

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9213 OF 2019

Sushila Dilip Mestry

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr. A.B. Vagyani i/by Manoj A. Patil for the petitioner.

Mr. B.V. Samant, AGP for the State.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 23, 2022

P.C.:

1. This writ petition is at the instance of the original applicant in Original Application No. 12 of 2016 on the file of the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short). It is directed against the order dated 29th November 2018 passed by the Tribunal dismissing the original application on the ground that the same was devoid of merits.

2. The facts reveal that the petitioner was an aspirant for the post of police constable. She belongs to Other Backward Class community. Appointment was sought for by the petitioner in the sports quota. One of the requirements of the advertisement inviting applications dated 30th April 2014 read

with the relevant Government Resolution dated 30th April 2005 was that any aspirant seeking to obtain employment in the sports quota must be a state-level player. The petitioner applied on 23rd May 2014. Together with her application, she had enclosed a certificate that she had participated in a competition at the sub-junior national level in hockey.

3. The said certificate, however, was not considered by the authorities to satisfy the eligibility criteria with the result that despite selection of the petitioner for appointment as a police constable, she was ultimately not appointed. More than six (6) months after the petitioner was informed of her ineligibility, she applied before the District Sports Officer, Osmanabad on 23rd April 2015 for a duplicate certificate on the ground that the original certificate had been lost. According to the petitioner, the original certificate had certified that she had participated in a hockey tournament of the state-level at Kolhapur, held during the period 31st October 2004 to 4th November 2004, in which the petitioner had turned out for the victorious team. Sufficient doubt is created in our minds by reason of the fact that the duplicate certificate was issued by the District Sports Officer, Osmanabad on 23rd April 2015 itself, i.e., the very date on which the petitioner made the application without even she having reported the loss of the original certificate to the police station by that date. Further suspicion is aroused by the petitioner's letter dated 20th October 2014 addressed to the Commissioner (Recruitment Cell). Even in October 2014, the petitioner unambiguously stated that she had not played in any state-level games but was directly selected through her school for participation in

the National level games. If indeed the petitioner had participated and obtained an original certificate from the District Sports Officer, Osmanabad to the effect that she was a participant in the state-level competition in hockey between 31st October 2004 and 4th November 2004, it is indeed quite strange and defies logic as to why the petitioner did not refer to such participation in the letter dated 20th October 2014.

4. Satisfied that the petitioner's conduct has not been above board, we proceed to consider whether the petitioner could have been considered eligible for appointment even assuming that the certificate dated 23rd April 2015 is a genuine document.

5. In terms of the advertisement dated 30th April 2014, the last date for filing applications was 25th May 2014. Having regard to the law laid down by the Supreme Court in its decision in **Ashok Kumar Sharma & Ors. V/s. Chander Shekhar & Anr.**,¹ an aspirant for public employment is required to acquire the eligibility on the last date for filing the applications. As held in such decision, the eligibility of the candidates shall have to be judged with reference to that date and that date alone; also, a person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. While holding so, the Supreme Court held that the judgment and order under review taking a contrary view did not lay down the correct position of law and that there was a clear error of law apparent on the face of the record.

¹ (1997) 4 SCC 18.

6. Although **Ashok Kumar Sharma** (supra) dealt with a case where 32 candidates who were appointed did not possess the requisite academic qualifications on the last date for filing applications, we see no reason why the ratio of such decision may not be made applicable on facts and in the circumstances. Any aspirant seeking appointment in a reserved vacancy, be it vertical or horizontal, can only be considered if he/she possesses the relevant certificate; and if it is the requirement of the advertisement that such certificate must accompany the application, there can be no two opinions that the certificate must be available at least on the last date for receipt of applications so that it can accompany the application for appointment. In the absence of the certificate, the application is liable to be rejected treating it as incomplete.

7. In this connection, we may also refer to the decision of the Supreme Court in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. V/s. M. Tripura Sundari Devi**², where it has been held in paragraph 6 as follows:

“6. It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable.

² (1990) 3 SCC 655.

No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

8. The aforesaid decision is an authority for the proposition that it would amount to a fraud on public if an appointment were made in disregard of the terms of the advertisement, unless the qualifications are relaxable. It has not been shown that the qualifications were relaxable in this case in the sense that the certificate could be submitted later on or even at the interview; therefore, we have no other option but to hold that the terms of the advertisement being inflexible, we cannot by a judicial fiat bring about a situation of fraud being committed on the public by taking a lenient view.

9. Mr. Vagyani, learned advocate for the petitioner, however, invited our attention to the decision of the Supreme Court in **Dolly Chhanda V/s. Chairman, JEE & Ors.**³ Having perused such decision, we are clearly of the view that the ratio thereof would not have any application in the facts and circumstances of the present case. The certificate of the appellant in that case was found to contain an error which was attributable to a fault of the certificate issuing authority and in such a circumstance, the Court held that the respondents were taking too technical an approach. That is not the case here and, therefore, the said decision is of no assistance to the petitioner.

10. We have read the order of the Tribunal which has held that the petitioner did not possess the necessary qualifying documents on the date she had applied for public

³ (2005) 9 SCC 779.

appointment. The observation that the petitioner not being vigilant in obtaining the documents at the appropriate time commends us to be acceptable. An aspirant for public employment is not expected to conduct herself in the manner the petitioner did, assuming arguendo that she indeed was the holder of a valid sports certificate which she had lost without any fault on her part.

11. Based on the above analysis, we hold that the petitioner did not possess the requisite certificate on the last date of filing applications certifying that she had participated in a state-level competition and had been part of the winning team; hence, the respondents did not commit any error in not appointing her on the post of police constable.

12. The order of the Tribunal is upheld. The writ petition is dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by
ATUL GANESH
KULKARNI
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