

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

WRIT PETITION NO.1494 OF 2015

Sandeep s/o. Sambhaji Yadav,
Age: 39 years, Occu.Service
(as Deputy CEO, Zilla Parishad
Raigad (Alibag), R/o. Vrindavan
Bungalow, Shivaji Nagar,
At Post Chendhre, Tal. Alibag,
Dist. Raigad.

PETITIONER

(Orig.Resp.No.3)

VERSUS

1. Sushant s/o. Ulhasrao Kawade,
Age: 27 years, Occu. Nil,
R/o. Sankalp, Sai Vihar,
Behind Hotel Prasad,
Ghulewadi, Tal. Sangamner,
Dist. Ahmednagar.
2. The State of Maharashtra,
Through its Secretary,
Women & Child Welfare Dept.,
Mantralaya, Mumbai – 32.
3. The Maharashtra Public
Service Commission,
Bank of India Buldg.,
3rd Floor, Mahatma Gandhi
Marg, Hutatma Chowk,
Mumbai – 01.
4. The Director of Sports &
Youth Services,
M.S., Pune

RESPONDENTS

(Resp.No.1 – Orig
Applicant, Resps.
Nos.2 to 4 Orig.
Resp.Nos.1,2 & 4)

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Mr.Avinash S. Deshmukh, Advocate for the petitioner

Mr.S.B.Yawalkar, AGP for respondent – State

Ms.Pradnya S. Talekar, Advocate holding for

Mr.S.B.Talekar, Advocate for respondent no.1.

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WITH

WRIT PETITION NO.6840 OF 2015

1. The State of Maharashtra
Through Secretary,
Women and Child Welfare
Department, Mantralaya,
Mumbai-32.
2. The Maharashtra Service Public
Commission, Bank of India Building,
3rd Floor, Mahatma Gandhi Marg.,
Hutatma Chowk, Mumbai-01.
3. The Director of Sport and Youth
Services, Pune-5

PETITIONERS

[Orig.Resp.Nos.1
2 and 4]

VERSUS

1. Shri Sushant Ulhasrao Kawade,
Age 26 years, Occu. Nil,
R/o. Sankalp, Sai Vihar,
Behind Hotel Prasad, Ghulewadi,
Tq.Sangamner, Dist. Ahmednagar
2. Sandip Sambhaji Yadav,
Age Major, Occu. Service,
R/o. C/o. Urban Development Division,
Nirmal Bhavan, 2nd Floor, CIDCO
Office, Rajani Patel Marg.,
Nariman Point, Mumbai-21.

RESPONDENTS

(Orig.petitioner
& Respondent No.3)

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Mr.S.B.Yawalkar, AGP for the petitioners – State.

Mr.D.R.Dhule, Advocate for Respondent no.2.

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**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL, JJ.**

Reserved on : 01.07.2016

Pronounced on : 11.08.2016

COMMON JUDGMENT: (Per S.S.Shinde, J.):

Heard. Rule. Rule returnable
forthwith with the consent of the learned
counsel appearing for the respective parties,
heard finally.

2. The above numbered Writ Petitions
have been filed challenging the same judgment
dated 28.01.2015 passed by the Maharashtra
Administrative Tribunal, Bench at Aurangabad
(in short 'MAT') in Original Application No.
383/2013, hence they are being decided by
this common judgment. For the sake of
convenience, the parties are hereinafter
referred to by their respective nomenclatures

as given in the cause title of Writ Petition No.1494/2015.

3. The learned counsel appearing for the petitioner submits that respondent no.1 had no locus standi to challenge the selection of the petitioner before the Maharashtra Administrative Tribunal. He submits that respondent no.1 had secured only 39 marks and minimum benchmark was of 40 marks for being called for interview. Since respondent no.1 did not qualify on the basis of his marks scored in qualifying examination, the question of entertaining the Original Application on his behalf would not arise. He further submits that though he specifically raised the above-stated ground before the Tribunal, the Tribunal did not consider the same properly. It is submitted that as far as the Rural Sports Tournaments held in 1990 at Ahmednagar in which the petitioner had participated is concerned, the

same was conducted by respondent no.4 – Director of Sports and Youth Services, State of Maharashtra under the aegis and/or the directions of the Sports Authority of India (SAI) and it was not at all the case that the said tournaments were conducted by respondent no.4 on its own, and therefore, on the said background, the petitioner having participated in the said tournaments and further having secured the first position not only in 400 meters but also in the 800 meters sprint that he was fully eligible and entitled to claim and to get the benefit of sports reservation as prescribed and provided under the Government Resolutions dated 30.04.2005 and 06.05.2008 issued by the School Education and Sports Department, Government of Maharashtra. The Tribunal failed to appreciate the rules and ratio laid down by the Hon'ble Apex Court in the case of *Duryodhan Sahu Vs. Jitendra Kumar Mishra*¹. It

¹ AIR 1999 SC 114

is further submitted that the Tribunal proceeded on hypothetical basis, which is clear from its observations in para 14 of the impugned order wherein it had concluded that in the event the appointment of petitioner (i.e. original respondent no.3) was set aside, respondent no.1 (i.e. original applicant) got a chance of selection that too in spite of the fact that the marks scored in the interview by the 3rd candidate had not been brought before it. The Tribunal did not properly appreciate that respondent no.4 had filed an affidavit to the effect that the petitioner was fully eligible to claim reservation as sports person.

