

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 406/91  
~~XXXXXX~~

~~199x~~

DATE OF DECISION 21.4.92

Shri A.A. Pookunhikoya Thangal Applicant (x)

Shri M.V. Thamban Advocate for the Applicant (x)

Versus

The Administrator, UT of Respondent (s)  
Lakshadweep & 4 others

Shri N.N. Sugunapalan Advocate for the Respondent (s) 1,2,4&5 /  
Shri P Santhoshkumar " " 3.

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman  
&

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant Shri A.A.Pookunhikoya Thangal, Athletic Coach, Regional Coaching Sub-Centre attached to Government High School, Amini under the UT of Lakshadweep has prayed that the letter dated 16.1.89 at Annexure IV of the 5th respondent, the Union Public Service Commission, advising the Secretary, Administration of UT of Lakshadweep to fill the post of Assistant Director (Sports) in the Directorate of Education, Lakshadweep Administration, by deputation in which persons who have held posts in the

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scale of Rs.1400-2300/- or equivalent with 8 years service are also made eligible and the order dated 27.11.90 of the 1st respondent at Annexure VI according sanction to the deputation of the 3rd respondent to the post of Assistant Director (Sports) may be quashed and that the 1st respondent may by a writ of mandamus or other writ or direction be directed to appoint the applicant to the post of Assistant Director (Sports) under the UT of Lakshadweep after reverting the 3rd respondent and that it may be declared that Physical Education Teacher cannot be included along with Coaches in the feeder category for the post of Assistant Director (Sports). The material averments in the application are as follows:-

2. The applicant, a graduate in Science with diploma in Coaching (NIS Patiala), commenced his service under the UT of Lakshadweep as an athletic coach in the scale of Rs.1640-2900 with effect from 20.4.91. During his service, the applicant had conducted various coaching camps and had obtained certificates of proficiency issued by the Head Master, Government High School, Amini. The post of Physical Education Teacher in the scale of Rs.1400-2300/- is a feeder category to the post of Athletic Coach. The 3rd respondent, is a Physical Education Teacher. His educational qualification is only B.P.E. A post of Assistant Director (Sports) was sanctioned in the UT of Lakshadweep as per the Government of India, Ministry of Human Resources Development, letter No.F.16/14/85-DI (SP) dated 13.2.1986. The 1st respondent prepared a draft recruitment rules for the post and forwarded the same for

approval to the Ministry. A copy of the draft recruitment rules is at Annexure I. According to the draft recruitment rules, the posts included in the feeder category are: (1) Assistant Education Officer (PE)(Group B Non Gazetted) of pay scale of Rs.550-900/-, (2) Junior Lecturer in PE of pay scale of Rs.550-900 (Group B Non Gazetted), and (3) Coaches in the pay scale of Rs.550-900/- (Group C). The applicant was the only candidate who was fully qualified for the post in the year 1986 when the post was sanctioned. As the recruitment rules have not been finalised so far, the 1st respondent forwarded a proposal suggesting the category and qualifications for filling the post in the absence of recruitment rules. The feeder categories mentioned in the proposal are: (1) Assistant Education Officer in the scale of Rs.1640-2900/-, (2) Lecturer in Physical Education in the scale of Rs.1640-2900/- and (3) Coaches in the scale of Rs.1640-2900/-. Physical Education Teacher was not included as an eligible category. The 3rd respondent though appointed as a Physical Education Teacher, had been working in the office of the Director of Education, the second respondent and had no experience in coaching or organising sports. Since the 3rd respondent has been working in the office of the 2nd respondent for considerably long time and as he was General Secretary of Lakshadweep Employees Parishad affiliated to a powerful political party, he was able to exert influence and get a letter issued by the UPSC, the 5th respondent directing the Administration to fill up the post of Assistant Director (Sports) on deputation for

