

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00057/2016

Tuesday, this the 3rd day of April, 2018

CORAM:

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

1. Thalhath P.S., S/o.Uduman,
Puthiyasurambi, Therakkal,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Kadmat, Lakshadweep.
2. Ummer.P., S/o.Cheriya Koya,
Purathakkal, Balap,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Amini, Lakshadweep.
3. Habeeb.K.M., S/o.Ahamed,
Kunninamel, Mayampokkada,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Kalpeni, Lakshadweep.
4. Sayedali.P.A., S/o.Basha,
Puthiya Alicom, Anapura,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Kavaratti, Lakshadweep.
5. Siddick.K., S/o.Abdulla,
Puthiyasurambi, Kattakam,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Kiltan, Lakshadweep.
6. Abdul Kader.B.M, S/o.Ahamed,
Puthiya Alicom, Kurupu Pura,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Chetlat, Lakshadweep.

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7. Abdul Gafoor, S/o.Nooruddeen,
Puthiya Pura, Chonam,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Agatti, Lakshadweep.
8. Fahiza.P., D/o.Hassan Ibrahim,
Faimigothi, Fenegenna Ghothi,
Folk Dance Instructor,
Public Library, Art & Culture Department,
Minicoy, Lakshadweep.Applicants

(By Advocate Mr.Vinod Madhavan)

V e r s u s

1. Union of India represented by Director,
Department of Art and Culture,
Lakshadweep Administration,
Kavaratti – 682 555.
2. The Administrator,
Lakshadweep Administration,
Kavaratti – 682 555.
3. The Collector & Development Commissioner,
Union Territory of Lakshadweep,
Kavaratti – 682 555.Respondents

(By Advocate Mr.S.Manu)

This application having been heard on 7th March 2018 the Tribunal on 3rd April 2018 delivered the following :

O R D E R

Per HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

The eight applicants who have approached this Tribunal with the present O.A are working as Folk Dance Instructors under the Directorate of Art and Culture in Lakshadweep Islands. They have been appointed on various dates. A sample of appointment orders is marked as Annexure A-1 issued to Applicant No.1 on 11.2.1994. Their duties as Dance Instructors

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have been detailed in Annexure A-2 order whereby they are to work under the office of the Library and Information Assistant and to perform the duties as instructed therein. In 2009 the Lakshadweep Kala Academy engaged Programme Assistants to be attached to the office of DCs/SDOs of the concerned islands to provide training to the young artists on the local folk arts as a part of preservation of the Lakshadweep folk arts. On 28.1.2015 the impugned Annexure A-4 order was issued by Respondent No.1 extending the engagement of the applicants from 22.1.2015 to 23.1.2016. As per the information received under the Right to Information Act by the applicants the view of the Lakshadweep administration is that Folk Dance Instructors and Programme Assistants are doing the same work and hence it amounts to duplication of work. The applicants apprehend that they are not going to be retained as Folk Dance Instructors any longer after the expiry of the term mentioned in. Hence they seek relief as under :

- (i) Call for the entire records which led to Annexure A-4 and set aside the same enabling the applicants to continue in service as Folk Dance Instructors.
- (ii) Declare that the applicants are entitled to be retained in service as Folk Dance Instructors in preference to Programme Assistants appointed by the Lakshadweep Kala Academy and direct the respondents to retain the applicants as Folk Dance Instructors.
- (iii) Grant such other appropriate orders or directions as are deemed fit and proper, by this Hon'ble Tribunal in the facts and circumstances of this case and
- (iv) Award costs for this proceedings.

2. Respondents state that the applicants are working on honorarium basis and not on regular posts. As there was no Recruitment Rules and no public notice of selection for appointment as Folk Dance Instructors they cannot be

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termed as “appointed” in the strict meaning of it. Their engagement is purely on monthly consolidated basis. It is further contended by the respondents that although it was for a short duration, by oversight the department did not issue timely orders of extending their engagement and the said defect had been rectified by extending the engagement vide Annexure A-4 from 22.1.2015 to 23.1.2016. Respondents state that in the Union Territory of Lakshadweep islands job opportunities are very meagre. There are no private employment or even public sector undertakings in the islands and therefore job opportunities are restricted to the Government employment. With the intention of giving some employment to the unemployed youth, to keep them engaged and to eradicate poverty, the Administration used to engage persons on casual basis for short duration with the intention of giving opportunities to other similarly situated persons also. The engagement of applicants herein also is casual in nature and was only for a short duration.

3. Applicants filed rejoinder producing Annexure A-8 to Annexure A-10 which show that the applicants are paid remuneration on a monthly basis duly sanctioned by the concerned department of the Lakshadweep Administration. Referring to Annexure A-8 the applicants state that the selection to the post of Folk Dance Instructors notified in the Employment Exchange and candidates sponsored by the Employment Exchange are selected after interview. The applicants therefore contend that it is a regular post.

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4. An additional reply statement was filed by Respondent Nos.1-3 reiterating the contentions in the reply statement and further stating that the applicants have no right to be regularised in the post of Folk Dance Instructors because there is no sanctioned post of Folk Dance Instructors.

