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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. O.A. 351/00035/2015

Date of order: 10.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Ali Akbar,
Son of Late Abdul Gafoor,
Aged about 49 years,
Residing at Dollygung,
Port Blair - 744 103 and
Working to the post of
Graduate Trained Teacher (Fine Arts),
In the Government Senior Secondary School,
Rangat, Middle Andaman under the
Director of Education, Andaman & Nicobar
Administration, Port Blair; 744101.
2. Unni Pillai,
Son of Late P. Bhaskaran Pillai,
Aged about 50 years,
Residing at Shadipur, Port Blair-744102
Working to the post of
Graduate Trained Teacher (Fine Arts),
In the Government Senior Secondary School,
Rangat, Middle Andaman under the
Director of Education, Andaman & Nicobar
Administration, Port Blair; 744101.
3. P. Dharam Raj,
Son of Late P. Poochi,
Aged about 49 years,
Residing at Hut Bay, Little Andaman-744207
Working to the post of
Graduate Trained Teacher (Fine Arts),
In the Government Senior Secondary School,
Rangat, Middle Andaman under the
Director of Education, Andaman & Nicobar
Administration, Port Blair; 744101.
4. B. Parmeswer Rao,
Son of B. Chinnaiah,



Aged about 48 years,
Residing at Dollygung, Port Blair-744103,
Working to the post of
Graduate Trained Teacher (Fine Arts),
In the Government Senior Secondary School,
Rangat, Middle Andaman under the
Director of Education, Andaman & Nicobar
Administration, Port Blair; 744101.

S. S. Mohan Rao,
Son of S. Chinnodu,
Aged about 48 years,
Residing at Haddo, Port Blair- 744101
Working to the post of
Graduate Trained Teacher (Fine Arts),
In the Government Senior Secondary School,
Rangat, Middle Andaman under the
Director of Education, Andaman & Nicobar
Administration, Port Blair; 744101.

... Applicants

- V E R S U S -

1. Union of India,
Service through the Secretary,
Government of India,
Ministry of Human Resource Development,
Department of Education,
Shastri Bhawan, New Delhi - 110 001.
2. The Andaman & Nicobar Administration
Service through the Lieutenant Governor,
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair - 744 101;
3. The Chief Secretary,
Andaman & Nicobar Administration,
Port Blair - 744 101;
4. The Secretary (Education),
Andaman & Nicobar Administration,
Port Blair - 744 101;

5. The Director of Education,
Andaman & Nicobar Administration,
VIP Road,
Port Blair - 744 101.

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.. Respondents

For the Applicants : Mr. P.C. Das, Counsel
Mr. T. Maity, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-

"(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.

(b) To quash and/or set aside the impugned notification published by the Andaman & Nicobar Administration, Education Department in the Daily Telegrams newspaper dated 12.2.2015 for filling up of the vacancies to the post of Post-Graduate Teachers (Fine Arts) on Direct Recruitment basis without considering the claims of the present applicants for promotion in the said post despite the several orders passed by this Hon'ble Tribunal as well as Hon'ble High Court at Calcutta and in spite of the assurance given by the respondent department in the office order dated 12th November, 2009 they have stated that the applicants shall be promoted in due course subject to availability of posts under departmental quota in the cadre of Post-Graduate Teachers (Fine Arts) and also strictly in terms of revised Recruitment Rules as and when notified.

(c) To pass an appropriate order directing upon the respondent authority to consider the promotion of all the

applicants to the post of Post-Graduate Teachers (Fine Arts) in the pay scale of Rs. 6500-10500/- (pre-revised) and revised at the rate of Rs. 9300-34800/- with Grade Pay of Rs. 4800/- as because they have possessed all the requisite qualifications in respect of the said teachers and their seniors has already got promotion to that post and the applicants also discharging duty and function to the post of Post-Graduate Teachers (Fine Arts) for more than one decade;

(d) To pass an appropriate order directing upon the respondent authority to grant pay scale of Rs. 6500-10500/- in favour of the applicants those who are discharging duties and function to the post of Post-Graduate Teachers (Fine Arts) till the Recruitment Rules is finalized in respect of the post of Post-Graduate Teachers (Fine Arts) in the light of the direction of this Hon'ble Tribunal dated 20.9.2008 under paragraph 11 of the said order;

(e) Respondents be directed to frame the Revised Recruitment Rules to the post of Post-Graduate Teachers (Fine Arts) in the light of the various orders passed by this Hon'ble Tribunal as well as Hon'ble High Court at Calcutta and till such time, the respondents be restrained from making any direct recruitment in the light of the earlier order passed by this Hon'ble Tribunal to the post of Post-Graduate Teachers (Fine Arts) throughout the Islands;

(f) Costs;

(e) Any other appropriate relief or reliefs as Your Lordships may deem fit and proper."

