

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 670/2022 (D.B.)

Shri Rajkumar Namdeo Jadhao,
Aged about 37 years, Occ. Ex-Serviceman,
R/o Dipali Nagar, Near Gajanan Maharaj Mandir,
Yawta Road, Malkapur, Akola,
Tah. & Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Ministry of Home Department,
Mantralaya, Mumbai-32.
- 2) The Add. Director General of Police,
Training & Special Force,
Maharashtra State,
Mumbai.
- 3) The Commissioner of Police,
Nagpur, Dist. Nagpur.
- 4) The Director, Mahapariksha,
Maharashtra Information Technology
Corporation Limited (MAHA IT),
Office at Dinshaw Vacha Road,
Near K.C. College Church Gate,
Mantralaya, Mumbai-32.

Respondents

Shri A.B.Moon, Id. Advocate for the applicant.

Shri S.A.Deo, Id. C.P.O. for the respondents 1 to 3.

**Shri S.P.Makkad holding for Shri S.M.Bhangde, Id. counsel for the
respondent no. 4.**

**Coram :- Hon'ble Shri M.A.Lovekar, Member (J) &
Hon'ble Shri Vinay Kargaonkar, Member (A)**

JUDGMENT

Judgment is reserved on 17th Jan., 2024.

Judgment is pronounced on 23rd Feb., 2024.

[Per:-Member (J)]

Heard Shri A.B.Moon, ld. Advocate for the applicant, Shri S.A.Deo, ld. C.P.O. for the respondents 1 to 3 and Shri S.P.Makkad holding for Shri S.M.Bhangde, ld. counsel for the respondent no. 4.

2. In response to advertisement dated 03.09.2019 (A-1) the applicant applied for the post of Police Constable. He is an Ex-Serviceman. His caste Banjara falls in V.J.(A) category. Four posts of Police Constable were reserved for V.J.(A) category under horizontal reservation for Ex-Servicemen. Clause 16.1.1 of the advertisement stipulated as follows:-

विमुक्त जाती-अ, भटक्या जमाती-ब, भटक्या जमाती-क, भटक्या जमाती-ड, इतर मागास प्रवर्ग, विशेष मागास प्रवर्ग, सामाजिक आणि शैक्षणिक मागास वर्ग आणि आर्थिकदृष्ट्या दुर्बल घटक या मागास प्रवर्गातील उमेदवारांनी ते उन्नत व प्रगत गटात मोडत नसल्याबाबतचे सक्षम प्राधिकाऱ्याने दिलेले लगतच्या आर्थिक वर्षाचे मूळ नॉन क्रिमीलेअर प्रमाणपत्र (Latest Non Creamy Layer Certificate) तसेच प्रमाणपत्रांची साक्षांकित छायाप्रत कागदपत्र छाननीच्या वेळी सादर करणे आवश्यक आहे. अन्यथा, त्यांची निवड रद्द करण्यात येईल.

He submitted online application (A-A-3). In Written and Physical Examination he scored 101 out of 150 marks in his category of Ex-Servicemen and by virtue of this score had qualified for this post. All certificates furnished by him, including Non-Creamy Layer Certificate, were verified. He was, however, not called for medical examination. By Circular dated 06.10.2021 (A-7) it was informed:-

नॉन क्लिमिलेअर प्रमाणपत्राबाबत : महाराष्ट्र शासन, सामाजिक न्याय व विशेष सहाय्य विभाग, शासन परिपत्रक क्रमांक सीवीसी २०१२/प्र.क्र.१८२/विजाभज-१, दिनांक २५.०३.२०१३ मधील मुद्दा क्रमांक २ (ii) मध्ये असे नमूद केले आहे की, "एखादया पदाकरीता अर्ज दाखल करावयाची/स्विकारण्याची अंतिम तारीख किंवा त्या पदाकरीता निश्चित करण्यात आलेली विशिष्ट निर्णायक (crucial) तारीख हीच संबंधित उमेदवार उन्नत आणि प्रगत व्यक्ती गटात मोडत नसल्याबाबतची पडताळणी करण्यासाठी गृहीत धरण्यात यावी" त्यानुसार अनुसूचित जाती य अनुसूचित जमाती प्रवर्ग वगळून उर्वरित विमुक्त जाती, भटक्या जमाती, इतर मागास प्रवर्ग आणि विशेष मागास वर्गातील उमेदवारांसाठी १ मार्च २०१८ ते ३१.०३.२०१९ या वर्षातील उत्पनाच्या आधारावर २०१९-२० या वित्तीय वर्षासाठी ग्राह्य असलेले, अर्ज दाखल करण्याच्या अंतीम दिनांकापर्यंतचे नॉन क्लिमिलेअर सर्टीफिकेट विचारात घेण्यात यावे व शासन परिपत्रक, सामान्य प्रशासन विभाग क्रमांक राआधो ४०१९/प्र.क्र.३१/१६-अ, दिनांक १६.०७.२०२१ नुसार सामाजिक व शैक्षणिक मागास प्रवर्गातील उमेदवारांना आर्थिकदृष्ट्या दुर्बल घटक आरक्षण अथवा खुला प्रवर्ग) विकल्पाबाबतच्या ईडब्ल्यूएस प्रमाण व नॉनक्लिमिलेअरचे मार्च २०२० चे प्रमाणपत्र ग्राह्य धरण्यात यावे.

