CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos.375, 378 and 379 of 2011

Friday this, the 8th July, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.375/2011

1. Mansoor Ahmed Rahmathulla M,
S/o Attakoya U.P.
Mootharammel House,
Androth Island, U.T. of Lakshadweep.

2. Dilshad Babu D.H.P.,
S/o Hassan Koya C.N.
Puthiyapura House,
Kavaratti Island, U.T. of Lakshadweep.

3. Mohammed Abdul Nazer K,
S/o Koya B,
Bapathiyoda,
Androth Island, U.T. of Lakshadweep.

4. Mohammed Afsal L.P.P,
S/o Mullakoya T, Palliyat,
Androth Island, U.T. of Lakshadweep.

5. Mohammed A bdul Gafoor Khan K.K.,
S/o Muthukoya N.P.
Neelathupura,
Androth Island, U.T. of Lakshadweep.

6. Mohammed B.H.,
S/o Cheriyakoya K.P.
Saira Manzil,
Kavaratti Island, U.T. of Lakshadweep.

7. Ahmed Koya B.B.
S/o Aboobacker,
Biyyathabiyyoda,
Agathi Island, U.T. of Lakshadweep.

8. Anver Sadath T.K.,
S/o Mohammed K.P.
Thaiakada House,
Kavaratti Island, U.T. of Lakshadweep.

9. Nisamudheen C.N.,
S/o Muthukoya.M.K.,

Cheriyannellala, Kalpeni Island,
U.T. of Lakshadweep.

10. Musthafa U.K.,
S/o Attakoya M,
Ummerthakada House,
Androth Island, U.T. of Lakshadweep.

11. Shihabudheen M.P.,
S/o Pookunhikoya K,
Mayampokada House,
Androth Island, U.T. of Lakshadweep.

12. Shameem Mujthaba A.I.,
S/o Kunhikoya Thangal.M.P.
Aliyathammada Ishayya Pura,
Androth Island, U.T. of Lakshadweep. ....Applicants

(By Advocate Mr M.R.Hariraj)

v.

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 555.

2. Director of Education,
Union Territory of Lakshadweep,
Kavaratti-682 555.

3. Union of India represented by
Secretary to Government of India,
Ministry of Human Resource Development,
New Delhi-110 001. ....Respondents

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

(By Advocate Mr George Joseph, ACGSC for R.3)

O.A.No.378/2011

Naseemabi.P.K.,
Purakkad House,
Kadmat Island,
Lakshadweep-682 556. - Applicant

(By Advocate Mr Arun Raj S)

v.

1. Administrator,
U.T. of Lakshadweep.
Kavaratti-682 555.

2. Director of Education,
U.T. of Lakshadweep.

Kavaratti-682 555.

3. Union of India represented by
Secretary to Government of India,
Ministry of Human Resource Development,
New Delhi-1. - Respondents

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

O.A.No.379/2011

1. Asif Shah Masod.E.P.,
S/o P Kunhikoya,
Ekkarpaili House,
Kavaratti Island, Lakshadweep.

2. Husna Hussain,
D/o Husain A,
Mariyage House, Kudehi Village,
Minicoy Island, Lakshadweep.

3. Musthafal Faizy.T.P.,
S/o Hamsa Koya KK,
Thattampokkada House,
Androth Island, Lakshadweep.

4. Mohammed Basheer P,
S/o Sidique K,
Pappet House,
Androth Island, Lakshadweep.

5. Mohammed Kasim S.V.,
S/o M.P.Muthukoya,
Shaikinte Veedu House,
Androth Island, Lakshadweep.

6. Nazer P,
S/o Nallakoya A,
Pakkeemmada House,
Amini Island, Lakshadweep.

7. Jareera.H.B.,
S/o Hussain K,
Hassanbebegothi House,
Sadivalu Village,
Minicoy Island, Lakshadweep.

8. Fousiya.K.M.,
D/o Abdulla Koya KK,
Kuiuz Manzil House,
Kadmath Island.

9. Anwer Hussain.T.I.,
S/o B Sulaiman,
Tekila Ilam House,

Kadmath Island, Lakshadweep.

