

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 780 / 2018 (D.B.)

Ankit Ramesh Ambepawar,
aged about 24 years, Occ. Student,
R/o Narayan Pethe, Post Kurli,
Tq. Ghatanji, Dist. Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through Principal Secretary,
School Education & Sport Department,
Madam Kama Road, Mantralaya, Mumbai-32.
- 2) The State of Maharashtra,
through Principal Secretary,
Home Department Madam Kama Road,
Mantralaya, Mumbai-32.
- 3) Maharashtra Public Service Commission,
through Secretary,
Cooperage Telephone Corporation
Building, Maharshi Karwa Road, Cooperage Mumbai.
- 4) The Deputy Service,
Sports & Youth Service,
Amravati Division, Amravati.

Respondents

Shri R.N. Chavan, Advocate for the applicant.

Shri A.M. Khadatkhar, the Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Member (A) and
Hon'ble Shri A.D.Karanjkar,
Member (J).**

JUDGMENT

PER : MEMBER (A)

(Delivered on this 1st day of February, 2019)

Shri R.N. Chavan, ld. counsel for the applicant and Shri A.M.

Khadatkar, learned P.O. for the respondents.

2. In the system of our governance mostly procedures are followed as per the provisions contained in the government resolutions. Many times Government Resolutions are subsequent to various court orders/ directions. It is also felt that though G.Rs. are issued with intention of better governance but many times its provisions confront realities of day to day governance and service to people. When such contradictions arise the issues are confronted before this Tribunal or Courts. It becomes imperative to bring cohesiveness between provisions of G.Rs. and day to day governance and service to people. The present O.A. is similar to that situation and that is the reason that one interim order was passed on 4th October, 2018 by this Tribunal which is reproduced below :-

"The applicant has applied for the post of Police Sub-Inspector under NT (B) (Sports) category. One post was reserved for NT category. It is stated that the applicant has cleared preliminary examination and at the time of preliminary examination also, it was made obligatory for the candidates to get verified the Sports certificate from the competent authority before the particular date. The applicant has cleared the preliminary examination and was eligible for main examination. The applicant has also cleared main examination. He has to appear for physical test and oral interview, which is scheduled to be held on


08/10/2018 and onwards. However, as per declaration dated 21/09/2018, candidates have been directed to produce duly verified sports certificates which must be prior to 16th May,2017. The applicant has produced the sport certificate, which bears no date and shows that he has participated in the sports events in 2009-2010 i.e. in between 25th to 30th September,2009. He has also applied for verification of certificates prior to 10/04/2017. But the certificate was issued late i.e. on 29th May,2017 and, therefore, the applicant apprehends that he may not be allowed to participate in the physical and oral test. The learned counsel for the applicant submits that the notification dated 21/09/2018 has been issued all of a sudden after recruitment process was initiated. In the notification dated 02/08/2018, it has been mentioned in note no.2 as under :-

“ प्रस्तुत निकालाआधारे मुख्य परीक्षेच्या प्रवेशासाठी पात्र ठरलेल्या व अर्जात प्राविष्यप्राप्त (गुणवत्ताधारक) खेळाडूंचा दावा केलेल्या उमेदवारांनी शालेय व शिक्षण व क्रीडा विभागाच्या दिनांक ०१/०७/२०१६ रोजीच्या शासन निर्णयानुसार व त्यास अनुसरून प्रसिध्द करण्यात आलेले दिनांक १८/०८/२०१६ रोजीचे शुध्दीपत्रक आणि तदनंतर शासनाने या संदर्भात वेळोवेळी निर्गमित केलेल्या आदेशानुसार विषयांकित गट-ब पदांसाठी निश्चित केलेली क्रीडा विषयक अर्हता धारण करित असल्याबाबत, पुर्व परीक्षेच्या अर्ज सादर करण्याच्या अंतिम दिनांकाचे म्हणजेच दिनांक १६ मे, २०१७ रोजीचे किंवा तत्पुर्वीचे क्रीडा प्रमाणपत्र व मुख्य परीक्षेचा अर्ज सादर करण्याच्या अंतिम दिनांकाचा म्हणजेच दिनांक १७ ऑक्टोबर, २०१७ किंवा तत्पुर्वीचा क्रीडा उपसंचालकांचा, क्रीडा प्रमाणपत्र पडताळणीबाबतचा अहवाल सादर करणे अनिर्वाय राहिल.”

