

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 66 OF 2018

DISTRICT : LATUR

Dnyaneshwar s/o Panditrao Kadam,)
Age : 28 years, Occu. : Student,)
R/o : At Dhawalgaon, Tq. Ahmedpuar,)
Dist. Latur & correspondence address)
C/o- Avinash Tainak Nivas, Yeldarkar Colony,)
Wasmat Road, Parbhani.)

.. **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through Secretary,)
Medical Education & Food and Drugs)
Department, Mantralaya, Mumbai.)
2. **The Maharashtra Public Service Commission,)**
Bank of India Building, 3rd Floor,)
Hutatma Chowk, Mumbai. (MH) Through the Secretary.)
3. **The Director,**)
The Directorate of Sports & Youth Services,)
Balewadi, Pune.)
4. **Maharashtra Throwball Association,**)
Through the General Secretary,)
Kiran P. Phulzene, Datey College Road,)
Umasara (Old), Gurumauli Society,)
Yavatmal.)
5. **Sachin S/o Dashrath Wagh,**)
Age Major, Occu. Student,)
R/o : 19, Deeraj Ratanjan Road, Near)
Hanuman Temple, Hattij, Tq. Barshi,)
Dist. Solapur. 413406.)

.. **RESPONDENTS**

APPEARANCE : Shri Kuldeep Patil with Shri Avinash
Deshmukh, Advocate for the Applicant.

: Shri V.R. Bhumkar, P.O. for the Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **29.11.2022**

Pronounced on : **04.01.2023**

O R D E R

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application No. 66 of 2018 has been filed by the sole applicant Shri Dnyaneshwar Panditrao Kadam on 01.02.2018 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985 thereby, seeking relief against impugned order dated 23.01.2018 issued by the respondent No. 2, i.e., the Maharashtra Public Service Commission (*hereinafter referred to as "MPSC"*). At subsequent stages, Miscellaneous Applications were filed by the applicant, which have been mentioned in details in the statement of background facts.

2. Background facts- Gist of the background facts derived from the original application, Affidavits in reply and other written

and oral submissions in the present matter may be stated as follows :-

(a) It is admittedly that 'MPSC' issued advertisement no. 127/2015 dated 26.08.2015 inviting applications from eligible candidates for total number of 48 posts of Food Safety Officer, Group-B on the establishment of Food & Drug Administration, Government of Maharashtra out of which 2 posts were reserved for candidates from Open (Sports) category. The applicant in the present matter, too was a candidate for appointment under Open Sports category.

(b) It is also admittedly that rule position regarding submission of verified sports certificate is as laid down in Government Resolution issued by the School Education and Sports Department G.R. No. बैठक-३४९३/प्र.क.२४९/कीयुसे-२, Mantralaya (Extn.) Mumbai, dated 03.10.2013 (page 30 of paper-book) which prescribes that MPSC should refer Sports Certificate for verification to Commissioner, Sports & Youth Services, Pune of only such candidates who have been selected for interview. *Concerned Sports Associations be directed to submit all documents required for verification within a period of one month failing which the selected*

sports person's candidature should be held to be ineligible. A copy of direction given to Sports Association should be endorsed to concerned sports person too. The relevant part of the said G.R. which is in Marathi, is being quoted for accuracy and ready reference as follows :-

“शासन निर्णय -

महाराष्ट्र लोकसेवा आयोगाच्या पूर्वपरीक्षेसाठी अर्ज करणा-या खेळाडूंची संख्या विचारात घेता त्यांची प्रमाणपत्रे पूर्वपरीक्षेपूर्वी प्रमाणित करणे क्रीडा व युवकसेवा संचालनालयाला शक्य होणार नसल्यामुळे केवळ ज्या खेळाडू उमेदवारांची मुलाखतीसाठी निवड होईल त्या खेळाडूंचीच प्रमाणपत्रे महाराष्ट्र लोकसेवा आयोगाने आयुक्त क्रीडा व युवकसेवा, पुणे यांच्याकडे पाठवावीत. आयोगाकडून त्यानुसार प्रमाणपत्रे प्राप्त झाल्यानंतर त्यांची पडताळणी करून क्रीडा व युवकसेवा संचालनालयाने एक महिन्याच्या कालावधीत त्याबाबतच्या अभिप्रायांसह प्रमाणपत्रे महाराष्ट्र लोकसेवा आयोगास परत पाठवावीत.