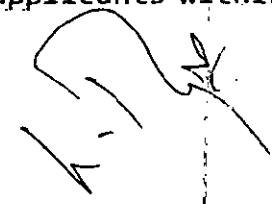
3. This case is having a chequered career of its own. The applicants herein along with some other persons earlier filed O.A. No. 48/AN/2006 in Central Administrative Tribunal, Calcutta Bench seeking relief for getting promoted to the post of Post Graduate Teacher (PGT) (Fine Arts) in Education department of Andaman & Nicobar Islands. In that O.A. the Central Administrative Tribunal

passed certain orders. The operative portion of the said order is extracted hereunder for ready reference:-

"12. Since a Masters degree is essentially required for the post of PGT, the Recruitment Rules to be drawn up should also carry a proviso allowing existing GTTs to avail of promotion quota under such RR provided they acquire a Masters Degree in 5 years time. This should be given as a one time measure only so that the applicants who have been working as GTTs for 18 years are given the benefit of their long service. This proviso has to be there since neither under Direct Recruitment nor under promotional quota of recruitment rules relaxation of qualification, namely that of a Masters Degree, cannot be given. Even under the promotion quota only relaxation of age is permissible and not in terms of qualification. The Hon'ble High Court in its judgment in WPCT No. 151/2005 has also clearly mentioned meeting of the eligibility criterion on which there must be no compromise."

4. Thereafter also no promotion was given to the applicants whereupon another O.A. No. 101/AN/2008 was filed before Central Administrative Tribunal, Calcutta Bench seeking almost the same relief whereupon this Bench passed the order. The operative portion of it would run thus:-

"4. The Ld. Counsel for the respondents would argue that for framing of Recruitment Rules, they may require some clarification and advice from the competent authority. The Ld. Counsel for the applicants submits that till such time they may be considered for grant of higher pay scale. However, the Ld. Counsel for the respondents submits that they are very much ardent in framing the Recruitment Rules as directed by the Tribunal but it may require some time. At this point of time we make it clear that the applicants are at liberty to make a comprehensive representation to the competent authority within one month and on receipt of such representation, the respondent No. 5 or any other competent authority shall consider and dispose of such representation with a speaking order and communicate the same to the applicants within three



months thereafter. For that purpose, the applicants are directed to forward the relevant documents/orders along with copy of the representation to the said authority. The Ld. Counsel for the applicant has also taken our attention to the decision recorded in O.A. 48/AN/2006 that if they are eligible, which also may be looked into while considering the case of the applicant."

5. Even then no promotion was given to the applicant. Thereafter this present O.A. has been filed seeking the same relief because the applicants could not get any relief from the respondents despite repeated persuasions made by them to the authority.

6. The Ld. Counsel for the applicant could advance his arguments which could succinctly and precisely be set out thus:-

The current RRs is dated 20.10.2010. The relevant portion of the RR is extracted hereunder for ready reference:-

2. Post Graduate Teacher (Fine Arts)

Essential:-

1. Master's Degree in Fine Arts with specialization in Painting from a recognized university or its equivalent.

OR

Graduation/Diploma in Fine Arts/Drawing and Painting as one of the subjects of minimum 5 years course duration from a recognized institute / university.

Desirable:-

1. Doctorate Degree in the subject concerned.

OR

2. Three years Teaching experience in the subject concerned from a recognized institution."

7. The Ld. Counsel for the applicant placing reliance on the extracted portion of the RR (Supra) would point out that his clients

namely the appellants are Graduates in Fine Arts and they underwent study in Drawing and Painting also as required under the RR. In fact their Graduation was for five years from a recognized University. They are having experience of almost 18 years of teaching Fine Arts.

