

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00335/2017

Original Application No. 181/00403/2018

Original Application No. 181/00654/2018

Tuesday, this the 20th day of August, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hon'ble Mr. Ashish Kalia, Judicial Member

1. Original Application No. 181/00335/2017 -

Mansoor Beegum C.N.,

aged 36 years,

W/o. Najmuddeen,

Residing at : Chariyannalal House, Kalpeni Island – 682 557,

Union Territory of Lakshadweep.

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Applicant

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep,
Lakshadweep Administration,
Kavaratti – 682 555.

2. The Director, The District Institution of Education and Training,
(DIET), Department of Education, Kavaratti – 682 555,
Union Territory of Lakshadweep.

3. The Secretary (Education), Department of Education,
Kavaratti – 682 555,
Union Territory of Lakshadweep.

4. The Principal, The District Institution of Education and Training,
(DIET), Department of Education,
Kavaratti – 682 555,
Union Territory of Lakshadweep.

5. Shri Ayoob, Meppada Illam,
Agati Island – 682 553,
Union Territory of Lakshadweep.

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Respondents

[By Advocate : Mr. S. Manu (R1-4)]

2. **Original Application No. 181/00403/2018 -**

Mansoor Beegum C.N.,
Aged 37 years,
W/o. Najmuddeen,
residing at Chariyannalal House,
Kalpeni Island-682 557,
Union Territory of Lakshadweep.

..... **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep,
Lakshadweep Administration,
Kavaratti – 682 555.
 2. The Director, The District Institution of Education and Training,
(DIET), Department of Education, Kavaratti – 682 555,
Union Territory of Lakshadweep.
 3. The Secretary (Education), Department of Education,
Kavaratti – 682 555,
Union Territory of Lakshadweep.
 4. Shri Ayoob, Meppada Illam,
Agati Island 682 553,
Union Territory of Lakshadweep.
 5. The Secretary to the Government of India,
Ministry of Human Resource Development,
New Delhi – 110 001.
- **Respondents**

**[By Advocates : Mr. S. Manu (R1-3),
Mr. K.B. Gangesh (R4) and
Mr. M.K. Padmanabhan Nair (R5)]**

3. **Original Application No. 181/00654/2018 -**

1. Ahamed Abdul Jalal K.P.,
Aged 32,
S/o. K. Cheriya Koya,
Kalpeniyattiyoda (House), Kiltan Island, UT of Lakshadweep.
 2. Mohammed Nazer K.K.,
Aged 34,
S/o. Anther A.K.,
Kailiyammakada House, Kadamat Island, UT of
Lakshadweep.
- **Applicants**

(By Advocate : Mr. P.V. Mohanan)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. The Director of Education,
Union Territory of Lakshadweep,
District Institute of Education and Training,
(DIET), Department of Education,
Kavaratti – 682 555.
3. The Secretary, Department of Education,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
4. Union of India, represented by Secretary,
Ministry of Human Resources Development Department,
North Block,
New Delhi – 110 012.
5. Rahmath Beegum M.S., D/o. M.K. Kunji Koya,
Melasurambi House, Kadmat Island,
Lakshadweep – 682 556. **Respondents**

**[By Advocates : Mr. S. Manu (R1-3),
Mr. K.B. Gangesh (R4) and
Mr. M.K. Padmanabhan Nair (R5)]**

These applications having been heard on 7.8.2019, the Tribunal on 20.08.2019 delivered the following:

ORDER

Per Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member –

OAs Nos. 181-335-2017 and 181-403 and 654-2018 have common points of fact and law involved and hence are being disposed of through this common order.

2. The applicant in OA No. 181-335-2017 and OA No. 181-403-2018 is one and the same and she is a Post Graduate degree holder with M.Ed

qualification. The 2nd respondent issued a notification Annexure A1 inviting applications for recruitment by deputation/direct recruitment to the post of Lecturers. In terms of Annexure I to Annexure A1 in OA No. 181-335-2017 the essential qualification is Master's degree in Physics, M.Ed. or degree in teachers education. In addition at least three years experience of teaching in a school preferably elementary school/ETEI was also required. The experience of active involvement in in-service/continuing/distance education of teachers or educational extension was also required. The applicant responded to the said notification. In the check list published (Annexure A2 in OA No. 181-335-2017), the applicant's name was shown at serial No. 5. The respondents considered the 4th respondent (in OA No. 181-403-2018) in preference to the applicant duly taking into account his experience certificate which was relating to the period when he was a student for M.Sc./B.Ed. The applicant submitted several representations to the respondents but there was no response to any of his representations. The 2nd respondent later issued another notification dated 24.3.2017 (Annexure A14 in OA No. 181-335-2017) titled contract employment notice wherein apart from other posts, the very same vacancy of Lecturer notified in Annexure A1 (OA No. 181-335-2017) was also notified for appointment on contract basis. In this notification the requirement of experience in teaching is not shown as essential qualification. The applicant submits that in case the process initiated in terms of Annexure A14 (OA No. 181-335-2017) is finalized, substantial prejudice, irreparable injury and recurring monthly losses would be caused to her. Aggrieved the applicant filed OA No. 181-335-2017 seeking quashing of Annexure A14 and further to declare that the