5. Heard both sides. Perused the record.

6. Annexure A-5 is the copy of the note file wherein a decision was taken by the Respondent No.1 with regard to the discontinuation of the engagement of the Folk Dance Instructors. It reads :

“Discussed with Dir.(A&C), JCEO (DP) and other departmental staff. During the discussion it emerged that the Folk Dance Instructors under the DP are also doing the same work as it is being done by the Programme Assistants. Hence it is clear that there is duplication of work. Since the Programme Instructors are more organized and their work allocation is well chartered out and since there is one Male and Female Programme Assistant in each island, we may continue with the engagement of Programme Assistants. However, I am not in favour of having the Folk Dance Instructors as it amounts to duplication of work. Whenever the tenure of Folk Dance Instructors comes to end necessary approval may be taken to discontinue their engagement.

In view of the above, the approval accorded vide 328 shall be implemented with effect from today ie., 12.11.2015.”

7. It appears that the impugned order has been issued by the respondents in accordance with the decision seen to have been taken in Annexure A-5 file notings. It is settled law in **P.U.Joshi & Others vs. Union of India & Others (2003) 2 SCC 632** that creation, abolition of posts are within the field of policy of the State and Tribunals cannot interfere in such decisions. The Apex Court in aforesaid case observed :

“Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

8. On going through Annexure A-5 file notings and the decision making process ensued, as revealed therefrom, it is clear that the decision to issue Annexure A-4 was a conscious decision. It is specifically contended by the respondents in their reply statement that the engagement of the applicants as Folk Dance Instructors was for a short period and that it was by an oversight the applicants continued in the engagement, getting remuneration regularly as sanctioned from time to time, without getting their term extended. A perusal of Annexure A-1 and Annexure A-2 'appointment orders' issued to the applicants reveals that it is an 'appointment' is purely on temporary and honorarium basis and is liable for termination without any notice. In Annexure A-1 order it was made clear that the appointment was initially for six months from the date of his joining.

9. Referring to paragraph 53 of the judgement of the Constitution Bench of the Apex Court in **Secretary, State of Karnataka & Others v. Umadevi & Others (2006) 4 SCC 1** applicants submitted that they are entitled to be regularised because they have been appointed on regular basis in a regular post. However, the respondents contend that there is no regular sanctioned post of Folk Dance Instructors and hence they cannot claim the benefit of para 53 of *Umadevi*'s decision of the Apex Court. We are unable to see anything from the record that the above Folk Dance Instructors are regular post for which applicants can lay a claim on the basis of their continued engagement so far. It is worth noticing that they still continue to be as Folk Dance Instructors in terms of the interim order granted by this Tribunal in this case.

10. Shri. Vinod Madhavan, learned counsel for the applicants submitted that in the event of the Tribunal finding that the applicants' term has come to an end by the period mentioned in Annexure A-4, they may be relieved on the basis of the 'first come last go' principle envisaged in Section 25 (f) of the Industrial Dispute Act. He submitted that the principle of 'first come last go' is a universally accepted principle in service/labour jurisprudence so that in the case of retrenchment of the employees, the last appointed person should be first retrenched. It is true that the 'first come last go' principle is a well accepted principle in law. Nevertheless, in the instant case by Annexure A-4 all the applicants have been given an extension only up to 23.1.2016. There is nothing to indicate as to who had been engaged first and who had been engaged last. Nevertheless, in order to relieve financial strain faced by the

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applicants on their disengagement from the work they have been doing a long time, we leave the matter to the Lakshadweep Administration to find out who among the applicants have been appointed first, in the pecking order, based on their date of joining the service and to consider them to be relieved in a piecemeal manner, adopting the principle of 'first come last go'. We are not inclined to grant any other relief sought in the O.A.

11. The O.A is disposed of with the above directions. No order as to costs.

(Dated this the 3rd day of April 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in O.A.No.181/00057/2016

- 1. Annexure A-1** - True copy of the order dated 11.2.1994 issued by the Chairman, Chairman Island Council, Kadamat.
- 2. Annexure A-1(a)** - True copy of the order dated 25.2.1994 issued by the Chairman, Chairman Island Council, Amini.
- 3. Annexure A-2** - True copy of the Chart of duties assigned to the Folk Dance Instructors, dated 15.1.2004.
- 4. Annexure A-3** - True copy of the Chart of duties assigned to the Folk Dance Instructors dated 28.1.2015.
- 5. Annexure A-4** - True copy of the order dated 28.1.2015 issued by the 1st respondent.
- 6. Annexure A-5** - True copy of the relevant pages of the information obtained under the Right to Information Act.
- 7. Annexure A-6** - True copy of the order dated 12.11.2015 issued by the Secretary, Lakshadweep Kala Academy.
- 8. Annexure A-7** - True copy of the order dated 17.11.2015 preferred by the 1st applicant before the 2nd respondent.
- 9. Annexure A-7(a)** - True copy of the order dated 17.11.2015 preferred by the 1st applicant before the 3rd respondent.
- 10. Annexure A-8** - True copy of the Office Memorandum dated 31.5.1994.
- 11. Annexure A-9** - True copy of the order dated 30.5.1994.
- 12. Annexure A-9(a)** - True copy of the order dated 26.7.1996.
- 13. Annexure A-10** - True copy of the order dated 30.10.2010.
