CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 411/2003

FRIDAY, THIS THE 1st DAY OF OCTOBER, 2004.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

P.A. Sajida D/o Hamzakoya
Puthiya Alathupura
Androth Island
UT of Lakshadweep. Applicant

By Advocate Mr. Shafik M.A.

Vs.

1. Union of India represented by
the Administrator
UT of Lakshadweep
Kavaratti.

2. The Collector cum Development Commissioner
UT of Lakshadweep,
Kavaratti.

3. The Director of Education
UT of Lakshadweep,
Kavaratti. Respondents

By Advocate Mr. S. Radhakrishnan

The Application having been heared on 4.2.2004 the Tribunal delivered the following on 1.10.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant P.A. Sajida, is aggrieved by the refusal of the respondents to appoint her to the post of Nursery Trained Teacher, despite her having been selected for the post in 2001. According to her, she possessed the required qualification and had undergone the selection process, upon which she was ranked third in a list of four and yet no regular appointment was made even though the first two in the list were appointed regularly. She was on the other hand offered a contract appointment and after the end of the contract period was offered a temporary appointment,

which she accepted on 16.12.2002. Until now even the temporary appointment, order has not been issued. It is her contention that she was entitled to be considered against any vacant post available at the point of time of her selection and considering the ban imposed on filling of post subsequently, she was, though belated, entitled to be appointed after the ban was lifted. She has sought the following reliefs:

> (i) To call for the records relating to Annexure A1 to A7 and to declare that the applicant is entitled for being appointed to the post of Nursery Trained Teacher as offered in Annexure A-4, consequent to her selection conducted in 2000 July,
>
> (ii) To direct the respondents to issue appointment order to the applicant consequent to Annexure A-4 offer of appointment and to appointment the applicant as Nursery Trained Teacher consequent to her selection and ranking in the select panel of 2000 with all consequential benefits
>
> (iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case
>
> (iv) To grant the costs of this Original Application.

2. The learned counsel for the applicant took us through the course of events with reference to Annexures A1 to A-7, highlighting how the applicant accepted the contract appointment issued on 20.6.2001, worked as a Nursery Trained Teacher on contract basis from 5.7.2001 to 30.3.2002 in Nursery School, Agatti and how A4 office order offering her a temporary post was issued on 5.12.2002. She had accepted the offer by A5 communication dated 5.2.2003. Pending issue of an appointment order on the basis of the offer made and the acceptance duly communicated, the third respondent notified 23 newly created vacancies and the applicant submitted her

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candidature. The learned counsel argued that he applicant was unaware how these vacancies were created, nor was there any reason for her to believe that the temporary post which was offered to her had in the meantime been included in the fresh notification as a regular post for which she had offered her candidature. By A6 communication the applicant was called for interview. She was not selected. She therefore held on to her only hope that lay attached to the offer of a temporary post. Having offered the temporary post, the learned counsel argued, the respondents could not now renege. We were taken through Annexure R2 orders dated 8.2.1982 which contained a provision that if an earlier list of selected candidates was available, then no fresh recruitment should be undertaken before absorbing them or without taking into account the number of persons already in the earlier list for declaring the vacancies of the next recruitment. The learned counsel for the applicant, relying on this provision argued that the applicant was already included in an earlier list which was still not exhausted and hence no fresh recruitment could be undertaken ignoring the post and the selected candidate awaiting appointment into it. When it was pointed out that the applicant had applied for the next recruitment and had failed to make the grade, the learned counsel for the applicant submitted that failure in the next recruitment would not belie the fact that she was selected earlier. Given the anxiety of an unemployed person, the learned counsel argued, the applicant was ready to avail any opportunity that came her way. He craved our indulgence in appreciating that success in one examination was no guarantee that the same examination held again would return the same success. It was according to him a serious lapse on

the part of the respondents to have ignored R-2 directive, which if kept in view at the appropriate point of time, could have secured for the applicant the much deserved regular appointment.

3. The learned counsel for the respondents submitted that there was only one vacancy for which requisition was placed on Employment Exchange on 12.5.2000. Thirtythree candidates appeared in the interview and the Interview Board prepared a list of four (including the applicant at Sl. NO. 3) for filling up one regular post, one anticipated post and two short-term leave vacancies. The select list was however, not published as there was only one vacancy to be filled up on regular basis. He admitted that preparation of a select list of four persons, against one notified vacancy was irregular. However, the learned counsel contended, the applicant was considered for a short-term vacancy. He argued that the applicant's suitability, ostensibly, was judged only for a short term vacancy and not for a regular vacancy. A-4 offer of temporary appointment, the learned counsel submitted, was issued on a 'wrong notion.' Explaining the circumstances leading to this 'wrong notion' the counsel, further submitted that since the applicant had already worked on contract basis, the respondents thought mistakenly that she could perhaps be offered the temporary post when such a vacancy arose. But before she could be issued with an appointment order, the process of regular recruitment was set into motion and the offer stood automatically withdrawn, though the applicant was not informed of this. In any case, the learned counsel argued, the applicant availed the

opportunity offered by the next vacancy announcement, was called for the interview and was found to be not meritorious enough to make it to the select list. Having participated in the selection process for regular recruitment, the applicant could not now turn back and revive a wrong offer that was made prior to the regular selection.

