

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.643 OF 2021
WITH
ORIGINAL APPLICATION NO.645 OF 2021
WITH
ORIGINAL APPLICATION NO.892 OF 2021**

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.892 OF 2021

Shrikrushna Bhagwanrao Kharat)
Age : 32 years, Occ. Service as Clerk)
Typist at General Administration)
Department, Mantralaya, Mumbai)
Permanent R/o. Palaskheda (Dabhadi))
Tq. Bhokardan, Dist. Jalna,)...**Applicant**

Vs.

1. The State of Maharashtra)
Through its Principal Secretary,)
Department of Sports and Youth)
Services, Mantralaya, Mumbai 32)
2. The Commissioner,)
Sports and Youth Services,)
Sports Complex, Balewadi, Pune)
3. The Joint Director,)
Sports and Youth Services,)
Sports Complex, Balewadi, Pune.)

4. The Deputy Director,)
Sports and Youth Services,)
Aurangabad Division, Aurangabad.)
5. The Desk Officer, Establishment-19)
General Administration Department,)
Mantralaya, Mumbai.)...**Respondents.**

ORIGINAL APPLICATION NO.643 OF 2021

- Rajendra Rohidas Rathod,)
Age : 28 years, Occ. Service as Ex-Police)
Constable, Naigaon, Dadar (East),)
Mumbai 400 014.)
Permanent R/o. Pangri Ugle,)
Post : Jambhora, Tq. Sidhkhed Raja,)
Dist. Buldhana.) **.....Applicant**

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Department of Sports and Youth)
Services, Mantralaya, Mumbai 32)
2. The Commissioner, Sports & Youth)
Services, Sport Complex, Balewadi,)
Pune.)
3. The Joint Director, Sports & Youth)
Services, Sport Complex, Balewadi,)
Pune.)

4. The Deputy Director,)
Sports and Youth Services,)
Aurangabad Division, Aurangabad)
5. The State of Maharashtra,)
Through its Principal Secretary,)
Home Department, Mantralaya,)
Mumbai.)
6. The Deputy Commissioner of Police,)
Headquarter No.2, Section 9,)
Office of Commissioner of Police,)
Brihanmumbai, Mumbai.)
7. Maharashtra Amateur Trampoline)
Association, through its Secretary,)
Having its office at 2-Green Quarter,)
University Campus, Aurangabad.)

...Respondents.

WITH

ORIGINAL APPLICATION NO.645 OF 2021

Ramdas Bandu Jaybhay,)
Age : 28 years, Occ. Service as Railway)
Police Constable, office of Dy.)
Commissioner of Railway Police,)
Mumbai, Area Manager Building,)
4th floor, P.D. Malo Road, Wadi Bandar,)
Mumbai.)
Permanent r/a At post Pimpalner,)
Tq. Shirur (ka), Dist. Beed.)

.....Applicant

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Department of Sports and Youth)
Services, Mantralaya, Mumbai 32)
 2. The Commissioner, Sports & Youth)
Services, Sport Complex, Balewadi,)
Pune.)
 3. The Joint Director, Sports & Youth)
Services, Sport Complex, Balewadi,)
Pune.)
 4. The Deputy Director,)
Sports and Youth Services,)
Aurangabad Division, Aurangabad)
 5. The Commissioner of Railways)
Police, Mumbai, Area Manager)
Building, 4th floor, P.D. Malo Road,)
Wadi Bandar, Mumbai.)
 6. The Dy Commissioner of Police,)
Mumbai, Area Manager Building,)
4th floor, P.D. Malo Road, Wadi)
Bandar, Mumbai.)
 7. The State of Maharashtra,)
Through its Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 001)
- ...Respondents.**

Mr. S.B Talekar, learned counsel with Mr A.S. Deshpande, learned Advocate for the Applicants in O.A.No.892/2021

Mr. A.B Chalak with Mr V.P. Sangvikar, & Ms Madhvi Ayyappan learned Advocate for the Applicants in O.A.No.643/2021 and O.A.No.645/2021.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

RESERVED ON : **05.05.2022**

PRONOUNCED ON : **09.06.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. All these three cases involve a common issue of validity of the Sports Certificate which was used for the purpose of reservation in securing the Government job with the Respondent-State. The arguments advanced by the learned counsel in O.A 892/2021 for the applicants are adopted by the others with some addition, and therefore, all these three cases are decided by a common judgment. However, the details in respect of the dates of the communication between the parties are different and so also the facts in respect of the Games and the score attained by the applicants in respective Sports vary, and therefore, to that extent they are noted down separately in the beginning of the judgment.

2. The applicant challenges order dated 26.10.2021 passed by Respondent no. 2, the Commissioner, Sports and Youth Services, M.S, Pune, arising out of order dated 26.6.2021 passed by Respondent no. 3 and communication dated 23.9.2020 issued by

Respondent no. 4 as well as show cause notice dated 29.10.2021 issued by Respondent no. 5, G.A.D as to why the services of the applicant should not be terminated for securing job on the basis of false Sports Certificate.

