

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.981 OF 2018

- 1) Vinod Kadubal Rathod,
Age-28 years, Occu:Nil,
- 2) Nivrutti Ramsing Rathod,
Age-29 years, Occu:Nil,

Both R/o: At-Dongaon Tekadi
Tanda, Post-Pargaon,
Tq-Paithan, Dist-Aurangabad

...PETITIONERS

VERSUS

Maharashtra State Electricity
Generation Co. Ltd.,
Estrela Batteries Extension Building,
Ground Floor, Labour Camp,
Dharavi Road, Matunga,
Mumbai-400 019

...RESPONDENT

...

Mr.Ganesh R. Jadhav Advocate for Petitioners.
Mr.S.M. Godsay Advocate for Respondent.

...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 24TH NOVEMBER, 2018

DATE OF PRONOUNCING JUDGMENT : 19TH DECEMBER, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India, has been filed with following substantive prayer:

“B. By issuing writ of Mandamus or any other Writ, order or direction in the like nature, the respondent company be directed to consider the claims of the petitioners from Open (Sportsperson) Category and issue orders of appointment in favour of the petitioners on the posts of Technician-III”

3. It is the case of the Petitioners that they are meritorious sport persons and are ITI

holders belong to VJ (A) category. In February, 2016, Respondent published an advertisement No.2 of 2016, for filling in the posts of Technician-III by direct recruitment. There were 12 posts reserved for the sports persons. On 1st March, 2016, Petitioners applied for the post from sports category as being eligible and possess requisite qualification, from open category. It is the case of the Petitioners that they secured 44 and 41 marks respectively in written examination out of 75 marks. On 1st October, 2016, Respondent published the list of successful candidates but names of Petitioners were not listed in open category, though they have secured 44 and 41 marks and also applied from open category. Names of eight candidates securing lesser marks than the Petitioners from open category, were listed. On inquiry it was informed to the Petitioners that, they are from VJ (A) category and they cannot be appointed from open category.

4. It is further the case of the Petitioners that, being aggrieved with the said decision of Respondent, in November, 2016, Petitioners filed Writ Petition No.11574 of 2016, before this Court seeking directions to the Respondent to consider the Petitioners from open category. On 21st January, 2017, this Court by way of interim relief, directed the Respondents to keep two posts vacant till the date of final disposal of said Writ Petition. On 17th February, 2017, this Court (CORAM: T.V. NALAWADE AND SANGITRAO S. PATIL, JJ.) allowed the said Writ Petition No.11574 of 2016, and directed the Respondent to consider Petitioners from open category. Accordingly, on 5th June, 2017, Respondent called Petitioners for document verification.

5. It is the case of the Petitioners that both the Petitioners have National certificates in

running as well as trampoline. On 19th September, 2017, Deputy Director, Sports and Youth Services, Aurangabad informed that Petitioners are sports persons in Trampoline and their certificates can be considered for 5% reservations in employment. On 22nd December, 2017, Deputy Director, Sports and Youth Services, Aurangabad, informed that certificates of the Petitioners in running are not as per Government Resolution dated 1st July, 2016, and therefore, they cannot be considered for 5% reservation in Running.

6. It is further the case of the Petitioners that, on 16th October, 2017, Respondent rejected to consider the valid sports certificates of the Petitioners in Trampoline on the ground that, Petitioners have applied from Running. Hence, this Petition is filed by the Petitioners, challenging the communication dated 16th October, 2017, issued by the Respondent.

7. Learned counsel appearing for the Petitioners submits that the Petitioners are the National Sports persons and possess valid sports certificates in Trampoline. It is submitted that the action of the Respondent in rejecting application of the Petitioners only on the ground that they have applied in Running and the said certificate is not valid, is illegal. In fact valid certificates as required by law in Trampoline are produced by the Petitioners. It is submitted that the Petitioners have applied in Running category, with good faith and they did not know their National Certificates in Running are not in consonance with the Government Resolution dated 1st September, 2016. Thus, on hyper technical ground the applications of the Petitioners are rejected, and the said action of the Respondent is absolutely illegal. It is submitted that the Petitioners are otherwise eligible and possess all

necessary qualification on the date of advertisement. The Petitioners are meritorious candidates and have secured more marks than other candidates, and therefore their applications should not have been rejected on hyper technical ground. Learned counsel therefore prayed that the Petition may be allowed.

8. On the other hand, learned counsel appearing for Respondent, referring to the reply filed on behalf of the Respondent, submits that both the Petitioners have applied for the post of Technician-III, against open category under Sports Reservation in response to the advertisement, whereas their actual category is VJ (A). According to Government Resolution dated 13th August, 2014, for merit preparation, Horizontal Reservation Candidates Category and the category from which he has applied, should be the same to avail benefit of sports reservation. Since the category

of the Petitioners and the category from which they have applied were not the same, they were not included in Open or VJ (A) category under sports reservation. The candidates who were included in Select/Wait list under Sports Reservation, their actual category and the category from which they had applied was the same, as such the exception taken by the Petitioners is not justified.