10. Adilabi S,
D/o Sayed Mohammed,
Sarabikal House,
Androth Island, Lakshadweep.

11. Abdul Kader P.S.,
S/o Hunhi A,
Puthiyasurambi House,
Kiltan Island, Lakshadweep.

12. Thaha Gafoor PP,
S/o Sainul Abid C.M.,
Padippura House,
Bitra Island, Lakshadweep.

13. Shahida Beegum.U.P.,
D/o Yakoob K,
Uthampokakakda House,
Kavaratti Island, Lakshadweep.

14. Bismi K,
D/o P Thangakoya,
Kaithat House,
Androth Island, Lakshadweep.

15. Zabeer.N.C., S/o K Kunhi,
New Chrecent House,
Amini Island, Lakshadweep.

16. Mohammed Shafi Quraishi V.K.K.M.M.,
S/o N.P.S.M.Abdul Salam,
Valiyakolikad Mubarak Manzril House,
Androth Island, Lakshadweep.

17. Ali Akber M, S/o Muthukoya C.H.,
Maydan House, Chetlat Island, Lakshadweep.

18. Raziya Beegum KK, D/o M.K.Attakoya,
Kunhanakal House, Kelpeni Island, Lakshadweep.

19. Sharafudeen.D., S/o M.K.Ummer Koya,
Darivinoda House, Agatti Island, Lakshadweep.

20. Rassak.U.C., S/o K.C.Sayed Ali,
Ukayachetta House,
Kadmath Island, Lakshadweep.

21. Moharrmed Sali A, S/o Cheriyakoya A.P.,
Arakkalar House, Kavaratti Island, Lakshadweep.

22. Kunhibi K.M., S/o Sayed Mohammed P.P.,
Kuttiyammukriyoda House,
Agatti Island, Lakshadweep.

23. Asiya Valumougothi, D/o Mohammed Alkeugothi,
Valumougothi House, Bada Village,
Minicoy Island, Lakshadweep.

24. Sahira.T.M., D/o Usuf K,
Thacheri Moosathada House,
Androth Island, Lakshadweep.

25. Sharshad Khan M, S/o M.C.Attakoya,
Maral House, Kalpeni Island, Lakshadweep.

26. Farceda Annargothi, D/o Mohammed Manikfan Auge,
Annargothi House, Kudehi Village,
Minicoy Island, Lakshadweep.

27. Mohammed Mujeeb C.L., S/o Yakoob M.P.,
Chemmacheri Lavanakkal, Androth, Lakshadweep.

28. Subhaidabi.K.K., D/o Sulaiman,
Palliammakkada, Kadamath Island, Lakshadweep.

29. Pookoya.K.K., S/o Kasmi A.K.,
Kuninakanayakada, Kavarathi, Lakshadweep.

30. Thahira Beegam..K.P., D/o M.I.Cheriyakoya,
Kelappura House, Agathi Island, Lakshadweep.

31. Umar Farook TKP, S/o MI Kunhikoya,
Thekkekilappura House, Agathi Island, Lakshadweep.

32. Latheef K.M., S/o Ahmed U.P.,
Kuttiyam Mukriyoda, Agathi, Lakshadweep.

33. Roshida, D/o Kidavu Koya.P.,
Davil House, Agathi, Lakshadweep.

34. Zahira Beevi.C.N., D/o Cheriya Koya EK,
Cheriyannannal House, Kalpeni, Lakshadweep.

35. Mariomabi K, D/o Jamal A,
Kidiyammada House, Androth Island, Lakshadweep. - Applicants

(By Advocate Mr M.R.Hariraj

v.

