

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 231 OF 2017

DISTRICT : PUNE

Shri Ramesh Tukaram Awate,)
Occ : Assistant Store Keeper,)
Pimpri-Chinchwad Municipal Corporation,))
Pimpri, Pune – 18.)
R/o: Survey No. 44/3, Someshwar Park)
Society, Flat No. 4, Chandan Nagar,)
Pune – 14.)...**Applicant**

Versus

1. The Secretary,)
Maharashtra Public Service)
Commission, [M.S], Mumbai.)
Having office at Cooperage)
Telephone Nigam Bldg, M.K Road,)
Mumbai 400 021.)
2. The State of Maharashtra,)
Through Principal Secretary,)
School Education & Sports Dept,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

RESERVED ON : **15.02.2018**

PRONOUNCED ON : **27.02.2018**

PER : **Shri Justice A.H Joshi (Chairman)**

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. Applicant is the employee of Pimpri Chinchwad Municipal Corporation. He has applied for selection for the post of Inspector in State Excise Department, pursuant to the advertisement issued by M.P.S.C.

3. Applicant claim horizontal reservation from Sports category. Applicant's candidature is rejected on account of fact of his age which is above 43 years. Admittedly applicant is above 44 years of age.

4. Applicant has amended the Original Application challenging paras 4(vii) and 6(vi) of Government Resolution dated 1.7.2016. Copy of Government Resolution dated 1.7.2016 was not annexed to O.A. Copy thereof was placed on record by the M.P.S.C along with its affidavit, as Annexure R-1.

5. Impugned text 4(vii) and 6(vi) read as follows:-

“४(vii) खेळाडूची गुणवत्ता व पात्रता विचारात घेऊन सदर पदासाठी सेवाप्रवेश नियमानुसार विहित असलेल्या वयोमर्यादेत ५ वर्षांपर्यंत वयाची अट शिथिल करण्यात यावी. तथापि वयोमर्यादेत ५ वर्षांसाठी वयाची अट शिथिल करताना कोणत्याही प्रवर्गाच्या उमेदवारांची उच्चतम वयोमर्यादा ४३ वर्षे राहिल.”

(Quoted from page 81 of O.A)

“६(vi) खेळाडूची गुणवत्ता व पात्रता विचारात घेऊन सदर पदासाठी सेवाप्रवेश नियमानुसार विहित असलेल्या वयोमर्यादेत ५ वर्षांपर्यंत वयाची अट शिथिल करण्यात यावी. तथापि वयोमर्यादेत ५ वर्षांसाठी वयाची अट शिथिल करताना कोणत्याही प्रवर्गाच्या उमेदवारांची उच्चतम वयोमर्यादा ४३ वर्षे राहिल.”

(Quoted from page 84 of O.A)

6. Applicant has formulated his challenge to the text quoted in foregoing para by amending the Original Application in para no 6.18C & 6.18D, which is reproduced below:-

“6.18C That in the circumstances stated above, the fixation of the upper age limit for the post in question namely that of Sub Inspector, State Excise is within the powers of the General Administration Department and not within the powers of the Respondent no. 2. That in view of this, the part of the clause 4(vii) and clause 6(vi) of the said G.R to the extent the same has put the restriction on the upper age limit up to 43 years in respect of candidate belonging to any category is in excess of power of the Respondent no. 2 and as such without jurisdiction and without competence.

6.18D That according to the Petitioner, the provisions made in the aforesaid clause 4(vii) and clause 6(vi) of the G.R to the extent of providing relaxation up to 5 years in the Recruitment Rules of the particular post for meritorious and eligible Sports person, can be said to be within the competence of the Respondent no. 2 and not anything more as stated above.”

(Quoted from page 10B & 10C of O.A).

7. By virtue of the averments quoted in foregoing paragraph No. 5 and also oral arguments by the learned advocate, applicant has simplified and restricted his submission on following points:-

- (a) Age limit has to be a matter of recruitment rules and cannot be prescribed and the cap on upper age limit cannot be prescribed by Sports department.
- (b) The condition of upper age limit of 43 years put in the impugned conditions of G.R dated 1.7.2016 is beyond executive and legislative powers of the Sports department, which is the prerogative and power of G.A.D.

8. Perusal of the impugned G.R reveals that in the concluding portion of the G.R, following text appears, which read as follows:-

“ हे आदेश सामान्य प्रशासन विभागाच्या संमतीने निर्गमित करण्यात येत आहेत.”

(Quoted from page 85 of O.A, i.e. last page of G.R dated 1.7.2016, Exh R-1).

9. It is thus evident that conditions as to limited age relaxation up to 43 years of age has been imposed through the impugned G.R in concurrence with G.A.D.

10. The applicant's plea that the Sports department has no authority and has taken action in an isolation for which it does not have powers thus turns out to be bald and baseless contention.

11. Moreover, G.R dated 1.7.2016 prescribes & provides for a concession. The mode and manner in which a concession be granted is a matter of absolute power of the Government. Any rule extending concession is not open for challenge unless it is ultra vires or otherwise violative of fundamental rights. Any such argument is coming forward.

12. In the result Original Application has no merit and is dismissed.

Sd/-
(P.N Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 27.02.2018
Dictation taken by : A.K. Nair.

H:\Anil Nair\Judgments\2018\Feb 2018\O.A 231.17 Selection denied on the basis of age, DB, 2.18.doc