

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
Original Application No.181/00025/2015**

Thursday, this the 22nd day of November, 2018

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Sithi Jubairathbi
Nursery Trained Teacher
Government Nursery School
Kadmat

..... **Applicant**

(By Advocate – Mr.K.B.Gangesh)

V e r s u s

1 The Administrator
 Union Territory of Lakshadweep
 Kavaratti-682 555

2. The Director of Education
 Directorate of Education
 Administration of Union Territory of Lakshadweep
 Kavaratti-682 555

..... **Respondents**

(By Advocate – Mr.S Manu)

This Original Application having been heard and reserved for orders on 14.11.2018, the Tribunal on 22.11.2018 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member:

Applicant has filed this Original Application seeking the benefit of pay protection as she had earlier been working as a Gramasevika before being accommodated as Nursery Trained Teacher under the Directorate of Education, Lakshadweep Administration. The relief sought in the Original Application are as follows:

- “ i) Set aside Annexure A4 order passed by the 2nd respondent withdrawing Annexure A3 order earlier passed by the said authority
- ii) Declare that the applicant is entitled for pay protection as Gramasevika as sanctioned to her vide Annexure A3 order passed by the 2nd respondent
- iii) Direct the respondents to restore Annexure A3 order passed by the 2nd respondent and to confer her all benefits arising there from forthwith.
- iv) To award costs to the applicant. "

2. Applicant is currently working as a Nursery Trained Teacher under Lakshadweep Administration. She jointed the service on 6.11.2008. Prior to her appointment as Nursery Trained Teacher, the applicant was working as Gramasevika under Border Area Project, Kavaratti with effect from 5.6.1989. She had resigned her post as Gramasevika and her resignation was accepted on 5.11.2008 as a technical resignation enabling her to join the new post of Nursery Trained Teacher on 6.11.2008. A copy of order of acceptance of technical resignation is produced and marked as Annexure A-1. It was in pursuance of Annexure A-1 that the applicant accepted the post of Nursery Trained Teacher on 6.11.2008.

3. She claims that as a Government servant in the event of her technical resignation, the benefit of past service is normally counted and it is a technical formality. The applicant preferred an application to the second respondent on 21.1.2011 seeking refixation of her pay by protecting the pay drawn as Gramasevika (Annexure A-2). The second respondent issued order dated 22.4.2013 sanctioning the protection of her pay as requested vide

Annexure A-3. However, to her disappointment, the said order was unilaterally withdrawn by the second respondent on 28.1.2014 on the ground that pay protection cannot be granted to the applicant as the appointment to the post of Nursery Trained Teacher was through an open competitive examination and not through an interview alone (Annexure A-4).

4. Applicant strongly rebuts this claim. She calls to her assistance the notification published in the Lakshadweep Times on 21.3.2003 and the intimation for interview sent as communication dated May 3,2003 (Annexure A-5) . It is submitted that there had been no written competitive examination as claimed by the respondents and hall tickets issued were for the purpose of interview and not for an open competitive examination. Again, a copy of the relevant page of Lakshdweep Times dated 2.8.2005 is produced as Annexure A-6 whereby it is made known that the select list had been published on the basis of the interview for various posts under the Education Department.

5. It is further maintained that at no point, there was an open competitive examination contemplated for the selection of Nursery Trained Teacher as notified on 21.3.2003. What took place by way of selection was only an interview and not a competitive examination. It is further affirmed that withdrawal of the facility granted to her was done without granting an opportunity to her to state her case.

6. Per contra, the respondents have filed reply statement wherein they have quoted the relevant part of the instructions contained in O.M

No.12/1/1996-Estt (Pay-I) dated 10.7.1998 under FR 22 of Fundamental Rules, 1922. It states thus:

“3. The benefit of pay protection is available to the Govt. servants on their recruitment by selection through UPSC, subject to fulfillment of certain conditions. The benefit under the O.M, dated 7.8.1989 was extended to the candidates working in Central PSUs/State PSUs/Universities/Semi Govt. Institutions/Autonomous Bodies, etc. with a view to drawing talent which is available in those organisations. The question whether the objective underlining the above orders could be achieved through Open Competitive Examination, in which the employees from Public Section Undertakings, etc. also appear, has been considered. It is clarified that the benefit of pay protection under the above orders is available only, if the selection is through interview and not through an open competitive examination.....”

7. It is maintained that the selection for the post of Nursery Trained Teacher had been on the basis of an open competitive test and interview. The test was in the form of an eligibility test and a hall ticket was issued for the purpose, a copy of which is at Annexure R1(a). This being so, her case attracted the prohibition under FR 22 of Fundamental Rules 1922 referred above. An extract of Lakshadweep Times dated 16.3.2003 is also produced as Annexure R1(d) indicating that there was a “Selection Test and Interview”.

8. Heard Smt.Smitha Gangesh, learned counsel for the applicant and standing counsel for the Lakshadweep Administration on behalf of the respondents.

9. Applicant had been working as Gramasevika and the project had been

absorbed into the Department of Women and Child in Lakshadweep. Smt.Gangesh pointed out that a claim of a similarly placed employee to count her past service for ACP/MACP benefit had been favourably dealt with by this Tribunal in O.A 466/2013. Applicant's case that there had been only an interview for the selection and the test as it is made out was only an eligibility test appears to be a more rational explanation of the events in this case. The respondents themselves have been convinced that she could be given the benefit of past service as is seen from Annexure A-3 which came to be abruptly rescinded. The respondents also admit that the selection consisted of an eligibility test and interview and this being so, an eligibility test cannot be considered as an open competitive examination which would attract the bar as per FR 22.

10. In due consideration of all the facts before us, we conclude that the Original Application has merit and we allow the same. However, since considerable time has elapsed between the denial of her claim and filing of the O.A, applicant would be entitled to get the benefit of the remedies ordered for a period of 3 years prior to 14.2.2015 as stated in Tarsem Singh's case (**Union Of India & Anr v. Tarsem Singh** in CIVIL APPEAL NO.5151-5152 OF 2008)

11. The Original Application is allowed as above. No order as to costs.

(ASISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - True copy of the order of acceptance of technical resignation of the applicant dated 5.11.2008

Annexure A2 - True copy of application dated 21.1.2011 preferred by the applicant to the 2nd respondent

Annexure A3 - True copy of order F No.6/14/2004-Edn/ESTT dated 22.4.2013 issued by the 2nd respondent

Annexure A4 - True copy of order F.No.6/14/2004-Edn/ESTT/826/1314 dated 28.1.2014

Annexure A5 - True copy of intimation dated 3.5.2003 issued to the applicant

Annexure A6 - True copy of the relevant pages of Lakshadweep Times dated 2.8.2005

Annexure R1(a) - A true copy of the Hall Ticket

Annexure R1(b) - A true copy of the relevant extract of the OM No.12/1/1996-Estt(Pay-I), dated 10.7.1998

Annexure R1(c) - A true copy of the representation dated 27.6.2012

Annexure R1(d) - A true copy of the relevant pages of the Lakshadweep Times dated 16.3.2003