three years from among the officers in the grade 1640-2900/- as also from Rs.1400-2300/-. Annexure IV is a copy of the said letter of the 5th respondent dated 16.1.89. Pursuant to this letter, the 2nd respondent issued a circular dated 19.4.89 inviting applications for the post of Assistant Director (Sports). Immediately, the applicant submitted a representation on 19.5.89 at Annexure V stating that he being the only qualified and eligible person on the date when the vacancy arose may be appointed to the post. Anyway, an interview was held by the 1st respondent and a member of the UPSC who was not an expert. After the interview, on 27.11.90 the 1st respondent issued order appointing the 3rd respondent overlooking the superior claim of the applicant who is the only eligible candidate. As the Annexure IV advise of the 5th respondent that officers in the grade Rs.1400-2300/- as also officers in the grade Rs.1640-2900/- are eligible for consideration for appointment on deputation to the post of Assistant Director (Sports) made unequals equals, the above advise is liable to be struck down as it violates the equity clause enshrined in Articles 14 & 16 of the Constitution. The method in which the interview was conducted and the 3rd respondent selected overlooking the superior claim of the applicant who alone according to the draft recruitment rules is eligible to be appointed to the post is illegal, arbitrary and amounts to colourable exercise of power. In these circumstances, the applicant prays that the appointment of the 3rd respondent may be quashed and the respondents may be directed to appoint him as Assistant Direct (Sports).

3. Respondents 1,2,4 & 5 have contended in their reply statement that as the recruitment rules for the post of Assistant Director (Sports) are yet to be finalised, it was decided to fill the post on deputation from among eligible officers as advised by the U.P.S.C. and that as the 3rd respondent was selected after an interview by a committee in which a member of the UPSC also was a member ~~and for that reason~~ the applicant cannot have any legitimate grievance. It has been further contended that the contention of the applicant that making the officers in the scale of pay of Rs.1640-2900/- and also in the scale of Rs.1400-2300/- eligible for consideration for deputation to the post of Assistant Director (Sports) is violative of the equality clause contained in Articles 14 & 16 of the Constitution has no merit because different period of experience is prescribed for the officers at different level. The respondents contend that as the selection was made by the UPSC following the normal rules and regulations, the malafides attributed against the selection is devoid of merit.

4. The third respondent has filed a counter statement. His contention is that he is fully qualified to be appointed on deputation as Assistant Director (Sports), that the degree in BPE is equivalent to a basic degree in arts or science and a diploma in physical education, that he has had experience as sports organiser and <sup>that</sup> there is no truth or basis for the allegation that he has exerted influence in the matter of selection.

5. We have heard the counsel on either side and have also carefully perused the documents on record. The applicant has

raised various questions challenging the selection and appointment of the 3rd respondent on deputation as Assistant Director (Sports). According to the applicant, the 3rd respondent does not have a basic degree <sup>in science or arts</sup> and diploma in physical education, but has only a degree in physical education, he does not satisfy even the qualification prescribed in Annexure IV. On this point the 3rd respondent <sup>has</sup> ~~contended~~ that Bachelor's Degree in Physical Education is as good as or even better than a degree in science or arts and a post-graduate certificate or diploma in physical education. He has produced a copy of the communication of the University Grants Commission dated 23rd August, 1961 issued to Registrars of Universities wherein it was stated that University Grants Commission has decided that the degree holders from Maharani Lakshmibai College of Physical Education, Gwalior, may be treated at par with 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. He has also produced an extract of the Government decision accepting recommendations of the UGC in which the qualification necessary for recruitment to the posts of Director/ Instructor of Physical Education in colleges have been mentioned as post-graduate diploma or certificate or degree in physical education. On the basis of these documents, the 3rd respondent contend that degree in physical education in all respects is equivalent to a basic degree in science or arts with a post-graduate diploma in physical education. Another point raised by the applicant is that by making officers in the scale of

Rs.1640-2900/- as well as Rs.1400-2300/- eligible for consideration for deputation to the post of Assistant Director (Sports) the selection has been made in gross violation of provisions of Articles 14 & 16 of the Constitution. In this context, reliance was placed by the applicant on the decision of the Hon'ble High Court of Bombay in Joaquim I.M. Dias v. R.S. Revonkar and others, (1990) 4 SLR 421, wherein it was held that by clubbing the posts of Chief Cashier, Cashier and Additional Cashier together for promotion to the post of Assistant Accounts Officer, the principle of equality enshrined in Article 14 of the Constitution has been violated. It appears that the facts and circumstances of the case before the ~~Hon'ble~~ High Court of Bombay and the facts of this case are entirely different. The case before the ~~Hon'ble~~ High Court of Bombay <sup>was that</sup> ~~the~~ the posts of Cashier and Additional Cashier which are subordinate to the post of Chief Cashier having lesser pay scales were clubbed along with the post of Chief Cashier for the purpose of promotion to the post of Assistant Accounts Officer in the same Department. But in the case on hand, it is not a case of promotion. It is only a case of deputation on a temporary basis till finalisation of recruitment rules. Be <sup>that</sup> ~~as~~ it may, we are of the view that we need not go into the question of sufficiency of the 3rd respondent's qualification or the propriety of two different classes of posts being considered for the purpose of deputation to the post of Assistant Director (Sports) because we are of the view that this application can be disposed of on another ground which goes to the very root of the selection and

