

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

8 WRIT PETITION NO. 4751 OF 2016

KAWATHEKAR HEMANTKUMAR HARISHCHANDRA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. A.G.Talhar h/f Seema T Pawar
AGP for Respondents 1 to 3 : Mr. A.P.Basarkar
Advocate for Respondent no.6 : Mr. Sawant Amol S.

**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE : JULY 19, 2018

O R D E R :

Pursuant to the advertisement issued by respondent in the year 2013 the petitioner applied for the post of Clerk-cum-Typist from the open (Sports) category. The petitioner was selected at Sr. No. 1 of the provisional select list. The sports certificate of the petitioner was sent for verification. The same was invalidated as per the order of the Assistant Director, Sports and Youth Services, Maharashtra State, Pune under order dated 13.1.2015. The petitioner made representation to the authority. Under order dated 22.11.2016 the Deputy Director, Sports and Youth Services, Aurangabad Division

validated the sports certificate of the petitioner. However, during interregnum, respondent No. 5 was appointed from open (Sports) category.

2. Mr. Talhar, learned counsel for the petitioner submits that initially on erroneous grounds, sports certificate of the petitioner was invalidated and subsequently it is validated on 22.11.2016. The petitioner has right to the said post. The petitioner has secured more marks than the respondent no. 5, who is appointed from open (sports) category. The petitioner was not at fault. The petitioner being more meritorious is required to be appointed.

3. Mr. Deshmukh, learned A.G.P. submits that the case of the petitioner could be covered under the Clause 4(C) of Government Resolution dated 30.4.2005. The Deputy Director has subsequently validated the certificate. According to the learned counsel, mere name in the select list does not give right to the petitioner to claim appointment. Respondent no. 5 is already appointed on the said post by following proper procedure upon sports

certificate of the petitioner being invalidated.

4. Mr. Sawant, learned counsel for respondent no. 5 submits that respondent no. 5 is appointed by following proper procedure on 8.10.2015 after the sports certificate of the petitioner was invalidated. He has become permanent.

5. We have considered submissions canvassed by learned counsel for the respective parties. The petitioner had applied for the post of Clerk-cum-Typist from open sports category. The petitioner possessed the sports certificate of securing third place in the Maharashtra State Soft Ball Championship (Men's) conducted by Maharashtra State Soft Ball Association which is recognized by Maharashtra State Youth Affairs and Sports and Government of Maharashtra, so also the Indian Olympic Association and Government of India.

6. It is the fact that petitioner stood at Serial No. 1 in the select list from open (Sports) category. It is also the fact that under order dated 13.1.2015 sports certificate of the petitioner was invalidated and thereafter, respondent no. 5 who was second in merit was given appointment order. It would appear that petitioner has represented and eventually under order dated 22.11.2016 it was affirmed that the sports certificate of the petitioner is valid and it also further states that the petitioner should be appointed and the report be submitted. However, the petitioner could not be appointed on the said post, on which respondent no. 5 was already appointed.

7. It is a fact that it is not the fault of the the petitioner. The respondent authorities realized the mistake and subsequently validated the sports certificate of the petitioner. The petitioner was at Sr. No. 1 in merit as per the select list. It also

be considered that respondent no. 5 has completed almost three years on the said post.

8. To resolve the anomaly, we had asked learned AGP to submit the position of the vacancies available. From open category, 9 posts are vacant for the persons to be appointed by nomination.

9. Equities will have to be adjusted. The petitioner is not at fault. It was the mistake at the behest of the authorities. The authorities realized the mistake and subsequently validated the sports certificate of the petitioner, meaning thereby, the petitioner was totally eligible. The petitioner was at Sr. No. 1 in the select list, however, during interregnum, respondent no. 5 is already appointed. His sports certificate is validated and he was at Sr. No. 2 in merit for the said post.

10. Considering the aforesaid eventuality and to

adjust the equities, we direct the respondents to accommodate the petitioner and to issue him appointment, if there is no other impediment on the post from open category of Clerk-cum-Typist. Said exercise be done expeditiously, preferably within six weeks from today.

11. Writ petition is allowed in above terms.

[**SUNIL K.KOTWAL, J.**] [**S.V.GANGAPURWALA, J.**]

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