From which, it seems that, the sports certificate should be prior to 18/08/2016 and it should have been verified from the competent authority before 17/10/2017. As per this condition, the applicant has obtained the said certificate. But the notification dated 21/09/2018 show that the certificate shall be verified prior to 16th May,2017. The learned counsel for the applicant submits that the respondents have changed the date after the process was initiated. Considering these facts, it will be in the interest of justice to protect the applicant for the time being and, therefore, the respondents are directed not to disqualify the applicant only on the ground


that he does not possess and verified the sport certificate on or before 16/05/2017. If he cleared the physical and oral tests on merits, his result may be kept in a sealed cover".

3. In this O.A. an advertisement was published bearing No.23/2017 on 26/04/2017 (Annex-A-1,P-12 to 15) for the posts of Assistant Cell Officer, Sales Inspector, Police Sub Inspector through the MPSC i.e. the respondent no.3. Online applications were called for the eligible candidates for preliminary examination which was scheduled on 16/07/2017. At Sr.No.1.3 of the advertisement, post of Police Sub Inspector Group-B is shown total 650 posts were shown in which various posts were reserved for various reserved categories. The present applicant applied under reserved category of **"NT (B) from Sport Quota"**. One post is shown for this category. The applicant applied for that post as he is eligible for that post as meritorious sports persons. The respondent no.3 has issued the next advertisement bearing no.66/2017 for main examination on 03/10/2017 (Annex-A-2, P-16 to 19) for the above said post. The applicant has successfully passed by the preliminary examination so, he was eligible for the main examination therefore he has filled the online application for the above stated post as per advertisement for main examination which was scheduled on 05/11/2017. The applicant received the online hall ticket from the respondent no.3 for main examination. The MPSC i.e. respondent no.3 has published result of main examination through roll numbers of



qualified candidates on 02/08/2018 (Annex-A-5,P-25 to 39). The applicant's roll number is in the qualified candidates list, it means he has successfully passed the main examination and he is eligible for the next stage i.e. for physical examination and oral interview which was scheduled on 08/10/2018 along with result dated 02/08/2018 the respondent no.3 published four notes. In which the applicant is concerned with the sr.no.2 note which was very much important to the applicant. As per that note the applicant has to possess the meritorious sport certificate on or before last date of filling the form for preliminary examination i.e. 16/05/2017 and the verified meritorious sports certificates from the respondent no.4 on or before last date of filling the form for main examination i.e. 17/10/2017. As per this note the present applicant having the meritorious sports certificate of the year 2009-2010 and verified meritorious sports certificates from the respondent no.4 which was received on 29/05/2017.

4. Suddenly in the middle of the process the respondent no.3 changed the rule of the recruitment process. The respondent no.4 has published the declaration in second advertisement for the post of Police Sub Inspector in sport category, wherein it has been stated that, It is mandatory that the candidate who has qualified for the physical examination for the post of Police Sub Inspector, Group-B has to possess the meritorious sports certificate and verified meritorious sports



certificate on or before last date of submitting the application for preliminary examination i.e. 16th May, 2017. As per G.R. No. राकीधो-२००२/प्र. क. ६८/कीयुसे-२, dated 01/07/2016 (Annex-A-9, P-46 to 64) the Government of Maharashtra has issued the guidelines for 5 % reservation to meritorious sports person in Government and Semi Government services in which para no. 4(v) the procedure for verifying the sports certificate and time limit is given. The applicant applied to the respondent no.4 for verifying the sport certificate on 10/04/2017 much before the first advertisement for preliminary examination for service purpose. But as per the time limit given in the above stated G.R. the respondent no.4 did not give the verified sports certificate to the applicant after much of persuasion by the applicant. The applicant received verified sports certificate on 29/05/2017. The applicant submits that there is no fault on his part for verifying the sports certificate because much before first advertisement he has given for verification.

