

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 635 OF 2018**

DISTRICT : KOLHAPUR

Shri Suraj Prakashrao Shinde)
Occ : Nil,)
R/o: 2027, E-Ward, 9th Lane,)
Rajarampuri, Kolhapur.)...**Applicant**

Versus

1. The Secretary,)
Maharashtra Public Service Commission)
[M.S], Mumbai, having office at)
Cooperage, Telephone Nigam Bldg,)
M.K Road, Mumbai – 21.)
2. The Deputy Director of Sports & Youth)
Services Department, Kolhapur Div.)
Kolhapur.)
3. The State of Maharashtra,)
Through Principal Secretary,)
Sports and Youth Services Department,)
Mantralya, Mumbai 400 032.)
4. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
5. The Director General & Inspector)
General of Police, [M.S],)
Having office at Old Council Hall,)
S.B Marg, Mumbai 400 039.)...**Respondents**

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

Shri A.J Chougule, learned Presenting Officer for the Respondents.

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

DATE : **19.11.2018**

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

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. Facts of the case are as follows:-

(a) Respondent No. 1 issued advertisement in order to fill up total 750 vacancies of the post of Police sub Inspector subject to the fulfillment of terms and conditions as mentioned therein.

(b) The applicant submitted online Application Form to compete for the said post in the vacancy meant for Open Sports Category by way of horizontal reservation.

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 pleased to set aside the impugned order dated 4.7.2018 passed by the Respondent no. 1 (Exhibit-A) under which he informed the Petitioner about he being deleted from the selection process in respect of the Police Sub Inspector (Main) Examination 2016 in the Open Category for being found not eligible as per the qualifying standard stating that at the time of interview the Petitioner did not have the Sports Validity Certificate of the date on or before 1.6.2017

which was the last date of submission of form for main examination 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 hold and declare the Petitioner to be deemed to have been issued the Sports Validity Certificate on 20.5.2017, i.e. on the expiry of 20 working days from 25.4.2017 to 20.5.2017 as per clause 5[iii] of the G.R dated 1.7.2016, i.e. before the cut-off date, namely, 1.6.2017 as per the advertisement for the Police Sub-Inspector [Main] Examination 2016 issued on 18.5.2017, though it was actually issued on 5.7.2017 by the Respondent no. 2 and accordingly the Petitioner held to be fully eligible, qualified and suitable to compete for the post of Police Sub Inspector [Direct Recruit] on the basis of his performance in the selection process undertaken by the Respondent no.1 vis-a-vis the Police Sub Inspector [Main] Examination 2016 and accordingly the Petitioner be granted all the consequential benefits."

(Quoted from pages 17 & 18 of O.A)

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

- (a) Applicant participated in the Commonwealth Cricket Series Darwin [Australia] held between 23.6.2006 to 8.7.2006 and secured second position.
- (b) He applied for validation of Sports Certificate on 25.4.2017.
- (c) The advertisement for recruitment to the post of Police Sub-Inspector was issued by Respondent no. 1 on 18.5.2017
- (d) The last date for submitting application is 1.6.2017.
- (e) The applicant received Validation Certificate on 5.7.2017.

6. The crucial pleadings contained in the Original Application are seen in grounds 6.14 & 6.15.

"6.14 That from the facts stated above chronologically, it is clear that as per clause 5(iii) of the G.R dated 1.7.2016, issued by the Respondent no. 3, it became statutorily mandatory for the Respondent no. 2 to strictly comply with the same and thus to ensure the issuance of the Sports Validity Certificate to the Petitioner within 20 working days from the date, namely, from 25.4.2017 when the Petitioner submitted his Sports Certificate for Verification. That, however, unfortunately, or otherwise the

Respondent no. 1 observed the said provision only in total breach thereof and not in compliance thereof.

6.15 That if the Respondent no. 1 insisted for the strict compliance of the relevant provisions of the said G.R dated 1.7.2016 from the candidates like the Petitioner, then equally it was must for all the concerned (more particularly for the Respondent no. 2) to observe the time limit of 20 days as mentioned therein. That had such time limit provision being strictly observed and complied with by the Respondent no. 2, that the Petitioner would have received the Sports Validity Certificate on 20.5.2017 when it was actually issued to the Petitioner on 5.7.2017.”

(Quoted from pages 10 & 11 of O.A)

7. Present Original Application is opposed by the Respondents. Learned P.O 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. 2 adopts the same affidavit for challenge to the mandatory requirement prescribed in clause 4(c) of Government decision dated 1.7.2016.

8. 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.

9. In the background that applicant had applied well in time but was awarded the validity certificate within two months and 10 days from his applying, applicant cannot be faulted for his inability to get the validation certificate.

10. 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.

11. 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?

Findings : (a) In so far as first 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.

(c) This Tribunal holds for the reasons recorded in O.A 610/2017 and O. A. 204 of 2018 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.

- (d) In view of the said discussion and findings, Question No. 1 is answered against the authorities and in favour of the Government.
- (e) 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. 2 took more than two months' time are admitted facts.

12. 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. G, page 49.
- (c) Applicant's candidature be considered on its own merit and Respondent shall grant to him due placement in the provisional and final merit list in accordance with the Recruitment Rules and

all consequential benefits according to his entitlement as regards his eligibility as to appointment according to his merit and as per the rules and procedure of recruitment, except impugned para/ Rule 4(v) contained in Govt. Decision dated 1.7.2016.

- (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.