1. Administrator,
U.T. of Lakshadweep.
Kavaratti-682 555.

2. Director of Education,
U.T. of Lakshadweep.
Kavaratti-682 555.

3. Union of India represented by
Secretary to Government of India,

Ministry of Human Resource Development,
New Delhi-1. - Respondents

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

This application having been finally heard on 30.6.2011, the Tribunal on 8.7.2011 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

As these three O.As have identical issue for adjudication, this common order is passed which could cover all the three O.As.

2. For the purpose of reference, however, O.A.375/2011 has been taken as a lead case. The brief facts of the case are as under:

(a) The applicants, belong to Scheduled Tribe, are Graduates with Bachelor in Education Degree from the Institutes which were recognised under the NCTE (Recognitions Norms and the procedure) Regulations 2002. The applicants availed of the relaxation of 5% of marks in graduation for seeking entry into the B.Ed. Course as such a relaxation is available to all ST candidates. Thus they had secured, in their graduation, marks in the range of 40 to 45%.

(b) The 2002 Regulations of NCTE came to be replaced by 2009 Regulation whereby 50% marks were held to be mandatory in graduation for getting admission in B.Ed courses.

(c) The applicants had been working under the 2nd respondent as Teachers on contract basis.

(d) The NCTE prescribe minimum qualification for appointment as Teachers under the provisions of Right of Children to Free and

Compulsory Education Act 2009 read with notification dated 23.8.2010. According to the notification, vide Annexure A-1, the requisite qualifications for TET are as under:

"Classes VI-VIII

BA/B.Sc and 2 – year Diploma in Elementary Education (by whatever name known)

OR

B.A/B.Sc with at least 50% marks and 1 – year Bachelor in Education (B.Ed)

B.A/B.Sc with at least 45% marks and 1 – year Bachelor in Education (B.Ed), in accordance with the NCTE (Recognition Norms & Procedure) Regulations issued from time to time in this regard."

(e) The first respondent revised the Recruitment Rules for the posts including that of Trained Graduate Teachers vide Annexure A-2. The qualifications prescribed are identical as above.

(f) The 2nd respondent notified various posts under him including TGT, Maths, Social Science, Malayalam, Arabic and Hindi vide notification dated 21.2.2011 and in respect of English, another notification dated 22.2.2011 was published. Annexures A-3 and A-4 refer. Subsequently, a corrigendum was issued to these Annexues A-3 and A-4 vide Annexure A-5.

(g) The applicants having sought the entry in B.Ed Course with 40 to 45% under the 2002 Regulations had applied for the post of TGT.

(h) In fact vide Annexure A-6, when a question arose as to relaxation to be given for ST candidates, the council decided that relaxation upto 5% according to existing policy of the State Government/U.Ts have made available to the SC/ST. In this notification however, there is a reference of only one part of the qualification (which prescribe 50% marks at the

Graduation level) whereas the applicants belong to the other category viz, 45% and one year Bachelor in Education in accordance with the NCTE (Recognitions Norms and the Procedure) Regulations 2002.

(i) According to the applicants, 5% relaxation is admissible to both the categories viz, as per 2009 Regulation as well as 2002 Regulations. However, to their disappointment, when the respondents gave a different interpretation which made the applicants disentitled to participate in the test for TGT, they have approached this Tribunal through the above O.As.

2. At the time of admission herein vide order dated 4.5.2011, all the applicants were permitted to participate in the test purely on provisional basis.

3. The claim of the applicants in the main relief is as under:

i) To quash Annexures A-7 and A-8 to the extent they do not permit individuals with less than 45% marks who obtained B.Ed degree in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002;

ii) To declare that the applicants are entitled to be considered for appointment as Trained Graduate Teacher against the direct recruitment quota and to appear and compete in the Teachers Eligibility Tests to be conducted for appointment to the post of Trained Graduate Teachers;

iii) To declare that Annexure A-2 to the extent it does not give any weightage to experience qualification of the candidates for appointment to the post of Trained Graduate Teacher is discriminatory and ultra vires Article 14 and 16 of the Constitution of India and to direct the respondents to give appropriate weightage for the experience qualification of candidates in the matter of selection to the post of

Trained Graduate Teachers.

iv) To call for the records leading to Annexure A-3 and A-4 and quash the same to the extent it provides for giving weightage for marks obtained in examinations other than the Teachers Eligibility Tests;

v) To direct the respondents to conduct the Teachers Eligibility Tests by a competent and independent professional body as contemplated in Annexure A-10.

vi) Grant such other reliefs as may be prayed for and the court may deem fit to grant; and

vii) grant the costs of this Original Application.

