BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY-400 614.

Original Application No.431/86
Kum.Tulsi Babani Naik,
C/o Shricant Shamba Shetye,
H.No. E 212, Near Peoples High
School, Mala Panaji. .. Applicant.

V/s

1. Union of India,
through Home Secretary,
NEW DELHI.

2. The Administrator of Goa,
Daman & Diu, with his office at
Cabo Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office at
Panaji-Goa. .. Respondents.

Original Application No.432/86
Kum.Lata Mallu Rane,
C/o G.M.Rane, M.P.T.Collony,
B.Type Quarters Bldg,
206½ ground floor,
Head Land Sada - Vasco
P.C.No.403 804. .. Applicant.

V/s

1. Union of India,
through Home Secretary,
NEW DELHI.

2. The Administrator of Goa,
Daman & Diu, with his office
at Cabo Raj Niwas, Cabo,
Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office
at Panaji, Goa. .. Respondents

Original Application No.434/86
Smt.Kumud Bapu Naik,
Passal,
Adrofonda, Poinginim,
Canacona, Goa. .. Applicant.

V/s

1. Union of India,
through Home Secretary,
New Delhi.

2. The Administrator of Goa,
Daman and Diu, with his office at
Cabo Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman and Diu, with his office
at Panaji - Goa. .. Respondents

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Original Application No.435/86
Smt.Kanti K.Dessai,
Sanvorkatto,
CUNCOLIM, SALCETE, GOA. .. Applicant

V/s

1. Union of India,
through the Home Secretary,
NEW DELHI.

2. The Administrator of Goa,
Daman & Diu, with his office
at Cabo Raj Niwas, Cabo,
Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office
at Panaji, Goa. .. Respondents.

Original Application No.198/87
Ulka Manu Rane,
C/o. Shashikala Rane,
G.P.T.Parve, Agonda,
Canacona Goa. .. Applicant

V/s

1. Union of India,
through the Home Secretary,
NEW DELHI.

2. The Administrator of Goa, Daman
& Diu, with his office at Cabo
Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office at
Panaji, Goa. .. Respondents.

Original Application No.199/87
Vishranti H. Naik,
H.No.E-2,
Pedda Margao Goa. .. Applicant.

V/s

1. Union of India,
through the Home Secretary,
NEW DELHI.

2. The Administrator of Goa, Daman
& Diu, with his office at Cabo
Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office at
Panaji, Goa. .. Respondents.

Original Application No.200/87
Geeta Narayan Tilve,
Patne Canacona Goa. .. Applicant.

V/s

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1. Union of India,
through the Home Secretary,
NEW DELHI.

2. The Administrator of Goa, Daman
& Diu, with his office at Cabo
Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office at
Panaji, Goa. .. Respondents.

Original Application No.201/87
Baby D. Fal Dessai,
At Patnem Canacona
Goa. .. Applicant.

V/s

1. Union of India,
through the Home Secretary,
NEW DELHI.

2. The Administrator of Goa, Daman
& Diu, with his office at Cabo
Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office at
Panaji, Goa. .. Respondents.

Original Application No.202/87
Sulaksha K.Kamat,
Durga Vilas Hotel,
Cuncolim,
Salcete Goa. .. Applicant.

V/s

1. Union of India,
through the Home Secretary,
NEW DELHI.

2. The Administrator of Goa, Daman
& Diu, with his office at Cabo
Raj Niwas, Cabo, Panaji.

3. The Director of Education of Goa,
Daman & Diu, with his office at
Panaji, Goa. .. Respondents.

Coram: Hon'ble Vice Chairman B.C.Gadgil.
Hon'ble Member (A) J.G.Rajadhyaksha.

Appearance:

1. Smt.Pushpa Menon
(for Mr.J.P.Cama)
Advocate for the applicants
in all the above matters.

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2. Mr.M.I.Sethna
Counsel
for the Respondents
in all the above matters.

JUDGMENT Dated: 22.12.1987
(PER: B.C.Gadgil, Vice Chairman)

These nine applications can be conveniently decided by a common judgment as they involve similar questions of facts and law.

