

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 204 OF 2018

DISTRICT : MUMBAI

Shri Ramesh Mohan Patil)
Occ : Nil, R/o: Hargude Plot,)
Mangalmurti Road, Sangli Wadi,)
Tal-Miraj, Dist-Sangli.)...**Applicant**

Versus

1. The Superintendent of Police)
Sangli, having office at Sangli.)
2. The Additional Director General &)
Inspector General of Police, [M.S],)
Mumbai, having office at Old Council)
Hall, S.B Marg, Mumbai 400 039.)
3. The Director of Sports & Youth)
Services, [M.S], Pune, having office at)
Pune - 1.)
4. The State of Maharashtra,)
Through Principal Secretary,)
Sports & Youth Services Department,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

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 A.V Bandiwadekar, learned advocate for the Applicant and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

2. Facts of the case is as follows:-

- (a) Respondent No. 1 issued advertisement in order to fill up total 53 vacancies of the post of Police Constable subject to the terms and conditions as mentioned therein. That only one vacancy of the said post came to be reserved for Sports Persons belonging to open category by way of horizontal reservation out of total 3 vacancies. That clause v of the said advertisement is material.
- (b) Applicant submitted the duly filled in on-line Application to the Respondent No. 1, thereby providing therein all the necessary details so as to compete for the said post in one vacancy meant for Open (Sports) category.
- (c) Applicant cleared the physical test by obtaining 88 marks and then cleared the written test by obtaining 87 marks with the total marks of 175. Two other candidates like him belonging to open category, Shri G.R Salunkhe and A.K Aute, secured 177 and 182 marks respectively.
- (d) Respondent no. 1 published the provisional select list in which name of one Mr A.K Aute, figured at Sr. No. 12 with 182 marks as against one vacancy meant for open (Sports) category.
- (e) In the provisional waiting list, the name of Mr G.R Salunkhe, figured at Sr No. 1 with 177 marks as against one vacancy meant for open (Sports) category.
- (f) Since the applicant had secured 175 marks, his name should have figured at Sr. No. 2 of the waiting list, below the name of Shri G.R Salunkhe.
- (g) Since applicant did not possess and could not furnish the Certificate of Validation of his Sports participation, his name has not been included in the provisional select list or waiting list.

3. In the aforesaid background, applicant has approached this Tribunal with following prayers:-

“9. **Relief sought:**

- a) By a suitable order / direction, this Hon'ble Tribunal may be pleased to hold and declare that as unconstitutional and illegal the clause V of the advertisement dated 23.2.2017 [EXHIBIT-A] issued by the Respondent No. 1 thereby insisting upon the candidates like the Petitioner applying for the post of Police Constable through the Sports Person Category by way of horizontal reservation to have a Sports Validity Certificate from the Respondent No. 3 of any date prior to making application to compete for the said post and accordingly, the Petitioner be granted all the consequential service benefits.
- b) By a suitable order / direction, this Hon'ble Tribunal may be pleased to direct the Respondent No. 1 to accept the Sports Validity Certificate of the Petitioner [of a date which is after deadline fixed, namely, 23.2.2017 [EXHIBIT-A] fixed as per the advertisement issued by the Respondent No. 1] to be in compliance or relaxation of the requirement as contained in para 4[v] of the Circular dated 1.7.2016 issued by the Respondent No. 4, and clause V of the advertisement dated 23.2.2017 and accordingly the Respondents be directed to consider for all legal and practical purposes the candidature of the Petitioner for the post of Police Constable through the Sports Category and thus to grant to the Petitioner all the consequential service benefits.
- c) By a suitable order / direction, this Hon'ble Tribunal may be pleased to hold and declare that the provisions contained in para 4[v] of G.A. dated 1.7.2016 issued by the Respondent No. 4 and corresponding provision contained in clause V of the advertisement issued by the Respondent No. 1 on 23.2.2017 to the extent to which the candidates like the Petitioner are required to obtain the Sports Validity Certificate on or before the date of advertisement is totally arbitrary, irrational, unjust, mala fide and bad in law and as such unconstitutional.
- d) By a suitable order / direction, this Hon'ble Tribunal may be pleased to direct the Respondent No. 1 to accept in principle and thus to implement the communication dated 4.7.2017 issued by the Respondent No.3 to the Respondent No. 1 and thus to accept the Sports Validity Certificate dated 10.5.2017 [based on the application dated 22.2.2017] and thus to hold the same to be in compliance

of the requirement of clause 4[v] and clause V of the G.R. dated 17.2.2016 and the advertisement dated 23.2.2017 issued by the Respondent No. 4 and the Respondent No. 1 respectively and accordingly, the Petitioner be granted all the consequential service benefits.