appointment of the 3rd respondent as Assistant Director (Sports) on deputation. It is a common case that the vacancy of Assistant Director (Sports) occurred in the year 1986 and that proposals for framing of the recruitment rules <sup>were</sup> ~~are~~ pending with the Government. The draft recruitment rules prepared by the 1st respondent had been forwarded to the Ministry as early as on 31.8.87. It is also not disputed that according to draft recruitment rules prepared by the 1st respondent, the feeder categories to this post were Assistant Educational Officers, Junior Lecturers in Physical Education and Coaches, all in the pay scale of Rs.550-900 (Rs.1640-2900/-). Therefore, as per the draft recruitment rules, officers in the scale of Rs.1400-2300/- were not eligible for consideration. However, as the recruitment rules have not been finalised, it appears that the UPSC has suggested that the post can be filled for the time being by transfer on deputation of officers. It was for this purpose that the Annexure IV advice was issued by the 5th respondent, the UPSC, in which officers in the scale of Rs. 1400-2300/2600 with 8 years service in the post are also made eligible for consideration in addition to officers in the scale of Rs.1640-2900/-. Since the proposal was only for the purpose of filling the post on a temporary basis till the recruitment rules are finalised if the Government had accepted the proposal and issued instructions accepting the proposal and specifying the method of holding the DPC, then the selection made according to the proposal cannot be faulted. But it is incumbent that



there should be a Government decision for accepting the proposal of the UPSC contained in Annexure IV and <sup>in</sup> ~~instructions~~ <sup>have been</sup> issued detailing the method by which the selection can be made. The constitution of the DPC also should ~~be~~ <sup>have been</sup> mentioned in such instructions. In cases where recruitment rules under Article 309 of the Constitution have not been framed, it is proper that recruitments are made on the basis of Government instructions. But without there being a Government instruction, it is not possible to make recruitment even by deputation. This aspect was brought to the notice of the respondents 1,2,4 & 5 and we directed the learned counsel for the respondents to clarify whether pursuant to the recommendations of the UPSC any administrative order/instructions were issued specifying the mode of recruitment, qualification, mode of selection, constitution of the DPC/selection committee for filling up the post of Assistant Director (Sports) and that if it was done, a copy of the relevant order should be produced on the date of next hearing. When the application came up for further hearing on 22.11.91, the learned counsel for the respondents 1,2,4 & 5 submitted that no administrative orders/instructions have been issued accepting the Annexure IV advice of the UPSC. What was done by the 1st respondent was notifying the officers specified in Annexure IV and holding an interview in which a Member of the UPSC also participated in the selection committee. This method is highly irregular. The role of the UPSC is only advisory in character. Without a decision by the competent authority accepting the advise of the UPSC, a selection cannot be validly held. For this reason alone, the proceedings of

the selection committee in which the third respondent was selected and appointed on deputation is liable to be quashed.

6. The learned counsel for the respondents submitted that as the applicant has participated in the selection, it is not open for him to challenge the selection after being unsuccessful. In this regard reliance was placed on the decision of the Hon'ble Supreme Court reported in AIR 1986 SC 1043. The fact that the applicant has offered himself as a candidate does not validate the selection process if it was otherwise invalid. Therefore, the argument of the learned counsel for the respondents seeking support from the decision of the Supreme Court in AIR (1986) SC 1043 has no force.

7. In the conspectus of facts and circumstances, we find that the impugned order at Annexure VI dated 27th November, 1990 appointing the 3rd respondent as Assistant Director (Sports) in the scale of pay of Rs.2000-3500/- is liable to be set aside. We direct the respondents to cancel the appointment of the 3rd respondent as Assistant Director (Sports) forthwith and to take steps to fill the vacancy in accordance with law after issuing proper administrative instructions for the purpose of filling up the post in accordance with law and considering the persons who are eligible within a period of two months from the date of communication of this order.

8. There is no order as to costs.

( A.V. HARIDASAN )  
JUDICIAL MEMBER

( S.P. MUKERJI )  
VICE CHAIRMAN

21.4.92