3 years essential experience for the post of Lecturer to be acquired after possessing the essential educational qualification as prescribed for the post is arbitrary, discriminatory, irrational and unreasonable. In OA No. 181-403-2018 she also sought a relief to declare that she is eligible to be considered for appointment to the post of Lecturer (Teacher Education).

3. This Tribunal vide interim order dated 26.4.2017 in OA No. 181-335-2017 directed the respondents to consider the applicant for the post notified without prejudice to her right to be considered for recruitment as per Annexure A1 notification also. Further vide order dated 21.1.2019 in OA No. 181-403-2018 an interim order was passed to maintain status quo.

4. The applicants in OA No. 181-654-2018 are also Post Graduate degree holders with M.Ed qualification. By notification dated 12.1.2008 the District Institute of Education and Training framed the Department of Education [Lecturers Group-B (Non-Gazetted)] Recruitment Rules, 2007 (Annexure A8 in OA No. 181-654-2018) wherein in Schedule I and II relating to Lecturer (Planning & Management) and Lecturer (Teacher Education) provides the experience criteria of both the posts. This Annexure A8 was further amended by Recruitment (Amendment) Rule, 2017 (Annexure A9 in OA No. 181-654-2018) inserting a note to the effect that the experience should be acquired after possessing the essential educational qualification prescribed for the post. Annexure A9 is not in consistent with Annexure A7 guidelines framed by the National Council for Technical Education. The respondents by employment notice dated

14.3.2018 notified one post of Lecturer (Planning & Management) and one post of Lecturer (Teacher Education) in Physics. Apart from the essential qualification fixed for the post a note was added to the effect that the essential experience should be acquired after possessing the essential educational qualifications for the post. The applicants applied for the posts. However, in the checklist published it was informed that the applicants do not possess the essential teaching experience as per Annexure A in the notification. Accordingly, the applicants were not permitted to appear in the written test. The applicants submitted representations to the respondents contending the above facts. However, the 2nd respondent rejected the representations stating that there is no merit in the representations. Aggrieved the applicants have filed this OA seeking relief to declare that the essential experience for the post of Lecturer to be acquired after possessing the essential educational qualification as prescribed for the post is illegal, violative of Articles 14 and 16(1) of the Constitution of India and contrary to the guidelines of National Council for Technical Education and consider their applications for appointment to the posts pursuant to notification dated 14.3.2018 by permitting them to appear in the written examination and to quash Annexure A14.

5. This Tribunal vide interim order dated 19.12.2018 in OA No. 181-654-2018 directed the respondents to permit the applicants to participate in the written examination and their qualification will be subject to the final outcome of the Original Application.

6. The respondents filed their reply statements contending that the UT of Lakshadweep invited applications from eligible local candidates for the post of Lecturers in various subjects. Since all the applicants were not having the required experience, their applications were rejected. The committee constituted by the Lakshadweep Administration for appointment to the vacant posts recommended for modification of Recruitment Rules as per the new guidelines of the Ministry of Human Resources Development, Government of India. Accordingly, the new Recruitment Rules were framed for the posts of Lecturer and published in the Gazette as well as the Lakshadweep official website. As per the new Recruitment Rules, the respondents invited applications from eligible candidates for the post of Lecturer in Physics and Planning & Management, etc. for the academic year 2017-18 vide notification dated 14.3.2018 and the applicants were among the candidates who applied for the posts. The respondents submit that regular selection process for appointment to the post of Lecturer is in the final stage. The respondents submit that there is absolutely no legal claim or enforceable right for the applicants to feel aggrieved by the note in the amended Recruitment Rules and therefore, pray for dismissing the OAs.

7. Respondent No. 4 in OA No. 181-403-2018 also had filed a reply statement supporting the stand taken by the official respondents in their reply statement and further submitting that the applicant had challenged Annexure A4 notification in OA No. 181-335-2017 which is a contract employment to the post of Lecturer and the aforesaid notification has lost its relevance in the light of Annexure A2 notification (in OA No. 181-403-

2018) issued to the post for regular appointment.

