

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 11806 OF 2015

Shri. Ravindra Arun Sonawane .....Petitioner

V/s.

The State of Maharashtra and Ors. ...Respondents

\* \* \* \* \*

Mr. Nitin P. Dalvi, Advocate for the petitioner.

Mr. N.C. Walimbe, AGP for the State, respondents no.1 to 4.

Mr. Abhijit B. Kadam, Advocate for respondent no.5.

CORAM :- SMT. V.K. TAHILRAMANI, &  
SANDEEP K. SHINDE, JJ.

RESERVED ON :- 20<sup>th</sup> June, 2017.

PRONOUNCED ON:- 30<sup>th</sup> June, 2017.

ORAL JUDGMENT : (Per :- SANDEEP K. SHINDE, J)

1. Rule. Rule made returnable forthwith. Heard finally by consent.

2. Heard both sides.

3. The facts giving rise to the petition are as under :-

. The Commissioner of Education (Secondary and Higher Secondary), respondent no.2 herein, issued an advertisement on 17<sup>th</sup> February, 2010 and invited applications for the post of "Peon" then reserved for the Sports category. The qualification, eligibility for the Sports category was subject to G.R. dated 30<sup>th</sup> April, 2005 in its terms, Clause-4(C) for Class-C and D, which is as under :-

*"For the said Post, Player should acquire minimum 1<sup>st</sup>, 2<sup>nd</sup> and third prize in State Level Tournaments or Gold, Silver or Bronze Medal in Individual Game as well as common games. State Level Tournaments should be organized by Associations which are affiliated with the Maharashtra Olympic Association."*

4. The petitioner, as well as, respondent no.5 applied for the said post. On 23<sup>rd</sup> April, 2012 the petitioner was appointed on the said post upon certain terms and conditions. In January, 2013 respondent no.5 herein

challenged the appointment of the petitioner dated 23<sup>rd</sup> April, 2012 vide O.A. No. 52 of 2013 before the Maharashtra Administrative Tribunal (MAT), Mumbai, Bench at Aurangabad. The petitioner herein was impleaded as a party respondent in the said O.A. On 12<sup>th</sup> March, 2013 the petitioner appeared before the Aurangabad Bench in O.A. No. 52 of 2013. It appears, after appointment, the petitioner's documents which were submitted by him for claiming the said post, were sent for verification to ascertain whether he qualifies in terms of the G.R. dated 30<sup>th</sup> April, 2015. In January, 2013 he was found not eligible to be appointed from the sports category. Resultantly, on 15<sup>th</sup> April, 2013 his services were terminated. It prompted the petitioner to file O.A. No. 331 of 2013 before MAT, Mumbai Bench at Mumbai. It is interesting to note that, at a given point of time O.A. No. 52 of 2013 filed by respondent no.5 was pending at Aurangabad Bench. It is further interesting to note that, the petitioner herein did not implead respondent no.5 in O.A. No. 331 of 2013. That on 9<sup>th</sup> October, 2013, O.A. No.

331 of 2013 was allowed by the MAT, Mumbai and the petitioner was reinstated in service.

5. It may be stated that, though the petitioner had appeared at Aurangabad in O.A. No. 52 of 2013, he did not referred to such proceedings in O.A. No. 331 of 2013 filed by him at Mumbai against the order of termination dated 15<sup>th</sup> April, 2013. Respondent no.5, after gaining knowledge that, the petitioner has been reinstated vide order dated 9<sup>th</sup> October, 2013 applied to MAT, Mumbai for transfer of her O.A. No. 52 of 2013 from Aurangabad to Mumbai. It was then numbered as O.A. No. 612 of 2014. Respondent no.5 also filed a Review Application No. 25 of 2014 and sought review of order dated 9<sup>th</sup> October, 2013 passed in O.A. No. 331 of 2013.

