



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 351/858/AFN/ of 2017

In the matter of:

M. RAKESH CHANDER, working as Assistant Professor on contract basis in the Tagore Government College of Education under Andaman & Nicobar Administration, Port Blair-744101 and residing at C/o. M. Rama Chander Rao, Diary Firm, Ward No. 09, Junglighat, Port Blair- 744103 ;

...Applicant

-Versus-

1. UNION OF INDIA service through the Secretary, Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi-110001.
2. THE SECRETARY, Union Public Service Commission, Dholpur House, Sahjahan Nagar, New Delhi- 110069.
3. THE LIEUTENANT GOVERNOR, Andaman & Nicobar Administration Islands, Raj Niwas, Port Blair-744101.
4. THE CHIEF SECRETARY, Andaman & Nicobar Administration, Secretariat, Port Blair-744101.

[Signature]

5. THE PRINCIPAL SECRETARY

(Education), Andaman & Nicobar

Administration, Secretariat, Port Blair-

744101.

6. THE PRINCIPAL, Tagore Government

College of Education, Port Blair- 744101.

...Respondents.

C.P.C/351/47/AN/2018

In the matter of :

M. Rakesh Chander, working as Assistant Professor on contract basis in the Tagore Government College of Education under Andaman & Nicobar Administration, Port Blair, Pin 744101 and residing at C/o. M. Rama Chander Rao, Diary Firm, Ward No. 09, Junglighat, Port Blair, Pin 744101.

..... Applicant

- Versus -

1. Dr. D.K. Joshi, the Lieutenant Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair - 74410;
2. Mr. Bikramjit Dutt, Chief Secretary in-charge, Andaman & Nicobar Administration, Secretariat, Port Blair, Pin - 744101;
3. Mr. Arva Gopi Krishna, the Secretary/Principal Secretary (Education), Andaman & Nicobar Administration, Port Blair - 744101;
4. Dr. J.D. Singh, Principal, Tagore Government College of Education, Middle Point, Port

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Blair, Andaman & Nicobar Islands,
Department of Higher Education, Pin –
744101;

5. Mr. Rakesh Gupta The Secretary,
Union Public Service Commission, Dholepur
House, Sahajan Nagar, New Delhi,
Pin -110069.

..... Contemnors/Respondents

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

Date of Order: 12.3.2019.

Coram: Hon'ble Mr. A.K Patnaik, Judicial Member
Hon'ble Dr. N.Chatterjee, Administrative Member

O.A./351/858/AN/2017
M.A./351/733/AN/2018

M.Rakesh Chander -vs- UOI & Ors.

C.P.C./351/47/AN/2018

M.Rakesh Chander Vs. Dr. D.K.Joshi & Ors.

For the Applicant(s): Mr. P.C.Das, Counsel
Ms. T.Maity, Counsel

For the Respondent(s): Mr. R.Halder, Counsel
Mr.A.K.Chattopadhyay, Counsel
Mr. S.K.Ghosh

ORDER

A.K Patnaik, Member (J):

The applicant has filed the OA No. 351/858/AN/2017 seeking the following reliefs:

“a) To quash and/or set aside the impugned speaking order dated 28th March, 2017 issued by the Assistant Secretary (Higher Education), Andaman & Nicobar Administration, Secretariat by which the claim of the applicant has been rejected by not recommending the name of the present applicant before the Union Public Service Commission for permanent appointment to the post of Assistant Professor in the Tagore Government College of Education against which the present applicant is discharging his duty and function for a long time who entered in the service after being declared successful in the selection

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process conducted by the respondent authority being Annexure A-14 of this original application.

b) To quash and/or set aside the impugned advertisement No: 16/2016 dated 10-16.09.2016 published by the Union Public Service Commission for appointment to the post of Assistant Professor in the Tagore Government College of Education by violation of the notification Recruitment Rules dated 29th October, 2013 being Annexure A-10 of this original application.

c) To pass an appropriate order directing the respondent authority to recommend the name of the present applicant before the Union Public Service Commission for appointment to the post of Assistant Professor in the Tagore Government College of Education who is an experienced ad qualified candidate and already worked as teacher on contract basis in terms of Recruitment Rules dated 29.10.2013 under Column 13 being Annexure A-11 of this original application.

d) Costs.

e) Any other order or orders as Your Lordships may deem fit and proper."