२. प्रमाणपत्रांची पडताळणी करण्यासाठी क्रीडा संघटनांकडून आवश्यक असलेली माहिती एक महिन्यांच्या कालावधीत सादर करण्याबाबत संबंधित संघटनांना कळविण्यात यावे. सदर मुदतीत जर संघटनांकडून माहिती प्राप्त झाली नाही तर संबंधित खेळाडूस अपात्र ठरविण्यात यावे. मात्र तसे करताना संबंधित खेळाडूवर अन्याय होऊ नये या दृष्टीने ज्या पत्रान्वये क्रीडा संघटनांकडून माहिती मागविण्यात आलेली आहे त्या पत्राची प्रत संबंधित खेळाडूसही पृष्ठांकित करण्यात यावी जेणेकरून खेळाडू स्वतःही संघटनेकडे माहितीसाठी पाठपुरावा करू शकेल.”

(c) The advertisement No. 127/2015 issued by M.P.S.C. in the present matter too, had mention of instructions for the candidates regarding getting sports certificates verified and submission of the same, as quoted below:

Clause 4.3 of the advertisement prescribed eligibility criteria for category of sports category which reads as follows-

“4.3 Sports category Candidates called for interview should get their sports certificate verified from Directorate of Sports.”

Clause 13 of the advertisement prescribed that-

“13. candidates claiming to be considered for sports category should get their sports certificates verified from the Director, Directorate of Sports, and Youth Welfare before applying for the advertised post.”

Clause 14 of the advertisement prescribed that-

“14. Candidates not submitting all the required original certificates at the time of interview may not be interviewed.”

(d) As stated in para 8 of the Affidavit in Reply submitted by respondent No. 2 i.e., M.P.S.C. on 23.05.2018 results of the screening test were declared on 28.06.2016. By that time, applicant's sports certificate verification report had not been received from respondent no. 3 and therefore, respondent no. 2, vide its letter dated 22.07.2016 (Annexure R-1, page 49 to 50 of paper-book) asked respondent no. 3 about the status of verification of the sports certificate submitted by the applicant. *Respondent*

no. 3 i.e., the Director Sports & Youth Services vide letter dated 22.12.2017 informed respondent no. 2 as well as the applicant that the case of applicant had been closed for want of submission of necessary documents by him. A copy of the said letter dated 22.12.2017 is at Annexure A-5, page 26 of paper-book.

(e) Respondent No. 2 has also stated factual details in para 13 to 16, pages 38 to 40 of paper-book, which clarify the reasons based on which candidature of the applicant was cancelled. These facts are not disputed by the applicant. As per submissions made by respondent no. 2 the applicant, vide his letter dated 29.12.2017 (Annexure A-4, page 21 to 24 of paper book) informed respondent no. 2 that due to delay in submission of necessary documents by Maharashtra Throwball Association, verification of his sports certificate could not be completed. The applicant further requested respondent no. 2 to select him pending submission of verified sports certificate. Maharashtra Throwball Association too, vide its letter dated 29.12.2017, which was addressed to respondent no. 3 with copy endorsed to respondent no. 2, communicated that for some *technical reasons* necessary documents could not be

submitted for verification of sports certificate of the applicant. It may be, therefore, inferred that an incomplete proposal was submitted to respondent no. 3 by the said Maharashtra Throwball Association vide its letter dated 17.11.2015. After the case of applicant was closed by respondent no. 3, the said association requested respondent no. 3 to reopen the case of applicant as the necessary compliance in terms of submission of requisite documents will be completed within a few days (page 28 of paper-book). The applicant too, submitted a follow up letter dated 30.12.2017 based on the letter issued by the Maharashtra Throwball Association addressed to respondent no. 2 to declare his result pending verification of sports certificate by respondent no. 3.

