

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11218 OF 2014

Savita d/o Raju Mulange,
Age : 22 years, Occup: Education,
R/o Barad Tq. Mudkhed
District Nanded. .. Petitioner

VS.

1. The State of Maharashtra
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai -32 .
2. The Director,
Sports and Yough Services,
Central Building, 1st Floor,
Maharashtra State, Pune-01.
3. The Commissioner,
Nanded-Waghala City,
Municipal Corporation,
Nanded.
4. Maharashtra Tug of War Association,
255, B Ward, Racecourse Naka,
Sambhaji Nagar, Kolhapur -12.
Through its Secretary namely
Janardhan E. Gupile. .. Respondents

Mr. A. N. Nagargoje, Advocate for the petitioner.
Mr. S. W. Mundhe, AGP for respondents No.1 and 2.
Mr. M. D. Narwadkar, Advocate holding for Mr. M. V.
Deshpande, Advocate for respondent No.3.
Mr. B. B. Kulkarni, Advocate for respondent No.4.

**CORAM : S. V. GANGAPURWALA &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 01-11-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith with consent of learned counsels for the parties, the petition is taken up for final disposal at the admission stage.

2. The petitioner has challenged letter dated 27-08-2014 issued by respondent No.2 and also letter dated 09-10-2014 issued by respondent No.3 by invoking the writ jurisdiction of this Court. By these letters the respondents have questioned the continuation of appointment of the petitioner for the post of 'Clerk' with respondent No.3.

3. It is not in dispute that, after undergoing due selection process, the petitioner was selected as 'Clerk' from Other Backward Classes (Sports) category on 20-05-2014. As per the procedure the sports certificate was required to be verified by respondent No.2 and after receipt of the verification report from the office of respondent No.2, the appointment letter could have been issued to the petitioner. In pursuance to the said procedure, respondent No.3 by letter dated

26-05-2014 had asked the petitioner to submit original sports certificate in order to get it verified from respondent No.2. The petitioner submitted the required original sports certificate along with application dated 02-06-2014 with respondent No.3. The respondent No.2 conducted the inquiry in respect of her certificate and informed respondent No.3 by letter dated 27-08-2014 that the petitioner is not fulfilling criteria for the sportsman as the affiliation of the respondent No.4 Association has been withdrawn on 11-07-2011 and the petitioner's certificate was regarding the tournament held between 15th to 17th of July, 2011. Thereby the said letter dated 27-08-2014 the respondent No.2 had turned down the claim of the petitioner in view of the Government Resolution dated 30-12-2013. After receipt of the said report, respondent No.3 cancelled the petitioner's selection for the post of Clerk and issued letter in that regard on 09-10-2014. Thereafter, the petitioner made representation on 11-10-2014 to the respondent No.3 that her certificate regarding sportsman has been discarded on technical ground and she would file appropriate proceeding before the Court, till then her post should be kept vacant.

4. It is case of the petitioner that, in view of the Government Resolutions dated 30-04-2005, 21-06-2006, 18-11-2006, 06-05-2008,

21-08-2008, 07-05-2013 and 20-09-2013, the State Government has laid down guidelines for giving reservation for the sportsman in the Government employment. A detailed procedure has been laid down regarding the same in Government Resolution dated 30-04-2005. The petitioner's claim came to be turned down on the ground that the respondent No.4 Association was not affiliated with the Indian Olympic Association who had conducted the tournament. Though the affiliation of near about 31 associations including respondent No.4 Association was withdrawn by the Indian Olympic Association vide its letter dated 11-07-2011, still the said fact was not informed to the concerned associations including respondent No.4. This fact can be revealed from the Government Resolution dated 30-12-2013. The said fact was also not informed to the State Authorities. Neither the respondent No.4 nor the petitioner was aware about the withdrawal of affiliation of 11-07-2011, and therefore, she had participated bonafidely in that tournament. Under such circumstance the fact of withdrawal of affiliation shall not affect.

5. Further, some of the candidates who had participated in the tournament held after 11-07-2011 got appointments on the basis of participation but petitioner who is similarly situated is deprived of

getting the benefit. Her appointment is sought to be cancelled only on technical ground which cannot be allowed.

6. Further now she has got her certificate verified during the pendency of the petition. Accordingly, the respondent No.2 has again verified the certificate and informed to respondent No.3 that the said certificate is valid and she is fulfilling the criteria required for the post of Class 'C' and 'D' vide letter dated 13-04-2016. On the basis of these contentions, the petitioner has sought writ of certiorari or direction for quashing and setting aside the impugned letters and appointing her for the post which is reserved for which she has been selected.

