

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 131 OF 2018

DISTRICT : KOLHAPUR

Shri Sohel Majid Kalavant)
Occ : Nil, R/o: 3/46, Kalavant Galli,)
Takavade Ves, Ichalkaranji, Tal-Hatkanangale)
Dist- Kolhapur)...**Applicant**

Versus

1. The State of Maharashtra)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Brihanmumbai, Estt. Branch,)
D.N Road, Opp. Crawford Market,)
Dhobi Talao, Fort, Mumbai 400 001.)
3. Divisional Dy. Director of Sports)
& Youth Services, Kolhapur Division,)
Central Administrative Bld,)
Kasba Bawada, Kolhapur.)
4. Director of Sports & Youth Services)
Shivchatrapati Krida Peeth, Mhalunge)
Balewadi, Pune 45.)
5. The Principal Secretary,)
School Education & Sports Department,)
Madam Cama Road, Hutatma Rajguru)
Mumbai 400 032.)...**Respondents**

Shri R.M Kolge, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for Respondents
no. 1 & 2

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

RESERVED ON : **31.10.2018**

PRONOUNCED ON : **19.11.2018**

PER : **Shri Justice A.H Joshi (Chairman)**

ORDER

1. Heard Shri R.M Kolge, learned advocate for the Applicant, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents no 1 & 2 and Shri D.B Khaire, learned advocate for Respondents no 3 to 5.

2. Facts of the case are as follows:-

- (a) Respondent No. 1 issued advertisement in order to fill up the post of Police Constable subject to the terms and conditions as mentioned therein.
- (b) Applicant submitted duly filled in on-line Application Form to the Respondent No. 1, thereby providing therein all the necessary details so as to compete for the said post against vacancy meant for Sports (OBC) category.
- (c) Applicant cleared the physical test by obtaining 88 marks and then cleared the written test by obtaining 73 marks with the total marks of 161.

3. As Applicant's candidature is declined, he has approached this Tribunal.

4. Applicant has approached this Tribunal with following prayers:-

“9. **Relief sought:**

- a) By a suitable order / direction, this Hon'ble Tribunal may be please to quash and set aside the impugned order dated 13.6.2017 issued by the Respondent no. 2, thereby rejecting the claim of the Applicant in Sports (OBC) category and further

be pleased to direct the Respondent no. 2 to select and appoint the applicant to the Police Constable and O.A be allowed accordingly.

a-1) By suitable order and direction of this Tribunal be pleased to hold and declare that condition mentioned in the G.R dt. 1.7.2016 issued by the Respondent no. 5 at clause 4(v) as arbitrary and illegal and the same be directed to the respondent no. 5 to cancel the same.

(Quoted from page 8 of O.A)

5. Applicant's claim and contentions contained in the O.A are as follows:-

- (a) Applicant participated in the State Level Inter University (Ashwamedha) Competition (Kho-Kho), which was held between 27th Nov to 1st Dec, 2015.
- (b) He applied for validation of Sports Certificate on 06.01.2017.
- (c) The advertisement for recruitment to the post of Police Constable was issued by Respondent no. 2 on 23.2.2017.
- (d) The last date for submitting application is 28.3.2017.
- (e) Applicant has received Validation Certificate on 5.7.2017.

6. The crucial pleadings contained in the Original Application are seen in grounds 6.8 & 6.11. Those read as follows:-

“6.10 The Applicant states that as per the G.R dated 1.7.2016 issued by the School Education and Sports Department. 5(iii) in which it has clarified that after receiving the application for Verification of Sports Certificate the concern Dy. Director of Sports and Youth Services the decision will have to be taken by the concern District Sports Officer within 20 days of office hours. That in the present matter, the Applicant sent the Certificate of Sports for validity in the event of Kho-Kho on 6.1.2017, i.e. prior to the advertisement within time but the same is not issued by the concerned District Sports Officer, Thane in time which is no fault on the part of the applicant. Therefore, as per the guidelines issued by the Respondent no. 4 dated 4.7.2017 shall have to be accepted as it is though the validity of the same is received by the applicant on 5.7.2017.