4. Respondents have contested the O.A. Their contentions in nutshell are as under:

(a) The above three O.As are filed by 48 candidates who had secured less than 45% marks in their academic qualification (B.A/B.Sc Degree) and hence became ineligible to apply for the post of Trained Graduate Teachers of various disciplines notified by the Department of Education vide employment notice F.No.18/3/2009-Edn/Estt(28)/563, dated 21.2.2011 and 22.2.2011 to fill up 28 posts of Trained Graduate Teachers of various disciplines. The employment notice dated 21st and 22nd February 2011 were based on recruitment rules framed and notified by the competent authority by notification F.No.10/28/2001-Edn(AW) RR dated 1.2.2011 published in the extra ordinary gazette of Lakshadweep dated 4.2.2011.

(b) The official respondents have not deviated from any of the provisions of the abovesaid notification of the NCTE dated 23.8.2010 while framing and notifying the Recruitment Rules for the post of Graduate Teacher, Trained Graduate Teacher, Primary school Teacher, Language

Teacher and other special categories of teachers.

(c) The contentions that the respondents have not followed the guidelines of the NCTE in the matter of conducting evaluating and giving weightage is baseless misleading and against the facts of the case.

(d) When the Government of India and National Council for Teacher Education under Ministry of Human Resource Development have fixed the minimum eligibility for teacher recruitment for classes I to VIII (Elementary Education) as 50% marks of the academic qualification with 5% relaxation to weaker section of the students, the Lakshadweep Administration had no option other than to maintain the same standard or higher standard than what has been fixed as minimum eligibility (45% marks) for teachers of Secondary and Senior Secondary classes.

(e) Teachers are fully responsible to maintain the minimum quality lof the children in the field of education and for their all round development and therefore it is the responsibility of the Administration of U.T of Lakshadweep to prescribe a minimum percentage of marks in academic qualification for teacher recruitment and this minimum eligibility (45%) is only fixed for teacher recruitment alone and not for any other category of posts under Lakshadweep Administration. Therefore, the candidates who do not qualify for teacher recruitment just because they fall to attain a minimum of 45% marks in their academic qualification have a large number of other options ,to contest and compete for other categories of posts under Lakshadweep Administration.

(f) BA/B.Sc with at least 45% marks and one year Bachelor in Education (B.Ed) in accordance with NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard clearly indicate that the above 45% marks indicated in the second provision of the qualification prescribed in the RR is the relaxed provision for the

candidates of the weaker section who have taken Degree in Teacher Education from the Institutions recognised by the NCTE based on its regulation issued from time to time. However, the candidates attained teacher education qualification from the institutions outside the purview of NCTE norms were to have a minimum of 50% marks including for the candidates of the weaker section. Accordingly, 5% relaxation from the minimum eligibility of 50% marks fixing it to 45% marks has been extended by the Government of India and NCTE.

(g) The NCTE norms do not allow any relaxation from 45% as qualifying mark which already has been relaxed from the set norm of 50% minimum. A relaxation of 5% has been allowed both by NCTE and the department of Education, Lakshadweep to the ST candidates on the basis of said norms elucidated in the foregoing paragraph. Any relaxation from 45% will be against the spirit of both RTE Act, 2009 and NCTE norms as well as the expected quality for Teacher.