(f) It is observed that one Shri Kiran P. Phulzane, General Secretary, the Maharashtra Throwball Association was listed in array of respondents in the present O.A., but he did not file any affidavit in reply.

(g) Respondent no. 2 has further stated in para 8 of his affidavit in reply (page 36 of paper-book) submitted on 23.05.2018 that following above-mentioned developments,

respondent no. 2, vide the impugned communication dated 23.01.2018 (Annexure A-8, page no. 33-34 of paper-book) informed the applicant that he was interviewed pending submission of verification report of sports certificate. As the applicant has failed to submit necessary documents for verification of his sports certificate during last about one and half years therefore, as per communication dated 11.12.2017 and 22.12.2017 issued by respondent no. 3, his case had been closed by respondent no. 3. Respondent no. 2 further communicated to the applicant that due to failure on part of applicant to get his sports certificate verified, his claim of getting selected stands extinguished and his candidature is being cancelled.

(h) For reference, results of examination showing break-up of marks secured by the candidates in screening test and interview and total marks was published on 31.12.2016 and merit list/select-list was published on 16.01.2017 in which the name of the applicant was shown at serial no. 110 of merit list. Two other candidates of sports category were at merit no. 96 and 107 as depicted in following Table No. 1-

TABLE-1**Depicting Marks Secured by Candidates under Open Sports Category and Merit List Position**

Merit No.	Name of Candidate	Marks Secured	Recommendation
96	Patil Parikshit Pandurang	85	Open Sports 1
107	Patil Ashvini Anil	79	Open Sports 2
110	Dnyaneshwar Panditrao Kadam	78	Waiting list

(i) With reference to TABLE-1, it has been stated by respondent no. 2 that one of the two selected candidates, i.e., Shri Parikshit Patil did not join within stipulated time, therefore, his appointment order had been cancelled vide order date 21.11.2017 and the respondent No. 1 (Originally numbered as respondent No. 4) vide his letter dated 22.11.2017 had requisitioned from MPSC another name from waiting list. As the applicant had not submitted necessary documents for verification of his sports certificate and no other candidate from Open (Sports) Quota was available in waiting list, MPSC de-reserved the post and recommended name of an Open (General) category candidate Shri Sachin Dasharath Wagh from the waiting list of Open category candidates vide letter dated 28.12.2018. This is evident from the copy of the

communication sent by respondent No. 2 addressed to respondent no. 1 dated 28.02.2018 (page 57 of paper-book).

(j) In the above background, the present O.A. No. 66 of 2018 was filed on 01.02.2018. Thereafter, M.A. No. 142 of 2018 in O.A. No. 66 of 2018 filed on 16.04.2018 praying for grant of leave to carry out amendments in the said O.A. Leave for the same was granted by this Tribunal vide Oral Order dated 04.12.2018 and amendment carried out on 14.12.2018 whereby name and address of Respondent No. 1 was amended, name of Respondent no. 4 deleted and serial number of respondents revised, respondent no 5 added, para 14 added to the O.A. and prayer clause G added. *(However, clause "F" is not mentioned which seems to be an inadvertent mistake)*. Another M.A. no 520 of 2018 in O.A. No. 66 of 2018 was filed on 21.12.2018 praying for direction to be issued to respondent no. 3 i.e., Director of Sports & Youth welfare Services, Balewadi Pune to verify the sports certificate of the applicant, if all compliances are made as sought by the respondents and file verification report on record on the next date. Directions as prayed for were issued vide Oral Orders dated 02.01.2019.

