

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 112 of 2008 (D.B.)**

Ku. Pallavi d/o Pramod Borde,
Aged about 21 years, Occ. Service,
Resident of Ashirwad Nagar,
Behind Trimurti Gas Agency, Main Road,
Murtizapur.

Applicant.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Department of Home, Mantralaya,
Mumbai-32.
- 2) The Superintendent of Police,
Buldhana, District Buldhana.
- 3) The Director,
Sports & Youth,
Directorate, Maharashtra State,
Pune.
- 4) District Sports Officer,
Buldhana, Tq. & Dist. Buldhana.

Respondents.

S/Shri Kiran Malokar, R.V. Shiralkar, Advocates for the applicant.

Shri P.N. Warjurkar, learned P.O. for the respondents.

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

JUDGMENT**PER : V.C. (J).****(Delivered on this 13th day of August,2018)**

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. In response to the advertisement dated 25/07/2007 issued by respondent no.2 the applicant participated in the recruitment process for the post of Police Constable. Out of 100 posts notified for Open, 5 posts were reserved for Sport category and the applicant applied for the post of Open Sport category. The applicant was appointed for the post on 10/09/2007 and continued to work there as such till 22/02/2008. Vide order dated 22/02/2008 the services of the applicant came to be terminated and said termination order is at Annex-A-D at P.B. page no. 17 and it reads as under :-

^ egjk"V" i syhl f'ki kbZ 1/1 dki d's k/fu; e]2006 e/khy rjrmhuu kj [kGMwEg.kuu
i syhl f'ki kbZ i nkoj Hkjrh y >ky; k menokj kauh nk [ky dsy syh [kGkl aalkph dkxni =s
@ i ek.ki =s l pkyd] dhlMk o ; pd l pkyuky;] e-jk-] i wks ; kulk i MrkG.kh o
vfhki k; kl kbh i kbfo.; kr vkyh vl rk R; kauh R; kps i = dz
[kvl@i kbk@411@2007&08@265] fnukd 15@02@2008 vUo; s mi jkDr uem
menokj gs i syhl f'ki kbZ ; k i nkoj [kGMwEg.kuu Hkjrh gks; kl uem l dki d's k
fu; ekrhy 'krhZu kj i k= Bjr ukghr vl svfhki k; fnY; kusgk vkns k i ktr >ky; kps
fnukd ki kl u mi jkDr uem i f'k{k.kkFhZ i syhl f'ki kbZ ; kph l ok l ektr dj.; kr ; r
vkg**

3. From the aforesaid order, it seems that in all 5 persons were terminated on the similar ground including the applicant. The

applicant has challenged the order of termination in this O.A. and requested that the impugned order dated 22/02/2008 (wrongly mentioned as 02/02/2008) issued by respondent no.2 terminating the services of the applicant from the post of Police Constable be quashed and set aside and the respondents be directed to reinstate the applicant on the post of Police Constable with back wages and continuity of services.

4. It seems that the termination of the applicant is on the basis of report of the Director of Sports & Youth, Directorate, Maharashtra State, Pune dated 15/02/2008. The copy of which is placed on record at P.B. page nos.17E to 17L (both inclusive). The applicant has therefore claimed that the said report be declared an illegal, arbitrary and contrary to the Judgment of this Tribunal in O.A.Nos. 58, 566 & 599 of 2008, dated 01/09/2009.

5. The respondent no.2 resisted the claim and submitted that the participation at International / National / All India Inter University Level in the sports is must. The certificate produced by the applicant is of Inter University Tournament Level in the game "Kho-Kho" as well as sports discipline Ball Badminton / Soft Ball/ Karf Ball and same is not included in the Home Department Circular dated 16/05/2006. The applicant was therefore rightly terminated and it was clearly mentioned in the appointment order that her services can

be terminated at any time without notice, if any doubtful or objectionable incident in verification of the certificates such as educational qualification, sport certificate, caste certificate etc. was noticed.

