

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 732 OF 2018

DISTRICT : PUNE

Nisar Musa Pathan,)
Occ : Nil,)
R/o: At Post Yeshwant Nagar,)
Tal-Malshiras, Dist-Solapur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Maharashtra Public Service)
Commission, through its)
Chairman, 7 & 8th floor,)
Cooperage Telephone Nigam)
Bldg, M.K Marg, Cooperage,)
Mumbai 400 021.)...**Respondents**

Shri S.B Talekar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

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

RESERVED ON : **20.12.2018**

PRONOUNCED ON : **04.01.2019**

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

ORDER

1. Heard Shri S.B Talekar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents
2. Facts of the case are as follows:-
 - (a) Respondent no. 2 issued advertisement in order to fill up total 750 posts of Police Sub-Inspector subject to the fulfilment of terms and conditions as mentioned therein.
 - (b) The applicant applied for the post of Police Sub-Inspector from Open Sport category pursuant to the advertisement.
3. As applicant's candidature is declined, he has approached this Tribunal.
4. Applicant has approached this Tribunal with following prayers:-

VIII Prayers:

- (A) To quash and set aside category wise details, number of posts advertised recommended candidates published on 20.6.2018 by the M.P.S.C, Mumbai (Exh. 'K')
- (B) To quash and set aside the impugned communication dated 4.7.2018 holding the applicant as ineligible for the post of Police Sub-Inspector from Open Sports Category issued by the Under Secretary, M.P.S.C [Exhibit-L].
- (C) To direct the Respondents to include the name of the applicant in the list of candidates eligible for recommendation dated 20.6.2018, published by the M.P.S.C and to appoint him as P.S.I from Open-Sports category pursuant to the PSI Main Examination-2016.
- (C) To direct the Respondents to consider the claim of the applicant strictly on the basis of merit from open sports category pursuant to the PSI Main Examination pending hearing and final disposal of the Original Application.

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

- (a) Applicant participated in 2nd National Interschool Tournament (Weight lifting) in December, 2007 and secured third position.
- (b) He applied for validation of Sports Certificate on 11.05.2017.
- (c) The advertisement for recruitment to the post of Police Sub-Inspector was issued by Respondent no. 2 on 17.5.2017.
- (d) The last date for submitting application is 1.6.2017.
- (e) The applicant received Validation Certificate on 24.11.2017.

6. The crucial pleadings contained in the Original Application are seen in grounds i, ii.

- "i. At the outset the applicant did possess verified sports certificate long before he was called for interview on 13.11.2017.
- ii. The purpose or relevance of the sports certificate has to be real and not momentary. The candidate should have verified sports certificate at the time of interview. Candidate need not have caste certificate at the time of submitting the application for appearing in the main examination. The factum of verification of sports certificate would be relevant only at the time of interview and not at the time of submission of the application for the post of police Sub-Inspector.

7. Respondents have not filed affidavit in reply.

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 196 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 on 19.11.2018 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 24.07.2017, which is on record of O.A, at Exh. I, page 77.
- (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 : 04.01.2019
Dictation taken by : A.K. Nair.