3. The applicant claims to be Sports person who has participated in second Maharashtra State Men-Women Trampoline Championship of 1998, held at Aurangabad and got second prize. By G.R dated 1.7.2016, the State of Maharashtra took policy decision to keep 5% seats in reserved category for Sportsmen who have participated in State and National level Sports Championship.

4. The advertisement was issued by M.P.S.C for recruitment to the post of Clerk-Typist in the year 2018. The applicant was selected after clearing the examination and appointed on the post of Clerk-Typist by order dated 23.8.2019. After one year of his service, Respondent no. 4, cancelled the Sports Validity Certificate of the applicant by order dated 23.9.2020.

5. The applicant filed first appeal before Respondent no. 3, Joint Director, Sports and Youth Service. It was dismissed by the Joint Director, Sports and Youth Services on 22.6 .2021. So the applicant filed second appeal before the Respondent no. 2, which was rejected vide order dated 22.6.2021. Thereafter, on 29.10.2021, Respondent no. 5, G.A.D issued show cause notice to the applicant in respect of the termination of services of the applicant. Hence, the applicant has filed this Original Application. The applicant was continued in service by interim order dated 3.11.2021 passed by the Tribunal.

6. As per the case of the applicant he had participated in 6th Maharashtra State Junior Under 19 Boys/Girls Trampoline

Championship. He has secured third position in the said Competition which were conducted from 10th to 12th February, 2022, was organized by District Trampoline Association of Aurangabad. The advertisement was issued for the post of Police Constable by the Respondent-State for the post reserved under the Sports category as 5% reservation was kept for Sports persons in Government service pursuant to Government Resolution dated 1.7.2016. He was selected on the basis of Sports Certificate dated 29.1.2018 issued by the Maharashtra Amateur Trampoline Association. He joined the said post and started working from 2.2.2019. After completion of almost 18 months, he received letter dated 18.8.2020 from the Respondent no. 6, Deputy Commissioner of Police, Mumbai, wherein the applicant was called upon hearing on 31.8.2020. However, he did not attend the same. Thereafter, Respondent no. 4, Deputy Director, Sports & Youth Services, Aurangabad Division, issued notice to the applicant that his Sports Certificate is verified and is cancelled and set aside by the Respondent no. 4. The applicant, therefore, challenged the said order before the Hon'ble High Court by filing W.P 6963/2020. The said Writ Petition was disposed of with directions giving liberty to the applicant to approach the Joint Director, Sports & Youth Services for filing first appeal. The applicant filed first appeal before the said authority, i.e. Respondent no. 3 on 5.2.2021. The first appeal was dismissed on 1.4.2021. So he filed second appeal before the Respondent no. 2. However, the second appeal was dismissed on 3.8.2021. However, Deputy Commissioner of Police, Respondent no. 6, by order dated 2.8.2021 terminated the services of the applicant as Police Constable. The applicant has challenged the said termination order dated 2.8.2021 and the order dated second appeal dated 3.8.2021 passed by Respondent no. 2, Commissioner, Sports and Youth Services. So also the applicant challenges the communication dated 25.9.2020 issued by

Respondent no. 4, cancelling the Sports Certificate. The applicant also seeks mandatory direction that Respondent no. 4 to restore the validity of the Sports Certificate of the applicant and he be reinstated in service on the post of Police Constable with continuity in service and consequential pecuniary benefits.

7. The applicant has participated in the 5th Maharashtra State Junior Under 19 Boys/Girls Trampoline Championship 2001, which was conducted from 15th to 17th held at University Campus, Aurangabad and has secured third position. The Respondent-State has issued the advertisement for filling up the post of Police Constable in Mumbai Railway Police Department maintaining 5% reservation in Sports Category in view of Government Resolution dated 1.7.2016. The applicant submitted his Sports Certificate dated 1.2.2018. The said Certificate, as per the case of the applicant was verified by Respondent no. 4, Deputy Director, Sports and Youth Services and thereafter, he was appointed on 4.6.2019 as Police Constable. However, after completion of nearly 26 months of service, Respondent no. 4, issued notice to the applicant that his Sports Certificate is bogus and forged. He was given hearing and his Sports Certificate was cancelled by order dated 16.9.2020. The applicant filed Writ Petition No. 7496/2020 before the Hon'ble Bombay High Court. The applicant was granted interim protection by the Hon'ble Bombay High Court and the said Writ Petition was disposed of with a direction to the applicant to approach the Joint Director, Sports & Youth Services. He filed first appeal and the same was dismissed by Respondent no. 4 by order dated 4.3.2021, by Respondent no. 4, Joint Director, Sports and Youth Services. The applicant filed second appeal before the Commissioner, Sports and Youth, which was rejected by order dated 3.8.2021. Hence, he approached this Tribunal with a prayer that the said order dated 3.8.2021 dismissing his second appeal is

to be quashed and set aside and so also the order in first appeal dated 4.3.2021 is also be quashed and set aside and the communication dated 16.9.2020 issued by Respondent no. 4, Dy Director, Sports and Youth Services also to be quashed and set aside. The applicant also sought directions that Respondent no. 4 should restore the Sports Validity Certificate.