6. We have perused the various documents placed on record, we have also gone through the arguments putforth by the learned counsel for the applicant and the learned P.O. The undisputed fact is that the applicant has applied from the Sport category of "Kho-Kho" and it is stated that she has participated in the Inter University competition and she was selected and appointed. It however seems that the certificate of the applicant was sent to the Director of Sports for verification and the Director of Sports opined that the applicant was not fit for the post since she had not participated in All India competition as required in the advertisement. The report of the Director of Sports is at Annex-E at P.B. page nos.17E to 17L (both inclusive) and so far as the case of the applicant is concerned, the same is at P.B. page nos.17 I and 17J. The relevant Sport in which the applicant has participated at Inter University level is "Kho-Kho". It seems that the place of Tournament has been wrongly shown as Jalgaon in the said report and it should have been at Calicut as seems from the sport certificate submitted by the applicant. From the report, it seems that the game Kho-Kho though included in the list of games certified, the applicant had not

participated in All India Tournament as required in the advertisement. The advertisement is at Annex-A at P.B. nos. 10 to 11 (both inclusive) and the relevant clause regarding the Sport category is as under :-

^ [kGMM& , dmk i nkb; k ?kVdfugk; 5 Vdds i ns [kGkMmmenokjkruu Hkj.; kr ; shty- [kGkMmckcr 'kkl ukusoGloGh fnyy; k l oyrh o funz kkuu kj Hkj.; kr ; shty- l njph l W QDr [kkyh uem dthMk dkefxjh dj.kk&; k [kGkMm kBhp ns jkghy- ¼1½ jkT; Lrj ¼vkrjftYgk½ ¼2½ vkrjfo?kkihB Lrj ifrfu/kRro ¼3½ jk"Vh; Lrj ifrfu/kRro ¼4½ vkrjjk"Vh; Lrj ifrfu/kRro- EkkU; rki klr [kG & 1- vkrjh ¼kufo?k½ 2-vMkySVd o dkk dth 3- vDofVDd ¼i k.; krhy [kG½ 4- cMfeV u 5- cMdl x 6-cMldVckW 7- fcyh, Ml o Luwdj 8-ftEuLVd 9-gMckW 10- T; Mks 11- dcMh 12- [kk& [kks 13- yklu Vful 14- jk; Qy 'kphax 15- jkbx 16- Vcy Vful 17- cMh fcYVhax 18- OgkVhckW 19- oVfyi &Vhax 20- dkrh 21- gkMh 22- rk; Dokms 23- QWckW 24- fdzV 25- dukbx ¼gkMh oYgfo.k½ 26-jXch 27- djkVs28- i kUj fyIVhax i # "k rl p efgyk [kGMMuk fdeku mpHP; k vVhe/; s2-5 l æh brdh l W ns jkghy- cMl eu & cMMeu i nkl kBh 12 oh mRrh.kz menokj feGr ul Y; kl 10 oh mRrh.kz menokjkpk fopkj dj.; kr ; bzy- 10 oh mRrh.kz menokj cMl eu i nkl kBh vtZd# 'kdrhy- rl p l nj menokjkuk mphe/; s2-5 l seh- o Nkrhe/; s2 l æh- u Qxforkj 1-5 l æh- Qxou brdh l W ns jkghy- l nj l oyr ns; kps vf/kdkj i ksyhl egkl pkyd e-jk-epbz ; kkk jkgrhy- cMl i Fdkrhy i nkl kBh vtZ dj.kk&; k menokjkuk cMl e/khy ok?kph ekfgrh vl .ls o ok?k oktfo.; kpk vuHko vl .ls vko'; djkgly- **

7. The aforesaid clause mentions about the participation in Sports at Inter University level.

8. The learned counsel for the applicant for the applicant submits that similarly situated Police Constables who were

terminated, have filed O.A.Nos. 58,566 & 599 of 2008 before this Tribunal at Aurangabad Bench and this Tribunal vide Judgment dated 1st Sept.,2009, in the said case The Tribunal was pleased to allow the applications and those candidates were allowed to be continued in the services, the case of the applicant is also covered by the said Judgment.

9. The learned counsel for the applicant also placed on record the copy of the common Judgment passed in O.A.51 of 2011 with 52 of 2011 & 53 of 2011 by this Tribunal on 22/07/2011 wherein similar issue was involved and considered and the order issued by the Director of Sports was quashed and set aside and the applicants were reinstated forthwith in the service with all consequential benefits.

10. The learned counsel for the applicant has also placed reliance on the Judgment delivered by the Hon'ble High Court Bench at Aurangabad in a group of Writ Petition Nos.479, 662, 3919, 4010 of 2010 on 12/07/2010. On the similar issue the Hon'ble High Court has observed in para-3 and 4 of the order as under :-

“(3) Since the facts in all these petitions are common, we advert to the facts in Writ Petition no.479 of 2010. In the present case, the respondents herein had participated in Kho-Kho game in the inter-university event. The certificates are appended to the present petitions. The competent

authorities turned down the said certificates on the ground that the Government Resolutions, issued by the Government from time to time did not include representation in inter-university events. The respondent herein, therefore, aggrieved by the decision of the authorities holding them as ineligible to be considered for appointment from the category of Sports persons, filed Original Application no.58 of 2008 before the Aurangabad Bench of the Maharashtra Administrative Tribunal. The Tribunal, by its order which is impugned in the present petitions dated 1/9/2009 allowed the original applications. Mr.K.J. Ghute Patil, learned Assistant Government Pleader has urged before us that though the advertisement in no uncertain terms holds candidates as eligible who have represented the university in the inter-university events, yet since the inter-university events are not included in the Government Resolution, the Tribunal was in error in allowing the original applications. Mr. A.S. Deshpande, learned counsel for the respondents has supported the order of the Tribunal.