8. Heard Mr. T.C. Govindaswamy, learned counsel for the applicant in OAs Nos. 181-335-2017 and 181-403-2018, Mr. P.V. Mohanan, learned counsel for the applicants in OA No. 181-654-2018, Mr. S. Manu, learned counsel for the Lakshadweep Administration, Mr. K.B. Gangesh, learned counsel for respondent No. 4 in OA No. 181-403-2018, Mr. M.K. Padmanabhan Nair, ACGSC, learned counsel for respondent No. 4 in OA No. 181-654-2018 and Mr. Harikumar G. Nair, learned counsel for respondent No. 5 in OA No. 181-654-2018. Perused the record.

9. Learned counsel for the applicants have relied on the following decisions in support of their contentions:

a) ***Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao & Ors.*** - AIR 1983 SC 852, the apex court held that filling the vacancies that occurred prior to the amended rules would be governed by the old rules and not by the new rules.

b) ***Director S.C.T.I. for Med. Sci. & Tech. v. M. Pushkaran*** – AIR 2008 SC 559, the apex court held that appointment – vacancies of posts of Security Guards advertised – Select list prepared – Appointment made to two or three vacant posts – Subsequent policy decision to contract out services of Guards – Refusal to appoint person in select list on third vacant post in view of new policy – Improper – Selected person was to be offered appointment at a point of time when no policy decision was taken or was even in contemplation – There

was thus no reason to refuse appointment.

10. Learned counsel for the respondents have relied on the following decisions in support of their contentions:

a) ***Indian Airlines Limited v. S. Gopalakrishnan*** – 2001 (2) SCC 362, the apex court held that when in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification.

b) ***State of Uttar Pradesh & Ors. v. Shiv Kumar Pathak & Ors.*** - (2018) 12 SCC 595, the apex court held that there is no manner of doubt that NCTE, acting as an academic authority under Section 23 of the RTE Act, under the notification dated 31.3.2010 issued by the Central Government as well as under Section 12 and 12-A of the NCTE Act was competent to issue notifications dated 23.8.2010 and 11.2.2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule.

c) ***Sreekala Devi Ammal v. Kerala Public Service Commission*** – 2012 (2) KLT 670, the Hon'ble High Court Kerala held that prescribed qualification as to experience shall be one gained after acquisition of educational qualification.

11. OA No.181/403/2018 has lost its relevance in view of the Annexure

A2 notification issued for the post as a regular appointment. In respect of the other two OAs, the lines are drawn between the applicants, who contend that any changes made to the recruitment process, insisting that experience prescribed in the notification has to be gained after acquisition of educational qualification and the respondents as well as Respondent-4 in OA No.403/2018 contending that the respondents are well within their rights to do so. The short point to be considered in these OAs is whether the experience gained as prescribed in the notification is to be gained after acquisition of educational qualification or not. Viewed from this perspective, the judgments referred to by the applicants at para-9 are not germane to the issue under consideration. When a qualification is insisted upon as a prerequisite for being considered for a post, the period of experience also notified is generally understood as having to be acquired after acquisition of the essential qualification. This stand is supported in the three judgments quoted by the respondents at para-10 ante.

12. There is a question that the respondents had chosen to amend the point relating to qualification after initiating the process of recruitment. As is seen at the first instance of calling for applications, there had been little response to the notification. Thereupon, the respondents, for the reason that the NCTE Regulations made the change mandatory, made a marginal change to the effect that the experience required is that gained *after* acquisition of educational qualification. We can see that the recruitment for the post has become a bone of contention between the warring candidates. But this in no way takes away the right of the respondents to

make a necessary change. Even otherwise, this Tribunal also feels that when a certain experience is insisted upon, only the experience gained after acquisition of educational qualification alone can be considered. Facts being as above, we see no merit in the three OAs. OA No.335/2017, OA No.403/2018 and OA No.654/2018 are dismissed. The official respondents will be free to finalise the recruitment in the manner they have proposed.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SD/SA”

Original Application No. 181/00335/2017**APPLICANT'S ANNEXURES**

- Annexure A1** – True copy of notification bearing F. No. 2/7/2009-DIET dated 23.06.2012, issued by the 2nd respondent.
- Annexure A2** – True copy of Check List dated 6.4.2013, issued from the office of the 2nd respondent.
- Annexure A3** – True copy of representation dated 29.4.2013 addressed to the 2nd respondent.
- Annexure A4** – True copy of representation dated 2.5.2013 addressed to the 2nd respondent.
- Annexure A5** – True copy of representation dated 8.10.2013 addressed to the 4th respondent.
- Annexure A6** – True copy of representation dated 14.8.2014 addressed to the Collector-cum-Development & Commissioner, UTL Admn.
- Annexure A7** – True copy of representation dated 2.3.2015 addressed to the Collector-cum-Development & Commissioner, UTL Admn.
- Annexure A8** – True copy of representation dated 2.7.2015 addressed to the 1st respondent.
- Annexure A9** – True copy of representation dated 30.4.2016 addressed to the 1st respondent.
- Annexure A10** – True copy of representation dated 17.11.2016 addressed to the 1st respondent.
- Annexure A11** – True copy of representation dated 1.2.2017 addressed to the 3rd respondent.
- Annexure A12** – True copy of representation dated 1.2.2017 addressed to the 2nd respondent.
- Annexure A13** – True copy of representation dated 1.2.2017 addressed to the 4th respondent.
- Annexure A14** – True copy of contract employment notice bearing F. No. 1/3/2016-DIET dated 24.3.2017, issued by the 2nd respondent.