5. The respondent no.3 has issued the general guidelines booklet for the competitive examination, i.e., like present one in which the column nos. 2.2.8.2 very clearly stated that for the sports category persons before the oral interview the candidate has to possess the sport certificate and verified sports certificate from the Competent Authority and produce at the time of interview. In view of this, the applicant submits that as he was having the sports certificate and verified sports

certificate from the Competent Authority, i.e., respondent no.4 and oral interview was scheduled on 08/10/2018, before the oral interview he was eligible for that post from the sport category. The applicant submits that he was eligible for physical examination. Had he passed the physical examination, then he would be eligible for the oral interview. It is stated that in the time schedule of the respondent no.3 that on one day itself physical and oral examination will be over. If the applicant succeeds in the physical examination, then he will be eligible for oral interview. At the time of oral interview the original documents, certificates will be verified by the respondent no.3 and at that time it is apprehension that as per declaration dated 21/09/2018 the applicant may be disqualified by the respondent no.3 on the ground that he did not possess the verified sports certificate on or before 16/05/2017. The applicant may not be disqualified by the respondent no.3, only on the ground that he does not possess the verified sport certificate on or before 16/05/2017 and he may be considered for the post of Police Sub Inspector in NT (B) Sports Category. Being aggrieved the action of respondent no.3 the applicant has filed this O.A. The applicant has prayed following reliefs :-

"8 (A) The present O.A. may kindly be allowed.

(B) The applicant may not be disqualified by the respondent no.3, only on the ground that he does not possess the verified sports certificate on or



before 16/05/2017 and he may be considered eligible for the post of Police Sub-Inspector in N.T. (B) Sports Category.


(C) The respondent no.3, i.e., MPSC may kindly be directed to allow the applicant for oral interview which is scheduled on 08/10/2018 or onwards if he passes the physical examination.

(D) The Notice/ declaration dated 21/09/2018 issued by respondent no.3 may kindly be quashed and set aside to the extent of present application".

6. During the course of hearing of O.A. learned P.O. submitted on 18/01/2019 that the MPSC (R/3) has not filed reply even after repeated reminders.

7. **The Hon'ble Supreme Court in Charles K. Skaria and Ors. Vs. Dr. C.Mathew & Ors reported in AIR 1980 Supreme Court 1230. We are reproducing below the para no. 20 of the said Judgment.**

"There is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:



(4)(b) : 10% to Diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced :- In all cases true copies of the following documents have to be produced:-

xx xx xx

(k) Any other certificates required along with the application.

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned

in the prospectus, but still above board, is to make procedure not the handmade but the mistress and form not as subservient to substance but as superior to the essence."


8. In above Judgment Hon'ble Apex Court has pointed out that having certificate is more important than getting it verified.

9. The Principal Bench of MAT, Mumbai Bench has passed orders in O.A.Nos. 610/2017, 204/2018 & 635/2018 on 19/11/2018. The order in O.A. No. 635/2018, regarding provisions of G.R. No. राक्रीधो-२००२/प्र.क.६८/कीयुसे-२, dated 01/07/2016 para nos. 4 (V), the detail observations have been made in para no. 11 and 12 of the Judgment, which are reproduced below:-

"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.
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(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.

10. In view of discussions in forgoing paras, following order is passed :-

ORDER

The MPSC, i.e., respondent no.3 is directed to open the result kept in sealed cover as per para no.2 of interim order dated 4th October,2018 and process it as per their rules and regulations. With this, the O.A. is disposed of with no order as to costs.

Dated :- 01/02/2019.

dnk.