

**(2012) 09 CAL CK 0057**

**Calcutta High Court (Port Blair Bench)**

**Case No:** WPCT No. 219 of 2012

Ms. P. Ummu Habeeba

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision:** Sept. 19, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** Jayanta Kumar Biswas, J; Harish Tandon, J

**Bench:** Division Bench

Advocate: Anjili Nag, for the Appellant; S.K. Mandal for the Official Respondents and Mr. M. Tabraiz for the Private Respondents, for the Respondent

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### **Judgement**

Jayanta Kumar Biswas, J.

The petitioner in this WPCT under art. 226 dated March 26, 2012 is questioning an order of the Central Administrative Tribunal, Calcutta Bench (Circuit at Port Blair) dated January 20, 2012 (WPCT p.134) dismissing her OA. The petitioner filed the OA questioning the selection of the private respondents therein for appointment to the post of GTT (Maths) in the Directorate of Education, A & N Islands, Port Blair. The petitioner was one of the candidates for the post. Selection of the private respondents was questioned, inter alia, on the grounds that they did not possess one of the essential educational qualifications.

2. In the recruitment notice published in newspaper on June 20, 2008 it was mentioned that one of the essential educational qualifications for the post was a Bachelor's degree from a recognized university or its equivalent in the subject concerned. This was also the relevant provision of the Andaman and Nicobar Administration, Department of Education (Group "B" Non-Gazetted and Group "C" post in the Directorate of Education), Recruitment Rules, 2006 applicable to the recruitment process.

3. The principal question that arose out of the pleadings of parties and the Tribunal was considering was whether the private respondents in the OA possessed the Bachelor's degree from a recognized university or its equivalent in Mathematics. The official respondents contested the OA by filing a reply. The private respondents, though were given notice of the OA, chose not to enter appearance and contest the OA.

4. It is evident from the order of the Tribunal that it decided the principal question involved in the OA on the basis of certain facts revealed by certain office file containing an office note dated July 19, 2010 proposing an amendment to the recruitment rules and produced by the official respondents. It is to be noted that the orders appointing the private respondents in the OA were issued as back as 2008.

5. The facts revealed by the file were not pleaded in the reply the official respondents filed before the Tribunal. The Tribunal specifically considered a part of the office note dated July 19, 2010 that for determining the essential educational qualifications eligibility of the candidates for the post of GTT (Maths) the Department of Education had been following a particular practice for more than three decades.

6. It is evident from para. 14 of the order that the Tribunal decided the principal question involved in the OA relying on the fact revealed by the office note about an existing practice.

7. The relevant part of para. 14 of the order is quoted below:-

14. Coming to the facts of the case we note that 2006 Recruitment Rules do not specifically state as in the case of 2011 Recruitment Rules that the persons concerned must have a major degree in the subject. The notes in the Education department file suggest that this practice had been going on for a long period of 30 years. The decision in N. Suresh Nathan (supra) shows that a practice consistent with the Recruitment Rules which has been followed for a long time should not be unsettled. The decision in Uma Shankar (supra) shows that a technical view of the matter should not be taken.

8. There is no dispute that the sole fundament of the order of the Tribunal was the office note dated July 19, 2010 produced by the official respondents at the time of hearing of the OA. It is not disputed either that the fact revealed by the office note that certain practice had been followed for more than 30 years was nowhere stated in the reply.

9. Since the fact was not stated in the pleading, the petitioner did not get an opportunity of dealing with it that was relied on by the Tribunal. It is not the case that the office file containing the note concerning an around 30-year old practice was made available for inspection, and that after inspecting the file the petitioner decided to proceed with the hearing of the OA.

10. In our view the Tribunal wrongly considered the facts revealed by the office note, because it could not decide the OA referring to and relying on a fact not pleaded by the official respondents in their reply. For these reasons, we set aside the impugned order, allow the WPCT to this extent and order as follows. The Tribunal shall hear the OA afresh and decide the issues involved therein considering the pleadings. Parties will be free to seek amendment of pleadings. No costs. Certified xerox.

Harish Tandon, J.

I agree.