

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 972/2019 (D.B.)**

Viplove Vijay Tiwari,
Aged about 28 years, Occ. Nil,
R/o 75, Ramai Nagar, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary (Transport),
Department of Home, Mantralaya, Mumbai-32.
- 2) Maharashtra Public Service Commission,
through its Chairman, 7th and 8th floor, Cooperage
Telephone Building, Maharshi Karve Road, Cooperage,
Mumbai-21.
- 3) Commissioner of Transport (Administration),
Administrative Building, 4th floor, near Dr. Ambedkar Garden,
Govt. Colony, Bandra (East), Mumbai-51.

Respondents.

Shri R.V. Shiralkar, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 5th March, 2020.

Date of Pronouncement of Judgment : 13th April, 2020.

JUDGMENT

Per : Member (J).

(Delivered on this 13th day of April, 2020)

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant is B.E. (Mechanical). In response to the advertisement published by the respondent no.2, the applicant applied for the post of Assistant Inspector of Motor Vehicle in sport category reserved for open candidate. The applicant passed the preliminary examination and main examination. The applicant was successful in the main examination, he was called for interview and name of the applicant was recommended for appointment on the post of Assistant Inspector of Motor Vehicle.

3. It is case of the applicant that after the preliminary examination, advertisement no.48/2017, dated 1/7/2017 was published by the respondent no.2 and the applicant applied to appear in the main examination for the post reserved for sport open category. It is submitted that application was made by the applicant on 16/6/2017 for verification of his sport certificate to the Deputy Director of Sports and Youth, Nagpur. The Deputy Director of Sports and Youth, Nagpur verified the sport certificate produced by the applicant and issued the verification certificate on 22/8/2017. In the last week of October,2019, the applicant received show cause notice dated 18/10/2019 from the respondent no.3, the applicant was called upon to show cause as to why recommendation of his name should not be

cancelled as the verification certificate was produced by the applicant after the cut off date. It is submitted that attempts were made by the applicant to satisfy the respondents, but it was in vain and representation made by the applicant was not considered. In this situation, it is submitted by the applicant that the action of the respondents is illegal and the respondent no.1 be directed to issue appointment letter to the applicant.

4. The respondents have submitted their reply which is at Page no.77. The stand of the respondents is that the applicant produced the verification certificate dated 22/8/2017 and as this verification certificate was produced after the cut off date, therefore, the applicant has committed the default and violation of the G.R. dated 1/7/2016, consequently, the respondent no.1 rightly not considered the applicant for the appointment. The respondents have also mentioned that though appointment is not given to the applicant, but as similar issue was involved in cases of three other candidates including the applicant, therefore, the Government did not take decision and matter was pending for the consideration.

5. According to the respondents, as the applicant was unable to produce the certificate before the cut off date, therefore, the applicant has no right to claim the relief.

6. So far as the G.R. dated 11/3/2019 is concerned, the respondents have submitted that this resolution is prospective and the applicant cannot take benefit of this resolution. On the basis of this, it is submitted that the applicant is not entitled for any relief in this matter.

7. The learned counsel for the applicant has submitted that the advertisement no.48/2017 was published on 1/7/2017. The applicant had already applied to the Deputy Director of Sports and Youth, Nagpur on 16/6/2017 for verification of his sport certificate. It is contended that it was not in control of the applicant to obtain the certificate within a time as prescribed, but it was depending on the Deputy Director of Sports and Youth, Nagpur to issue the Certificate. It is submitted that as the Deputy Director of Sports and Youth, Nagpur delayed the matter, the applicant was not responsible for it and therefore; it would be unreasonable to reject the candidature of the applicant at the threshold. The learned counsel for the applicant has invited our attention to the Judgment in O.A. No. 732/2018 decided by the Division Bench, M.A.T., Mumbai on 04/01/2019. After placing reliance on Judgment of the M.A.T. in O.A. No. 610/2017, it was held that the imposition of a condition, compliance whereof is within exclusive domain of the executive and is beyond the control of candidate cannot be made a hurdle in the way of individual of

becoming a candidate for public employment. The denial of candidature in a matter of public employment on account of failure to comply with a condition which is beyond the physical control, human limits of the candidate and it is exclusively depending on the public authorities, then the candidature of the candidate cannot be rejected. In the present case, it is undisputed that the applicant had given application to the Deputy Director of Sports and Youth, Nagpur to verify his sport certificate on 16/06/2017, therefore, it was necessary for the Deputy Director of Sports and Youth, Nagpur to verify the certificate and issue the report, the applicant cannot be held responsible for this. In view of this, in our opinion it would be grave injustice if the applicant is not given appointment for this reason. It is cleared that when the applicant applied for the post and he appeared in the preliminary examination, the applicant was possessing the valid sport certificate, but it was not verified. In this regard, the following observations are made by the Hon'ble Apex Court in case of **Charles K. Skaria and Ors. Vs. Dr. C. Mathew & Ors., AIR 1980, SCC,1230**

in para-20 which is as follows –

“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 is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a 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 hand-made but the mistress and form not as subservient to substance but as superior to the essence”.

8. It appears from the submissions made on behalf of the respondents that so far as the applicant and two other candidates are concerned, final decision was not taken by the Government, when the matter came before the Bench on 09/12/2019 same submission was made by the respondents and consequently the respondents were directed to keep one post vacant in the open sport category for the applicant. In view of this situation, we hold that the stand of the respondents not to appoint the applicant on a post reserved for open sport category is highly unreasonable and amounting to grave injustice. Hence, we pass the following order –

ORDER

The O.A. is allowed in terms of prayer Clause Nos. (A), (B) and (C). The respondents are directed to comply the order within a period of 30 days from the date of this order. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 13/04/2020.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 13/04/2020.

Uploaded on : 16/04/2020.