8. Learned counsel Mr Talekar for the applicant has submitted that under Article 311 of the Constitution of India the services of a Government employee is protected and without giving sufficient opportunity of hearing, the Respondent-State cannot deprive the applicant of his services on the ground of cancellation of Sports Validity Certificate. Learned counsel for the applicant has pointed out that the applicant has produced the Sports Certificate dated 18/19.7.1998, issued by the Maharashtra Amateur Trampoline Association, which is Affiliated to Trampoline Federation of India, thereby disclosing that the applicant has attained the second position in Trampoline. He has submitted that this Certificate was issued by one Mr R.R Pathaniya, General Secretary and Dr Nitin Kareer, President of the Maharashtra Amateur Trampoline Association. Its validity was certified on 28.2.2018 by Mr Rajkumar Mahadawad, Deputy Director, Sports & Youth Services, Aurangabad Division, Aurangabad.

9. The main contention of the learned counsel for the applicant was that in the order dated 23.9.2020 issued by Ms Urmila Morale, Deputy Director, Sports & Youth Services, Aurangabad Division, Aurangabad, there is a reference of seven documents. However, documents no 1, 2 & 3 dated 14.7.2020, 27.7.2020 and 5.7.2020 are important. Further the important documents were not furnished to the applicant at any time. Learned counsel for the applicant has submitted that the order passed on the basis of the

documents at Serial Nos 1 to 3 is illegal. He further argued that in the notice, the details in the report of the Committee prepared by Mr Suhas Patil, Assistant Director, dated 14.7.2020, though relied, the details of the said report are missing in the show cause notice. In the letter dated 14.7.2020 written by Mr R.R Pathaniya, Ex. General Secretary, Maharashtra Amateur Trampoline Association, he has not mentioned that the signature appearing on the Certificate is not his signature or he has not issued the said Certificate. Learned counsel for the applicant has submitted that these two persons Mr Pathaniya and Dr. Nitin Kareer who have issued the Certificate had never denied the issuance of the Certificate to the applicant. Learned counsel has submitted that the applicant wants to cross-examine these two persons. Learned counsel for the applicant has submitted that the applicant was not given fair opportunity of audience, but everything was concocted behind the back of the applicant. The report submitted was tampered and concocted and cannot be relied. The Deputy Director, Mr Rajkumar Mahadawad, has verified the Sports Certificate on 28.2.2018. Thus, the Sports Certificate which was issued was verified by the authority. The report submitted by the Assistant Director is bogus and concocted without going into the original record maintained by the Maharashtra Amateur Trampoline Association, Aurangabad Division, Aurangabad. The first Appellate Authority and Assistant Director, Sports and Youth Services, M.S, Pune, has passed the order dated 22.6.2022 without furnishing the required documents. The order passed by the First and Second Appellate Authorities are without application of mind and cryptic. The second Appellate Authority has dismissed the second appeal on 26.10.2021, without giving reasons. The applicant has informed that he was suffering from cough and cold, therefore, it was necessary for the Second Appellate Authority to adjourn the hearing. Learned counsel for the applicant has further

submitted that the fraud is required to be proved and is to be demonstrated that the authority has once had opportunity to defend the fraud. However, if it is not defended, then the same cannot be reopened.

10. Learned counsel for the applicant has submitted that once such Certificate was verified by the Respondent-State at the time of giving appointment to the applicant, then the Respondents have no right to review its own order on any other ground. Learned counsel for the applicant submitted that the Respondent-State has not followed the principles of natural justice.

11. Learned counsel Ms Madhvi Ayyapan in O.A 643/2021 & with Shri A.B Chalak, in O.A 645/2021 adopted the same arguments of Learned Counsel Mr S.B Talekar and they made further submissions. Both the learned counsel submitted that the Sports Certificates of these applicants are genuine as they have played in the tournament and have secured the rank. The said Certificates were submitted by both the applicants to the authority and at that time the Respondent authority has verified these Sports Certificates. Once the Certificates are verified, the Respondent-State has no right to review its order. Both the learned counsel has submitted that notice in respect of the reverification of the Sports Certificate was not served on the applicants, hence the enquiry was not fair. Learned counsel Mr Chalak submitted that the applicant Mr Rathod was appointed in VJ Sports Category on 2.2.2019 and he has already joined and working. Both the learned counsel argued that the necessary documents were not furnished, i.e. especially report dated 14.7.2020 of Mr Suhas Patil, Assistant Director, Sports and Youth Services was not furnished to the applicants. Thus, the order of cancellation of Sports Certificate passed by Ms Urmila Morale,