(Quoted from pages 30, 31 & 32 of O.A)

4. Crucial facts of applicant's case are as follows:-

- (a) Applicant participated in Kanoeing & Kayaking in the Tournament held in 2011.
- (b) He has been issued Sports Participation Certificate dated 18.11.2012.
- (c) He applied for validation of Sports Certificate on 27.12.2016.
- (d) The advertisement for recruitment to the post of Police Constable was issued by Respondent no. 1 on 23.2.2017.
- (e) The last date for submitting application is 28.3.2017.
- (f) Applicant has received Validation Certificate on 10.8.2017.
- (g) Verification of documents was done by Respondent no. 1 on 13.4.2017.

5. Applicant has drafted the original application in verbose manner. Therefore, Applicant's claim and contentions contained in the O.A require to be condensed, hence those are summarized as follows:-

- (i) Government of Maharashtra has framed recruitment Rules framed rules called as Maharashtra Police Constable (Recruitment) Rules, 2011.
- (ii) Reservation for Sports persons is prescribed under Rule 8(1) of Recruitment Rules of 2011. Relevant rules reads as follows:-

“8. **Reservation:-**

- (i) Sports category:- 5% of total posts available for recruitment of Police Constables shall be reserved for sports persons. The terms and condition governing this reservation shall be in consonance with Education and sports Department, Government Resolution No. NSP-2002/CR-68/SYS-2, dated 30th April, 2005 and any subsequent orders issued by Government from time to time.

(Quoted from page 104F of the O.A)

- (iii) Government Resolution dated 30.4.2005 does not contain a scheme of producing Validation Certificate before last date fixed for submission of online application.
- (iv) The concept of validation Certificate is introduced through Government decision dated 1.7.2016, Exh. B, page 49, which lays down in para 4(v), following conditions:-

“4.....
 (v) खेळाडू उमेदवारांनी अर्ज करण्यापूर्वीच सुधारीत तरतूदीनुसार विभागीय उपसंचालक यांचेकडून खेळाच्या प्रमाणपत्राची पडताळणी करून घेणे आवश्यक आहे. त्यामुळे खेळाडू उमेदवाराने अर्जासोबतच विभागीय उपसंचालक यांनी क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गासाठी पात्र ठरतो याबाबत प्रमाणित केलेले प्रमाणपत्र जोडणे आवश्यक राहिल-”

(Quoted from page 54 of O.A)

- (v) Rule 8(1) of the Recruitment Rules of 2011 refers to the procedure of reservation for Sports persons as per the procedure laid down by Govt. Resolution dated 30.4.2005, therefore new Government decision dated 1.7.2016 has no application to sports reservation in the cadre of Police Constables. Application of condition of possession and producing the certificate before last date of submitting applicant is unreasonable, unfair and amounts to imposition of condition which is not provided by Recruitment Rules.
- (vi) The contents of Recruitment Rules cannot be altered by a general policy decision of the Government without amending the statutory Recruitment Rules.
- (vii) The recruitment procedure takes about six months' time. Therefore, imposition of the restriction that validation must be produced, fails to achieve the desired object. The time left between the date of advertisement and date of declaration of provisional select list is pretty short, and fixing too shorter time limit is unjust and unreasonable.
- (viii) The individuals who are to be the candidates for the post of Police Constable comprise of the candidates are a too young and most amongst them are having education up to 12 standard and they do not possess the intense degree of maturity which would keep them alert and to always remain on toes, and be ready with all certificates for any recruitment notification, that may be flashed.
- (ix) Considering the time taken by the Sports authority which is 7 months and 14 days in issue of validation certificate, shows unreasonableness on their part, for which applicant should not suffer.

- (x) The mandate that the candidate must possess the validation certificate on the last date fixed by notice of recruitment/ advertisement is not made known to candidates, well in advance and due publicity thereto was not given, and this has resulted in great prejudice to the candidates and in particular to the applicant..

6. Original Application is opposed by the Respondents. Respondent no. 3 has contested the O.A by filing affidavit in reply. So also Respondent no. 1 has filed affidavit in reply.