2. There are a number of Primary schools in the erstwhile Union Territory of Goa, Daman and Diu. The Administration decided to prepare a select list for appointment of teachers in such Primary schools. The Primary schools have the following media of instructions viz. English and Marathi. Hence before June 1983 the Administration decided to prepare a list of over 100 persons eligible to be appointed as Primary Teachers. Consequently, a requisition was sent to the Employment Exchange. That office forwarded a list of persons who were so eligible for being appointed as Primary Teachers. In due course, the Selection Committee processed the selection some time in June, 1983. A select list of 112 persons was prepared. Out of them eleven were appointed on regular basis. All the nine applicants in these matters were selected and they have been appointed as primary teachers (Marathi Medium) in leave vacancies from time to time. It is not material to mention the periods for which these applicants have so worked.

3. In 1986, the Administration again called for a list from the Employment Exchange for the purpose of preparation of select list of Primary School Teachers (Marathi Medium). In November 1986, letters were sent to the prospective candidates for interview. The applicants' contention is that it is not open to the

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Administration to initiate a fresh selection process until the earlier list of 1983 is exhausted by giving appointments to those selected persons. The applicants therefore, filed these applications with a prayer that the respondents should be restrained from holding the interview for the post of Primary Teachers (Marathi medium) and from making any appointments on regular, temporary or ad hoc basis on the basis of such lists. It was also prayed that the respondents be directed to appoint the applicants to the posts of the primary teachers.

4. The respondents resisted the claim by filing the written statement. In paragraph 3 of the reply they frankly stated that the selection was held in 1983 and that in that selection a panel of seven candidates for English Medium teachers and 112 candidates for Marathi medium Teachers was prepared. It was further stated that at that time there were in all 100 regular and short term vacancies and it is in that background that the panels were prepared. The respondents contend that in view of the circular dated 26th June, 1982 (vide Annexure 'C' to the reply) a panel was prepared and the same was to be valid for one year but is extendable for a further period of six months. It was submitted that there was a ban on the recruitment of the Primary Teachers from 13.1.1984 to 3.5.1985 and that, therefore, no appointments could be made on regular basis during this period. The respondents contend that after the ban was relaxed the Administration started a fresh process of selection and that this was done as the earlier panel prepared in 1983 came to an end after the lapse of 18 months. The applicants are relying on the Government orders dated 8.2.1982 (vide annexure 'D' to the application). That memorandum states that the

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select list for direct recruitment would be valid till the list is exhausted. The respondents contend that this memorandum was circulated and made known to the Government of Goa in 1985 and that, therefore, it would not be applicable to the selection of 1983. It was further contended that the panel of 1983 does not confer any right on the applicants as the said panel has not been published. The last contention of the respondents is that the enrolment of Marathi medium students is diminishing every year and that there would be a surplus of existing teachers and that in that background it may not be possible to make any appointments of the applicants enlisted in the panel of 1983 as there would not be any vacancies for some years to come.

5. The fact that a panel of selected candidates was prepared in 1983 is not in dispute. Similarly, it is common ground that all the applicants have been offered appointments on leave vacancies and they have worked as such. The memorandum of 8.2.1982 states that there will be no limit on the period of validity of the list of selected candidates. Thus the said list will be operated till it is exhausted. In the reply, the respondents do not say that this memorandum of 1982 does not apply to the selection process of 1983. All that is contended is that the memorandum of 1982 was circulated in 1985 and that, therefore, the respondents acted in pursuance of the circular dated 26 June, 1982. It may be noted that this circular of 26 June, 1982 refers to the earlier circular dated 28 December, 1971 under which a panel was to be valid for one year. By 26th June, 1982 circular, the previous circular of 1971 was amended so as to make the panel extendable for a further period of six months.

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In our opinion the fact that the memorandum of 1982 was circulated in 1985 would not mean that the panel prepared in 1983 can be scrapped after a period of one year with an extendable period of six months more. What is material is that the 26th June, 1982 circular is really a restatement of the earlier orders of December 1971. However, these 1971 orders as well as 26 June,1982 circular were issued by the Government of Goa, Daman and Diu while the 8.2.1982 memorandum is a memorandum of the Ministry of Personnel and Administrative Reforms. In the first place, the Government of Union Territory Goa, Daman and Diu would not be able to issue any orders or circulars which would be contrary to the memorandum of the Central Government. Secondly, the Government of Goa orders of 1971 have been restated in the circular dated 26.6.1982. What has been done in June, 1982 is to continue the earlier circular of 1971 subject to a modification that the validity of the panel is extendable for six months more. Thus the 1971 orders would not remain operative when the Central Government has issued a memorandum specifically stating that there would not be any time limit ~~when~~ upon the validity of the select list and that the select list would be operative till it is exhausted. The respondents have merely alleged that the memorandum of 8.2.1982 was circulated in 1985 and that therefore, the 1983 selection would not be governed by the 1982 circular. We may, with advantage, state that it is not the case of the respondents that the selection process of 1983 would not be governed by 1982 memorandum for any other reason. Of course, during the course of arguments Mr.M.I.Sethna contended that the 1982 memorandum envisages that the concerned