4. It is further submitted that the Tribunal clearly exceeded its jurisdiction while dealing with the interpretation of the Government Resolutions dated 30.04.2005 and 06.05.2008 inasmuch as under the garb of interpreting those Government Resolutions,

the Tribunal practically rewrote the policy of the State Government in regard to extension of the benefit of sports reservation, which is clear from the fact that it introduced the theory of contemporaneousness and/or contemporaneity in regard to the period of participation in the concerned sport event. The Tribunal also gave unnecessary and uncalled for importance to the factum of the petitioner being a juvenile at the time of participating in the Rural Sports Tournaments. In doing so, the Tribunal defeated the very purpose and intention of the State Government in introducing the facility of sports reservation through the Government Resolution dated 30.04.2005. Even on the facts also, the Tribunal has gone wrong in observing that the certificate of Proficiency on the basis of which petitioner's eligibility was decided by respondent no.4 was signed only by the

District Sports Officer and the Collector. This is because a bare look at those certificates of Proficiency showed and established that those were also signed by respondent no.4 – Director of Sports, who had conducted the tournaments for and on behalf of the SAI. The Tribunal reached the conclusions on the basis of surmises and conjectures without giving any opportunity either to the petitioner or to respondent no.4 to establish that the said Rural Sports tournaments were conducted under the aegis of the SAI.

5. The learned counsel appearing for the petitioner invites our attention to Form 3 (A) certificate issued by the Director of Sports and Youth Services, Maharashtra State, Pune and submits that the said Form 3 (A) is very much signed by the said Authority, and the Tribunal was not correct in observing that the certificate is not signed by the

Director of Sports and Youth Services, Maharashtra State, Pune. He also invites our attention to the contents of the Government Resolutions dated 30.04.2005 and 06.05.2008 issued by the School Education and Sports Department, Government of Maharashtra, and submits that petitioner's case is squarely covered by clause 4 of the Government Resolution dated 06.05.2008 and therefore, there was no occasion for the Tribunal to cancel the appointment of the petitioner on the post of Child Development Project Officer. It is submitted that the petitioner was already appointed and after his appointment, he has completed more than 2 years of service. Therefore, it was not proper on the part of the Tribunal to quash his appointment merely because the petitioner did participate in the tournaments held in the year 1990, and the recruitment process was initiated in the year 2012-13, and

thereafter, the petitioner was appointed from the sports category. The said time gap cannot be a ground to disbelieve the claim of the petitioner from the said category. The learned counsel appearing for the petitioner in support of his contention that respondent no.1 had no locus standi to assail the appointment of the petitioner placed reliance on the reported judgments in the cases of *Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation and ors.*², *Ravi Yashwant Bhoir Vs. District Collector, Raigad and ors*³ and *K.H.Siraj Vs. High Court of Kerala & ors.*⁴ It is submitted that while exercising the power of judicial review of the administrative action, the Court is not the Appellate Authority. In support of said contention, he pressed into service the exposition of law in *Ekta Shakti Foundation*

2 2007 (8) SCC 644

3 2012 (4) SCC 407

4 2006 AIR (SC) 2339

*Vs. Govt. of NCT of Delhi*⁵. Therefore, the learned counsel relying upon the pleadings in the Petition, grounds taken therein and the written notes of arguments filed on record submits that the Petition deserves to be allowed.

6. The learned counsel appearing for respondent no.1 submits that the petitioner was ineligible for the sports reservation, and cannot seek benefit of the Government Resolution dated 06.05.2008 for more than one reason. *Firstly*, it was not organized by the National Sports Authority of India, and *Secondly*, the competition participated was not of national level. Both of these are conditions mentioned in the clause 1 (4) of the Government Resolution dated 06.05.2008 and non-fulfillment of even one of the conditions leads to ineligibility of the candidate for sports reservation as per the

5 2006 AIR (SC) 2609

Government Resolution. It is more than clear from the certificates of the petitioner that he had participated in athletic sports, which was not organized by the National Sports Authority of India, and on the contrary the same was organized by the Director of Sports and Youth Services, M.S., Pune. It is submitted that respondent no.1 had locus standi to file Original Application since he was the candidate applying from sports category for the same post, which is occupied at present by the petitioner. The learned counsel also invites our attention to the averments in the affidavit-in-reply filed on behalf of respondent no.1 and submits that the Petition deserves to be dismissed.

7. The learned AGP appearing for respondent nos.2 to 4 submits that the Original Application at the instance of respondent no.1 should not have been entertained by the Tribunal, since he did not

secure 40 marks to qualify for calling him for interview. It is submitted that it is improper to direct the Chief Secretary to conduct an enquiry through a person not less in rank than the Principal Secretary into the conduct of respondent no.3 herein as to the alleged illegalities committed in deciding eligibility of the petitioner in the affirmative. It is submitted that there was no occasion for the Tribunal to direct such enquiry. Therefore, relying upon the pleadings in the Writ Petition no.6840/2015 and annexures thereto, the learned AGP submits that the Writ Petition deserves to be allowed.

