

LIBRARY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 351/00120 / A N / of 2019

IN THE MATTER OF:

1. ABHISEKH BISWAS, son of Biswajit Biswas, aged about 23 years, residing at Nabagram Diglipur, North Middle Andaman, Pin-744202.
2. BIVA BAIRAGI, daughter of Gour Bairagi, aged about 34 years, residing at Nabagram Diglipur, North Middle Andaman, Pin-744202.
3. DEEPA KUMARI, daughter of Guru Swamy, aged about 32 years, residing at R. No.14, 3rd Floor, Samsuvas Plaza, Gurudwara Line, Port Blair, Pin-744101.
4. PHANI KUMAR DAS, son of Bhaktibhushan Das, aged about 26 years, residing at Santipur, P.O. Swadeshnagar, North And Middle Andaman, Pin-744201.
5. BINOTA BISWAS, daughter of Subash Biswas, aged about 33 years, residing at Village Ramkrishnapur, Little Andaman, South Andaman, Pin-744207.
6. RAIKISHORI MONDAL, wife of Pratap Kumar Mistry, aged about years, residing at Village Uttara, Post Kadamtala, North & Middle Andaman, Pin-744209.

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7. RAHUL KUMAR MISHRA, son of Kameshwarnath Mishra, aged about 31 years, residing at Near Krishna Temple, Naya Basti, Bamboo Flat, Pin-744102.
8. SAMIT MAZUMDER, son of Swapan Mazumder, aged about 27 years, residing at R.K. Gram, Ward No.6, near Mahindra Showroom, Diglipur, North & Middle Andaman, A&N Islands, Pin-744202.
9. AALIA ALI, daughter of P. Venkat Raman, aged about 33 years, residing at 32/1B, Street Buniyadabad, Port Blair, South Andaman, Pin-744102.
10. M.T. SHERBAN, daughter of M.T. Khalid, aged about 25 years, residing at Malapuram, Port Blair, Pin-
11. K.P. NAZIRA BEGUM, daughter of K.P. Hussain, aged about 25 years, residing at Bamboo Flat, Port Blair, South Andaman, Pin-
12. CHUMKI GHARAMI, daughter of Motilal Gharami, aged about 28 years, residing at Vijaynagar, Havelock, South Andaman, Pin-744211.
13. SARMILA MANDAL, daughter of Sunil Mondal, aged about 34 years, residing at Laxmipur, Diglipur, North & Middle Andaman, Pin-744202.

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14. AZMIN BEGUM, daughter of Iqubal Hussain, aged about 30 years, residing at M.A. Road, Phoenix Bay, Port Blair, South Andaman, Pin-744102.
15. K. VIJAYANTHI, daughter of K. Karuppaiah, aged about 28 years, residing at Baludera, Mayabunder, North & Middle Andaman, Pin-744202.

...Applicants

-Versus-

1. UNION OF INDIA service through the Secretary, Government of India, Ministry of Human Resource Development, ShastriBhawan, New Delhi- 110001.
2. THE LIEUTENANT GOVERNOR, Andaman & Nicobar Islands, Raj Niwas, Port Blair-744101 ;
3. THE ANDAMAN & NICOBAR ADMINISTRATION service through the Chief Secretary, Andaman & Nicobar Administration, Secretariat Complex, Port Blair-744101;
4. THE SECRETARY (EDUCATION), Andaman & Nicobar Administration, Secretariat, Port Blair-744101;

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5. THE DIRECTOR OF EDUCATION,
Andaman & Nicobar Administration VIP
Road, Port Blair-744103;

6. THE DEPUTY DIRECTOR OF
EDUCATION (PERSONNEL), Andaman
& Nicobar Administration, VIP Road, Port
Blair-744103.

...Respondents.

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CENTRAL ADMINISTRTRION TRIBUNAL
KOLKATA BENCH

O.A./351/00120/2019
MA/351/67/2019

Date of Order: 30.01.2019

Coram: Hon'ble Mr. A.K. Patnaik, Judicial Member

Abhisekh Biswas & Ors. -VS- Education

For the Applicant(s): Mr. P.C. Das, Counsel
For the Respondent(s): Mr. R. Halder, Counsel

ORDER (ORAL)

A.K. Patnaik, Member (J):

Heard Mr. P.C. Das, Ld. Counsel for the applicants, and Mr. R. Halder, Ld.