3. Relief Prayed For: - The applicant has prayed for relief in terms of para IX of the original application which is reproduced verbatim as follows :-

“IX] THE APPLICANTS, THEREFORE PRAYS THAT,

- (A) *To allow the Original Application.*
- (B) *To hold and declare that, the present applicant is deserves to be appoint as Food Safety Officer, Group “B” from the Open (Sports) Category as per advertisement No. 127/2015 and its result dated 31.12.2016 declared by the respondent no. 2 Maharashtra Public Service Commission.*
- (C) *The order/communication dated 23.01.2018 to the applicant issued by the respondent no. 2 Maharashtra Public Service Commission, may kindly be quashed and set aside and appointment order kindly be issued in favour of the applicant.*
- (D) *Pending hearing and final disposal of the present original application further process for the post of Food Safety Officer, Group “B” from Open (Sports) Category and order or communication dated 23.01.2018 to the applicant may kindly be stayed.*
- (E) *Any other equitable and suitable relief may kindly be granted in favour of applicant in the interest of justice.*
- (F) (it appears that by mistake this number is jumped)
- (G) *The order/ communication dated 08.03.2018 to the respondent no. 5 issued by the respondent no. 2 Maharashtra Public Service Commission to, may be quashed and set aside and appointment order kindly be issued in favour of the applicant.*

(Incorporated vide amendment allowed in MA No. M.A. No. 142 of 2018 in O.A. No. 66 of 2018 filed on 16.04.2018 and Tribunal’s Order dated 04.12.2018).

(H) *The respondent no. 1, may kindly be directed to issue appointment order in favour of present applicant and appoint him as Food Safety Officer, Group "B".*

(Incorporated vide Tribunals Oral Order in M.A. no 520 of 2018 in O.A. No. 66 of 2018 was filed on 21.12.2018 and allowed vide Oral Orders dated 02.01.2019)

4. Details about further proceedings before this Tribunal :-

(a) After having above mentioned facts before itself, this Tribunal had considered reasons to pass Oral Order on 02.01.2019 operative parts of which are as follows. Respondent no. 3 somehow complied with the mandate as is evident from the contents of its letter dated 24.01.2019 (Annexure A-9 of the O.A., page 34 C of the paper book) addressed to respondent no. 2 enclosing the copy of sports certificate dated 31.05.2018, issued by Maharashtra Throwball Association, which is not on letter-head of the Association nor the same has any serial number.: -

"2 Since the present applicant is seeking verification of his sports certificate pending the decision in the present O.A., the res. No. 3- the Director, Directorate of Sports & Youth Services, Balewadi, Pune- is hereby directed to verify the sports certificate of the applicant, if all the compliances are made as sought by the respondents and file verification report on record on the next date.

3. With the above directions, the present M.A. is disposed of without any order as to costs.

4. O.A. no. 66/2018 be put up on board on 06.02.2019 for filing report by res. No. 3- the Director, Directorate of Sports & Youth Services, Pune- as directed above.”

(b) However, respondent No. 3 & 4 (in un-amended O.A.) had maintained their stand and accordingly had filed affidavit in reply on 18.12.2018 and 12.04.2018 respectively which were taken on record on 06.02.2019. By the affidavit in reply, the respondent no. 3 and 4 (in un-amended O.A) had opposed the original application on merit. During hearing that took place on 06.02.2019, the applicant had to bring to the notice of the Tribunal as follows:-

“3. On the other hand, the learned Advocate for the applicant submits that, in fact, sports verification certificate is already issued as mentioned in reply of respondent No. 3 & 4. In view of the fact that there was condition in the advertisement itself that the sports verification certificate is required to be obtained before filing of the application for the post, the dispute between the parties would still remain.

4. In that view of the matter, the learned P.O. seeks time to file affidavit in reply of res. No. 1, if any. In the circumstances, at her request S.O. to 13.03.2019 for filing affidavit in reply of res. No. 1, if any.”

(c) On 19.07.2019 the learned Advocate for the applicant prayed orally seeking leave of the Tribunal to amend the present O.A. and to place on record caste verification certificate (probably, it was meant to place on record

‘Sports certificate verification report’) with specific modification in the prayer clauses. This Tribunal passed Oral Orders on the same day in following words :-

“CORAM: A. R. Chadha, Member (A).