7. Learned CPO, Ms Manchekar, who also appears for Respondent no. 4, states that same point is involved in O.A 610/2017, in which detailed affidavit is filed by Respondent no. 4, who is also Respondent no. 1A in O.A 610/2017 and therefore present Respondent no. 4 would adopt the same affidavit in reply to contest present O.A. as well, as no other point is to be argued in present OA.

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

Question No. (1) Whether it is not open for the Government to lay down a detailed procedure for verification of Sports Certificate in addition to the prescription contained in Rule 8(1) of the Maharashtra Police Constable Recruitment Rules 2011?

Question No. (2). Whether conditions contained in para / rule 4(v) of Government decision dated 1.7.2016 and requiring that candidate must possess the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of reasonable and fair opportunity of being a considered for public employment?

Question No. (3) On facts, has the applicant made out a case that the deficiency in his eligibility due to failure to possess validation has occurred due to delay in grant thereof by the respondent No.3 and any default is not attributable to the applicant?

DISCUSSION AND REASONS

9. Question No. (1): Whether it is not open for the Government to lay down a detailed procedure for verification of Sports Certificate in addition to the prescription contained in Rule 8(1) of the Maharashtra Police Constable Recruitment Rules 2011?

Findings:

- (a) Perusal of the Recruitment Rules of 2011, reveals that the language employed in Rule 8 is as follows:-

“The terms and condition governing this reservation shall be in consonance with Education and sports Department, Government Resolution No. NSP-2002/CR-68/SYS-2, dated 30th April, 2005 and any subsequent orders issued by Government from time to

- (b) It shall be evident from Exh. B, i.e. the Government decision dated 17.2016, by which the procedure have been revamped, that said Government Decision has been issued in supersession of all earlier decisions. The text of the opening paragraph of Government decision dated 1.7.2016 reads as follows:-

“शासन निर्णय:

या शासन निर्णयाद्वारे खेळाडूसाठीच्या ५% आरक्षबाबतचा मूळ शासन निर्णय दिनांक ३०.०४.२००५ व त्यानंतर या विभागाने निर्गमित केलेले सर्व शासन निर्णय, परिपत्रक, पत्र इ. अधिक्रमित करण्यात येत असून नोकरीत ५% आरक्षणाचा लाभ घेणा-या खेळाडूसाठी पुढीलप्रमाणे सुधारित आदेश देण्यात येत आहेत:-

(Quoted from page 50 of O.A)

- (c) Moreover, it is a well settled principle of interpretation of statute that:-

Whenever, in any statute any set of rules is referred and if the said title of rules is substituted by another title of rules, newly enacted rules will be deemed to have been bodily incorporated in earlier legislation, unless contrary intention is apparent.

(d) In view of the foregoing, applicant's submission of exerting to adhere to the Government Resolution of 2005, is of not worth of any weight whatsoever.

10. Question No. (2). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must possess the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of reasonable and fair opportunity of being a considered 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 which is beyond the control of candidate cannot be made a hurdle in the way of consideration of an individual / 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 and human limits and for an act which rather is a matter of failure of any officer or authority and domain of public authorities, can never be imposed.

(c) Imposition of condition as prescribed in impugned clause 4(v) result in violation of fundamental Rights of equal opportunity of consideration in the matter of public employment, and is utter violation of Articles 14 & 16 of the Constitution of India.

(d) In view of the said discussion and findings, Question No. 2 is answered against the authorities / Government and is held in favour of the applicant.

11. Question No.(3) On facts, has the applicant made out a case that the deficiency in his eligibility due to failure to possess validation has occurred due to delay in grant thereof

by the respondent No.3 and any default is not attributable to the applicant?

Findings:

- (a) The details as to how the applicant had participated, his Certificate had been validated and Respondent no. 3 took more than 7 months' time are admitted facts.
- (b) In the background that applicant was awarded the validity certificate after 7 months and 14 days from his applying and beyond 4 months and 24 days of last date fixed in the advertisement, the applicant cannot be faulted for his inability to get the validation certificate.
- (c) 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 stay was operating and when it was vacated and as to how the authorities were justified in taking time in deciding the validation of certificates.

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

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

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 by appointing authority- the Respondent No.2 commissioner of Police, Mumbai, on the basis of validity certificate received by him on 10.5.2017, which is on record of O.A, at Exh. B- page 100 by ignoring the restraint to the contrary contained in the advertisement and the Govt. Decision dated 1.7.2016.
- (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 and applicant's entitlement.
- (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.