6.11 That the Respondent no. 2 while passing the impugned order ought to have considered that the time of filing up online application form, the applicant could not produce the same

certificate, since the same is not in the hands of the applicant. It is the reason beyond control of the applicant and the Respondent no. 3 fails in its duty to verify the same within time stipulated as per the G.R dated 1.7.2016 at clause 5(iii) of the said G.R issued by the Respondent no. 5."

(Quoted from page 6 of O.A)

7. Present Original Application is opposed by the Recruiting Authority, Respondent no, 2 and he has tried to justify the action, it being based on declared policy of the Government.

8. Learned CPO, Ms Manchekar, states that the point agitated in this case is dealt with by the Respondent no. 5 in the affidavit in reply, which is filed in O.A 610/2017, and Respondent no. 5 adopts the same affidavit for challenge to the mandatory requirement prescribed in clause 4(v) of Government decision dated 1.7.2016.

9. The question which arises for consideration in the present O.A are as follows:-

Question No. (1). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must obtain the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of opportunity of being a candidate for public employment?

Question No. (2) On facts, has the applicant made out a case of his eligibility on account of failure to possess validation, delay in grant whereof is not attributable to him.

10. In the background that applicant was awarded the validity certificate within 6 months from his applying, applicant cannot be faulted for his inability to get the validation certificate.

11. Though Respondent no. 3 has tried to show that a litigation is pending relating to the Association, which had conducted the tournament, it is not shown that any stay was operative. It is also not shown as to how if any order of stay was operating and when order if any in operation was vacated and as to how the authorities were justified in taking time/delaying in deciding the validation of certificates.

12. This Tribunal holds for the reasons recorded in O.A 610/2017, decided today, that the imposition of condition of possession of certificate by a candidate before the last date fixed for making application cannot apply to the candidates whose claim for verification or vetting of the Sports Certificate is pending before the authorities and the candidate is not responsible for the delay and the blame is not attributable to the candidate.

13. On the facts of the case, it is not shown that the delay in issuance of the validity in the present case was on account of any fault on the part of the applicant.

14. Finding on Questions:-

Question No. (1). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must obtain the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of opportunity of being a candidate for public employment?

Finding : (a) In so far as second question is concerned, this Tribunal has decided O.A 610/2017 and held that imposition of a condition, compliance whereof is exclusively within the domain of the executive and is beyond the control of candidate cannot be made a hurdle in the way of a individual of becoming a candidate for public employment.

- (b) Denial of candidature to a citizen in the matter of public employment on account of failure to comply with a condition which is beyond his physical control, human limits and is a matter of authority and domain of public authorities, can never be imposed. Imposition of such condition result in violation of fundamental Rights of equal opportunity of consideration in the matter of public employment, is utter violation of Articles 14 & 16 of the Constitution of India.

In view of the said discussion and findings, Question No. 1 is answered against the authorities and in favour of the Government.

Therefore, applicant is held entitled for consideration of his claim on his own merit and in accordance with the recruitment rules.

Question No. (2) On facts, has the applicant made out a case of his eligibility on account of failure to possess validation, delay in grant whereof is not attributable to him.

Findings : The details as to how the applicant had participated, his Certificate had been validated and Respondent no. 3 took more than four months' time, are admitted facts.

15. In the result, O.A is allowed in following terms:-

- (a) Clause 4(v) of Government decision dated 1.7.2016 shall not apply to applicant's candidature for his claim being considered.
- (b) Applicant's candidature be considered on the basis of validity certificate received by him on 5.7.2017, which is on record of O.A, at Exh. B, pages 13 & 14.

- (c) Applicant's candidature be considered on its own merit and grant him due placement in the provisional and final merit list in accordance with the Recruitment Rules.
- (d) In the facts and circumstances of the case, parties are directed to bear their own costs.

Sd/-
(P.N Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 19.11.2018
Dictation taken by : A.K. Nair.