

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 554 / 2018 (D.B.)**

Kunal S/o Sukhram Meshram,
Aged about 27 Yrs., Occupation : Student,
R/o Rajgopalachari Ward, Near Bhandara Patrika office,
Bhandara, District. Bhandara.

Applicant.**Versus**

- 1) State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.
- 2) The Selection Committee Chairman,
Nagpur District (Rural), Nagpur.
- 3) Shrikant Kawaduji Raut, Near Nag Mandir,
Saoner, Tah. Saoner, District Nagpur.

Respondents

Shri P.S.Chawhan, the Id. Advocate for the applicant.

Shri A.P.Potnis, the Id. P.O. for the respondent nos. 1 & 2.

Shri A.B.Mahajan, the Id. Advocate for the respondent no. 3.

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

JUDGMENT

PER : MEMBER (A)

(Delivered on this 01st day of February, 2019)

Heard Shri P.S.Chawhan, Id. counsel for the applicant, Shri A.P.Potnis, Id. P.O. for the respondent nos. 1 & 2 and Shri A.B.Mahajan, the Id. Counsel for the respondent no. 3.

2. The Rules and Government Resolutions are bedrock of Governance in Government; this principle would hardly requires any reiteration.

However, firmly entrenched the principle and essence of G.Rs., it confronts many times with ground realities in day-to-day Governance as well as service to general people at large. Tribunal often confronts such issues time-to-time. The present O.A. in hand is one such example. It is contention of the applicant that the respondent no.2 has illegally granted time to the respondent no.3 to produce the validity certificate. It is submitted that as per the advertisement the respondent no.3 was bound to possess the validity certificate bearing date prior to 18-2-2016, the respondent no.2 had no authority to relax the mandatory condition in the advertisement and as it was done, the action selecting the respondent no.3 is illegal.

3. In this O.A. the respondent no. 2, issued an advertisement dated 07/02/2018 (Annex-A-1, P-15) for the post of Police Constables and Prison Constables. The applicant and respondent no.3, applied for the said post from Open Sports Category. On the basis of merit and as per the marks obtained by the candidates in written as well as physical

test provisional selection list as well as waiting lists were published which is at Annex-A-2, page nos.33 to 36. In the said list the respondent no.3 (Chest No. 6879) was kept at select lists at P.B., Pg. No. 33 (Annexure-A-2) at Sr. No. 20 and had obtained 96 marks in ground marks category and 90 marks in written, thus total 186 marks.

4. The applicant (Chest No. 6930) was kept at provisional waiting list (Sports Person) at Sr.No.1 in the sports open quota and had obtained 86 marks in ground marks category and 86 marks in written, thus total 172.

5. Thereafter, as per reply submitted by respondent no. 2 in para no. 3, it is submitted that the respondent no. 3 produced Sports Certificate and in para no. 5, it is mentioned that he has scored 2nd position in State Level Athletic Sports Competition held in Jalgaon against the 3rd position held by the applicant. Hence, apart from scoring higher marks respondent no.3 was superior in Sports Quality also. The respondent nos. 1 and 2 made communication for document verification and respondent no. 3 produced his Sports Certificate but did not produce the said certificate verified by concerned authority i.e. Deputy Director, Sports Department. The respondent no.3, thereafter submitted an application to S.P., Nagpur, P.B., Pg. NO. 77 (Annexure-R-5) for extension of date for getting his Sports Certificate verified. He also wrote to Deputy Director Sports (Annexure-R-6) (P.B., Pg. No.78). Respondent no. 3 had

applied for verification of Certificate on 05/02/2018 (P.B., Pg. No. 73, Annexure-R-3) and got the certificate verified vide letter no. [Asv@mi l @dh-i z @i MrkG.lh@168] fnukad 03-03-02018 at P.B., Pg. No. 72, 73 & 74 (both inclusive). So, it is crystal clear that applicant has applied for verification to Deputy Director Sports Office, before publication of advertisement date which is 07/02/2018. In this background the substantial question is whether the condition in the advertisement that all certificates/documents shall be bearing date prior to 18-2-2016 is directory or mandatory.

6. The Id. Counsel for the respondent no. 3 has relied upon the case of **Hon'ble Supreme Court in case of 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 on which the Id. Counsel for the respondent no. 3, specifically relied for supporting his claim which is as below:-

20 "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.”

7. However, aggrieved by the respondents' decision the applicant filed O.A.No. 554/2018 and claimed following relief, which is as under:-

“(i) By way of an interim relief direct the respondent nos. 1&2 not to finalize the claim of respondent no.3.

(ii) grant ad-interim relief in terms of prayer clause (i).”

8. The learned counsel for the applicant cited the Judgement of **Hon'ble Supreme Court in the case of Supdt. of Taxes, Dhubri Ors. Vs. Omkarmal Nathmal Trust, reported in (1976) I Supreme Court Cases 766** and he mainly relied on para no. 23 of the Judgment.

However, with due respect, we are of the view that, it is not applicable to the O.A. in hand.

9. The Principal Bench of MAT, Mumbai Bench had 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. jkdh/18/2002@i:dz:68@dh; q & 2] dated 01/07/2016 para nos. 4 (V), the detailed 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.*
- (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 the present O.A., the situation is same. The respondent no. 3 had already Sports Certificate, which was superior in quality than the applicant. In the test also, respondent no. 3 has scored much higher marks than the applicant. This proves that, the respondent no. 3 was more meritorious than applicant. He had also applied for verification of his Sports Certificate to the concerned competent authority i.e. Deputy Director, Sports by his application dated 05/02/2018, which was prior to

Advertisement for Recruitment, which is 07/02/2018. However, the respondent no.3 got relevant verified certificate on 03/03/2018. Getting this certificate was not in his own hands, it was pending in concerned Government office. So, he is not required to be punished for this delay.

11 In view of the discussions in foregoing paras, we hold that the condition in the advertisement was directory as it was not in hand of the respondent No.3 to obtain the verification/validity certificate urgently, he was forced to depend on the Government department, therefore, in our view no illegality is committed by the respondents granting time to produce the verification certificate, therefore, we pass the following order:-

ORDER

O.A. is dismissed with no order as to costs.

(Shri A.D.Karanjkar)
Member (J)

(Shri Shree Bhagwan)
Member (A)

Dated :- 01/02/2019.

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