8. In both Writ Petitions, we have considered the submissions of the learned counsel appearing for the petitioner, learned counsel appearing for respondent no.1 and the learned AGP appearing for the State and its Authorities. With their able assistance,

perused the pleadings in the Petition, grounds taken therein and annexures thereto, replies filed by the parties and also the original record summoned from the Tribunal and also findings and the conclusions recorded by the Tribunal. The Tribunal has recorded the reasons that the Original Application was maintainable at the instance of respondent no.1 (i.e. original applicant) and he had locus. We do not find any reason to take different view that the Original Application was not maintainable on behalf of respondent no.1.

9. We have carefully considered the copy of sports certificate on which heavy reliance has been placed by the petitioner, and we find that, there is no signature of the Director of Sports and Youth Services, Maharashtra State, Pune, on the said certificate. However, there is signature of the District Sports Officer and the

Collector. It is true that there is copy of letter dated 23.07.2010 addressed by the Deputy Director of Sports and Youth Services, Maharashtra State, Pune to the Secretary, Urban Development Department, Government of Maharashtra wherein the case of the petitioner was referred to the State Government stating therein that the petitioner fulfills the requirements mentioned in the said Government Resolutions of which reference is made in the said letter, and therefore, his case can be considered from the sports category in which he participated. It further appears that Form 3 (A) is attached to the said letter, and the said letter is signed by the Director of Sports and Youth Services, Maharashtra State, Pune. However, as observed earlier, the certificate which is in the format is not signed by the Director of Sports and Youth Services, Maharashtra State, Pune, and

therefore, it appears that there was move by respondent no.3 subsequently in the year 2010 to write to the State Government, seeking for approval to issue such certificate by mentioning therein that the said tournaments in which the petitioner participated were organized by the Sports Authority of India. In fact, the copy of certificate which is placed on record by the petitioner at Page 55 and 56 would clearly demonstrate that there is no signature of the Director of Sports and Youth Services, Maharashtra State, Pune and also nowhere it is written that the said tournaments in which petitioner participated were conducted under the aegis of the Sports Authority of India. Therefore, the conclusion reached by the Tribunal that the said Rural Sports Tournament in which the petitioner did participate in the year 1990 were not conducted by the Sports Authority of India, and the certificate was not signed by the

Director of Sports and Youth Services, Maharashtra State, Pune, cannot be said to be perverse and contrary to the record.

10. Another conclusion reached by the Tribunal that the certificate is not signed by the Authority prescribed in Schedule-B (परिशिष्ट-ब), since the Government Resolution dated 06.05.2008 has a prospective effect and more contemporaneousness is expected, respondent no.4 could not have issued the letters dated 23.07.2010 and 27.09.2013, stating that respondent no.3 is eligible for the appointment against sports quota, on the basis of a proficiency secured in 1990, cannot be said to be perverse and without any basis.

11. The Tribunal has also reached to the conclusion that the petitioner i.e. respondent no.3 secured certificates in 1990 for participation in Rural Sports, wherein

the team he is supposed to have represented is not specified. It is a condition precedent that a sportsman should have been member of a team and there is nothing on record to show that he was part of a team. The said conclusion also does not appear to be perverse.

12. There are other conclusions reached by the Tribunal that, even the genuineness of the certificate in Form 3 (A) is found to be doubtful. Careful scrutiny and verification of all underlying documents / files and enquiry is called for. On the basis of the said conclusions, the Tribunal has directed the Chief Secretary to conduct an enquiry through a person not below the rank of Principal Secretary into the conduct of respondent no.4 i.e. the Director of Sports and Youth Services, Pune, as to the illegalities committed in deciding the eligibility of the petitioner in the

affirmative and fix the responsibility thereof and take further departmental action, including prosecution, is well founded. Ultimately, it will depend upon an enquiry and respondent no.4 will get full opportunity to defend its case during the course of said enquiry. Even not to hold enquiry in such a case where the Tribunal after recording the findings and reasons, questioned *bona fides* of respondent no.4 and genuineness of certificate in Form 3 (A), would send wrong signal to the society, and therefore, in such cases an enquiry as directed by the Tribunal is necessary. However, as already observed, while conducting such enquiry, the Officer who was incharge at the relevant time should be given full opportunity to defend his case and put forth his contentions.

13. It is not necessary for us to lengthen this judgment, when we are in

complete agreement with the findings recorded and the conclusions reached by the Tribunal on all aspects. Admittedly, the petitioner applied from the sports category and his candidature was considered from the said category which process ultimately culminated into issuance of an appointment order on the post of Child Development Project Officer, for which he was not entitled for, therefore, the MAT has rightly cancelled his appointment on the said post. For the reasons aforesaid, we decline to interfere in the impugned judgment and order of the Maharashtra Administrative Tribunal, and therefore, both Writ Petitions stand rejected. No costs. The concerned respondents to take immediate steps to advertise the post occupied by the petitioner. Rule discharged.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE