

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00404/2018

Tuesday, this the 26th day of February, 2019

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

1. Sudheesh K.B, aged 37 years
S/o.Bhuvanendran
Post Graduate Teacher (Commerce)
Mahathma Gandhi Senior Secondary School
Androth, Union Territory of Lakshadweep
Residing at Androth
2. Balakrishnan.V, aged 42 years
S/o. P.V.Kunhikannan
Post Graduate Teacher (Economics)
MGSS Androth, Union Territory of Lakshadweep
Residing at Androth
3. Shameema Makkuttathil, aged 41 years
S/o.Ali Akbar, Post Graduate Teacher (Malayalam)
J.N.Senior Secondary Schook, Kadamat
Union Territory of Lakshadweep
Residing at Ramlath Manjel
Androth, Union Territory of Lakshadweep **Applicants**

(By Advocate – Mrs.Shameena Salahudheen)

V e r s u s

- 1 Union of India represented by the
Secretary, Ministry of Home Affairs
North Block, New Delhi – 110 012
2. The Administrator
Union Territory of Lakshadweep
Kavarathi – 682 555
3. The Director of Education
Department of Education
Union Territory of Lakshadweep
Kavarathi – 682 555 **Respondents**

**(By Advocate – Mr.M.K.Padmanabhan Nair,ACGSC for R 1 &
Mr.S.Manu for R 2&3)**

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This Original Application having been heard and reserved for orders on 13.2.2019, the Tribunal on 26.2.2019 delivered the following:

ORDER

Per: Mr.Ashish Kalia, Judicial Member

Original Application No.181/00404/2018 is filed by Mr.K.B.Sudheesh, Post Graduate Teacher (Commerce) and two others. Applicants are aggrieved by the rejection of their claim for regularisation by the 1st respondent. The reliefs sought in the Original Application are as follows:

“I) Call for the records leading to Annexure A-11 and set aside the same.

II) Declare that the applicants are entitled for regularisation as Post Graduate Teachers.

III) Direct the 1st respondent to reconsider the claim of the applicants in the light of Annexure A5 & A8 within a time limit as prescribed by this Tribunal.

IV) Such other relief as may be prayed for and this Tribunal may deem fit to grant.

V) Grant the cost of this Original Application.”

2. The brief facts of the case are as follows:

The applicants are mainlanders and are working as Post Graduate Teachers (PGT for short) in the Higher Secondary Schools of Lakshadweep since 2003 and 2005 respectively. Applicants were selected by duly constituted selection committee against sanctioned post in regular cadre on 23.7.2005, 6.8.2005 and 21.7.2003 respectively. It is further submitted that

in the previous years, the teachers who were appointed on contract basis had continued for two years and regularised in service vide order dated 4.5.1994 (Annexure A-3). The applicants are claiming for the same benefits. As per Recruitment Rules 1993 (Annexure A-4) as amended by notification dated 18.3.2000, 50% of the vacancies were to be filled up by 'Direct Recruitment' and the remaining 50% by promotion, and failing both, by Deputation including short term contract. The first applicant and 2nd applicant along with some others, after filing a representation, filed O.A 163/2006 before this Tribunal. This Tribunal by order dated 21.9.2007 directed the respondents to take up the matter with the Ministry of Home Affairs, as had been done in Annexure A3, for taking a policy decision in the matter and till such decision was taken the applicants were permitted to continue on the terms and conditions as stipulated in the contract and their services shall not be dispensed with till such decision is taken (Annexure A-5). The third applicant was appointed as Post Graduate Teacher (Malayalam) in the Govt. Higher Secondary School at Agatti right from the year 2003 pursuant to the selection conducted by the selection committee. She filed O.A 477/2008 claiming regularisation. As per order dated 7.7.2009, that O.A was disposed of by granting her similar benefits as flowing from the orders of the Tribunal in O.A 163/2006 (Annexure A-6).

3 In the meanwhile, Lakshadweep Administration issued a fresh notification for selection to the post of PGT on contract basis for the year 2015-16. In the said selection though one Sithunnisabi secured more marks than the 3rd applicant, she was not given appointment on the basis of the

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order in Annexure A-6 and the 3rd applicant was appointed. This was challenged by filing o.A 74/2015 and though pleadings were adverted on behalf of the 3rd applicant, the Tribunal found that she is not entitled to get appointment as she is not an islander and the post is reserved for Islanders (Annexure A-7). Being aggrieved by the same, 3rd applicant filed OP(CAT) 50/2016 against Annexure A-7. The same was disposed off holding good the orders of the Tribunal in O.A 163/2005 and O.A 477/2008 (Annexure A-8). In the meantime, another three persons who were islanders appointed on contract basis, filed O.A 1023/2012 and the same was dismissed (Annexure A-9). The applicants therein preferred appeal against Annexure A-9 vide O.P(CAT) 109/2017 and the same was also dismissed (Annexure A-10). Vide Annexure A-11 order, first respondent rejected the claim of the applicants' for regularisation. Hence they approached this Tribunal for redressal of their grievances.

4. Notices were issued and the respondents entered appearance through their counsel and filed reply statement. Standing Counsel for the Lakshadweep Administration also filed reply statement. It is submitted therein that the applicants were appointed purely on contract basis as Post Graduate Teachers in Higher Secondary Schools of Lakshadweep and the appointment letters and contracts signed by the applicants clearly spelt out that appointment is purely on contract basis on a consolidated remuneration and do not confer any legal right of regularization in favour of any individual or person, and granting the same would go beyond the terms of the contract. Applicants were willfully agreed the same. Though the

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applicants were engaged as per Recruitment Rules for the post of PGT in terms of sub clause-c i.e, on short term contract, do not confer any right of regularisation. Hence, respondents pray for dismissing the Original Application.

