaid applicants will not get appointments on contract basis for the academic year 2015-2016 as the posts are limited. With respect to applicants in O.A.No.253/2013 the 1st applicant (PGT - Commerce) is included as Sl.No.5, the 2nd applicant (PGT – English) is included as Sl.No.20, the 3rd applicant (PGT – Arabic) is included as Sl.No.1 and the 4th applicant (PGT – Political Science) is included as Sl.No.14. It is submitted that except the 3rd applicant other applicants will not be engaged for contract basis during the academic year 2014-2015 as they are much lower in the check list and the posts are very limited in number. With respect to applicants in O.A.No.361/2013 it is submitted that pursuant to Annexure A-11 among the applicants in the O.A though they are sufficiently qualified and having experience in the field, the applicant Nos.3, 4, 7, 8 and 15 could not find a place.

2.3 Applicants contend that the Hon'ble Supreme Court in AIR 2006 SC 1806 (Secretary, State of Karnataka vs. Umadevi and others) held against the regularization of the casual employees. However, the aforesaid decision was mainly in respect of the irregular temporary employments or in respect of the persons who were continuing in the employment even after the stipulated period, based on the orders of courts and tribunals or otherwise. In this case, the appointment of all the

applicants for each tenure were made after publication of notifications in this regard and also after weighing the relative merits of the candidates. Moreover, all the applicants belonged to scheduled tribe category, which requires special treatment. Such a situation was not there in the Umadevi's case and hence the principles laid down therein cannot be made applicable in this case.

3. Respondents in their reply state that the applicants are only contract employees and they are engaged purely on contract basis on full understanding that they are not entitled to get any regularization in service. The applicants had agreed to the terms and conditions attached to the appointment, which specifically denied any claim for regular appointment. It can be seen from the appended Annexures that applicants are appointed only on contract basis and will not confer any claim for regular appointment. The appointment of the applicants were not against any sanctioned vacancy as contended by the applicants but made purely on contract basis with a fixed remuneration based on mutual agreement executed between the parties. All the 70 regular vacancies created for Senior Secondary Schools in the Lakshadweep were already filled up with regular hands in terms of existing Recruitment Rule and no sanctioned posts of PGTs are lying vacant. In order to manage the Senior Secondary classes in the newly upgraded schools a conscious decision was taken by the Administrator to engage teachers purely on contract basis until the proposal submitted by the Administration for creation of additional posts for the said

upgraded schools are sanctioned by Ministry of Human Resource Development. Creation of additional posts for the Senior Secondary Schools are not yet sanctioned by the Ministry of Human Resource Development. Applicants herein are not working against any sanctioned post. The department has already posted 93 Post Graduate Teachers on regular basis (70 PGT and 23 erstwhile Lecturers).

3.1 In order to manage the Senior Secondary classes in the newly upgraded schools, the department engaged 115 Post Graduate Teachers on annual contract basis for a total student strength of 2005 in the 11th and 12th classes in the Islands. These applicants are teaching various subjects in the schools of the Island. The Administration is resorting to the appointment on contract basis, paying consolidated remuneration since the creation of new posts of PGTs are not sanctioned by the Ministry. The applicants are not engaged through a regular selection process for permanent appointment prescribed by the Recruitment Rules for the post of PGT and hence cannot equate with the regular appointees who have undergone a regular selection procedure. Their engagement is not against any sanctioned post with regular pay scales and that they are not entitled to get any regularization as prayed for.

3.2 The schools in Lakshadweep, the entire population being Muslim, will be closed during the period of Ramzan and academic year begins from 23rd May and end of 31st of March every year. It is also pertinent to note

that the engagement of contract teachers are made in two spells in a particular academic year, first spell from the reopening of School after annual vacation during the last week of May up to closure of schools for Ramzan holidays and second spell from the date of reopening after Ramzan holidays and up to the closure of school for the annual vacation on 31st of March every year.

3.3 Certain persons from mainland working on contract basis as Post Graduate Teacher filed O.A.No.163/2006 seeking regularization in which the Tribunal as per order dated 21.9.2007 directed the respondents to take up the matter with Ministry of Home Affairs by reviewing the Recruitment Rules and also directed that till such decision is taken, the applicants shall be allowed to continue on the terms and condition stipulated in the contract and their service shall not be dispensed with till such a decision is taken. Challenging the order passed by the Tribunal in O.A.No.163/2006 the respondents have filed WP(C) No.34762/2007 before the Hon'ble High Court of Kerala. The High Court by its order dated 28.11.2007 has stayed the operation of the order passed by the Tribunal in O.A.No.163/2006 and directed the Administration to continue the contract engagement till regular hands are appointed. In O.A.No.163/2006 this Tribunal on 21.9.2007 directed the respondents to take a policy decision to consider the appointment of contract teachers working for a period of more than 2 years on regular basis. It was also directed that the Recruitment Rules will have to be amended to enable regular appointment of qualified persons

irrespective of nativity. Observing thus, it was directed that till a final decision is made in this regard, the applicants be directed to continue on contract basis.