7. Affidavit-in-reply has been filed by respondents No.2 and 3. They are not disputing that the petitioner was selected for the post of 'Clerk' from sportsman category out of post reserved for Other Backward Classes. The certificate produced by the petitioner was forwarded for verification. The respondent No.2 has stated that, Indian Olympic Association had withdrawn affiliation of certain associations by letter dated 11-07-2011. Respondent No.4 was one of the said associations. In order to secure the sportsman, from the loss caused, due to de-recognition of National Federations, the Government of Maharashtra issued Government Resolution dated 30-12-2013

which prescribed cut off date to submit the sports certificate up to 28-02-2013. However, the certificate of the petitioner was submitted to the office of respondent No.2 on or about 01-09-2014 wherein the petitioner was held ineligible for the post of A, B, C and D categories under sports quota. However, thereafter Maharashtra Olympic Association vide its letter dated 19-05-2015 informed that, Maharashtra Tug of War Association was affiliated to it since 08-02-2009. Therefore the respondent No.2 reverified the sports certificate and it was found correct. Therefore, as per the Government Resolutions, the petitioner fulfills the criteria prescribed for group 'C and D' posts.

8. In order to cut short, we would like to say that, all the concerned counsels representing the respective parties submitted their submissions in support of their respective contentions.

9. It is to be noted that, the certificate in respect of sport on which the petitioner is relying, is in respect of the event that had taken place between 15th to 17th July, 2011. The competition was organized by Maharashtra Tug of War Association. The respondent No.3 had asked the petitioner by its letter dated 26-05-2014 to submit her documents. Accordingly, she produced the documents on 02-06-2014.

The same was sent for verification to respondent No.2 vide letter dated 07-06-2014 by respondent No.3. By letter dated 27-08-2014 respondent No.2 informed respondent No.3 that the petitioner is not fulfilling the criteria because the certificate is issued after 11-02-2011, when in fact the affiliation of the association was cancelled by Indian Olympic Association. The fact was informed to the petitioner by respondent No.3 by letter dated 09-10-2014. The petitioner is claiming the benefit given to a sports person under Government Resolution dated 30-04-2005. However, thereafter one more Government Resolution has been passed on 30-12-2013. By this Government Resolution, the respondent No.1 State has accepted that though the Indian Olympic Association had taken away the affiliation from 11-02-2011, by letter dated 11-07-2011, yet the said fact was not brought to the notice of the State as well as to the sport persons by the association, and therefore, they participated in the competitions, applied for the job within the 5 % reservations. The respondent No.2 came to know about the said fact and gave reply/ report while submitting the verification. The said fact was brought to the notice of respondent No.2 in February, 2013, and therefore, in order to save the loss to the players/ sports persons, the Government Resolution dated 30-12-2013 came to be issued. The concerned departments who had

given appointments/ recruited sports persons, who have taken part in the sports after February 2011 which was organized by those associations, whose affiliation has been withdrawn/ cancelled by the Indian Olympic Association, were directed to resubmit the applications for verifications before 01-03-2014.

10. Here in this case the petitioner cannot be deprived of the benefit because she was in fact asked to submit her documents by the respondent No.3 only on 26-05-2014. Further it is to be noted that, in view of Government Resolution dated 30-12-2013, the verification has been done and the fresh report has been given to respondent No.3 by respondent No.2 on 13-04-2016 stating that, she is fulfilling the criteria. The sports certificate of the petitioner is protected and valid pursuant to the Government Resolution dated 30-12-2013.

11. In the above circumstances, the act of invalidating the sports certificate by earlier communication by respondent No.2 on 27-08-2014 and pursuant to the same the communication by respondent No.3 to petitioner on 09-10-2014, appears to be unsustainable. Having regard to the documents filed on record, we are satisfied that the petitioner fulfills the criteria as prescribed under the Government Resolution dated 30-04-2005, and thus, entitled to be selected from

the category of sports person. We are, therefore, inclined to allow the petition. Hence, following order.

ORDER

- 1) The communication dated 27-08-2014 issued by respondent No.2 to respondent No.3 is quashed and set aside. Consequently the order/ letter issued by respondent No.3 to the petitioner on 09-10-2014 is also quashed and set aside.
- 2) The respondent No.3 is directed to issue appointment letter to the petitioner as 'Clerk' in pursuance to the selection list, if she otherwise fulfills the other conditions.
- 3) Rule is made absolute in above terms with no order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

vjg/-.