(4) A reference to the advertisement would clearly indicate that representation of the university in the inter-university events has been held to be an event which would entitle the candidate who had represented the university to be considered for appointment. The advertisement enlists about 28 events, of which Kho-Kho is an event included at item no.9. The respondents herein had represented the university in inter-university Kho-Kho event and as such, according to us the respondents can be said to have fulfilled the terms of the advertisement. The Tribunal has proceeded

on these lines and after perusal of the findings of the Tribunal, we cannot fault the reasoning of the Tribunal.”

11. The Hon'ble High Court therefore has confirmed the order passed by this Tribunal and has clearly observed that the representation in Inter University of Kho-Kho event fulfils the terms of the advertisement.

12. We have carefully gone through the Judgments as referred above and we are satisfied that the case of the present applicant is also covered by the aforesaid Judgments. The applicant has participated in Kho-Kho Tournament at Inter University level and therefore seems to be very much eligible for being considered for the post of Police Constable in view of the advertisement dated 25/07/2007 and therefore she was rightly appointed on the said post and therefore the termination of the applicant by respondent no.2 vide impugned communication dated 22/02/2008 was not legal and proper. The respondent no.3 also did not consider the sport certificate of the applicant with a proper perspective and therefore wrongly opined that the applicant was not fit for being appointed on the post of Police Constable as per the advertisement dated 25/07/2007.

13. The learned counsel for the applicant submits that in O.A.51 of 2011 with 52 of 2011 & 53 of 2011 this Tribunal at

Aurangabad Bench vide order dated 22/07/2011 has passed the order of reinstatement with all consequential benefits which were to be released within a period of three months from the date of order and therefore the applicant shall also be granted all consequential financial benefits. It seems that immediately after termination of the other candidates, they have approached the concerned Tribunal and their services were protected and some of them were continued in services by way of interim order. In the present case the applicant was terminated and therefore was not in service. It is not known whether the applicant has served any where during the period from the date of termination till today. It is also material to note that this O.A. was dismissed vide order dated 14/01/2016, however, the said order was challenged before the Hon'ble High Court, Bench at Nagpur in writ petition no.518/2018 and the Hon'ble High Court vide order dated 24/2/2018 in the said Writ Petition was pleased to allow the writ petition and directed the parties to appear before the Tribunal on 9/4/2018. Thus, admittedly from 14/1/2016 till the writ petition was allowed on 24/2/2018, the application was not on record, since it was already dismissed in default. Considering all these aspects, it would not be proper and in the interest of justice to grant 100% financial benefits to the applicant on reinstatement. Therefore, in the interest of justice, we are of the opinion that if 50% of the emoluments are

granted to the applicant for the period from the date of termination till she is reinstated in the services, it will meet the ends of justice.

14. On a conspectus of discussions in forgoing paras, we are therefore satisfied that the impugned order dated 22/02/2008 issued by the respondent no.2 terminating the services of the applicant from the post of Police Constable is illegal and such is required to be quashed and set aside. Consequently, the report of respondent no.3 dated 15/02/2008 so far as it pertains to the applicant is also illegal, arbitrary and contrary to the common Judgment delivered in O.A.Nos. 58,566 & 599 of 2008, dated 1st Sept.,2009. We, therefore, pass the following order :-

ORDER

The O.A. is partly allowed in terms of prayer clause 10 (i) and 10 (iii). We direct the respondents to reinstate the applicant forthwith on the post of Police Constable. The respondents shall also pay 50% of the back wages to the applicant from the date of termination of services till the date on which she is reinstated. The report of respondent no.3 dated 15/02/2008 so far as it relates to the applicant is quashed and set aside since the same is illegal, arbitrary and contrary to the common Judgment of this Tribunal in O.A.Nos. 58,566 & 599 of 2008, dated 1st Sept.,2009. The financial benefits as

referred above shall be paid to the applicant within three months from the date of reinstatement. No order as to costs.

(Shree Bhagwan)
Member(A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 13/08/2018.

dnk.