

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.385/2003

Wednesday, this the 17th day of March, 2004.

C O R A M

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

M. Mohammed Ameen,
'Moothakkada',
Androth Island,
UT of Lakshadweep.

..Applicant

[By Advocate Mr. Shafik M.A.]

Versus

1. Union of India represented by
The Secretary to Government of India,
Department of Education,
Ministry of Human Resources Development,
New Delhi.
2. The Administrator,
UT of Lakshadweep,
Kavaratti.
3. The Director of Education,
UT of Lakshadweep,
Kavaratti.

..Respondents

[By Advocate Mr. C. Rajendran, SCGSC for R-1 and Mr. S. Radhakrishnan for R-2 and R-3.]

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Vide A-1 notification dated 2.2.2003 appeared in Lakshadweep Times, the first respondent invited applications for the post of Fisheries Teacher from the persons, who have the qualifications of graduation in Fishing or B.Sc. degree having Zoology and Chemistry as main subject and successfully undergone the reorientation course in Fisheries Education at CIFE, Mumbai. In pursuance of the said notification, the applicant has applied for one of the said posts on the strength of A-3 degree certificate issued by the University of Calicut and A-4 Reorientation Programme Certificate on Fisheries Education issued



by the Central Institute of Fisheries Education (CIFE, for short), Mumbai. He has also annexed the certificates of training programme (A5) on 'Aquatic Animal Toxins and Pharmacological Bioresources' and the CAS training programme (A6) on 'Advances in Fish Disease Diagnostics' issued by the CIFE, Mumbai and Centre of Advanced Studies in Fishery Science (CASFS, for short), Mumbai. Despite having the degree in Zoology with CIFE training, the applicant's candidature was not considered on the ground of his not having the degree in Zoology and Chemistry as main subject. Thereafter, he sent representations on 25.2.2003, 22.4.2003 and finally on 3.5.2003. In the last representation, he pointed out that his name has not been considered on the plea that he is not qualified as per the present Recruitment Rules. The required qualification for the post as per the notification is BFSc. /B.Sc.degree having Zoology and Chemistry as main subject and successfully undergone the reorientation course in Fisheries Education at CIFE, Mumbai. The qualification prescribed is B.Sc. having Zoology and Chemistry as main subject and not subjects. If the intention had been for double main (Zoology and Chemistry), then subjects (plural) would have been used instead of subject (singular). The intention is very clear since the singular is used in the Recruitment Rules. The applicant is a B.Sc. degree holder having Zoology as main subject and Chemistry and Botany as subsidiaries. It is also contended in the said representation and the O.A. that in any of the Universities in India, there is no B.Sc. degree with Zoology and Chemistry as main subjects (double main). B.Sc.Ed is there with triple main. But the Recruitment Rules clearly say it as B.Sc. and not B.Sc.Ed. Therefore, the contention of the



applicant is that he is fully qualified for the said post. Being aggrieved by the action on the part of the respondents, the applicant has filed this O.A. praying for the following reliefs:

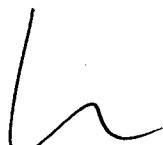
- (i) To call for the records relating to Annexure A/1 to A/8 and to quash Annexure A/1 and A/2 to the extent it requires B.Sc. degree having Zoology and Chemistry as main subject;
- (ii) To declare that the applicant is entitled to be considered for the post of Fisheries Teacher as per his qualification of B.Sc. degree in Zoology and successful completion of reorientation course at CIFE, Mumbai;
- (iii) To direct the respondents to consider the applicant for the post of Fisheries Teacher as per Annexure A/1 Notification and to appoint him if selected, notwithstanding the unattainable qualification sought for in Annexure A-1 and A-2;
- (iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case; and
- (v) To grant the costs of this Original Application."

2. The respondents have filed a detailed reply statement contending that A/2 Recruitment Rules is notified in 1990 and the applicant is challenging it after a lapse of 13 years. The application is, therefore, barred by time. The Recruitment Rules stood the test of time and is accepted as valid and legal. The applicant has no specific grounds for challenging the qualifications prescribed for the post of Fisheries Teacher. According to the existing Recruitment Rules, the post of Fisheries Teacher is to be filled up from among the candidates having the qualifications "Graduate in Fishing Science or B.Sc. Degree having Zoology and Chemistry as main subject and successfully undergone the reorientation course in Fisheries Education at CIFE, Bombay." The applicant has admitted that he has acquired only B.Sc. degree with Zoology as main subject and Chemistry and Botany as subsidiaries. As, it is clear that the applicant is not qualified for the post of Fisheries Teacher. The Administration cannot make Recruitment Rules to suit the



qualification of the applicant for the post of Fisheries Teacher and it will be a continuous process when other candidates come forward with another qualification. The statement that there was no candidate, who has passed B.F.Sc. in whole of Lakshadweep is not correct. One candidate, namely Shri K. Mohammed Koya, who was obtained B.F.Sc. attended the written test and interview. There is no mistake in the Recruitment Rules. It is further contended that the combination of Zoology and Chemistry are required for proper understanding of Fisheries Science and it was for that purpose that the Recruitment Rules made a specific provision for it. Therefore, the O.A. does not have any merit and is liable to be dismissed.

3. The applicant has filed a rejoinder contending that the objection raised by the respondents to the effect that the O.A. is barred by time is baseless and the same should have been raised as a preliminary objection. Having admitted the O.A., the respondents are estopped from taking such a plea, the applicant would urge. In the rejoinder, he further reiterated that there is no University in India which offers a Science Degree with main two subjects and it is very unthoughtful that the respondents have framed the Recruitment Rules with such an unattainable qualification. It is pointed out that the idea of framing such Recruitment Rules is only to deny employment to the natives, who mostly had obtained their degree from the Universities in South India, where there is no such degree course available. Probably, due to specifying this unattainable qualification by the department, only one post out of six posts of Fisheries Teacher in the last thirteen years was filled up and five posts left unfilled. Therefore, the applicant contended that there is a glaring mistake in the recruitment rules. There is no requirement of Zoology as well as Chemistry for proper



understanding of Fisheries Science. The respondents may be put to strict proof with regard to insisting of that mandatory condition, when no University offers such a course. The applicant, therefore, urged that the O.A. is to be allowed.

4. We have heard Shri M.A.Shafiq, learned counsel for the applicant and Shri C.Rajendran, SCGSC for R-1 and Shri S.Radhakrishnan, learned counsel appearing for R/2 and R/3.

5. Learned counsel for the applicant vehemently argued that there is no course in the Universities in India with Zoology and Chemistry as main subjects together as sought in Annexures A/1 and A/2 and therefore, specifying any such requirement of essential qualifications may be a mistake happened while framing the Recruitment Rules, which ought to have been corrected. In these circumstances, the refusal of the applicant's candidature for the post of Fisheries Teacher by the respondents is illegal, arbitrary and unjust and, therefore, he prayed for the interference by the Tribunal in the matter. Learned counsel for the applicant submitted that even though the applicant is having a B.Sc. degree with Chemistry as one of the subsidiary subjects and has also undergone orientation course at CIFE, Mumbai, his application for the post of Fisheries Teacher was rejected on account of having prescribed an unattainable qualification in the Recruitment Rules. The learned counsel for the respondents, on the other hand, persuasively argued that at present there is no proposal to make any amendment in the Recruitment Rules or to grant any exemption to the qualification prescribing double main. The University of Mysore is imparting B.Sc. degree in Zoology and Chemistry as main subjects. Therefore, the applicant is not entitled to any relief as sought in the O.A.

h

6. We have given due consideration to the pleadings, arguments and the material placed on record.

7. The grievance in this case is with regard to framing of an unattainable qualification in the Recruitment Rules for the post of Fisheries Teacher. For better appreciation, the qualification that has been prescribed for the aforesaid post as per notifications A/1 and A/2, is reproduced hereunder:

"Graduate in Fishing Science

OR

B.Sc. degree having Zoology and Chemistry as main subject and successfully undergone the reorientation course in Fisheries Education at CIFE, Bombay."

8. On going through the pleadings, we find that in order to make ourselves clear on the question of unattainable qualification pleaded by the applicant, we have directed the learned counsel for the respondents appearing on behalf of the Lakshadweep Administration to ascertain whether the qualification for the post of Fisheries Teacher is Zoology and Chemistry as main subject and that any appointment has been made under the new Recruitment Rules with the qualification Zoology and Chemistry as the main subject. The Court also directed the respondents to clarify whether such educational qualification is imparted in any of the Universities in India. In compliance of the said direction, the learned counsel appearing for the Lakshadweep Administration filed a statement contending as follows:

"5. One of the points on which the clarification is sought by the Tribunal is whether any appointment has been made under the present Recruitment Rules with the qualification Zoology and Chemistry as main subjects. It is submitted that the department has not appointed any candidate as Fisheries Teacher having Zoology and Chemistry as main subjects so far.

6. As regards the second point to mention the name of Universities in India imparting such educational qualifications, it is submitted that the University of Mysore is imparting B.Sc. degree in Zoology and Chemistry

as main subjects. The facility to undergo this course is available in the Regional Institute of Education (R.I.E.), Mysore. This Institute is managed by NCERT and affiliated to the University of Mysore.

7. Moreover, the qualifications have been finalised, as per the recommendation of the "Vocational Education and Manpower Development" Project of the Department of Ocean Development, Government of India, for those who studied the vocational curriculum in Marine Fisheries for VIII, IX and X in Lakshadweep. A true copy of the vocational curriculum in Marine Fisheries is produced herewith and marked as Annexure A/2(a).

8. Hence, the Recruitment Rules has been prepared with the help of resource persons in the field of Fisheries Education."

9. In response to this reply statement, the applicant has submitted that the University of Mysore is not imparting the B.Sc. degree with Zoology and Chemistry as main subject, but it is imparting B.Sc. Ed. for five years. In support of his contention, the applicant has produced a certificate of one Ms. Suhrabi.E, issued by the Vice Chancellor, University of Mysore dated 21.4.1997, conferring her the Bachelor of Science Education, which is kept in the O.A. file.

10. The learned counsel for the respondents by citing a judgement of Hon'ble Supreme Court in State of M.P. vs. Dharam Bir, (1998) 6 SCC 165, contended that the power to prescribe and relax the qualification is with the Government and this power cannot be usurped by the Tribunal. We are in respectful agreement with that decision in particular. On going through the said decision, we find that the facts and circumstances of that case and the case on hand are quite different. In this case, the grievance is in respect of prescribing an unattainable qualification in the RRs, whereby denying appointment mostly to all and keeping ⁱⁿ lying the vacancy unfilled for a long period. It is not so in the case cited by the respondents and, therefore, we are of the view that the decision aforesaid is not squarely applicable to the present case.



11. Now, the question comes before us whether this Tribunal, in such circumstances, is justified in interfering the matter or not. In this case, we notice with concern that though six number of vacancies for the post of Fisheries Teacher are available, only one post was filled up during the past 13 years which clearly gives an indication of doubt that no Universities in India are imparting such a course. The respondents in the additional reply statement stated that University of Mysore is imparting B.Sc. Degree in Zoology and Chemistry as main subjects. As against this argument, the applicant has produced a copy of the certificate issued to one Ms. Suhrabi.E to show that the University of Mysore is imparting the Degree of Bachelor of Science Education for five years with Chemistry, Zoology and Botany as major subjects and not the B.Sc. Degree having Zoology and Chemistry as main subjects. In these circumstances, we are unable to accept the contention of the respondents that the University of Mysore is imparting the Degree course prescribed in the Recruitment Rules of Fisheries Teacher. It is also admitted by the respondents that no candidate with such qualification was appointed for the post in question in these years. The respondents have only stated in the reply statement that the qualifications have been finalised as per the recommendations of the "Vocational Education and Manpower Development" Project of the Department of Ocean Development, Government of India, for those who studied the vocational curriculum in Marine Fisheries for VIII, IX and X. The respondents failed to produce before this Court to show that any of the Universities in India is imparting the B.Sc. degree having Zoology and Chemistry as main subject. It appears to us that no scientific study has been conducted in prescribing the aforesaid qualification for the post of Fisheries Teacher.



12. The fact that the applicant and other similarly placed candidates have undergone reorientation course on Fisheries Education in CIFE, Mumbai, is an indication that a candidate having B.Sc. Degree with Zoology as main subject and Chemistry and Botany as subsidiaries, is also competent to undergo that reorientation course, which has a direct bearing on oceanographic studies. On analysing the entire gamut of the events, it is clear that atleast in the entire Universities situated in South India, the Degree of B.Sc. having Zoology and Chemistry as main subject is not imparting. It is also evident from the certificate submitted on behalf of the applicant that the University of Mysore is imparting the Degree of Bachelor of Science Education (five years course) having Zoology, Chemistry and Botany as major subjects and not the degree course as specified in A/1 and A/2 Notifications. In these circumstances, we are of the considered view that the qualification was prescribed for the Fisheries Teacher without conducting a scientific study and, therefore, relaxation can be granted to the candidates, who have the degree of B.Sc. with Zoology as main subject and Chemistry and Botany as subsidiaries, as contemplated in clause 5 of the A2 notification. Accordingly, we hold that the applicant is entitled to relaxation in the qualification prescribed in view of the circumstances narrated above.

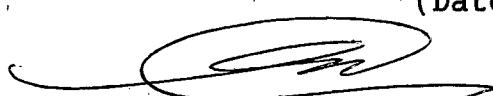
13. In this case, we have already granted interim order dated 12.5.2003 directing the respondents to permit the applicant to appear in the written test scheduled to take place on 13.5.2003 or any other deferred date and ordered that any interview to be held would be purely provisional subject to outcome of this O.A. Since we have already held that the applicant is entitled to relaxation, we direct that if the applicant is found successful

A handwritten signature or mark, appearing to be a stylized 'H' or a similar character, located at the bottom left of the page.

in the written examination conducted earlier for the post of Fisheries Teacher, he may be called for interview and in case of his qualifying in the same, he may be considered for one of the posts advertised in terms of the observation made above within a period of three months from the date of receipt of a copy of this order. However, for future appointment to the post of Fisheries Teacher, the respondents will be at liberty to amend the provisions that prescribe an almost unattainable qualification in the Recruitment Rules in consultation with an expert body on the subject so that aspiring candidate from Lakshadweep Islands will have the benefit of sending their applications for the vacant posts of Fisheries Teacher.

14. The O.A. is allowed as indicated above. No costs.

(Dated, the 17th March, 2004.)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

CVR.