

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.3853 OF 2023

1. Rahul Gorakhanath Kadam,
Age: 30 yrs, Occu: Student,
R/at: Shelakgaon, Tal. Kadegaon,
District: Sangli 415305.
Email ID: rahkadam4u@gmail.com
Contact No: 8668459558.
2. Nilesh Shivaji Patil,
Age: 30yrs, Occu: Student,
R/at: Mali Galli, Bastavade,
Kolhapur, Maharashtra -416235.
Email ID: Nileshpatil425@gmail.com,
Contact No: 9404859999.

...Petitioners

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department (Transport),
Mantralaya, Mumbai-32.
2. The Transport Commissioner Maharashtra
State Administrative Building, 4th Floor,
Government Colony, Bandra (East),
Mumbai 400051.
3. Maharashtra Public Service Commission
Through its Secretary 5 ½, 7 & 8th Floor,
Kuprej Telephone Nigam Building,
Maharshi Karve Road, Kuprej, Mumbai.
4. The State of Maharashtra,
Through Principal Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
5. The State of Maharashtra,
Through Principal Secretary,

School Education and Sports Department

Mantralaya, Mumbai-32.

6. Deputy Director,
Sports and Youth Services,
Nagpur Region, Nagpur.
Office at: Divisional Sports Complex,
Koradi Road, Mankapur, Nagpur-30.

...Respondents

Mr. Abhijit Desai a/w. Mr. Shrikant D. Patil for the Petitioners.

Mr. N. C. Walimbe, Addl. G. P. a/w. Mr. N. K. Rajpurohit, AGP for
Respondent Nos.1 to 6-State.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were heard : 21st March 2024

Date on which the Judgment is pronounced : 04th April 2024

Judgment (Per Jitendra Jain, J.) :-

1. By this petition under Article 226 of the Constitution of India, the Petitioners have challenged an order dated 16th February 2023, passed by the Maharashtra Administrative Tribunal, Mumbai (for short "Tribunal") whereby the Original Application (O.A.) No.364 of 2021 filed by the Petitioners came to be dismissed, solitarily on the ground that game of powerlifting was not included in the Olympics, Common Wealth and Asian Games as per Government Resolution of 2016 for the purpose of granting 5% reservation to the sports person.

2. **Brief facts are as under:-**

- (i) On 30th January 2017, Respondent No.3-MPSC issued an advertisement bearing Advertisement No. 02/2017 for the post of Assistant Motor Vehicle Inspector. Certain posts were reserved for the sports person as per the said advertisement.
- (ii) In February 2017, the Petitioners made an online application in response to the above advertisement under the open sports category. The Petitioners cleared their preliminary exams. On 1st July 2017, Respondent No.3-MPSC issued an advertisement for main exam for the aforesaid post. The Petitioners applied for the main exams and cleared the same. On 9th September 2019, merit list was published and Petitioner No.1 was placed at Serial No.2781 in open category under sports reservation having scored 126 marks. The Petitioner No.2 was placed at Merit No.3603 in open category under sports reservation having scored 114 marks.
- (iii) Meanwhile, on 6th April 2017, Respondent No.6-Deputy Director, Sports Affairs, Nagpur issued a certificate to Petitioners, certifying that Petitioner No.1 had secured second position and Petitioner No.2 had secured 3rd position in Powerlifting Game at Senior State Powerlifting Championship Men's 2012 held at Chandrapur. The said certificate further states that the verification is done as per

Government Resolution dated 1st July 2016 and, therefore, they are eligible to avail reservation under sports category.

- (iv) In July/October 2020, Respondent No.3-MPSC recommended both the Petitioners' names for the aforesaid post.
- (v) On 27th March 2017, a letter was addressed by School Education and Sports Department of the State to Sports and Youth Affairs Officials stating that powerlifting competition organised prior to 1st July 2016, by Vidarbha Powerlifting Association should be considered for 5% reservation under sports category in the vacancies to be filled up by the State.
- (vi) On 7th May 2021, Respondent No.2-Transport Commissioner informed the Petitioners that State Powerlifting Competition 2012 Certificate would not be considered for the purpose of 5% reservation under the sports category and, therefore, the Petitioners were not eligible to be considered under the sports category for the post of Assistant Motor Vehicle Inspector. Being aggrieved by the aforesaid communication, the Petitioners filed an O.A. with the Tribunal.
- (vii) On 16th February 2023, the Tribunal dismissed the O.A. on the ground that as per the Government Resolution dated 1st July 2016, only games played in the Olympics and Asian Games would be considered for 5% reservation in the Government job under sports

category and since 'powerlifting' game is not included in the said competitions, the Petitioners cannot be considered for the post of Assistant Motor Vehicle Inspector under the sports category.