RESPONDENTS' ANNEXURES

Nil

Original Application No. 181/00403/2018

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of notification bearing F.No. 1/4/2017 dated 14.9.2017 issued by the 1st respondent.
- Annexure A2** – True copy of employment notice bearing NO. 217/2013-DIET (2) dated 14.3.2018, issued by the 2nd respondent.
- Annexure A3** – True copy of notification bearing F. No. 2/7/2009-DIET/286 dated 23.6.2012 issued by the 2nd respondent.
- Annexure A4** – True copy of contract employment notice bearing F. No. 1/3/2016-DIET dated 24.3.2017, issued by the 2nd respondent.
- Annexure A5** – True copy of notification bearing F. No. 2/7/2007-DIET dated 12.1.2008.
- Annexure A6** – True copy of norms downloaded from the website of National Council for Teacher Education.
- Annexure A7** – True copy of notification bearing F. No. 2/7/2007-DIET (Part-2) dated 9.10.2018.
- Annexure A8** – True copy of notice bearing F. No. 18/1/2018-Edn/Estt. dated 8.1.2019.

RESPONDENTS' ANNEXURES

- Annexure R1(a)**- True copy of the employment notice F.No. 2/7/2013-DIET(2) dated 14.3.2018 issued by the Department of Education, Union Territory of Lakshadweep.
- Annexure R1(b)**- True copy of the notification F. No. 1/4/2017-DIET dated 14.9.2017.
- Annexure R1(c)**- True copy of the restructuring and reorganization of the Central Sponsored Scheme on Teacher Education, Guidelines for Implementation June,2012 issued by the Government of India, Ministry of Human Resource Development, Department of School Education and Literacy.

Annexure R4(a)- True copy of rank list dated 8.1.2019 published by the 3rd respondent for the post of Lecturer (Teacher Education) in Physics.

Original Application No. 181/00654/2018

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the B.Ed certificate of 1st applicant.
- Annexure A2** – True copy of the M.Ed certificate of 1st applicant.
- Annexure A3** – True copy of the details of teaching experience of the first applicant.
- Annexure A4** – True copy of the B.Ed certificate of 2nd applicant.
- Annexure A5** – True copy of the M.Ed certificate of 2nd applicant.
- Annexure A6** – True copy of the details of teaching experience of the second applicant.
- Annexure A7** – True copy of the qualification set in by NCTE for the post of Lecturer (Planning and Management) and Lecturer (Science).
- Annexure A8** – True copy of the Scheduled I and II relating to Lecturer (Planning and Management) and Lecturer (Teacher Education) of the Recruitment Rules, 2007 F. No. 2/7/2007-DIET dated 12.1.2008.
- Annexure A9** – True copy of the Recruitment (Amendment) Rule, 2017 F. No. 1/4/2017-DIET dated 14.9.2017.
- Annexure A10** – True copy of the notification F. No. 2/7/2013-DIET (1) dated 14.3.2018.
- Annexure A11** – True copy of the notification F. No. 2/7/2013-DIET (2) dated 14.3.2018.
- Annexure A12** – True copy of the check list F. No. 2/7/2007-DIET (Part 2) dated 29.6.2017.
- Annexure A13** – True copy of the representation filed by the first applicant dated 12.4.2018.
- Annexure A14** – True copy of the proceeding F. No. 2/7/2007-DIET (Part 2) dated 15.6.2018.

Annexure A15 – True copy of the notice F. No. 2/7/2007-DIET (Part-2) dated 9.10.2018 along with reject list.

Annexure A16 – True copy of the notice F. No. 18/1/2018-Edn/Estt dated 29.11.2018 proposing to conduct Written Test at Kavaratti Island on 31.12.2018.

Annexure A17 – True copy of the notice F. No. 18/1/2018-Edn/Estt dated 8.1.2019.

RESPONDENTS' ANNEXURES

Annexure R1(a)- True copy of the relevant portion of notification dated 7.8.2012 of the Director of the Public Instructions, Thiruvananthapuram.

-X-X-X-X-X-X-X-X-X-