9. Learned counsel appearing for the Respondent further submits that in view of the order passed by this Court in Writ Petition No.11574 of 2016, and pursuant thereto the approval granted by the competent authority, both the Petitioners were called for submission of documents on 6th June, 2017. The sports certificates which were submitted by them while applying, were obtained from them and the same were sent to the Sports Authority, Aurangabad, and in turn the said authority, by letter dated 19th

June, 2017, informed that the sports certificates submitted by both the Petitioners were not valid, and as such based upon the letter received from the sports authority, the claim of the Petitioners was rejected. It is submitted that the Petitioners again approached the sports authority in view of Government Resolution dated 1st July, 2016 and obtained altogether different sports certificates, which were not mentioned in the application form submitted in response to the advertisement, got it verified and validated from sports authority and requested the Respondent by their application dated 22nd September, 2018, to consider their sports certificates, which in fact were not mentioned by them in the application form.

10. Learned counsel further submits that in the advertisement, it is clearly mentioned that it is the absolute responsibility of the candidates to fill the on-line form completely and only based

upon the details filled in the application form, their documents will be collected. Therefore, the certificates got verified by the Petitioners from the sports authority, which were not part and parcel of the application form, cannot be considered by the Respondent. It is further submitted that both the certificates are just same except change in name and certificate number. Moreover, the position is same and thus it is doubtful how two candidates have given same position in the same event organized on the same day. It is submitted that the sports competition organized by the District Trampoline Association of Aurangabad cannot be considered by the Respondent, as these sports certificates were not mentioned by the Petitioners in the application form. As such, the claim of the Petitioners has been rightly rejected by the Respondent. Hence it is submitted that there is no merit in the Petition and the same deserves to be rejected.

11. We have carefully considered the submissions of the learned counsel appearing for the Petitioners and learned counsel appearing for the Respondent. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of Respondent and affidavit in rejoinder filed by the Petitioners.

12. It is admitted position that both the Petitioners belong to VJ (A) category but they have applied for the post of Technician-III from Open/General Category and such they have not claimed the benefits of reservation from VJ (A) category. It appears that the Petitioners being sports persons, they have claimed benefit of the reservation from sports category. Admittedly, the Petitioners had appeared for the written examination, which was conducted on 8th May, 2016,

and secured 44 and 41 marks, respectively, out of 75 marks. The Respondent published the list of successful candidates, wherein the name of the Petitioners were not included. In the merit list published by the Respondent, the names of candidates from General Category claiming benefit of reservation from sports category were included though the said candidates had obtained less marks than the Petitioners in the written examination. It is the contention of the Respondent that the Petitioners belong to VJ (A) category, therefore their names have not been considered from General Sports Persons Category. Challenging the said action of the Respondent, Petitioners, earlier filed Writ Petition No.11574 of 2016, which came to be allowed by the Division Bench of this Court, with direction to the Respondent to consider the names of the Petitioners for being included in the merit list/select list for the post of Technician-III from General Sports Persons' Category on the

basis of their individual merit.

13. Thus, this is the second round of litigation, wherein the Petitioners have challenged the communication dated 16th October, 2017, issued by Respondent. Respondent rejected to consider the sports certificates of the Petitioners in Trampoline, on the ground that the Petitioners have applied from Running category. It is admitted fact that the Petitioners have applied from general sports persons category, and while submitting the application forms, they have annexed the certificates in running category. However, on verification, the sports authority has communicated that the said certificates in running category, are not as per the Government Resolution dated 1st July, 2016, and therefore the same cannot be considered for 5% reservation in running category. It is the contention of the Petitioners that they have applied in running category with

good faith and they were unaware that their national certificates in Running category are not in consonance with Government Resolution dated 1st July, 2016.

14. The documents placed on record reveals that both the Petitioners possess National certificates in running as well as trampoline, and by communication dated 19th September, 2017, Deputy Director, Sports and Youth Services, Aurangabad, informed that Petitioners are sports persons in Trampoline and their certificates can be considered for 5% reservations in employment. Relying upon the said certificates issued in Trampoline, Petitioners again approached the Respondent by their application dated 22nd September, 2018, requesting the Respondent to consider their names for the post of Technician-III, as they are also possessing sports certificates in trampoline, which request is not

favourably considered by the Respondent.

15. It is the contention of learned counsel appearing for the Petitioners that the candidates who applied from General Sports persons category and who secured lower marks than the Petitioners, have been given appointments. It is pertinent to note that the candidates who secured less marks than Petitioners and still appointments given to them, are not party to this Petition. In that view of the matter, the said submissions made by learned counsel for the Petitioners cannot be considered.

16. The Supreme Court in the case of Dolly Chhanda vs. Chairman, JEE and others,¹ in Para 7 of the Judgment, observed thus:-

“7. The general rule is that while applying for any course of study or a post, a person

¹ (2005) 9 S.C.C. 779

must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc., necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

17. In the present case, it is the case of the Petitioners that they were unaware of the fact

that the certificates submitted by them in respect of running category were not admissible and when the Respondent rejected the claim of the Petitioners on the said ground, the Petitioners have submitted the certificates of trampoline sport. Even the Deputy Director, Sports and Youth Services, Aurangabad has informed that Petitioners are sports persons in Trampoline and their certificates can be considered for 5% reservations in employment.

18. In that view of the matter, we direct the Respondent to take into consideration the certificates submitted by the Petitioners in trampoline sport, and if the vacancies are available, then without going into technicalities, consider the issue of giving appointments to the Petitioners from Open (Sportsperson) Category afresh, and take decision as expeditiously as possible, however, within FOUR WEEKS today, and

communicate the decision so taken, to the
Petitioners.

19. Rule is made absolute on above terms. The
Writ Petition stands disposed of.

[K.K. SONAWANE, J.]

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[S.S. SHINDE, J.]