Counsel, appearing for Andaman & Nicobar Administration, in extenso.

2. M.A. No. 67/2019 filed for joint prosecution of this case is allowed and disposed of.

3. Mr. R. Halder, Ld. Counsel, appearing for Andaman & Nicobar Administration, at the outset, submitted that this is a Division Bench matter and this can only be admitted and interim order may be passed by the Single Bench but no final order should be passed. On the other hand, Mr. P.C. Das, Ld. Counsel for the applicants, submitted that similarly situated candidates had approached this Tribunal in O.A. No. 351/95/AN/2019 and some final order has been passed by the Single Bench of this Tribunal and, accordingly, he prays for a similar order in this O.A. I have gone through the records of this O.A. as well as order passed by this Tribunal in O.A. No. 351/95/AN/2019.

4. This O.A. has been filed under Section 19 of the Administration Tribunals Act, 1985 with the following prayers:

“8(a) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have a common grievance and all of them aggrieved against cancellation of the selection process those who are been declared successful in the same selection process for appointment to the post of Primary School Teacher;

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b) To quash and/or set aside the impugned Press Note dated 11th January, 2019 being File No., 8-10(1427)/Edn/CCB/PST-Rectt/2018 being Annexure A-6 of this original application issued by the Deputy Director of Education (Personnel) who is the incompetent authority by which the entire selection process for the post of Primary School Teacher has been cancelled without assigning any reason by depriving the present applicants those who have declared successful candidates and their names were enlisted in the Merit List after fulfilling all the eligibility criteria prescribed by the Education Department in terms of the notification dated 16.07.2018.

c) To declare that the decision of the Education Department of Andaman and Nicobar Administration vide Press Note dated 11th January, 2019 is wholly arbitrary and illegal because they themselves admitted in Press Note published on 19th December, 2018 in the Daily Telegrams that the process of recruitment to the post of Primary School Teacher has been conducted in a free, fair, transparent and objective manner. After such declaration by way of paper notification, the cancellation of the selection process to the post of Primary School Teacher is wholly arbitrary and illegal and which may be liable to be quashed and/or set aside in the eye of law by restoring the entire selection process in terms of the notification dated 16.07.2018 and to hold that the merit list which they have published is in accordance with the Recruitment Rules and on the basis of the assessment of marks obtained by them in terms of the Merit List the present applicants will get appointment.

d) To quash and/or set aside the cancellation order of selection process for recruitment to the post of Primary School Teacher and direct the respondent authority to issue the appointment orders in favour of the applicants those who are selected candidates and their names enlisted in the Merit List to the post of Primary School Teacher immediately in terms of the Recruitment Notification dated 16.07.2018.”

5. Ld. Counsel for the applicants, at the outset, submitted that the applicants have passed the Central Teacher Eligibility Test and are holding Diploma in Education/Junior Basic Training. Recruitment Rules were notified by the Andaman and Nicobar Administration on 07.03.2011 for the post of Primary School Teacher. In pursuance of the notification dated 16.07.2018 issued for recruitment to the post of Primary School Teacher by the Deputy Director Education (Personnel), Andaman and Nicobar Administration (Respondent No. 6) against a total number of vacancies of 224 including General Caste, OBCs and STs, applicants applied



