

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5268 OF 2015

Shailesh s/o yashwant Chaudhar,
Age: 23 Years, Occu. : Education,
R/o. Plot No.76, Near Sambhappa
Colony, Chittod road, Dhule,
District Dhule.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through it's the Secretary,
The Education and Sport Department,
Mantralaya, Mumbai
- 2] The State of Maharashtra,
Through it's the Secretary,
Home Department,
Mantralaya, Mumbai
- 3] The Assistant Director,
The Sports and Youth Services,
Maharashtra, Pune
- 4] The Maharashtra Public Service
Commission, Bank of India Bldg.,
2nd Floor, Mahatma Gandhi road,
Hutatma chowk, Mumbai.

RESPONDENTS

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Mr. K.N.Shermale, Advocate for the Petitioner

Mr. V.V.Tele, AGP for the Respondent – State

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**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE : 8th May, 2015.

ORAL JUDGMENT (PER:- S.S.SHINDE, J.)

1] Heard.

2] Rule. Rule made returnable forthwith heard with the consent of the parties.

3] This Petition is filed with following prayers:

B] The letter Outward No. Kh.A-10859/2014-2015/2329/Ka-15, dated 21st October, 2014 issued by the Assistant Director of Sports & Youth Services, Maharashtra, Pune (respondent no.3) to the petitioner as well as respondent no.4 may kindly be set-aside and quashed.

C] Pending hearing and disposal of this writ petition, the respondents may kindly be directed not to fill up the post of Police Sub-Inspector in Sport Category as per the advertisement dated 16.7.2013 issued by Respondent No.4 to the extent of the petitioner.

4] It is the case of the petitioner that, the petitioner has completed graduation as well as he is a player of the *Pole-Malkhamb*, and he possesses certificate issued by the Association of Indian Universities. In that respect, the respondent No.4 had published an advertisement on 16.7.2013 for the post of Police Sub Inspector in the news paper. The petitioner appeared for the Examination. His name was shown in the provisional select list of qualified candidates. After publication of the provisional select list of qualified candidates, the respondent No.4 – MPSC issued a letter to the Assistant Director of Sports and Youth Services, Maharashtra, Pune i.e. respondent No.3, stating therein that, the petitioner is a selected candidate for the post of Police Sub Inspector under the Sports Category and thereby requested the respondent No.3 to verify the sports certificate of the petitioner, and send the report to the respondent No.4. The respondent No.3 verified the said Certificate and informed to the respondent No.4 that, the petitioner is not qualified for reservation of 5% in sports category as the Certificate issued by the Association of Indian Universities is prior to the Government Resolution dated 20th September, 2013. Accordingly, on 21st October , 2014, the respondent No.3 informed the petitioner that, the petitioner is

not qualified for the reservation of sports category.

5] Mr. Shermale, learned counsel appearing for the petitioner submits that, the petitioner is selected for the post of Police Sub Inspector from the sports category. The petitioner possesses certificate of Pole-Malkhamb. The petitioner stood as runners-up. The said certificate is issued by the Association of Indian Universities. The learned counsel appearing for the petitioner submits that, when the certificate was sent for verification, the case of the petitioner was negated on the ground that, tournaments were held prior to the Government Resolution dated 20th September, 2013. The learned counsel submits that, the authorities have wrongly interpreted the said Government Resolution. The Government Resolution will have effect from the date of the promulgation of the said Government Resolution. It will also apply to the tournaments, which were held earlier to the said Government Resolution. The case of the petitioner cannot be negated only on the ground that, the petitioner had participated in the tournaments conducted prior to the said Government Resolution.

6] Mr. Tele, learned AGP supports the decision of the Authority. According to the learned AGP, as the Government

Resolution has been issued on 20th September, 2013, the certificate produced by the petitioner was not eligible to be considered.

7] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and the learned AGP appearing for the Respondent – State, with their able assistance, perused the pleadings in the Petition, annexures thereto, and all documents placed on record.

8] The Division Bench of this Court in the case of ***Sukanya d/o. Dilip Vaidya Vs. The State of Maharashtra & others*** in Writ Petition No. 164/2015 decided on 29th January, 2015, while considering the clause No.2 of the Government Resolution dated 20th September, 2013 in para 4 and 5 held thus:

4 We have considered the submissions canvassed by the learned counsel for respective parties. Vide said Government Resolution, 5% reservation is given to the sports category for participation and securing prominence in the sports. Clause (2) of the said Government Resolution is relied by the Tribunal and authority while negating the case of the petitioner. Clause (2) of Government

Resolution dated 20th September, 2013, reads as under:

"2- उपरोक्त तरतूद खेळाडू आरक्षणांतर्गत निर्गमित झालेल्या व होणाऱ्या सर्व शासन निर्णयांना लागू राहिल तसेच ही तरतूद शासन निर्णयाच्या दिनांकापासून लागू होईल."

5. *Perusal of the said clause, it is manifest that the said clause would intent to mean that 5% reservation would be provided from the date of said Government Resolution. It cannot be interpreted to mean that if the Petitioner had participated in the tournament prior to the promulgation of the said Government Resolution and has secured eminence in the same, the said certificates cannot be considered. If the said Government Resolution is interpreted in the manner interpreted by the authority and the Maharashtra Administrative Tribunal, then that would be defeating the very purport of giving reservation of 5% to the sportsmen, who have excelled in sports nor it would subserve the object and the intent of the said Government Resolution.*

9) As rightly contended by the learned counsel appearing for the petitioner, the issue raised in the present Petition is covered by the Judgment of this Court in the case of **Sukanya d/o. Dilip Vaidya** [supra]. In that view of the matter, for the same reasons which are assigned in para 4 and 5 in the aforesaid Judgment, we pass the following order:

- i] The letter dated 21st October, 2014 (Exhibit-C to the petition) issued by respondent No.3 - Assistant Director of Sports and Youth Services, Maharashtra, Pune to respondent No.4 - MPSC and to the petitioner, is quashed and set aside.
- ii] The authorities shall consider the certificate produced by the petitioner and shall not reject the said certificate and the case of the petitioner for consideration from the sports category only on the ground that, the said certificate is in respect of participation in the tournaments prior to the Government Resolution dated 20th September, 2013.
- iii] Rule accordingly made absolute in above terms. No costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(S.S.SHINDE)
JUDGE

bdv/