Deputy Director, Sports and Youth Services, is erroneous and illegal. Both the learned counsel submitted that Mr Pathaniya and Dr Nitin Kareer have issued the Sports Certificates and rather they both are responsible for issuing the Certificates, if they are treated false. In both the cases, the order passed in first Appeal by Mr Sudhir More and in second appeal passed by Om Prakash Bakoria are not well reasoned, unfair and are required to be quashed and set aside. It is further argued that the record and result of the tournaments as per the rule should be submitted to the Director of Sports and Youth Services within 30 days. However, the record of the tournament which the applicants have played was submitted subsequently after many years. Both the learned counsel argued that no person is to be castigated in such a manner as it is a matter of reputation when the applicants were denied a fair opportunity of hearing and explaining the circumstances in respect of their Sports Certificate.

12. Learned counsel for the applicant relied on the following judgments:-

- (a) **Naresh Kumar & Ors Vs. Government (NCT OF DELHI) & Ors, (2019) 9 SCC 416.**
- (b) **Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, (1976) 1 SCC 311.**
- (c) **Anil s/o Shivram Bandawar Vs. District Caste Certificate Verification Committee, Gadchiroli & Anr, 2021 (5) Mh.L.J 345.**
- (d) **Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant & Ors, (2001) 1 SCC 182.**

13. Learned C.P.O while opposing the Original Applications submitted that two show cause notices were given to the applicants before cancelling the validity of the Sports Certificate.

Learned C.P.O pointed out that first notice was sent to the applicant on 7.8.2020 at Palaskheda, Tal-Bhokardan, Dist-Jalna, which was the address given by the applicant in the Sport Validity affidavit and application. However, the Department did not receive the acknowledgment because the address was not correct. The applicant, however, did not attend the enquiry. Hence, second show cause notice was sent on 16.9.2020. The applicant did not respond second time also. Learned C.P.O submitted that the notice could not be sent through the Department because the Director, Sports & Youth Services were not aware of the appointment of the applicant. The applicant was appointed as a Clerk in G.A.D on 23.8.2019. Learned C.P.O explained the background that initially the M.P.S.C while conducting examination at Kolhapur suspected that a Certificate issued to one person namely, Mr Vijay Borkar, in Trampoline appearing for the examination for the post of P.S.I, was found to be bogus. By order dated 15.6.2020, Shri Om Prakash Bakoria, Commissioner, Sports & Youth Services, appointed Mr Suhas Patil, Assistant Director, Sports and Youth Services, M.S, to enquire into the validity of the Sports Certificate in respect of Trampoline and Tumbling. Thereafter, Mr Om Prakash Bakoria, Commissioner, Sports & Youth Services, wrote letter dated 30.6.2020 to Mr Rajendra Pathaniya, General Secretary, Maharashtra Amateur Trampoline Association regarding verification of Trampoline Certificates, Result and affidavits. Thereafter he received letter dated 4.7.2020 from Shri Rajendra Pathaniya, Ex. Honorary General Secretary, Maharashtra Amateur Trampoline Association, Aurangabad, which is very important document. Mr Suhas Patil, Assistant Director, Sports & Youth Services, by letter dated 14.7.2020, submitted the report to the Commissioner, Sports and Youth Services. Learned C.P.O has submitted that the Certificate of the Sports, Trampoline which was issued by the said Association of Aurangabad was

signed by Mr R.R Pathaniya in his capacity as Hon. General Secretary, Maharashtra Amateur Trampoline Association to the office Director, Sports and Youth Services. The said record was checked and the validity of the Sports Certificate of 261 candidates was verified. Out of 261 Sports Certificates, 259 Certificates were found bogus and only 3 Certificates of the candidates Mr Sunil N. Gite, Mr Anil B. Dasalkar and Mr Bajirao M. Chate were found valid. However, all these candidates were recommended by the M.P.S.C and they were appointed by the Respondent-State in the Sports Category on the basis of false/bogus Certificates.

14. Learned C.P.O pointed out that the seals on the communication issued by the Association dated 16.6.2019, 13.10.2016 and 27.6.2018 and the seals on the disputed Certificates dated 26.2.2018, 20.1.2018 and 26.2.2018 were different. Learned C.P.O submitted that the Respondents issued show cause notice to the applicant not on the basis of the report from Mr Suhas Patil, Assistant Director, but on the basis of the letter of Mr R.R Pathaniya, Ex. Hon. General Secretary, Maharashtra Amateur Trampoline Association, disclosing the true facts. Mr Pathaniya, has verified all the Certificates personally and mentioned his remarks about each and every Certificate and has categorically stated that he has not issued any Certificate and the Trampoline Sport was never played separately for Under-19 age group for Boys and Girls but it was a open Competition for all. Learned C.P.O pointed out that in the Certificate issued in the name of the applicant Mr. Kharat, the game mentioned is Tumbling, however, in Form-3 of the Certificate dated 26.12.2018 it was mentioned that he played Trampoline. Learned C.P.O relied on the Chart giving year-wise break up of 271 candidates who gave false Certificates. Learned C.P.O compared the actually conducted Competition and the original result with the fake and concocted