and after a due recruitment process they were selected and their names were listed in the Provisional Merit List dated 17.12.2018. Subsequently, the certificates of the applicants were also verified. The grievance of the applicants is that while they were waiting for appointment, suddenly a Press Note was issued on 11.01.2019 by the Deputy Director of Education (Personnel) (Respondent No. 6) by which the entire selection process for the post of Primary School Teacher has been cancelled without assigning any reason. By drawing my attention to the Press Note dated 11.01.2019, Mr. Das submitted that this notification itself runs contrary to the spirit of the judgment of the Hon'ble Supreme Court of India in the case of **East Coast Railway and Another -Vs- Mahadev Appa Rao and Others reported in (2010) 7 SCC 678** wherein the Hon'ble Apex Court held that "Recruitment process – Examination/Selection test – Cancellation of – Judicial review on the ground of arbitrariness – Held, though a candidate who has passed an examination or whose name appears in select list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification – Court can give appropriate directions where decision is found to be arbitrary." The Hon'ble Supreme Court also held in the case of **Union of India and Others -vs- Rajesh P.U. Puthuvalonikathu and Another reported in (2003) SCC (L&S) Page 1048** wherein the Hon'ble Apex Court also held that – Recruitment process – Selection – Cancellation of en bloc – Held, where from out of the selectees it was possible to weed out the beneficiaries of irregularities or illegalities, there was no justification to deny appointment to those selected candidates whose selection was not vitiated in any manner – On facts, the decision cancelling the selections in their entirety was rightly held to be irrational by High Court."

The applicants have already submitted representation on 16.01.2019 under Annexure A/7 to the Respondent Nos. 2, 3, 4 and 5.

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6. After going through the representation as well as judgment rendered by the Hon'ble Supreme Court of India in the case of East Coast Railway and Another - Vs- Mahadev Appa Rao and Others reported in (2010) 7 SCC 678 and in the case of Union of India and Others -vs- Rajesh P.U. Puthuvalonikathu and Another reported in (2003) SCC (L&S) Page 1048, I am of the view that the applicants' grievance are quite genuine. Therefore, the impugned cancellation order vide Press Note dated 11th January, 2019 being File No. 8-10(1427)/Edn/CCB/PST-Rectt/2018 which is appearing at Annexure A-6 of the original application is wholly arbitrary and illegal because no specific reason has been assigned in the said cancellation order and ,therefore, I quash and/or set aside the same by applying ratio of two decisions of the Hon'ble Supreme Court of India referred as above.

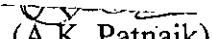
7. The applicants have also raised their grievance in their representation dated 16.01.2019 that their names appeared in the Merit List, which was published by the respondent authority themselves in their official website which has been annexed at Annexure A/3 of the Original Application, and they are waiting for issuance of appointment order for the post of Primary School Teacher in terms of the notification dated 16.07.2018 as per the commitment made by the respondent authority appearing at Annexure A/4 of the Original Application, which was published in the Daily Telegrams Newspaper on 18.12.2018, and as per their declaration, which was also notified in the Daily Telegrams Newspaper dated 19th December, 2018 (Annexure A/5) of the Original Application that the process of recruitment to the post of Primary School Teacher has been conducted in a free, fair, transparent and objective manner. In view of such declaration made by the respondent authority themselves, which was published in the Daily Telegrams Newspaper and which is an official newspaper of the Andaman and Nicobar Administration, I am of the view that as the names of the applicants already

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appeared in the Merit List published by the respondent authority being Annexure A/3 of the Original Application, therefore, the respondent authority are further directed to issue appointment orders in favour of the present applicants without any further delay. Mr. P.C. Das, Learned Counsel on behalf of the applicants also submitted that the respondent authority is going to re-advertise the post by cancelling the selection process. I have already held that in view of the judgement of Hon'ble Apex Court the impugned cancellation order of the selection process to the post of Primary School Teacher without assigning any reason is illegal; therefore, the question of re-advertising the post cannot be sustainable in the eye of law. I also make it clear that the entire exercise in respect of issuance of the appointment orders in favour of the applicants shall be completed within four (4) weeks from the date of communication of this order and I also make it clear that I have passed this order in respect of the 15 candidates, who are parties in this Original Application.

8. With the aforesaid observation and direction, this OA has been disposed of. No costs.

9. Since it was informed by the Learned Counsel on behalf of the applicants during the course of hearing that the respondent authority is going to re-advertise the post on or about 28.01.2019, therefore, the urgent copy of this order may be supplied to both the parties by 31.01.2019 and the Registry is directed to send one copy of this order to all the respondents for that the Learned Counsel on behalf of the applicants shall deposit a necessary cost for sending such copy through Registry within a week.


(A.K. Patnaik)
Member (J)