2. On 28.6.2017 prima facie case having been found this OA was admitted and by giving liberty to the Respondents the interest of the applicant was protected by passing an order as an ad interim measure. After lapse of more than one year Respondent-Department filed MA No. 351/733/2018 seeking modification and/or alteration of the ad interim order. In the meantime, the applicant, alleging non compliance of the said ad interim order, filed CPC No. 351/47/2018. Thereafter, the Respondent-Department approached before the Hon'ble High Court Calcutta at its Circuit Bench at Port Blair in WPCT No. 270 of 2018 and the Hon'ble High Court was pleased to dispose of the said WPCT with direction to take up the OA as well as MA together and dispose of the same.

3. The main thrust of the applicant in this OA is that he has been discharging duties of Assistant Professor in English Discipline with all

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sincerity and due devotion long since after being duly selected upon facing a process of selection conducted after receipt of applications from different candidates in pursuance of an advertisement issued by the College and, therefore, it is contended that without considering his case for regularisation in the post of Asst. Professor the authority concerned ought not to have placed requisition to the UPSC for issuing advertisement once again for the same post. Hence, according to the applicant the issuance of advertisement being bad in law is liable to be set aside and he is entitled to be regularised in the post, in question, taking into consideration his experience and expertise so also unblemished period of service to the department and the fact that, in the meantime, he has crossed the maximum age limit even to apply as per the advertisement issued by UPSC. Emphasis has been led that since the engagement of the applicant was through a process of selection as per the Recruitment Rules, merely because he was appointed on contractual basis it cannot take away his right to claim regularisation.

4. Respondents have filed counter objecting to the contentions advanced by the applicant in his original application on the ground the engagement of the applicant was purely on contractual basis. As per the Recruitment Rules the post is to be filled up on Direct Recruitment basis. Thus, the applicant has no right to claim appointment on regular basis without qualifying the regular process of selection as per rules. Hence, it has been prayed by the Respondents that this OA being devoid of any merit is liable to be dismissed.

5. Learned counsel for both the sides have reiterated the stand taken in their respective pleadings and enclosures placed in support thereof. While giving consideration to the MA filed by the Respondents, as per the order of the

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Hon'ble High Court, we have also heard on the merit of the OA so also the CPC filed by the Applicant alleging non compliance of the order of this Bench.

6. The engagement of the applicant on contractual basis through a process of selection pursuant to the advertisement issued by the College authority is not in dispute and, equally, it is not in dispute that as per the Recruitment Rules the post is to be filled up on direct recruitment basis. Further it is not in dispute that when the applicant was engaged he was within the age limit as per the Recruitment Rules but by efflux of time he has crossed the said age so as to apply and compete along with others in pursuance of the advertisement issued by the UPSC. As per the conditions stipulated in the RR the Lieutenant Governor (Admn.) A&N is competent to relax any of the provisions of the rules with respect to any class or category of persons and the Lieutenant Governor (Admn.), A& N issued specific circular dated 11.6.2001 providing that where the candidate has been working on ad hoc/contract basis for some years and was not over aged for regular appointment when he/she was initially appointed on ad hoc/contract basis, in such a case relaxation of age is admissible to the extent of total period of service spent continuously without any break, if breaks are there condonation to the extent of total past service in any capacity (adhoc/contract) can be considered. We find that the advertisement was issued by the college authority for selection on contractual basis. The applicant applied and accepted the offer to continue on contractual basis in open eyes and, therefore, the applicant cannot claim, as a matter of right, regularization based on his continuance on contractual basis. At the same time, we cannot close our eyes to the fact that the Respondents rejected the representation denying straight away regularization based on his continuance on contract basis in the College and simultaneously rejecting his prayer for granting

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him age relaxation without taking note of the circular of issued by the A&N administration dated 11.6.2001 and the saving clause appended in the RR providing therein that the Lieutenant Governor (Admn.) A&N is competent to relax any of the provisions of the rules with respect to any class or category of persons for recruitment to the post in question. We find that the rejection of his claim is without taking into consideration the above aspect of the matter. Hence the order of rejection dated 28.3.2017 is quashed and while declining to interfere in the advertisement issued by the UPSC we direct the Respondent No.2 that in case the applicant makes an application pursuant to the advertisement within a period of 15 days from the date of this order, the same be entertained, provided the applicant does not exceed the age limit after grant of relaxation to the extent he had worked on contractual basis, and in such an event he be allowed to face the selection along with others. It is made clear that till the process of selection is over and duly selected candidate through UPSC joins the post, in question, the applicant shall be allowed to continue on the same terms and conditions as before and he be paid all his dues for the period for which he discharged his duties within a period of thirty days from the date of this order.

7. With the observations and directions made above, OA, CP and MA are disposed of. No costs.

(Dr. N.Chatterjee)
Member (Administrative)

(A.K.Patnaik)
Member (Judicial)

RK/PS