3. It is on this backdrop that the Petitioners are before us today.

Submissions of the Petitioners:-

4. The Petitioners submitted that as per Government Resolution dated 30th April 2005, the candidate possessing a verified certificate for 'powerlifting' would be eligible to avail the benefit of being considered in category reserved for sports category. The Petitioners submit that they have cleared the preliminary and main exams and were also recommended by the Respondent No.3-MPSC. The Petitioners further submit that their certificates were verified and found eligible for being considered under the sports category vide certificate dated 6th April 2017, issued by Sports and Youth Department. The Petitioners, therefore, submitted that the Respondents cannot now turn around and contend that powerlifting game is not to be considered for the purpose of 5% reservation. The Petitioners submitted that the Respondents are estopped on the basis of promissory estoppel to contend so. The Petitioners also submitted that the other two candidates who have been selected for the said post have been appointed on the basis of being certified for powerlifting and thereby falling under the sports category

and are in the service. The Petitioners, therefore, submitted that the action of the Respondents is contrary to the Article 14 of the Constitution of India and, therefore, prayed that the impugned order of the Tribunal be quashed and set aside.

Submissions of the Respondents:-

5. Per contra, the Respondents submitted that the Government Resolution dated 30th April 2005 has been superseded by Government Resolution dated 1st July 2016, which was enforced on the date of issuance of the advertisement for the post of Assistant Motor Vehicle Inspector. As per Government Resolution 2016, only those games which are included in the Olympics, Common Wealth and Asian Games would be considered under the sports category and since the powerlifting game is not included in these competitions, the action of Respondents is justified. The Respondents further stated that merely on the basis of recommendation by MPSC, no right accrues to claim employment. The Respondents further submitted that the appointment letters issued to the other two candidates have been cancelled and the status quo order is passed by the Tribunal on the Application made by these two candidates. The Respondents further submitted that the Petitioners cannot claim benefit of Article 14 of the Constitution of India on the basis of negative equality.

6. We have heard the learned counsel for the Petitioners and the Respondents and with their assistance have perused the documents annexed to the petition and Affidavits-in-reply filed by the Respondents. We have also perused the decisions relied upon by the parties.

Analysis and Conclusions:-

7. There is no dispute that Government Resolution dated 1st July 2016 granting reservation under sports category specifies that games included in Olympics, Common Wealth and Asian Games will be considered for 5% of reservation under sports category. There is also no dispute that powerlifting game under consideration is not included in the list of the games organised at Olympics, Common Wealth and Asian Games. The Advertisement for the post of Assistant Motor Vehicle Inspector is issued on 30th January 2017 and on the said date, the Government Resolution in existence is that of Government Resolution dated 1st July 2016. The Government Resolution of 2016 specifically states that the said Government Resolution will have to be considered by departments of the State for all the recruitment which would take place after one month from the date of issuance of the Government Resolution. Therefore, for the purpose of the recruitment advertised on 30th January 2017, the Government Resolution dated 1st July 2016 only will have to be considered. Admittedly, the powerlifting game is not

included in the games organised at Olympics, Common Wealth and Asian Games, which is the requirement of Government Resolution 2016, and for this reason the claim of the Petitioners for the post of Assistant Motor Vehicle Inspector under the sports category cannot be considered.

8. The Petitioners claim on the principle of promissory estoppel also is misconceived. Merely because their names have been recommended by Respondent No.3-MPSC and the sports certificate has been verified by the appropriate authority, in our view, no vested right accrues in favour of the Petitioners on the basis of such recommendation and verification. It is a settled position that at the stage of recommendation and verification of the documents in the service jurisprudence, no right can be claimed to have been vested in the candidates. Therefore, the contention raised by the Petitioners on the basis of promissory estoppel is required to be rejected.