6. That as such, all proceedings i.e. O.A. No. 612 of 2014 (filed by respondent no.5 herein) and Review Application No. 25 of 2014 were heard together and by order dated 8<sup>th</sup> October, 2015 directed thus; (i) respondent

no.5 was held entitled to be appointed to the post of Peon from the sports category subject to verification as per rules, (ii) respondents were directed to initiate the process of verification forthwith and complete it within four weeks, (iii)if the applicant is found eligible in that behalf, necessary order be issued within two weeks thereafter, (iv) respondent no.5 shall be appointed to the post and if it is necessary that someone may have to be removed, he be removed.

7. That in terms of the order dated 8<sup>th</sup> October, 2015, verification of documents submitted by respondent no.5 was done. She was found eligible to be appointed in terms of the G.R. dated 30<sup>th</sup> April, 2005. Resultantly, on 27<sup>th</sup> November, 2015 petitioner herein was terminated from service as he was not eligible for the appointment from the sports category.

8. Being aggrieved by the order dated 8<sup>th</sup> October, 2015 passed by the MAT, Mumbai, this petition under

Article 226 and 227 of the Constitution of India, is preferred.

9. The respondent, State, as well as, the contesting respondents filed their respective affidavits. The State, in its affidavit, contended that the petitioner had only participated in the All India International Tournament for Power Lifting in the year 2007-08 but did not secure rank and had acquired the first position only at the University Tournament. The State, further contended that, the petitioner had neither won any Gold, Silver or Bronze Medal nor acquired any rank/position in the Inter-State Tournament. That as such, the petitioner did not comply with the criteria laid down in terms of Clause-4(C) of the G.R. dated 30<sup>th</sup> April, 2005. The State, would further contend that, in the circumstances, the petitioner was not eligible to be appointed from the sports category. The State, therefore supported the order passed by the MAT. Respondent no.5 in her counter submitted that, the petitioner was not fulfilling the requirements of the subject

G.R. She would contend that, she had participated in the Junior National Softball Championship-2000 organized by the Andhra Pradesh Softball Association which is affiliated to Softball Association of India and in support of her claim, has placed on record, a Certificate issued by the State certifying her participation in the State Level Softball Competition held at Solapur and the Certificate issued by the Andhra Pradesh Softball Association.

10. Heard Mr. Dalvi, the Learned Counsel for the petitioner. It is not in dispute that, respondent no.5 was found eligible to be appointed from the sports category in terms of the G.R. dated 30<sup>th</sup> April, 2005, whereas, the petitioner was found not eligible. The G.R. lays down the eligibility criteria for appointment from the sports category and clarifies that a mere participation in the tournament, even if duly recognised, would not be sufficient and the candidate must have secured a first, second or third position in the said Tournament or should have bagged Gold, Silver or Bronze medal. Therefore, a mere

participation would not be sufficient. Admittedly, the petitioner had not secured either of these positions/ranks in the tournament. He did not bag Gold, Silver or Bronze medal. Therefore, on this count, we hold that the petitioner was not qualified to be appointed as a “Peon” from the sports category. On the other hand, after perusing affidavit of State and Certificates produced on record by respondent no.5, we hold that, respondent no.5 was qualified and eligible to be appointed from the Sports category in terms of G.R. dated 30<sup>th</sup> April, 2005 and therefore finding recorded on this issue requires no interference.

11. We have perused the order passed by the MAT. That in the concluding paragraphs of the impugned order, the respondents were directed to initiate the process for verification, the eligibility of respondent no.5 (who was an applicant before the MAT) within four weeks and communicate the decision within one week thereafter. The respondents were directed that, if the applicant is found eligible then they shall appoint her to the said post and if

for such appointment, anyone is required to be removed, the same may be done. It is not in dispute that, respondent no.5 was found eligible and the petitioner herein was found not eligible. That in the circumstances, vide order dated 27<sup>th</sup> November, 2015 the petitioner's services were terminated which order is at page-54 of the petition.

12. In the subject petition, the substantive prayer is, to set aside the judgment and order dated 8<sup>th</sup> October, 2015 passed in O.A. No. 612 of 2014. In alternative, the petitioner sought directions to the respondents to accommodate him in view of Affidavit dated 3<sup>rd</sup> September, 2015 filed by the Deputy Director of Education, Nashik Division, Nashik before the MAT. That by way of interim relief, the petitioner sought stay to the order of termination dated 27<sup>th</sup> November, 2015.