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department should assess the vacancies to be filled in and that the selection should be on the basis of such declared number of vacancies. He, therefore, argued that in the present matter there is nothing to show that the department has declared a specific number of vacancies. It is however, material to note that the respondents themselves have admitted in paragraph 3 of their reply that there were about 100 regular and short term vacancies in English and Marathi medium schools and that a panel of 112 persons was prepared after selecting them. Apart from that the position would become anomalous if we accept the contentions of the respondents. What is contended by them is that persons from the select list of 1983 (but they have not been regularly absorbed) would not get any appointment at all and that they should undergo a fresh process of selection. It was argued that such persons might fail in the new selection and that some others may be selected. In our opinion the Memorandum of 1982 shows that the Government never intended to create such an anomalous position.

6. Mr.Sethna then contended that in the selection process of 1986 the applicants and other persons from the list of 1983 have taken part and that they can get advantage, if they would be selected again. However, the matter cannot be decided on such hypothesis. In the first place, a person who has been validly selected need not undergo a second selection process. Secondly, some of the persons already selected in 1983 would now become age barred in 1986 so as to prevent them from being eligible for fresh selection in 1986. The

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age limit for selection is to be decided on the basis of the last date for making an application or the date on which the Employment Exchange sponsored the names. It is an admitted position that all persons included in the select list of 1983 were within the prescribed age limit and they would be entitled to get an employment whenever their turn comes. The position would however be different, if these persons are required to undergo a fresh selection in 1986. Some of those persons would be age barred in 1986 and hence Mr.Sethna would not be right in saying that the persons selected in 1983 should again try their luck in 1986 selection.

7. It was further contended by Mr.Sethna that the select list of 1983 was not at all published and that, therefore, the persons included in that list have no right. We must state that we are not able to understand as to what sort of publication was expected particularly when persons from that list have already been given appointments in leave vacancies. Thus the list of 1983 is already acted upon and absence of any publication would be irrelevant.

8. It was lastly urged by Mr.Sethna that on account of reduction of the number of students opting for Marathi medium the need for Marathi medium primary teachers is diminishing and that the Administration would be facing the problem as to how the surplus teachers from the existing strength itself is to be adjusted. The argument is that in this contingency there is no possibility of the applicants and other persons in the select list being appointed as primary teachers in the near future. Regarding the selection process of

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1986, Mr.Sethna contended that the same is principally meant for the purpose of making a provision for filling leave vacancies that may arise and it is not for regular appointments. In our opinion this aspect would not come in the way of the applicants inasmuch as all they claim is that they should be appointed in leave vacancies or in regular vacancies, whenever such vacancies arise. They would not get any such appointment when such vacancies arise if the select list of 1983 is scrapped. However, the hypothetical position need not detain us while passing an appropriate order in favour of the applicants.

9. Before closing we may add that the applicant in O.A.431/86 has made an application that she may be permitted to file the application in a representative capacity so as to cover the claim of all persons who are in the select list of 1983. We are not inclined to grant that application as it would be necessary to issue notices to all the persons whom the applicant intends to represent. Order 1, Rule 8, of the Civil Procedure Code prescribes this. Of course, an individual notice or a public notice would do. But in our opinion all this is not necessary as the respondents are expected to obey the orders of this Tribunal with respect to the validity or otherwise of the entire select list of 1983. Thus it is needless to say that all the persons mentioned in the select list would be entitled to the benefit of the order passed by us in these proceedings. It is, therefore, also needless to add that the respondents will have to act accordingly.

ORDER

The Original Applications Nos. 431/86, 432/86, 434/86, 435/86, 198/87, 199/87, 200/87, 201/87 and 202/87 succeed.

The respondents are directed to give effect to the select list of 1983 for making appointments of Primary School Teachers of Marathi Medium either in leave vacancies or on regular basis. To be more specific the respondents should fill in such vacancies on the basis of the said select list of 1983 and in accordance with the merit placement of various persons in that list as long as the last available person from that select list is not absorbed.

Parties to ~~bear~~ their own costs.

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