result of the Trampoline Competition as given by the applicants. Learned C.P.O further submitted that Tumbling was not played till 2001. She further relied on the report of Mr Suhas Patil, Assistant Director, Sports and Youth Services, wherein he has highlighted the negligence on the part of the Aurangabad office. Learned C.P.O pointed out that the files in these matters of false Certificates are missing and this fact is mentioned in the said report. Learned C.P.O further argued that the applicant has not completed 3 years of service and his appointment is temporary.

15. Learned C.P.O relied on the following decisions of the Hon'ble Supreme Court.

- (i) **VIJAY KISHANRAO KURUNDKAR & ANR Vs. STATE OF MAHARASHTRA & ORS, AIR 2020 S.C 3715.**
- (ii) **ASHOK KUMAR SONKAR Vs. UNION OF INDIA & ANR, (2007) 4 SCC 54.**

16. We have perused the Certificate of Mr S.B Kharat, issued on 26.2.2018. It is marked as Annexure A-1. In the caption of the Original Application, Mr Kharat has mentioned his age as 32 years and he has played the tournament held at Aurangabad on 18/19.7.1998. Thus, in the year 1998 he was 8 to 9 years old approximately. The said Merit Certificate is issued at Sr. No. 20. It is signed by Mr R.R Pathaniya, General Secretary, Maharashtra Amateur Trampoline Association and Dr Nitin Kareer, President, Maharashtra Amateur Trampoline Association.

17. Learned C.P.O has submitted that Dr Nitin Kareer and Mr Pathaniya have not signed these Certificates and accordingly Dr Nitin Kareer has communicated this to the Appellate Authority. Learned C.P.O has also submitted that the Police have registered criminal case of forgery against one Mr Rajkumar Madhavad,

Deputy Director, Sports and Youth Services, Aurangabad Division, Aurangabad and he was in jail for long time. The Police have not yet completed the investigation and it is going on. They have also recorded the statements of Dr. Nitin Kareer who is at present, Additional Chief Secretary, Revenue & Forest Department, Government of Maharashtra and in the said statement he has made it clear that those Certificates are not signed by him.

18. On query made by this Tribunal, Dr Nitin Kareer has filed common affidavit in reply dated 4.5.2022 in all the three matters wherein he has stated as under:-

“1. I say that I have gone through the contents of the present Original Applications and the relevant office record. I am filing this short affidavit as directed by the Hon’ble Tribunal.

2. I say and submit that I have perused the record submitted by the Maharashtra Amateur Trampoline Association dated 30th December, 2014 and 16th June, 2015 maintained in the office of Director of Sports and Youth Services, Maharashtra State, Pune.

3. I say and submit that after perusal of the above record and the Merit Certificates attached in the present Original Applications, I say that the said Certificates do not bear my signature.

19. In Annexure A-1, the event shown is ‘Tumbling’. However, in Form 3, Annexure A-2, which was signed by Mr Pathaniya and also signed under the seal of Deputy Director of Sports and Youth Services, Aurangabad Division, the event is shown not ‘Tumbling’ but ‘Trampoline’.

20. We have gone through order in first appeal and second appeal. The said orders of the Appellate Authority being the First Forum of putting grievance are important and to be looked into.

The order in the matter of Mr Kharat was passed on 22.6.2021 in Appeal No. 16/2021. At the appellate stage the grievance was made by the applicant that he was not furnished the necessary documents. Learned C.P.O has explained that the State did not rely on the report of Mr Suhas Patil, Deputy Director, Sports & Youth Services, Aurangabad Division, Aurangabad and started discreet enquiry on the basis of letter dated 4.7.2020 written by Mr Pathaniya. The said letter was already given to the applicant. It was also contended that the principles of natural justice was not followed and the decision was taken unilaterally by invalidating the Sports Certificate. However, it is mentioned that the applicant was given opportunity of audience on 24.8.2020 and 23.9.2020. However, he did not appear and therefore the decision was taken. The applicant was present at the time of hearing of the first appeal. The Appellate Authority has considered all the submissions of the applicant and also of the Respondents and after perusal of the record and facts arrived at the conclusion that the applicant Mr Kharat has never participated in the tournament held in the year 1998 and Maharashtra Trampoline Association has never issued such Sports Certificate in favour of the applicant Mr S.B Kharat. His name also does not appear in the result sheet of the Sports in the year 1998. In the first appeal, the Appellate Authority has specifically mentioned that the person who claims reservation in Sports has to file one affidavit. However, the Stamp Paper of the said affidavit in purchased by some third person to whom the applicant did not know. The applicant was given opportunity to explain the situation. However, he could not give any satisfactory explanation. At the time of hearing of the appeal, on queries made by the Appellate Authority, the applicant could not give satisfactory reply. The Appellate Authority has also noted down the endorsement made by Mr Pathaniya that it was not signed and issued by the Association and the applicant has not participated in

this competition. Hence, there is no question of his performance. Therefore, on this basis, the appeal was dismissed.