13. That amongst the aforesaid prayers, the petitioner has not sought substantive prayer to quash and set aside the order dated 27<sup>th</sup> November, 2015 i.e. his

termination order.

14. Mr. Dalvi, argued that the co-ordinate Bench could not have reviewed/revoked the order dated 9<sup>th</sup> October, 2013 passed in O.A. No. 331 of 2013 whereby he was reinstated in service. At the first place, the order dated 27<sup>th</sup> November, 2015 was neither assailed by him before the MAT, nor before this Court. Secondly, from the tenor of the order, it cannot be said that MAT has reviewed the order dated 9<sup>th</sup> October, 2013.

. We have perused the order and, in our opinion, MAT has not reviewed the order dated 9<sup>th</sup> October, 2013 but in substance directed to verify as to whether, respondent no.5 herein was eligible to be appointed from the Sports category. At the same time, on merits, MAT has held, the petitioner was not eligible to be appointed from the Sports category in view of the G.R. dated 30<sup>th</sup> April, 2005. The respondents, State after obtaining the copy of the order dated 8<sup>th</sup> October, 2015 and after verifying the eligibility of respondent no.5 herein issued the order dated 27<sup>th</sup>

November, 2015. That in the circumstances, the contention of the petitioner that the impugned order reviewed the order dated 9<sup>th</sup> October, 2013 passed in O.A. No. 331 of 2013 lacks substance and same is rejected.

15. Mr. Dalvi, in the course of the argument, to justify the eligibility of the petitioner has relied on the order dated 16<sup>th</sup> June, 2011 passed by MAT, Mumbai in Review Application No. 7 of 2007 in O.A. No. 875 of 2009. We have perused the order, wherein, the applicant was seeking post of Police Constable under the Sports category. Admittedly, the recruitment of Police Constables is subject to the Maharashtra Police Constables (Recruitment) Rules, 2006. Rule-6(B) stipulates eligibility, which reads as under :-

**“6(B) ELIGIBILITY :**

*(i) Participation in International/National/All India Inter University levels in any of the sports disciplines listed below. Participation at national level will include School Nationals, Sub Junior Nationals (Under 17 years), Junior Nationals (Under 19 years), Youth Nationals*

*(Under 21 years) and Senior Nationals.*

*(ii) Medal winners at State level (Inter District) Sports Tournaments in any of the sports disciplines listed below.”*

. Mr. Dalvi, would contend that the aforesaid Rule was considered in depth by the Division Bench Judgment of Aurangabad Bench, wherein participation at the Zonal Level in the All India Inter University Tournament was held, that it amounts to participation in All India Inter University Level.

. Relying on these rules and observations as reproduced, Mr. Dalvi, submitted that, mere participation is sufficient to cross the threshold of eligibility and therefore the eligibility contained in the G.R. dated 30<sup>th</sup> April, 2005 is required to be read in as in Rule 6(B) of the Maharashtra Police Constables (Recruitment) Rules, 2006.

. We do not agree with these submissions for the simple reason that the eligibility for the police constables in the sports category is all together different, meaning thereby, mere participation in any of the sports disciplines at

National Level is sufficient in terms of Constable Recruitment Rules, whereas, under G.R. of April, 2005, participation must bag rank or a medal.

16. Mr. Dalvi, further submitted that when the matter was pending before MAT, the Deputy Director of Education, Nashik Division had filed an Affidavit on 3<sup>rd</sup> September, 2015 wherein, he stated as under :-

*“ I say that, at present, 24 posts of Peon are vacant. I say that, out of this vacant 24 posts, one post of Peon is admissible for sports person.”*

. Mr. Dalvi, therefore submitted, appropriate directions may be issued to the State to consider/accommodate the petitioner in the available post. In our view, such directions cannot be issued as it would fall beyond the jurisdiction and powers of this Court. That for the reasons aforesaid, the petition is dismissed. Rule is discharged. No order as to costs.