The applicant furnished Non-Creamy Layer Certificate issued on 23.10.2019 (A-2). Since the last date for submitting applications was fixed to be 30.09.2019, by the impugned communication dated 28.01.2022 (A-6) the applicant was informed as follows:-

उपरोक्त संदर्भाधीन पत्रास अनुसरुन आपणास कळविण्यांत येते की, श्री राजकुमार नामदेव जावध ता. बारिंताकळी जि. अकोला यांनी सन २०१९ च्या पोलीस भरतीसाठी पोलीस आयुक्त, नागपूर शहर यांच्या आस्थापनेवर आवेदनपत्र सादर केले होते. सदर भरतीसाठी नॉनक्रिमीलेअर सादर करण्याची अंतिम मुदत दि.३०.०९.२०१९ ही निश्चित करण्यात आली होती. त्यानंतर प्राप्त होणारे नॉनक्रिमीलेअर प्रमाणपत्र अनुज्ञेय ठरणार नव्हते. अर्जदार श्री जाधव यांनी नॉनक्रिमीलेअर प्रमाणपत्र दिनांक २३.१०.२०१९ च्या दिनांकाचे असल्याने तुमचा पोलीस आयुक्त, नागपूर शहर यांनी पोलीस भरतीसाठी विचार केलेला नाही.

Hence, this Original Application.

3. It is the grievance of the applicant that by Circular dated 06.10.2021 (A-A-7) the date for verification of documents could not have been arbitrarily fixed/preponed to 30.09.2019 when Clause 16.1.1 of the advertisement was silent on this point and this flaw which goes to the root of the matter would lead to the conclusion that Circular dated 06.10.2021 as well the impugned communication dated 28.01.2022 (A-6) need to be quashed and set aside.

4. The application is opposed on the following grounds:-

A. As per G.R. dated 25.03.2013 (A-R-1) the last date for submitting application is to be treated as the last date for submitting necessary certificates.

B. On 17.09.2019 the applicant submitted application online (A-A-3). In this application he mentioned number of his Caste Certificate to be 360 and that it was issued at Akola.

This information was falsified by certificate (A-A-2) which was issued on 23.10.2019 by Sub Divisional Officer, Murtizapur. By furnishing false information the applicant played a fraud. Under such circumstances the Recruitment Committee was fully justified in disqualifying the applicant by exercising powers vested in it by Clause 14.9 of the advertisement which reads as under:-

सदर प्रक्रियेत उमेदवार अपात्र आढळल्यास त्यास निवड प्रक्रियेतून वगळण्यात येईल. पात्रता धारण न करणाऱ्या उमेदवारांना भरतीच्या कोणत्याही टप्प्यावर अपात्र करण्याचे संपूर्ण अधिकार अध्यक्ष, भरती समिती यांनी राखून ठेवले आहेत व याबाबत उमेदवाराची कोणतीही तक्रार विचारात घेतली जाणार नाही.

C. Circular dated 06.10.2021 (A-7) merely reiterated the following which is stipulated in G.R. dated 25.03.2023 (A-R-1):-

एखाद्या पदाकरीता अर्ज दाखल करावयाची / स्विकारण्याची अंतिम तारीख किंवा त्या पदाकरीता निश्चित करण्यात आलेली विशिष्ट निर्णायक (crucial) तारीख हीच संबंधित उमेदवार उन्नत आणि प्रगत व्यक्ति / गटात मोडत नसल्याबाबतची पडताळणी करण्यासाठी गृहित धरण्यात यावी.

D. By Circular dated 03.10.2021 (A-R-3) it was informed:-

उपरोक्त विषयाबाबत काही पोलीस घटक प्रमुखांकडून पोलीस भरती -२०१९ साठी प्रमाणपत्रांचा दिनांक (Cut off date) निश्चितीबाबतचे पत्र या कार्यालयास प्राप्त झालेली आहेत. त्यानुषंगाने पोलीस शिपाई या पदासाठी वयोमर्यादा ही दि. ३०.०९.२०१९ अशी निश्चित करण्यात आलेली आहे. तीच कागदपत्र पडताळणीबाबतची तारीख अंतिम असेल.

It may be reiterated that the applicant had applied for the post of Police Constable.

5. The applicant has relied on **The West Bengal University of Animal and Fishery Services & Ors. Vs. Nihar Janti Roy & Anr. 2014 SCC Online Cal 17321**. In this case no date was fixed in the employment notification for submission of experience certificate and, therefore, acceptance of experience certificate after the cut off date was held to be proper.