21. We have also gone through the order in first appeal dated 14.3.2021 in O.A 643/2021 and order dated 1.4.2021 in O.A 645/2021. It appears that the contentions raised by both the applicants are more or less the same as mentioned in the appeal in O.A 892/2021. We do not have the powers of appeal Court as such. We cannot go further into the scrutiny of the facts and evidence. However, we point out only one striking fact that the Stamp paper on which all the applicants have given their personal affidavits while submitting the Certificates at the time of their respective appointments, all those Stamp Papers were purchased by one third person Mr Ankush Rathod, and his identity is not known to either of the applicants. The first appellate authority has discussed the evidence and facts in detail and passed well-reasoned order in both the matters. Similarly, the orders passed by the authority in second appeal are also reasoned. Thus, procedurally, we are of the view that the principles of natural justice are followed by giving sufficient opportunity of audience to the applicants. We have also given them opportunity to explain certain situations and facts. However, we did not get the satisfactory answers from the Lawyers who represented the applicants.

22. Much is argued on the point that once the Certificates are verified and accepted as true Certificates by the Competent Authority, then they have no power to re-verify or review their own verification. The Respondents have no power of review. Though it is true that review is a statutory power, however, it is applicable to the judicial decisions. The verification of documents is an administrative or supervisory act. Moreover, the reason of re-

verification and invalidation of Sports Certificate is the fraud. A fraud once claimed and demonstrated then the authority undoubtedly has power to re-do its own act/action. In all the fraud or forgery matters when it was detected and how much time is taken to take action against it, is a material point. After detection of fraud, if no action is taken for years together then it may be condoned on the ground of acquiescence.

23. However, in the present case, the Respondents received complaints of use of fake Sports Certificates in securing jobs in reserved category against the appointments of some of the persons who have secured the Government job in a Sports reserved category on the basis of Sports Certificates which were issued in the game of Trampoline by the Maharashtra Amateur Trampoline Association, Aurangabad for the Sports organized by the District Trampoline Association, Aurangabad. This alarmed the authority to investigate and inquire into the incident of fraud. It appears that no time was wasted in between and thereafter the notices were issued to the applicants and the persons concerned.

24. We would like to rely on the ratio laid down by the Hon'ble Supreme Court in the case of **VIJAY KISHANRAO KURUNDKAR & ANR Vs. STATE OF MAHARASHTRA & ORS, AIR 2020 S.C 3715**. In the said appeal, job was secured on the basis of false Certificate. The Supreme Court held as follows:-

“12. The decision in Punjab National Bank must be read in light of these observations by the three Judge Bench of this Court in Food Corporation of India. It is trite law that an appointment secured on the basis of fraudulent certificate is void ab initio. It is not open to the government to circumvent the existing statutory mandate by indefinitely protecting the deceitful activities of such candidates through the use of circulars or resolutions.”

25. Learned C.P.O relied on the judgment of the Hon'ble Supreme Court in the case of **ASHOK KUMAR SONKAR Vs. UNION OF INDIA & ANR, (2007) 4 SCC 54**. The appellant in the said case did not hold the requisite educational qualification as on the cut-off date and he was held not eligible for the post in question. It was held that if such appointment is illegal and it is non-est in the eye of law and is a nullity. In the said matter notice was not given to the appellant and so he contended that the application of principles of natural justice was not followed. The Hon'ble Supreme Court held that:-

“It is well settled that the principles of natural justice cannot be put in a straitjacket formula and it may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.”

26. In the case of **NARESH KUMAR & Ors (supra)**, the Land Acquisition Collector has reviewed the award beyond the period of six months and this issue of power to review especially under Section 13-A of the Act is dealt with in the matter by the Hon'ble Supreme Court. The Hon'ble Supreme Court held that once it was passed under Section 11 of the Act, there is no provision under Land Acquisition Act to review the award. The said award can be corrected under Section 13-A of the Act. It does not confer power to review which are exclusively statutory and such power is not available in case of judicial/quasi-judicial orders. The Hon'ble Supreme Court further held that:-

“It is settled law that the power to review can be exercised only when the statute provides for the same. In the absence, the power of review cannot be exercised by the authority concerned.”

In the present case, admittedly the Sports Certificate was verified. However, the power of reverification was involved as there was a complaint of fraud.