4. Heard. We find from the requisition form issued to the District Employment Officer, Kavaratti that there was only one post to be filled. But we find from Annexure R-4 that the Interview Board was led into believing that the vacancies notified were for one regular, one anticipated and two short-term leave vacancies and hence they recommended four names. The contention of the respondents that the Interview Board might have adopted lesser standards for recommending names against short-term vacancies is not only unacceptable, it is a presumption we consider irresponsible. Had the respondents cared to refer to Annexure R-4 produced by them they would have seen that the Board had kept the criteria prescribed in view and had recommended four names after careful assessment, in the order of merit. The Board was apparently requested to prepare an all-inclusive panel for making regular and contract appointments. Evidently neither any lesser standards were adopted, nor was merit compromised in empaneling the four suitable candidates. The respondents have admitted that it was a mistake to have prepared a panel of four when the vacancy was actually one. They have also admitted that the panel was not declared. They have further admitted that A4 appointment offer was made under a 'wrong notion.' We wonder how many more mistakes could the respondents have committed to cross the limits of

normal probity and how much more non transparent they could have been to test the tolerance of fairness. We have absolutely no difficulty in seeing that the applicant was very much a suitable candidate. The opportunity that came her way in the form of a contract engagement, which she used effectively in discharging her role to she satisfaction of her supervisor, could have earned her the benefit of regular appointment, had the respondents kept in mind the stipulation in para 3 of R-2 communication. Para 3 of R-2 reads as follows:

> 3. The matter has been carefully considered. Normally, recruitment whether from the open market or through a Departmental Competitive examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future in case, names of selected candidates are already available there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already on the list of selected candidates awaiting appointment. Thus, there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination.

5. Now the question to be decided is whether the applicant should be held as a 'selected candidate' being Sl. NO. 3 in a list of four, when the declared vacancy was only for one. Declared vacancy, understood as notified vacancy, casts upon the recruiters the responsibility of preparing a list limited to that number. But if the list is prepared for a larger number, in contravention of the clear stipulations of R-3 communication, then it has to be seen how the Board could do so, on its own. In the present case, the Board has apparently gone by the request of the respondents, and

respondents have been non-transparent in keeping the fact of a larger panel under a wrap. The rules or procedures do not provide a way to deal with a contingency of this nature. But going by the principle laid down by the Hon'ble Supreme Court in R.S. Mittal Vs. Union of India (1995 (Supp)(2) SCC 230) we would hold that a person included in a Select Panel, eventhough he has no vested right to be appointed, cannot be ignored without justification. The respondents cannot take shelter behind their self confessed error of judgment when it is quite apparent from the minutes of the Selection Board that the panel of four was clearly recommended against four vacancies. The applicant has pointed out in her rejoinder to the reply statement that there were regular vacancies that arose during the currency of her contract appointment which could have very well been anticipated. The pernicious practice of under reporting real vacancies and obtaining from Selection Boards larger panels then declared vacancies, only allows the recruiters a latitude of manipulative excesses. We therefore hold that the panel of four recommended by the Selectors on 27.7.2000 was in fact a Select List which should have been exhausted first before undertaking fresh recruitment in pursuance of R2 communication. We find force in the submission of the learned counsel for the applicant that the applicant's failure in the subsequent selection would not belie the fact of her earlier selection. As a matter of fact, she would not have even taken the next selection had she been treated as part of an earlier Select List. The respondents have readily conceded that the offer of temporary appointment to the applicant was a mistake perpetrated by their sympathy for the applicant whose contract had ended by that time and who needed employment.

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On the contrary, we believe that someone had interpreted the Select List which included the applicant as a live panel in pursuance of the R2 communication, and had accordingly offered a temporary appointment, which the respondents are now seeking to cover up by a not-too-well-constructed afterthought. This is prevarication at its worst, or else the respondents would not have failed to atleast inform the applicant that the offer was withdrawn.

5. In conspectus, we reach the inescapable conclusion that the respondents are at fault in not appointing the applicant after offering her the temporary post of Nursery Trained Teacher by their A4 office order. We direct that an appointment order in pursuance of A4 office order be issued forthwith subject to her fulfilling the required formalities within a period of two months from the date of issue of these orders. The application is thus allowed to that extent, leaving the parties to bear their own costs.

Dated 1.10.2004.

H. P. DAS
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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