6. The applicant has further relied on judgment of **Principal Bench of this Tribunal dated 07.06.2019 in O.A. No. 1086/2016 (Sunil Bhanudas Sumbe Vs. State of Maharashtra & 2 Ors.)** In this case, on facts, it was observed:-

It is, however, relevant that applicant did produce his experience certificate from Indian Navy at the time of verification and the same has not been disputed by respondent no. 2. Just because the applicant did not mention about it in the online application form, therefore, denying the fact that he had submitted the same during verification, cannot be discarded.

Both these Rulings are clearly distinguishable on facts.

7. The respondents, on the other hand, have relied on **Sushila Dilip Mestry Vs. The State of Maharashtra & Ors. 2022 (6) ALL MR 130**. In this case it is held:-

Any aspirant seeking appointment in a reserved vacancy, be it vertical or horizontal, can only be considered if he/she possesses the relevant certificate, and if it is the requirement of the advertisement that such certificate must accompany the application, there can be no two opinions that the certificate must be available at least on the last date for receipt of applications so that it can accompany the application for appointment. In the absence of the certificate, the application is liable to be rejected treating it as incomplete.

In this connection, we may also refer to the decision of the Supreme Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. V/ s. M. Tripura Sundari Devi (1990) 3 SCC 655., where it has been held in paragraph 6 as follows:

"6. It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

The aforesaid decision is an authority for the proposition that it would amount to a fraud on public if an appointment were made in disregard of the terms of the advertisement, unless the qualifications are relaxable. It has not been shown that the qualifications were relaxable in this case in the sense that the certificate could be submitted later on or even at the interview; therefore, we have no other option but to hold that the terms of the advertisement being inflexible, we cannot by a judicial fiat bring about a situation of fraud being committed on the public by taking a lenient view.

We have read the order of the Tribunal which has held that the petitioner did not possess the necessary qualifying documents on the date she had applied for public appointment. The observation that the petitioner not being vigilant in obtaining the documents at the appropriate time commends us to be acceptable. An aspirant for public employment is not expected to conduct herself in the manner the petitioner did, assuming arguendo that she indeed was the holder of a valid sports certificate which she had lost without any fault on her part.

Based on above analysis, we hold that the petitioner did not possess the requisite certificate on the last date of filing applications certifying that she had participated in a state-level competition and had been part of

the winning team; hence, the respondents did not commit any error in not appointing her on the post of police constable.

8. The respondents have further relied on judgment of **Principal Bench of this Tribunal dated 29.04.2022 in O.A. No. 246/2022 (Shri Ganesh Maruti Jagtap Vs. State of Maharashtra & 2 Ors.)**. This Ruling squarely applies to the facts of the case the only difference being in the said case driving licence was issued after cut off date i.e. 08.01.2020 whereas in the instant case Non Creamy Layer Certificate was issued after said cut off date. The Principal Bench observed:-

However, the applicant did not possess a valid driving license on the cut-off date, i.e. 8.1.2020. Hence, he was declared disqualified as his LMV License was beyond the cut-off date. The Driving License zerox copy submitted by the applicant during the scrutiny process shows issuance of Driving License is 14.1.2020, i.e. after the cut-off date prescribed by Respondent no. 1. Learned C.P.O further pointed out that as per the advertisement dated 30.11.2019, the cut-off date is 22.12.2019 and in due course the cut-off date was extended up to 8.1.2020. Learned C.P.O relied on the judgment of this Tribunal, Aurangabad Bench dated 29.11.2011, in O.A. 821/2011 & Ors, wherein the applicants were not given extension for submitting the Domicile Certificates beyond the cut-off date.

We have considered the submissions of both the parties. In view of the fact that the applicant did not submit his driving license before the cut-off date, i.e. 8.1.2020, the Respondents have rightly declared the applicant disqualified. The said examination has been held all over the State of Maharashtra and the candidature of other similarly situated candidates has also been rejected.

9. The respondents have further relied on **Ashok Kumar Sonkar Vs. Union of India & Ors. 2007 (4) SCC 54**. In this case it is held

that the Court will not issue a direction insisting upon compliance of useless formality. In a given case, where no prejudice is shown or no different result is possible, the formality of notice can be dispensed with.

10. A conjoint consideration of facts of the case and legal position discussed above shows that the applicant ought to have produced Non-Creamy Layer Certificate which was issued not after the cut off date i.e. 30.09.2019. He produced certificate which was issued on 23.10.2019. In online application (A-A-3) he furnished false information in respect of Caste Certificate. Considering such conduct the Recruitment Committee was justified in disqualifying him by taking recourse to Clause 14.9 of the advertisement. For all these reasons, **the O.A. is dismissed with no order as to costs.**

(V.Kargaonkar)
Member(A)

aps
Dated - 23/02/2024

(M.A.Lovekar)
Member (J)

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J)
& Hon'ble Member (A).

Judgment signed : 23/02/2024.
on and pronounced on

Uploaded on : 24/02/2024.