9. The Petitioners have heavily relied upon the certificate issued by Sports and Youth Services, Nagpur dated 6th April 2017 which certifies that the powerlifting game in which the Petitioners participated would be considered as per Government Resolution dated 1st July 2016. The Petitioners submitted that if that be so then the Respondents cannot contend otherwise in its impugned letter dated 7th May 2021. As per the Affidavit-in-reply filed by the Respondents before the Tribunal, it is

clarified that the said certificate has been inadvertently issued without considering provisions of Government Resolution dated 1st July 2016 in its entirety. In our view, if a letter is issued contrary to the Government Resolution and further, specifically when it is found that the same was issued inadvertently then certainly the Respondents would be justified in submitting that since the said letter is contrary to the Government Resolution of 2016 and the same ought not to be considered. Even otherwise, we have opined above that merely on the basis of the letter issued by Sports and Youth Services, one cannot claim vested right, therefore, in our view, it would not be appropriate for the Petitioners to contend for being considered contrary to the Government Resolution of 2016.

10. The Petitioners in the alternative have also submitted that two other candidates have been selected on the basis of powerlifting game and, therefore, there is a violation of Article 14 of the Constitution of India, inasmuch as, the Petitioners are being denied on the very same basis on which the other candidates have been appointed. The Respondents in their Affidavit dated 1st February 2024 have stated that the sports verification report in the case of Viprav Tiwari and Avinash Korade have been cancelled. These candidates filed the First Appeal before Sports and Youth Director which also came to be dismissed and

the matter is now pending before the Tribunal. We are informed that the status quo order is passed with respect to these two candidates since they were already in service when their appointment was sought to be cancelled. In our view, if powerlifting game is not to be considered as per Government Resolution of 2016 and assuming the other two candidates have been appointed on the basis of powerlifting game then the Petitioners cannot claim the benefit of Article 14 of the Constitution of India to seek negative equality. Article 14 of the Constitution of India can be invoked for positive equality and not to take the benefit of the same by perpetuating illegality in another case. In the situation referred to in present case by the Petitioners, the Respondents have cancelled the sports certificate issued to the other candidates and, therefore, even on this ground, the Petitioners cannot seek recourse to Article 14 of the Constitution of India.

11. The Deputy Director, Sports and Youth Services, Nagpur Division, vide its letter cum report dated 31st March 2021 has clarified and rectified by stating that Senior State Unequipped Powerlifting Championship is not included in the Government Resolution dated 1st July 2016 and, therefore, same should not be considered under the sports category. In our view, this letter would amount to nullifying the possession of Sports Verification Certificate dated 6th April 2017 issued

by Deputy Director of Wealth and Sports Affairs, Nagpur for the purpose of being eligible for availing benefit of reserved sports category. Therefore, the basis of the Petitioners' claim by relying upon the Certificate dated 6th April 2017 does not exist anymore post 31st March 2021.

12. The Petitioners submitted that they are protected by Government Resolution dated 27th March 2017 which provides for verification report to be secured by the sports person with regard to competitions organized by National Federations/Association or State Associations affiliated with or attached prior to 1st July 2016. In our view, this Government Resolution dated 27th March 2017 does not provide that although not included in the Olympics, Common Wealth and Asian Games, the game of powerlifting should be considered for reservation under sports category. In any view of the matter, on 10th April 2023, the State has decided to withdraw the said letter and has directed that for the purpose of verification of sports certificate, only Government Resolution dated 1st July 2016 and subsequent Government Resolutions should be considered. Therefore, the claim of the Petitioners on the basis of letter dated 27th March 2017 also does not survive.

13. We now propose to deal with the decisions relied upon by the Petitioners and Respondents.

14. The Petitioners have relied upon the decision in the case of *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.*¹ and more particularly, paragraph 22. In our view, this decision would not be applicable to the facts of the present case. Inasmuch as, there is no pronouncement of any judgment in rem dealing with the controversy under consideration.

15. The Respondents are justified in relying upon the decisions in the case of *Chandigarh Administration & Anr. vs. Jagjit Singh & Anr.*², *Union of India & Anr. vs. Kartick Chandra Mondal & Anr.*³, *KR Mann & Ors. vs. Govt. of NCT of Delhi & Anr.*⁴ and *R. Muthukumar & Ors. vs. Chairman and Managing Director TANGEDCO*⁵ in support of their submission that Article 14 cannot be invoked to enforce negative equality.

16. In view of above, we do not find any infirmity in the order of the Tribunal dated 16th February 2023. The Petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)

1 (2015) 1 SCC 347

2 (1995) 1 SCC 745

3 (2010) 2 SCC 422

4 2024 SCC OnLine Del 1554

5 2022 SCC Online SC 151