

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1079 OF 2019

DISTRICT : SOLAPUR

Miss Madhuri Sanjay Chaugule)
R/at. Chaugule Wasti, Yelmar,)
Mangewadi, Solapur 413 307)

..Applicant

Versus

1. The Secretary,)
Maharashtra Public Service)
Commission, 5th and 7th floor,)
Cooprej Telephone Exchange)
Bldg., Maharshi Karve Marg,)
Cooprej Telephone Exchange)
Bldg., Maharshi Karve Marg,)
Cooprej, Mumbai 400 021)

2. The State of Maharashtra,)
Through the Secretary,)
Agriculture, Dairy Development,)
Animal Husbandry and Fisheries)
Department, Mantralaya,)
Mumbai 400 032)

3. Mr. Rajhans Gopinathrao)
Khorar, working as Agriculture)
Circle Officer, Selu, Dist.Parbhani)

..Respondents

Mr. S.S. Dere, learned Counsel for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for Respondents.

Mr. S.G. Sawalkar, learned Counsel for Respondent No.3 is absent.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil, Member (A)

RESERVED ON : **08.02.2024.**

PRONOUNCED ON : **09.02.2024**

J U D G M E N T

1. Learned Counsel Mr. Dere has submitted that he has informed learned Counsel Mr. S.G. Sawalkar that the matter is listed for Final Hearing on today's board.

2. In view that learned Counsel Mr. Sawalkar was aware that the matter is on today's board for Final Hearing, yet he is not present, we proceed with the matter.

3. In this matter the entire issue and arguments are based on clause 3.8 and clause 12 of the advertisement dated 7.3.2018 for preliminary examination and the last date of submission of the Sports Certificate with validation. The applicant prays that respondent no.1 to hold that applicant possesses valid sports certificate and the report is submitted as per clause 3.8 of the advertisement and if the applicant is found meritorious then he is to be recommended by respondent no.1 to respondent no.2.

4. Respondent no.1 MPSC has issued the advertisement for the post of Agriculture Officer, Group-B Junior. 66 posts were advertised out of which 2 posts were earmarked for Sports

category. The applicant applied in the Open Sports Category. The last date for submission of application was 27.3.2018 as per para 12.7.10 of the said advertisement. The applications were to be filled up till 28.3.2018. The applicant filled up the form and applied for the same on 23.3.2018. Her candidature was not accepted from the sports category on the ground that she was not possessing valid sports certificate within the period as mentioned in the advertisement. Thus her candidature was rejected. Therefore she has approached this Tribunal.

5. Ld. PO submits that applicant is wrongly relying on clause mentioned in the advertisement dated 24.7.2018 which is for main examination. The candidature was rejected on the basis of the advertisement dated 7.3.2018 which was for the preliminary examination. She submits that as per clause 4.7 of the advertisement dated 7.3.2018 a candidate should possess sports certificate certified by the competent authority at the time of filling up the application form. Ld. PO submits that applicant was not holding valid sports certificate when she submitted her application in March, 2018 and she has applied for sports certificate on 25.7.2018 against which she has received certificate on 2.8.2018. She further relies on clause 5(viii) of GR dated 1.7.2016.

6. Learned P.O. has relied on the affidavit-in-reply dated 04.02.2020 filed on behalf of Respondent No.1 through Mr. Bhalchandra Pandurang Mali, Under Secretary, M.P.S.C. wherein

it is mentioned that the State relies on Clause 5 of G.R. dated 01.07.2016 on the point of submissions of validation of Sports Certificate. She has submitted that the Applicant was required to obtain Sports Verification Certificate from the Divisional Deputy Director of Sports before applying for the examination i.e. 27.03.2018. Learned P.O. has submitted that Clause 3.8 of the Advertisement dated 24.07.2018 of Main Examination is wrongly added and therefore it is not necessary to read Clause 3.8.

7. Considered the submissions of both the parties. Chronological details are as follows :

On 07.03.2018 the advertisement for Preliminary Examination for the post of Agricultural Officer was issued by the M.P.S.C. Last date for filling of the application forms for Preliminary Examination was 27.10.2018. On the last date the applicant submitted application in Sports Category as she was holding the certificate in Kho-kho which was issued by the competent authority on 13.11.2009. Applicant cleared the Preliminary Examination and thereafter the advertisement dated 24.07.2018 for Main Examination was issued by the M.P.S.C. The last date for filling up application forms for Main Examination was 07.08.2018. The Applicant submitted her form on 25.07.2018 along with her Sports Validation Report dated 25.07.2018. She cleared Main Examination the result of which was published on 08.02.2019. Applicant applied in Sports Category and Respondent

No.3 applied in General Category and have secured 144 marks and 131 marks, out of 400 marks, respectively. She was also called for the interview, but her candidature was rejected on the ground that the Sports Validation Report was beyond the date of the submission of the application forms for Preliminary Examination. Admittedly, the Applicant is holding genuine Sport Certificate issued by the Competent Authority when she filled up application form for the Preliminary Examination. However, she was not having Sports Validation Report on that date which was the last date of submission of application form for the Preliminary Examination. Applicant was holding the Sports Validation Certificate on 02.08.2018 and the last date of filling the application form for Main Examination forms was 07.08.2018. Thus, the Applicant was having Sports Validation Report before the last date of filling up the application form of the Main Examination. It is necessary to reproduce the relevant Clause 4.7 of the Advertisement dated 07.03.2018 for the Preliminary Examination :