5. Heard Mrs.Shameena Salahudheen, learned counsel for the applicants and Mr.M.K.Padmanabhan Nair,ACGSC, learned counsel for the respondent no.1 and Mr.S.Manu, learned counsel for respondent nos.2&3. Perused the records.

6. During the course of argument, learned counsel for the applicant submitted that the term 'short term contract' is misleading and misinterpreted. There can never be a short term contract of employment for any applicant in the Original Application. In reply to this, learned counsel for the respondents has submitted that the word 'short term contract' has to be read in conjunction with deputation and not disjunctively. For example, only if a person is on deputation then he can be recruited on a short term contract. Therefore, being on deputation is a pre-requisite to take the benefit of mode of recruitment given in sub-clause (c). Thus the word including short term contract” only qualifies or explain the word deputation and it can not be said that it is an appointment on short term contract. Therefore, the contention of the applicants that they were engaged on short term contract in terms of recruitment rules as amended on 18.3.2000 is found to be bereft of any merit.

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7. The terms of the contract for engaging these Teachers are as per the terms and conditions of the contract only. There cannot be any explanation to this. We are in agreement with the contentions raised by the respondents in this Original Application. The admitted factual position is that the applicants are engaged only on contract basis in terms of the Recruitment Rules which provides 50% of the vacancies were to be filled up by Direct Recruitment and the remaining 50% by promotion and failing both, by deputation including short term contract. There is no ambiguity in the Recruitment Rules which clearly stipulates that if both the condition of direct recruitment and promotion not fulfilled, then only personnel on contract basis will be engaged.

8. The Hon'ble Apex Court in the case of **R.N.Nanjundappa v. T.Thimmaiah & Ors** (AIR 1972 SC 1767), the Supreme Court observed that regularization is not itself a mode of recruitment and any act in the exercise of executive power of the government cannot override rules framed under Article 309 of the Constitution of India. In the case of **State of Orissa v. Sukanti Mahapatra** (AIR 1993 SC 1650), the Supreme Court has observed that assuming that their having served for long years is a valid reason for regularization, that without any thing more, will not meet the requirement of the action being in public interest and what has been done under the impugned orders is to be regularize the illegal entry into service as if the Rules were not in existence. In another case of **K.C.Joshi v. Union of India** (AIR 1991 SC 284), the Supreme Court observed that the ad-hoc appointees cannot be put on a higher pedestal over the candidates who stood

the test of merit and became successful in a competitive recruitment and secured ranking according to the merit in the approved list of candidates. In the case of **State of Haryana and others v. Piara Singh and others** (1992 SC 2130), the Supreme Court observed that direction to regularize ad-hoc appointments, work charged employees would only result in encouraging of unhealthy practice of back door entry-what can not be done directly can not be allowed to be done in such indirect manner. In the case of **Dr.M.A Haque v. Union of India** (1993 2SCC 213), the Supreme Court held that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commission are permitted, it will open a back-door for illegal recruitment without limit. In the case of **Dr.Arundhati.A.Pargaonkar and another v. State of Maharashtra** (AIR 1995 SC 962), the Apex Court has held that a continuous service by itself do not give rise to the claim of regularisation.

9. All these judgments of the Hon'ble Apex Court have categorically stated that the practice of regularization of personnel appointed on contract basis/ad-hoc basis is considered as a back door entry. In the present case, there is no provision in the Recruitment Rules made by the Lakshadweep Administration for regularization of employees who are working on contract basis. Thus we are of the view that there is no merit on the side of the applicants or the applicants have failed to convince us as their appointment is purely on contractual basis which clearly stipulates the terms of appointment. As they agreed the terms and conditions of the contract when

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they joined the said post, now they cannot claim that they should be regularized.

10. There is no merit in the present Original Application. Hence the O.A is liable to be dismissed. Ordered Accordingly. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - A true copy of the appointment order No.F.No.18/6/2003 Edn/Estt dated 29.10.2005 issued to the first & second applicant.

Annexure A2 - A true copy of the appointment order No.F.No.18/61/2003 Edn/Estt dated 21.07.2003 issued to the 3rd applicant

Annexure A3 - A true copy of the Regularisation order F.No.18/38/93 Edn dated 4/5/1994 with covering letter

Annexure A4 - A true copy of the Lakshadweep Education Department (Post Graduate Teacher Group B) (Non-Gazetted) Recruitment Rules 1993.

Annexure A5 - A true copy of the order dated 21st September 2007 in O.A 163/2006 of this Tribunal

Annexure A6 - A true copy of the order dated 7.7.2009 in O.A 477 of 2008 of this Tribunal

Annexure A7 - A true copy of the order dated 25.1.2016 in O.A 181/00074/2015 of this Tribunal

Annexure A8 - True copy of the judgment in WP(C) No.34762 of 2007 dated 26.7.2016 delivered by the Hon'ble High Court of Kerala

Annexure A9 - A true copy of the common order dated 15.10.2015 in O.A No.1023 of 2012 and connected cases passed by this Tribunal

Annexure A10 - True copy of the judgment in OP(CAT) No.109 of 2017 dated 20.7.2017 delivered by the Hon'ble High Court of Kerala

Annexure A11 - A true copy of the Order No.U-14012/4/2017-ANL dated 6th February 2018, along with the communication letter No.F.No.36/14/2006-Edn/217 dated 14.2.2018

Annexure A12 - A true copy of the Contract Employment Notice No.F.No.6/1/2018-Edn/Estt(1) dated 15.5.2018 issued by the 3rd respondent

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