27. Learned counsel for the applicant Mr Talekar further submitted that once the Certificate is verified and the applicant is appointed, then the Respondents cannot cancel the said Certificate and terminate his service as this action is against the doctrine of acquiescence and promissory estoppel. In the case of **Shri Krishnan (supra)**, the appellant, Government servant was pursuing LL.B. The Hon'ble Supreme Court held that the candidature of the applicant cannot be cancelled when the applicant has not given any undertaking. It was the duty of the Head of the Department or the University to scrutinize the form in order to find out whether it was in order. It was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If it was not done so, it is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence. In that case the appellant never wrote to the University authorities that he has attended the prescribed number of lectures. So it was the duty of the University to find out the defect. Thus, when the University authorities acquiesced the infirmities which the admission form contained and allowed the appellant to appear in Part-I examination, then the University had no power to withdraw the candidature of the appellant. However, by applying the principles of acquiescence the door of finding the true fact that the fraud is committed cannot be closed.

28. In the present case, as soon as the Government received the complaint, the Respondents found that the Certificate obtained is fraudulent and accordingly notice was given to the applicant.

Learned counsel for the applicant submitted that the notice dated 7.8.2020 was erroneous and he further submitted that it was not served. However, the learned counsel for the applicant could not point out from the pleadings that it was not served on him at any time and he even could not point out the said contention raised in the first Appeal Memo stating that the applicant was not served with the said notice dated 7.8.2020. Learned counsel for the applicant therefore fairly submitted that he gave up the point.

29. In the case of **Anil S. Bandawar's case (supra)**, the applicant claims to belong to Zade-Nomadic Tribe-C category. At the time of his caste scrutiny the Petitioner's nephew sought to rely upon various documents including the validity Certificate issued to the Petitioner and asked him to submit all the documents on the basis of which he was given the Validity Certificate. The Division Bench of the Hon'ble Bombay High Court held that merely because a different view on the same facts could be arrived at, the same would not entitle the Scrutiny Committee merely by subsequent caste claim to reject such claim. However, in the said judgment the Division Bench in para 7 has stated that neither in the show cause notice nor in the impugned order cancelling the Caste Validity Certificate issued to the petitioner there is any reference of "fraud" being practiced by the petitioner while obtaining the Caste Validity Certificate. Thus, it shows that in the said case also the Division Bench of the Hon'ble Bombay High Court has carved out a case where the fraud is involved as an exception to review the decision. The present case is squarely based on the fraud where all the authorities have suspected fraud. Thus, the said case of Mr Anil Bandawar is not relevant to the facts of the present case.

30. In the case of **Kumaon Mandal Vikas Nigam Ltd (supra)**, we do agree that the ratio laid down by the Hon'ble Supreme Court in

the said judgment that there should be fairness in procedure is binding on all the cases. Undoubtedly, the enquiry should be free from bias. It is rightly stated that it is a fundamental requirement of law that doctrine of natural justice is to be complied with and the same as a matter of fact, turned out to be an integral part of administrative jurisprudence in this country. However, the Hon'ble Supreme Court has also held that compliance or non-compliance is to be judged on the totality of the facts and circumstances of each case.

31. Under Article 311 protection is given to a Member of a Civil servant of the Union and the State against the dismissal or removal from service. It implies that such Government servant is having a valid employment if the appointment itself is illegal and void, then the relationship which is protected under Article 311 does not exist. The safeguard is provided to assure the security to the Civil servant when he is in the Government employment, subject to his appointment, is legal and valid. A person who has taken the benefits of reservation, may be vertical or horizontal by playing fraud on the Government like in the present cases, cannot claim that his appointment is valid.

32. On the point of observing the principles of natural justice, especially serving show cause notice and giving opportunity of hearing, learned counsel Mr Talekar relied on the judgment of the Hon'ble Supreme Court in **STATE OF BIHAR Vs. LAL KRISHNA ADVANI & ORS, (2003) 8 SCC 361**. The ratio laid down in the said judgment about issuance of show cause notice that the principles of natural justice were inducted in the shape statutory provisions, i.e. issuance of notice and it is incumbent upon the Commission to give an opportunity to a person before any opinion is expressed and failure to comply with the principles of natural

justice render the action non-est as well as the consequences thereof. The said ratio is binding in this case also.

33. Learned counsel for the applicant Mr Talekar further relied on the point of non-issuance of notice on the decision of the Hon'ble Supreme Court in the case of **ORYX FISHERIES PRIVATE LIMITED Vs. UNION OF INDIA & ORS, (2010) 13 SCC 427**. In the said case, the Hon'ble Supreme Court has while explaining the importance of show cause notice and implementation of natural justice in administrative law held that show cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. A person to whom the notice is given might get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and it should not be an empty formality.