(This matter is placed before the Single Bench due to non-availability of Division Bench)

DATE : 19.07.2019

ORAL ORDER :

Heard Shri A. S. Deshmukh, learned Advocate holding for Shri Kuldeep S. Patil, learned Advocate for the applicant and Smt. S. Deshpande, learned Presenting Officer for the respondents.

2. *Learned Presenting Officer seeks time for filing affidavit in reply.*

3. *Learned Advocate for the applicant seeks leave of the Tribunal to amend the present O.A. and to place on record caste verification certificate along with specific modification in the prayer clauses. Leave as prayed for is granted/ Amendment as prayed for be carried out within a period of 2 weeks and amended copy be supplied to the learned Presenting Officer.*

4. *S. O. to 6.8.2019.*

MEMBER (A)”

(d) Reference is made to a letter dated 05.10.2019 written by respondent No. 1 and addressed to learned C.P.O., which has been cited by the applicant and enclosed at page 33 of paper-book, the respondent No. 1 has informed the learned C.P.O. that in case respondent No. 2 recommends name of the applicant then appointment order

in favour of applicant may be issued following prescribed procedure. Further, the Tribunal had asked learned C.P.O. vide Oral order dated 29.11.2019 whether the post which was originally reserved for Open (Sports) category is still vacant or not. In that background, respondent no. 1 by another letter dated 14.01.2020 addressed to learned C.P.O. informed that the said post is vacant.

(e) The applicant has submitted Additional Affidavit on 02.09.2021 (page 62-76 of paper-book) to the effect that Shri Sachin Dashrath Wagh has already joined as Naib Tahsildar. However, MPSC, vide its letter dated 05.08.2021 at page no. 77 of paper-book, informed the learned CPO that the recruitment process has been concluded and waiting lists too have expired. Learned CPO submitted the said communication from MPSC before this Tribunal on 24.08.2021.

(f) The Tribunal decided vide Oral Order dated 22.10.2021 to examine implication of G.R. dated 02.09.2019. It is realized subsequently that the period of validity of waiting list is of no immediate consequence in the instant matter.

(g) On 15.02.2022 the applicant submitted that he had made fresh representation dated 02.02.2022 to MPSC. A copy of the same submitted on behalf of the applicant was taken on record by this Tribunal for considerations vide the day's Oral Order. Representation dated 02.02.2022 addressed to respondent No. 2, mentions that Sports Certificate of the applicant has been verified by respondent No. 3 Director, Sports & Youth Services and the same has been submitted before this Tribunal on 21.01.2019. As Shri Sachin Wagh from Open (General) category who was given appointment against Open (Sports) quota by de-reserving the post for Sports category, has not joined and the said post is vacant, the applicant's name may be recommended by respondent no. 2 for appointment.

(h) The matter was closed for orders vide Oral Order dated 19.04.2022. However, the constitution of Division bench was changed by the order of Hon'ble Chairperson of this Tribunal in the month of October 2022 by which time order in the present O.A. could not be passed therefore, the matter was re-heard by reconstituted Division Bench on 29.11.2022 and the matter was closed for orders.

5. Analysis of facts on record and oral submissions made by contesting parties :-

(i) The applicant does admit that respondents no. 2 had forwarded sports certificate of the applicant to respondent No. 3 for verification vide letter dated 02.11.2015. Maharashtra Throwball Association could not submit requisite documents for verification of sports certificate of applicant till end of month of December 2017. Thereafter, his case was closed by respondent No. 3 communicated to respondent No. 2 vide letter dated 22.12.2017 (Annexure A-5 of the O.A., page 26 of paper-book). In pursuance of the same, candidature of the applicant was cancelled by respondent No. 2 and communicated to respondent no. 1 and to the applicant.

(ii) It is admittedly that the respondent no. 2 de-reserved the post reserved for Open (Sports) candidate and recommended the name of a candidate from Open (General) category on 28.12.2018 which is as per standard procedure in this regard.

(iii) Further, the respondent Nos. 2, 3 and 4 (in un-amended O.A.) had filed affidavit in reply on 23.05.2018;

18.12.2018 and 12.04.2018 respectively elaborating reason of the applicant not being eligible for any relief, still this Tribunal has further asked the learned C.P.O. question such as, whether the post is vacant or not, whether the respondent no. 1 is intending to offer appointment to the applicant or not.

(iv) This Tribunal also examined the issue of validity of waiting list. Respondent no. 3 and 4 (in unamended O.A.) have been taking ground that in case M.P.S.C. recommends name of the applicant then he can be considered for appointment against de-reserved post under Open (Sports) category.

(v) As directed by this Tribunal vide Oral Order on 24.08.2021, the learned C.P.O. submitted original records of this matter, a Xerox copy of which was provided to the learned Advocate for the applicant, who subsequently filed a short affidavit on 31.08.2021 on the same which was taken on record. By this additional affidavit the applicant stated that the Open (General) category candidate Shri Sachin Dasharath Wagh has not joined the post as he has already joined as Naib Tahsildar in Aurangabad Taluka.

(vi) Earlier, the applicant had submitted a document on page 25 of paper-book, purportedly issued by Sports Association concerned is not letter head of concerned sports association and truncated with lower part missing. It is, therefore, cannot be treated as authentic.

(vii) It is also observed that the applicants had joined the Maharashtra Throwball Association as respondent which never submitted any affidavit in reply. The applicant too, had failed to submit any details of so-called 'technical problem' faced by the Maharashtra Throwball Association in submitting basic requisite records relating to participation of the applicant as a sportsman of outstanding performance.

(viii) The applicant has also relied on provisions of clause 17 of the G.R. dated 30.04.2005 issued by School Education and Sports Department for claiming temporary appointment under sports quota pending verification of sports certificate. However, it is noticed that the G.R. Dated 30.04.2005 has been superseded by another G.R. dated 03.10.2013 relevant part of which is quoted as follows-

“शासन निर्णय -

महाराष्ट्र लोकसेवा आयोगाच्या पूर्वपरीक्षेसाठी अर्ज करणा-या खेळाडूंची संख्या विचारात घेता त्यांची प्रमाणपत्रे पूर्वपरीक्षेपूर्वी प्रमाणित करणे क्रीडा व युवकसेवा संचालनालयाला शक्य होणार नसल्यामुळे केवळ ज्या खेळाडू उमेदवारांची मुलाखतीसाठी निवड होईल त्या खेळाडूंचीच प्रमाणपत्रे महाराष्ट्र लोकसेवा आयोगाने आयुक्त क्रीडा व युवकसेवा, पुणे यांच्याकडे पाठवावीत. आयोगाकडून त्यानुसार प्रमाणपत्रे प्राप्त झाल्यानंतर त्यांची पडताळणी करून क्रीडा व युवकसेवा संचालनालयाने एक महिन्याच्या कालावधीत त्याबाबतच्या अभिप्रायांसह प्रमाणपत्रे महाराष्ट्र लोकसेवा आयोगास परत पाठवावीत.

२. प्रमाणपत्रांची पडताळणी करण्यासाठी क्रीडा संघटनांकडून आवश्यक असलेली माहिती एक महिन्यांच्या कालावधीत सादर करण्याबाबत संबंधित संघटनांना कळविण्यात यावे. सादर मुदतीत जर संघटनांकडून माहिती प्राप्त झाली नाही तर संबंधित खेळाडूस अपात्र ठरविण्यात यावे. मात्र तसे करताना संबंधित खेळाडूवर अन्याय होऊ नये या दृष्टीने ज्या पत्रान्वये क्रीडा संघटनांकडून माहिती मागविण्यात आलेली आहे त्या पत्राची प्रत संबंधित खेळाडूसही पृष्ठांकित करण्यात यावी जेणेकरून खेळाडू स्वतःही संघटनेकडे माहितीसाठी पाठपुरावा करू शकेल.”

(ix) The learned Advocate for the applicant has also relied on following citations:-

- (a) **State of J & K v. Satpal, (2013) 11 Supreme Court Cases 737, in Civil Appeals No. 938-39 of 2013, decided on 05.02.2013.**
- (b) **Order passed by Maharashtra Administrative Tribunal, Mumbai Bench in O.A. No. 985 of 2015, order dated 21.11.2016.**
- (c) **Judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition No. 11843 of 2017 with Civil Application No. 5428 of 2020, Angad Dnyanoba Shitale and Ors Vs. State of Maharashtra and Ors., dated 04.05.2021.**

(d) Judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition No. 5621 of 2015 and batch, dated 03.07.2018

However, in our considered opinion, above citations deal with validity period of Wait-List and are not relevant for adjudication of the present dispute. In the present matter, the provisions of GR dated 03.10.2013, issued by School Education and Sports Department, Government of Maharashtra, which deal with the consequence on eligibility of the candidate of non-submission of necessary information required for verification of sports certificate of the candidate within prescribed time limit. In this regard this Tribunal's order dated 19.01.2022 in O.A. No. 130/2017, Priyanka Appasaheb Dongre Vs. State of Maharashtra and Ors. is referred to as precedent. In this case, it has been ruled that delay of even one day in submission of Non-Creamy Layer Certificate has fatal effect on candidature. The order of this Tribunal has been upheld by the Hon'ble High Court of Judicature at Bombay, in W.P. No. 1991/2022 filed by adversely affected selected candidate whose selection had been cancelled by the order of this Tribunal.

6. Conclusion:- Based on above analysis, we are of considered opinion that- (a) the applicant is wrongly relying on Government Resolution dated 30.04.2005 issued by the Department of School Education and Sports, Government of Maharashtra which has been superseded by Government Resolution dated 03.10.2013, issued by the Department of School Education and Sports, Government of Maharashtra. (b) Further, it is established that the applicant has not been able to comply with requirements of submission of necessary records through Maharashtra Throwball Association for more than one and half years as a result of which applicant's sports certificate could not be verified. Resultantly, his candidature had to be cancelled which in our opinion, is in order. (c) As there was no other eligible candidate in the waiting list for being recommended from Open (Sports) category which is a Horizontal Reservation Category, the respondent No. 2 had to de-reserved the post for Open (General) category candidates. Applicant's demand that once the said post had been de-reserved, the same may again be reserved is not backed by any provisions of law/rule or judgments which constitutes a case-law or precedent. (d) It is also inferred that the conditions mentioned in clause no. 4.3 and clause no. 13 of the advertisement published by MPSC on

26.08.2015 have become inconsequential as, firstly, the process of verification of sports certificate of the applicant had been initiated on 02.11.2015 itself which was before declaration of results of screening test and secondly, the results of selection process in respect of the applicant had been declared subject to submission of documents. This can be said to be by way of sympathetic consideration to protect the interest of the applicant by going out of way. (e) In the present context, G.R. dated 01.07.2016, issued by School Education and Sports Department does not merit consideration as the present matter concerns selection process started in the year 2015 by advertisement no. 127/2015, dated 26.08.2015 issued by MPSC and, therefore, any further discussion on this is not undertaken. (f) Likewise, the issue of validity period of waiting list too, in our considered opinion, does not merit consideration as the critical issue is altogether different and relates to non-submission of necessary records by the Maharashtra Throwball Association, without which verification of sports certificate of the applicant could not be carried out. After considering above facts, in our considered opinion, the present Original Application is devoid of any merit. Therefore, the following order:-

ORDER

- (A) The Original Application No. 66 of 2018 is dismissed for reason of being misconceived and devoid of merit.
- (B) No order as to costs.

MEMBER (A)**MEMBER (J)****Kpb**/D.B. O.A. No. 66/2018 VDD & BK 2023 Appointment