5. Counsel for the applicant argued that the interpretation relating to relaxation should be such that it applies to the qualification as contained in the regulations. 2009 Regulation prescribed, no doubt, 50% minimum marks for graduation for seeking entry in the B.Ed course and the respondents contend that 5% relaxation should be applied only to this category. This would then mean that there would be total exclusion of all those qualified under the 2002 Regulation from the above concession which could not be the intention of the Government.

6. Counsel for the respondents justified the act of the respondents and he has also invited our attention to the decision by the Apex Court in the case of **State of Orissa and another v. Mamata Mohanty** [(2011) 3 SCC 436] which

deals with inter-alia provisions of Article 21(a) introduced with a view to facilitating the children to get proper and good quality education are dependent on various factors, the most important being the excellence of teaching staff.

7. Arguments were heard and documents perused. Admittedly, all the applicants belong to S.T. Category, holders of Degree in Education and availed of the 5% relaxation in marks as had been provided under the NCTE Regulations of 2002 for obtaining admission for B.Ed. The qualifications prescribed by the second respondents for various posts under him including TGT (Maths, Social Science, Malayalam, Arabic , Hindi and English) include B.A/B.Sc with at least 45% marks and 1 year Bachelor in Education (B.Ed) in accordance with the NCTE (Recognition norms and Procedure) Regulations issued from time to time in this regard. Vide Annexure A-6, the NCTE has decided that relaxation upto 5% in the qualifying marks should be available to SCs/STs etc., in accordance with the extant policy of the State Governments/UTs and other school managements. The applicants who had secured marks between 40 and 45% in the Bachelor Degree examination under the NCTE Regulations 2002 applied but their candidature was rejected since as per the respondents, the relaxation of 5% as contained in Annexure A-6 would be applicable to only those candidates who possessed the other qualifications as prescribed viz., B.A/B.Sc in the relevant subject with 50% marks and 1 year Bachelor in Education (B.Ed).

8. At the time of admission, the applicants were permitted to participate in the examination on provisional basis vide order dated 04-05-2011 and accordingly all the applicants have participated. Results have not so far been declared nor any appointments have been made.

9. Though various other grounds were raised, the focal point in this case is

as to interpretation of Annexure A-6, which has been extracted in one of the earlier paragraphs. Grounds such as the exams were not conducted properly and leakage of question papers are not in fact pressed by the counsel for the applicants nor are they supported by any evidences.

10. The qualification as prescribed is in the alternative – one with 50% and the other with 45%. The latter should adhere to the prescription made by the NCTE. That the applicants belong to the latter category is not denied by the respondents. In fact, they had enjoyed the benefit of 5% granted at the stage of admission in the B.Ed course in accordance with the provisions under NCTE. This part has also not been denied by the respondents. The requisite qualifications as contained in serial No. 9 of Annexure A-3 relating to Trained Graduate Teacher are in the nature of alternatives as already extracted in one of the previous paragraphs. These qualifications are prescribed under the provisions contained in Sec. 23 (1) of the Right To Education Act, 2009 (already extracted). Section 23 also provides for relaxation vide Section 23(2) (already extracted). When provisions of Section 23(2) are pressed into service, it has to be applied to the entire part of Section 23(1) and not with respect to one alternative only. If the interpretation as given by the respondents is accepted, it would throw out all those individuals who had obtained admission into the B.Ed degree course by availing of the 5% marks at the time of admission in accordance with the NCTE Regulations of 2002. Such an exclusion cannot be permitted, more so, when the decision that was taken vide Annexure A-6 does not give even an inkling that the relaxation is meant to only one of the alternative qualifications.

11. In view of the above, the **OAs are allowed**. It is declared that the applicants are all entitled to participate in the selection for the post of TGT. As

these applicants have already participated on provisional basis in the examination, their candidature be also considered along with others and the results on the basis of the performance of the aspirants be declared and further action taken.

12. Under the above circumstances, there shall be no orders as to cost.

K NOORJEHAN
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN
JUDICIAL MEMBER

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