

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3346 OF 2025

Santosh Vitthal Pote and Ors

...Petitioners

Versus

State of Maharashtra

Thr Its Medical Education and Drugs

Dept. and Anr

...Respondents

Mr Yatin Malvankar, for Petitioners.

Ms P B Chavan, AGP for Respondent-State.

Dr Pallavi Divekar, with Aishwarya Shetty, i/b Divekar & Co, for Respondent No.2.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 05 OCTOBER 2026

P.C.

1. This Writ Petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

“[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 and 227 of the Constitution of India, 1950, thereby quashing and setting aside the results showing all 38 persons i.e. the Petitioners as 'Physical Failed' [EXHIBIT-G];

[B] That this Honourable Court be pleased to issue a writ certiorari or writ in the nature of certiorari or any other appropriate writ, direction and order under Article 226 and 227 of the Constitution of India, 1950, thereby quashing and setting aside the impugned Notices at [EXHIBIT-I] to 3 persons represented by Petitioner No. 3;

[C] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 and 227 of the Constitution of India, 1950, thereby directing the Respondent No. 2 to conduct an Outdoor Test (Sprint, Push-up's and sit up's) and thereafter if the Petitioners qualify the same register them as Security Guards with the Respondent No. 2;

[D] That considering the nature of relief claimed by the Petitioners and the issue involved in the Petition, it is prayed that the present Petition may be heard and disposed off finally at the admission stage itself;

[E] The cost of this Writ Petition be awarded in favour of the Petitioners against the Respondents by this Hon'ble Court.”

2. We have accordingly heard learned counsel for the parties. We have also perused the reply affidavit filed on behalf of Respondent No.2.

3. The issue, which arises for consideration in the Writ Petition is regarding the Petitioners not being selected for registration as ‘Security Guards’ with Respondent No.2, so that they can be deployed in appropriate establishments.

4. Learned counsel for the Petitioners has drawn our attention to the relevant documents, including the orders passed by the Division Bench of this Court. In the order dated 8th February 2017 passed in Writ Petition No. 2939 of 2016, in the case of **Pune District Suraksha Rakshak and General Kamgar Union Through President v. State of Maharashtra & Anr**, this Court, after considering the different Government Resolutions (‘GRs’) as also the uncertainty prevailing in regard to the selection of the ‘Security Guards’ for the purpose of registration, had made significant observations in the nature of guidelines, which are required

to be followed. Subsequent thereto, the GR dated 10th October 2018 was issued by the State Government, which considered the previous GRs. The relevant observations as made by this Court in the said order are required to be noted, which read thus:-

“8 We have been explained the process of registration by both Ms. Desai, learned counsel appearing for the Board and Mr. Vagyan, learned Government Pleader appearing for the State. It is stated that on receipt of an application, the Board calls upon the candidate/applicant to submit himself to an examination or a process whereby his physical fitness can be tested. That is how the aspirant or the applicant is directed to approach the Directorate of Sports, Government of Maharashtra. The Director, thereafter, conducts a physical test. The result of this physical test, and styled as 'preliminary scrutiny process', is communicated to the Board. As soon as that is received, the Board is expected to forward the application together with the result/certificate from that Directorate, for approval of the Government, after which, the State Government sanctions and approves the registration. Thereafter, the Board issues a registration certificate. However, there is an important step preceding this, and namely, that the applicant/candidate has to undergo a thorough medical check-up. We are informed that the Bombay Board has requested the Dean of the J. J. Hospital and thereafter, the said Government Hospital has set up a medical board. Now that the medical board is constituted and functional, every applicant would be examined by this medical board and it would certify his mental and physical fitness and general health. That report serves a dual purpose. It ensures that after registration, if the Security Guards are deployed or if the agencies who have either registered themselves deploy or provide security guards, then, in the event there is a misrepresentation of a relevant fact or a complaint about their conduct and behavior, immediately a cross verification and necessary scrutiny can be made. Then, on the strength of the same, appropriate directions can be issued. Till such time, as the Security Guard subjects himself to a thorough

scrutiny, he would be withdrawn from duties. Therefore, this is a significant step in the process and we do not think that it can be dispensed with.