34. Learned counsel for the applicant Mr Talekar further relied on the decision of the Hon'ble Supreme Court in the case of **BOARD OF CONTROL FOR CRICKET IN INDIA Vs. CRICKET ASSOCIATION OF BIHAR & ORS, (2015) 3 SCC 251**. The Hon'ble Supreme Court has dealt with a major issue of Body discharging public functions but not amounting to 'State', comes under the ambit of judicial review. In the said matter, one contention was raised that since the Committee did not issue any notice to Jaipur IPL (P) Ltd, the owner of Rajasthan Royals, the probe Committee holding Mr Raj Kundra guilty of betting was vitiated, did not appear to be sound. The Hon'ble Supreme Court observed as follows:-

“The question is whether Mr Raj Kundra was heard by Justice Mudgal Committee, before holding him guilty of betting. Our answer to that question is in the affirmative.

Admittedly, Mr Raj Kundra was heard by the Committee before concluding that he had indulged in betting. Absence of any notice to anyone else was of little consequence so long as the person concerned was duly notified and afforded a fair opportunity. To that extent, therefore, the grievance sought to be projected by Jaipur IPL Cricket (P) Ltd. regarding absence of any notice need be noticed only to be rejected.”

35. In the present case, in fact, the notice was given to the applicant Mr Kharat and thrice the matter was adjourned, i.e. on 24.8.2020, 16.9.2022 and 23.9.2020. In fact, as we have observed earlier that Mr Talekar earlier argued that no notice was given to the applicant, Mr Kharat, he withdrew that point as nowhere in the pleading at the earlier stage and appellate stage, this point was contended. Thus, though notice was served on the applicant he did not remain present on three dates. Therefore, his Sports Certificate was declared invalid by order dated 23.9.2020. Against that order, the applicant filed Writ Petition before the Hon'ble Bombay High Court at Aurangabad Bench and in the said Writ Petition the Hon'ble High Court remanded the matter again to the Appellate Authority and the said Authority after hearing applicant Mr Kharat dismissed it by order dated 22.6.2021. The applicant Mr Kharat, as per the provisions in G.R dated 1.7.2016 filed second appeal before the Commissioner, Sports & Youth Services. The applicant was given the dates by issuing the notice and email on 28.9.2021. Then again, it was adjourned on 11.10.2021 and 18.10.2021. However, the applicant Mr Kharat, informed that he could not remain present on 18.10.2021 due to his ill-health. The said appeal was dismissed by the Commissioner, Sports and Youth Services on 26.10.2021, ex-parte and decision of cancellation of Sports Certificate was upheld by Mr Om Prakash Bakoria. Thereafter, by order dated 29.10.2021, the Respondent-State gave

show cause notice to the applicant Mr Kharat that his second appeal was dismissed on the ground of securing the job in the reserved category on the basis of false / fake Sports Certificate. Therefore, he was called upon to submit his explanation, otherwise his services will be terminated.

36. In the present case, the applicants were given sufficient opportunity before the first Appellate Authority and second Appellate Authority to put up their say in respect of validity of Certificates. They were also given full opportunity to put up their say before this Tribunal. When the signature is denied by the signatory on the Certificates, the burden lies on the applicants who have produced and submitted such Certificates and prove that the signatures are genuine. Mere denial is a word against word evidence which does not take the case of the applicants any further. Dr Nitin Kareer has submitted that he has not issued the Certificate and it is not his signature. It is the applicants who have to prove the positive fact of truth of the Certificates.

37. Incidentally, it is also to be noted that the District Trampoline Association of Aurangabad yearly organizes the Trampoline game and therefore, there can be only three winners each year. We have perused the letter dated 7.8.2020 written by Ms Urmila Morale, Deputy Director, Sports & Youth Services, wherein she has communicated that 261 candidates have submitted their performance Certificates under the 5% reservation. Out of which Certificate of 258 candidates were found fake. Thus, the laudable object of providing the reservation under the Sports category of giving encouragement to the Sportsmen by assuring job opportunities in the Government service is pathetically defeated. Thus, the fraud is ex-facie evident. We are informed by learned C.P.O that 261 candidates have submitted their performance Certificates securing the rank in the Trampoline Sports, which

were organized by the same District Trampoline Organization. As per the Merit Certificate issued to Mr Kharat in the year 1998, it was the second Championship. So in the year 1987 the first Championship was held. By applying the simple logic thus during the period of 20 years, at the most total 60 Certificates would have been issued and as per the information given by the learned C.P.O 261 persons have submitted the Certificates. We also note that the Criminal Case is lodged against the officer bearers of MT Trampoline Association Aurangabad and investigation is going on. Thus, we have sufficient reason to believe that there appears to be a big racket at Aurangabad, where such Sports Certificates are “manufactured” for the game of Trampoline.

38. Under the circumstances, we are of the view that there is no merit in the Original Applications. All the Original Applications are hereby dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 09.06.2022
Dictation taken by : A.K. Nair.