4. Respondents submit that in (2007) 1 SCC 408, Indian Drugs and Pharmaceutical Ltd. vs. Workman, Indian Drugs and Pharmaceutical Ltd. the Supreme Court has clearly and categorically held that :

“ If the Court/Tribunal direct that a daily rated or adhoc casual employee should be continued in service till the date of superannuation, it is impliedly regularizing such an employee, which cannot be done. Regularization can only be done in accordance with the Rules and not dehors the Rules. The Rule of recruitment cannot be relaxed and the Court/Tribunal cannot direct regularization of temporary appointees dehors the Rules, nor can direct continuation of service of a temporary employee (whether called a casual, adhoc or daily rated employee) or payment of regular salary to them. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions etc. are all Executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The Courts must exercise judicial restraint in this connection, and not encroach in to the executive or legislative domain. The tendency of some Court/Tribunal to legislate or perform executive function cannot be appreciated. Judicial activism in some extreme and exceptional situations can be justified, but resorting to it readily and frequently, as has lately been happening is not only unconstitutional, it is also fraught with grave peril to the judiciary”.

5. The Hon'ble Apex Court in the above said decision has clearly illustrated the impermissibility of deciding cases based on sympathy or compassion. It is purely an executive or legislative function. In (2008) 10 SCC 1 Official Liquidator vs. Dayanand para 65 (head note) the Supreme Court held that in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court cannot issue a mandamus and compel the state and its instrumentalities/agencies to regularize the service of

temporary/adhoc/daily wage/casual/contract employees and direction cannot be issued to the public employer to prescribe or give similar pay scale to employees appointed through different modes, with different conditions of service and different sources of payment. The Supreme Court also observed that illegal and back door appointments compelled the courts to rethink and in a large number of subsequent judgments this court declined to entertain the claims of adhoc and temporary employees for regularization of service and even reversed the orders passed by the High Courts and Administrative Tribunals.

6. In (2011) 3 SCC 436 State of Orrisa vs. Mamata Mohanty para 57

it has been held that :

“57. The principle (negative equality) also applies to judicial pronouncements. Once the Court comes to a conclusion that a wrong order has been passed, it becomes the solemn duty of the Court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji vs. State of A.P observed as under :

“12. ...2.....to perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter :

“a judge ought to be wise enough to know that he is fallible and therefore ever ready to learn; great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead; and courageous enough to acknowledge his errors.”

7. Heard the counsel for the parties and considered the written submissions made. The applicants in the O.As admit that they are contract employees and this is averred by the respondents in their reply statement. The applicants are not working against any sanctioned

posts, There are 93 PGT posts which are filled on a regular basis. The applicants are engaged on an annual contract basis to manage the secondary classes in the newly upgraded schools. The applicants are not engaged through a regular selection process for permanent appointment prescribed by the Recruitment Rules for the post of PGT and hence cannot be equated with regular appointees who have been engaged after following the said selection procedure as per Recruitment Rules. The teachers are engaged as and when teaching sessions in the school are on, excluding the holidays for Ramzan and annual vacation.

8. The respondents have cited the Apex Court decisions in (2007) 1 SCC 408, *Indian Drugs and Pharmaceutical Ltd. vs. Workman, Indian Drugs and Pharmaceutical Ltd.*, (2008) 10 SCC 1 *Official Liquidator vs. Dayanand* and (2011) 3 SCC 436 *State of Orrisa vs. Mamata Mohanty* in support of their contention.

9. We could find that the relief claimed in this O.A attracts the guidelines laid down in the Constitution Bench judgment of the Apex Court in AIR 2006 SC 1806 (*Secretary, State of Karnataka vs. Umadevi and others*). The Apex Court held that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wager or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment. The Courts in some cases directed that these irregular or improper entrants be absorbed

into service thereby creating a class of litigious employment. Merely because the above categories of employees continued beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed would only mean that some people who at least get employment temporarily, contractually or casually would not be getting even that employment. The Constitutional Bench of the Apex Court goes on to add that it is not possible to accept the argument that the State action in not regularizing the employees, was not fair within the framework of the rule of law. The employment was accepted fully knowing the nature of it and the consequences flowing from it. The State is also controlled by economic considerations and financial implications of any public employment. A contractual appointment comes to an end at the end of the contract.

10. It would not be appropriate for the Bench to interfere or dilute the qualifications and percentage of marks allocated for teaching experience, academic qualification and experience for the selection to the posts, as getting the best teachers for the students would be in the interest of the students, the school and the State. However, the respondents may consider enhancing the percentage of marks for teaching experience of the contract teachers who have spent 5 years or more on contract basis in view of their experience which would be useful in handling both students and the subject

.17.

taught. But it is impermissible to give any such direction in view of the judgment in Uma Devi (supra). The applicants have been engaged on contract basis and not against any sanctioned posts and their appointment according to respondents is not made in accordance with the Recruitment Rules. The applicants were engaged with the knowledge that they are not entitled to any regularization in service. The applicants have also agreed to the terms and conditions of the contract engagement. Hence no injustice was perpetrated as the applicants accepted the engagement knowing fully the nature and consequences flowing from it. Therefore, we find no merit in the O.As and accordingly the O.As are dismissed.

(Dated this the 15th day of October 2015)

Sd/-
P.GOPINATH
ADMINISTRATIVE MEMBER

Sd/-
N.K.BALAKRISHNAN
JUDICIAL MEMBER

asp

CERTIFIED TRUE COPY

Date:.....

Deputy Registrar