9. Our anxiety is that the above process consumes lot of time. Therefore, a person awaiting registration, at times, is without any means of livelihood or source of employment. Given the fact that Government jobs are scarce and in the job market the situation is not very conducive, many unemployed therefore come to Mumbai in search of any employment and particularly as a Private Security Guard. Since everything about them has to be verified, the process is vital and necessary. We do not deem it fit and proper to interfere with this process or dispense with the same. We only direct that when any application is received by the Board, it should, in the order of its receipt, process it without in any manner picking and choosing applicants/candidates for favourable treatment. If a proper system is devised in which the applicant obtains a code number, then, he can follow the process himself rather than seek assistance of anybody. For that, it is necessary to devise a program. We are happy to note that in the affidavit of the Principal Secretary of the Department of Industries, Energy and Labour, which is tendered today by Mr. Vagyani, in paragraph 8, it is stated that the 1st respondent has instructed the Labour Commissioner office in the meetings held on 28th September 2016, 22nd November 2016 and 5th January 2017 to develop a computerized software application for online registration of security guards and covering all other aspects of working of the security guards Boards in the State. This is to ensure fair and transparent registration of security guards and their overall supervision. Similarly, the activities and working of the Board itself would be monitored by this process. Mr. Vagyani states on instructions that this computerized software application would be ready and functional and on the next date, the learned Government Pleader would inform the Court about it being put in place.

11 We expect the Board, on receipt of applications, to enter the details of its receipt in the register and promptly sent the candidate for physical test. We are assured that this will be done within a period of two weeks from the date of receipt of such application for registration. Then, we are informed, on

instructions, that the physical test would be conducted in batches and concluded as expeditiously as possible and within a period of four weeks from the date the candidate is sent for such test. The result of such test would be forwarded to the board by the Directorate of Sports within a period of two weeks thereafter. We are also informed that after the results of the physical and medical tests are found to be in order, the Board will forward such applications for approval and eventual registration to the State Government. The Board will forward such applications, as stated on instructions, within a period of four weeks from the date the results are obtained. After the applications are so forwarded, we expect the State Government to grant approval within a period of six weeks from the date of their receipt. Thus, within a period of three to four months of the receipt of the application, the process as above will be completed is the assurance and promise. We direct that for all the delays that may occur and for a genuine and bona fide cause or otherwise, reasons would have to be assigned by the functionaries for not being able to meet the deadline. Hereafter, we would not tolerate any delay on the part of any authority or functionary, for they must change their mind set. In the year 2017, in the age of E-governance and information technology, we do not think that the old procedures and methods have any place. If every application with all its details is available online and the same can be verified by accessing the website, then, we do not think why the Government should sit on files or documents for granting approvals. The Government would have to trust the statutory Board set up by it. If anything in the process is deficient or defective, the power to issue directions is available to the Government and it must exercise it. We do not think that for smoothening the process and for removing the hurdles and obstacles therein, this Court would have to intervene after this Order. This Court, if thereafter receives complaints about the working or the above process not being adhered to, it would not hesitate to take action against all concerned, including initiating proceedings under the Contempt of Courts Act, 1971 and Inquiries under the Disciplinary and Conduct Rules applicable to the officials. We do not countenance undue delays in matters where people, and youth especially, seek employment opportunities with the State's intervention. In a Welfare

State, it is the bounden duty of the Government to abide by the “Directive Principles of State Policy” enunciated in the Constitution of India. Articles 39(b) and (c), 41, 43 ought to be the guiding force for all concerned. The State Government can ignore the above at its own peril. Public servants as all are they perform a public duty. The powers vested in them are in the nature of a Trust. It is time there is awareness about this role, else, unrest on account of lack of faith and confidence in them would lead to riots and anarchy. If the Government jobs are not easily available, the State atleast must assist such applicants and aspirants so that they can earn a livelihood on their own without depending upon any dole or money from the State. In such circumstances, we are of the opinion that when it is assured that all the applications including those in the present Writ Petition in which the above steps or stages are concluded, would be duly considered and disposed of within a period of four weeks from today, then, ordinarily, the Writ Petition need not be kept pending.