8. In fact, the Ld. Counsel for the applicant would argue that even though they were not in stricto sensu designated as PGT in Fine Arts the administration extracted work from them as PGT (Fine Arts). As such, they satisfied all the requirements of the RRs, but they have not been given promotion. As such, he was praying for a positive direction to the respondent authorities to constitute DPC for considering the promotion. According, to him there are vacancies still existing in the post of PGT (Fine Arts).

9. Per contra, the Ld. Counsel for the respondent authorities placing reliance on the reply, more essentially on the para 6.1 and 6.2 would develop his arguments that the applicants are not satisfying the requirements of the RRs and they are not having the requisite qualification as per the RRs for being promoted to the post of PGT (Fine Arts). Accordingly, he would pray for the dismissal of the O.A.

10. The point for consideration is as to:

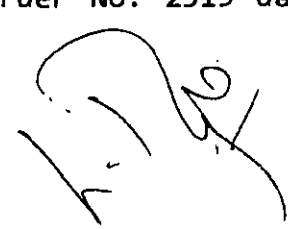
(i) whether the applicants are having the requisite qualification



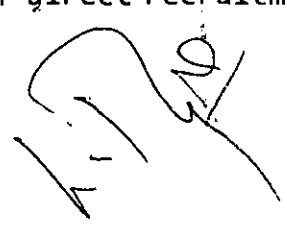
as per the RRs to get promoted to the post of PGT (Fine Arts)
And (ii) Whether there are vacancies to be filled up ?

11. Both the points are taken up together as they are interlinked and interconnected with each other.

12. At the outset itself we would like to highlight and spotlight the fact that the RRs of 2010 referred to supra contemplate at the first instance a Master Degree in Fine Arts; alternatively, Graduate/Diploma in Fine Arts, Drawing & Painting as one of the subjects, in the five years course. The Ld. Counsel for the applicants drawing our attention to annexure A-17, would develop his argument by pointing out that unipillai the applicant No. 2 is possessing the bachelor degree in Fine Arts which is a five years course. Even in the year 1991 he acquired that qualification and he has been in service as Graduate Trained Teacher and virtually performing his duties as PGT (Fine Arts). Similarly the other applicants are also having the qualifications. Despite the query raised by this Bench, the Ld. Counsel for the respondents could not point of anything that this specific contention raised by the applicant was refuted in the reply. We are, therefore, of the view that the reply is general in nature. Over and above, that the Ld. Counsel for the applicant drawing our attention to page 123 of the paper book, namely the Office Order No. 2519 dated



18.6.2012, would submit that some of the GTT were given promotion to the post of PGT (Fine Arts) during the year 2012, and it is a fact that some among them, happened to be applicants, in the previous O.A. As such, those promotees are similarly circumstanced and placed persons like the applicants. We could see prima facie and ex-facie from the arguments as put forth by the Ld. Counsel for the applicant, the eligibility of the applicants for the post of PGT (Fine Arts) and no contrary evidence could be found from the reply. Trite law as it is, that the RRs as it existed at the time of the arising of the vacancies, should be applied. To put it in single syllabled words, the rule as it stood in force as on the date of arising of the vacancies should be followed. No doubt, both sides in unison would submit that in 2010 as referred to supra, RRs emerged in respect of the post of PGT (Fine Arts); in such a case those RRs have to be applied and the Ld. Counsel for the applicant is having no quarrel over the said RRs. However, he would stress upon the fact that if at all his clients could satisfy those requirements, they could be promoted as otherwise the applicants would be having no grievance at all. It is also an incontrovertible and indebutable fact that unless vacancies are there could be no promotion. The RRs provide for 50:50 ratio, for direct recruitment and promotion.



12. In view of the discussion supra we are of the firm opinion that the following direction could be given to the respondents:-

The respondents are directed to consider within a period of three months from the date of receipt of a copy of this order as to whether the applicants do possess the requisite qualification prescribed under the RRs of 2010 and they are also expected to consider about the vacancies and if vacancies do exist and any one of the applicants or the applicant also do possess the requisite qualification, then DPC shall be constituted for considering their promotion on merits and accordingly the matter shall be processed.

13. Ordered accordingly.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(D)

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