“४.७. प्रविण्य प्राप्त खेळाडू आरक्षणाचा दावा करणा-या उमेदवारांच्या बाबतीत त्यांची क्रीडा विषयक प्रामाणपत्रे योग्य दर्जाची असल्याबाबत व तो उमेदवार खेळाडू प्रवर्गातील आरक्षित पदासाठी पात्र ठरतो याबाबत, आयोगास अर्ज सादर करण्यापूर्वीच. सक्षम प्रधिका-याने प्रमाणित केलेले प्रमाणपत्र प्राप्त केलेले असणे आवश्यक आहे.”

Thus Clause 4.7 pertains to the submission of Sport Validation Certificate issued by the Competent Authority on 13.11.2009. Respondents have no issue about the same. Thus, the advertisement of Preliminary Examination is silent on the point of submission of Sports Validation Report. In the Advertisement

dated 24.07.2018 for the Main Examination, Clauses 3.8 and 3.10 are relevant and the same are reproduced below :

“३.८. प्राविण्य पात्र खेळाडू आरक्षणाचा दावा करणा-या उमेदवारांच्या बाबतीत क्रीडा विषयक विहित अर्हता धारण करित असल्याबाबत पूर्व परीक्षेचा अर्ज सादर करण्याचा अंतिम दिनांकास किंवा तत्पूर्वीचे सक्षम प्राधिका-याने प्रमाणित केलेले क्रीडा प्रमाणपत्र प्राप्त केलेले असणे आवश्यक आहे. तसेच त्यांची क्रीडा विषयक प्रमाणपत्रे योग्य दर्जाची असल्याबाबत व तो खेळाडू उमेदवार कोणत्या संवर्गातील (गट-अ ते गट-ड) खेळाडूसाठी आरक्षित पदाकरीता पात्र ठरतो याविषयीच्या क्रीडा पडताळणीबाबतचा संबंधित विभागीय उपसंचालकाचा अहवाल मुख्य परीक्षेचा अर्ज सादर करण्याच्या अंतिम दिनांकाचा अथवा तत्पूर्वीचा असणे आवश्यक आहे.

३.१० क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गातील खेळाडूसाठी आरक्षित पदाकरीता पात्र ठरतो याविषयी मुख्य परीक्षेस अर्ज सादर करण्यापूर्वीचा संबंधित संवर्गातील खेळाडूसाठी आरक्षित पदावर शिफारशी/ नियुक्तीकरीता विचार करण्यात येईल.”

These Clauses state about the production of Sports Verification Report and the last date of submission of the said report, which should be before filing of application form for Main Examination. As per the submission of learned P.O. in the affidavit the M.P.S.C. stated that Clause 3.8 is withdrawn and it is not to be read in the Advertisement dated 24.07.2018.

8. We failed to understand under what authority M.P.S.C. has made such statement of withdrawal without issuing any corrigendum. Assuming Clause 3.8 is not to be read yet Clause 3.10 states that the last date of submission of Sports Validity Report should be before the submission of application form of the Main Examination. We are of the view that the Applicant was holding Sports Validation Certificate before she applied for the Main Examination therefore M.P.S.C has committed a mistake and decision of M.P.S.C. of not including the name of the Applicant in the recommendation list is erroneous and illegal. Applicant and Respondent No.3 have secured 144 marks and 139 marks, out of

400 marks. Thus, the Applicant is otherwise meritorious and entitled to get the appointment, if found otherwise eligible. It was earlier argued by learned Counsel Mr. Sawalkar that Respondent No.3 is in service and has occupied the said post since last three years for no fault of him. These submissions are correct, hence we accept the same. We are informed by learned P.O. that there is no vacancy available with the Government of the post of Agricultural Officer in the said Recruitment Process. However, we rely on the ratio laid down by the Hon'ble Supreme Court in the case of **Vikas Pratap Singh & Ors. Versus State of Chhattisgarh & Ors. reported in 2013 (14) SCC 494**. In the judgment of **Vikas Pratap Singh (supra)**, the Appellants were Platoon Commanders and Sub Inspectors who had already undergone the training and were appointed. However, select list was challenged and in the revised list they were found less meritorious. Hence, they challenged cancellation of their appointments. The Hon'ble Supreme Court while dealing with this issue held as follows :

“26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

27. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the

minimum statutory age for appointment shall be accommodated with suitable age relaxation.”

The Applicant in the present case is a deserving candidate and she is to be appointed. In view of the above, we pass the following order :

O R D E R

- (A) Original Application is allowed.
- (B) Respondent-M.P.S.C. should recommend the name of the Applicant.
- (C) Respondent-State should issue appointment order in favour of the Applicant, if she is found otherwise eligible.
- (D) Respondent No.3 is not to be removed from the service and he is to be continued in the service.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

sgi/prk