13 However, we have found that even if assurances are forthcoming and on affidavits, the actual implementation leaves a lot to be desired. The implementation at the ground level and execution and enforcement of several orders and directions of this Court has led to multiple litigations, including applications to proceed in contempt against the defaulters. Therefore, in order to ensure that the above Scheme is put in place as assured, we place this matter on 07th April 2017.”

5. In the present case, it appears to be not in dispute that the Petitioners and the persons, whose names are included in the list annexed to the Writ Petition at Exhibit ‘A’, participated in the procedure as adopted by Respondent No.2 for registration as ‘Security Guards’. They contend that they were eligible, however, their applications were not accepted initially on the ground that they failed in the physical tests, as seen from the documents at Exhibit G, page 225 of the Writ Petition. In the reply affidavit filed on behalf of Respondent No.2, however, a

different reason has been set out, when the following averments are made in the paragraph 3(d), (e) and (f), which read thus:-

“3.....

d) The physical test and field test in respect of the security guards involved in the present Petition was fixed for the period from 11.09.2023 to 14.09.2023. As the age of 36 security guards was above 35 and who claimed to have worked for 60 days with the principal employers, they were not called for the field test and only physical and educational qualifications were checked. Hence on the computer system generated remark is wrongly shown as physical failed. However, on checking the experience criteria of 60 days it was found that the said security guards did not fulfil the said work experience criteria and hence they were declared unsuccessful/failed.

e) Out of the 37 security guards the proof submitted OVT.C security guards by name Kamlakar Bhagwan Kenjale and Santosh Jalidhar Burse were correct and hence they are eligible to be registered.

f) Hence as per the final tally

i) 19 security guards from serial No.1 to 18, and serial No.28 have not submitted the work experience documents, hence declared as failed.

ii) 15 security guards at serial No.20 to 26, serial No.29 to 36 have submitted bogus documents, hence declared as failed.

iii) security guard by name Vishal Udhav Gangarde being 24 years of age failed to pass physical criteria of chest test and hence declared as failed.

iv) 2 Security guards at serial No.19 and 27 have passed and 11 are eligible for registration. Hereto annexed and marked Exhibit "1" is a list giving details of the results of the candidates.”

6. Considering the aforesaid circumstances, we are of the opinion that it is necessary that an appropriate procedure for registration of persons as ‘Security

Guards', especially under the Scheme, as also, the criteria which are required to be applied as notified by the State Government, need to be followed in a totally transparent and non-arbitrary manner. The applicant needs to be informed of the clear reasons, as borne out by the Rules, as to why such candidate would not be eligible, if registration is being refused. However, in the present case, in our opinion, this has not taken place. What was notified was something different from what is now being said in the reply affidavit. A reply affidavit cannot give different reasons from those what were initially informed to the applicants as part of the selection process.

7. In the aforesaid circumstances, we are of the clear opinion that the Petitioners, including those whose names are set out at Exhibit 'A', need to be given a fair opportunity of being heard as to whether they qualified as per the extant criteria as prevalent at the relevant time.

8. We hence permit the Petitioners to make an application/representation to Respondent No.2 within a period of ten days from the day a copy of this order is available. If such representations are made, an opportunity of a hearing be given to each of the candidates and a reasoned order in respect of each of the candidates be passed by the Board.

9. In the event, the registration of the candidate is being rejected, a reasoned order in that regard be passed. It is clarified that, in the event, a person is selected for the purpose of registration, an intimation that he has qualified all the norms shall suffice.

10. Let such action be taken strictly in accordance with law by the Respondent No.2 within three weeks of their representations/applications.
11. All contentions of the parties in that regard are expressly kept open.
12. The Writ Petition stands disposed of in the aforesaid terms. No cost.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)

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