

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12592 OF 2023

1. **Dadaso Balaso Awad,**
Age : 37 years, Occupation : Sports Coach,
Residing at : At post 29 Phata, Gunawadi,
Tal-Baramati RO: Bhavaninagar,
Sub-District : Indapur, District: Pune – 413104.
2. **Yogesh Prakash More,**
Age : 39 years, Occupation : Service/Sports Coach,
Residing at : C, 304 Yashwant Complex Katrap,
Badlapur East, Tal-Badlapur,
District: Thane– 421503. ...Petitioners

Versus

1. **State of Maharashtra,**
Sports Ministry, Mantralaya,
Mumbai – 400 081.
2. **The Directorate of Sports and Youth Services,**
Shiv Chhatrapati Sports Complex,
Mahalunge, Balewadi, Pune–411045,
through its authorised person.
3. **The District Sports Officer, Pune,**
Having its office at Divisional Sports Complex,
Shastri Road, Yerawada, Pune–411006. ...Respondents

Mr. Shekhar Jagtap a/w. Ms. Sairuchita Chowdhary and Mr. Ishan Paradkar i/by M/s. J. Shekhar & Co. for the Petitioners.

Mr. N. C. Walimbe, AGP for the Respondent (State).

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

RESERVED ON : 6th NOVEMBER, 2023.
PRONOUNCED ON : 5th DECEMBER, 2023.

JUDGMENT: (Per Jitendra Jain, J.):

1. By this petition under Article 226 of the Constitution of India, the Petitioners have challenged the advertisement published on 19th July 2023 for the post of Sports Coach. The substantive prayers reads as under:-

- “A. *The Hon’ble Court may kindly issue writ of mandamus and/or any other appropriate writ and/or direction and/or order and thereby examine the constitutional validity of the advertisement published on 19.07.2023, annexed at **Exhibit E** herein, and direct that the impugned advertisement is arbitrary, unfair and causing a discrimination to the Petitioners by compelling them to compete with candidates holding a degree in physical education as well as state level sportsperson, who are not professionally trained as a coach under the National Institute of Sport and therefore the impugned advertisement ultra vires to the constitution to the extend of appointment of Sports Coach posts, the Hon’ble High Court may kindly quash and set aside the impugned advertisement dated 19.07.2023;*
- B. *The Hon’ble Court may kindly issue writ of mandamus and/or any other appropriate writ and/or direction and/or order and thereby direct that the Respondent No.2 has made an illegal addition of criteria, more particularly mentioned in clause 7.2 of an impugned advertisement, by adding degree holders in the Physical Education and the State level Sportspersons and thereby further direct to allow only candidates holding a Diploma in Sports Coach and candidates who are international as well as national sportsperson in a specific sport activity;”*

Brief facts:-

2. The Petitioners are the Diploma holders in Sports Coaching from Netaji Subhash National Institute of Sports, Patiala (for short

“NIS”). They have also participated at National and State level in Kabaddi and Kho-kho Sports. The Petitioners have completed one year Diploma Education Programme from NIS. On 19th July 2023, the Respondents issued an advertisement for the post of Sports Coach for 50 vacancies. Translated paragraph 7.2 of the said advertisement provides for qualification of the candidate for the said post of Sports Coach, which reads thus:-

“7.2 Sports Instructor :-

(1) Candidate should have passed degree examination of a recognized Institution in physical education alongwith the degree examination in Arts/ Science/ Commerce /Law faculty of Constitutional University,

OR

(2) Candidate should have passed Diploma examination (Instructor) in Sports Field held by the Kolkata, Bangalore and Gandhinagar Divisional Centres of Netaji Subhashchandra National Sports Academy, Patiyala or by any recognized Institutions similar thereto,

OR

(3) Candidate should have passed Degree examination (B.P.E.) in Physical education with the main subject viz. Physical education.

OR

(4) Candidate should have received State/National Award in any specific sport.”

3. The Petitioners have challenged the above qualifications in the present petition and prayed that only a diploma holder from NIS should be considered for the said post.

4. The Petitioners contend that the candidates holding Bachelor in Physical Education course are eligible to be appointed as teacher in schools and colleges and the training given to these candidates pursuing Bachelor of Physical Education (for short “BPE”) is of soft skills, such as

leadership, students physic and psyche and overall physical training. Whereas the Petitioners who have obtained a Diploma from NIS in 'Coaching Programme', are eligible for the post of sports coaching. The Petitioners further contend that equal status cannot be given to the candidates holding BPE, and candidates holding diploma in sports coach, and only candidates holding diploma in sports coach and no other candidate should be made eligible for the post of sports coach. It, therefore, the Petitioner's contention that the said qualifications are ultra-vires.

5. The Petitioners further contend that a degree in physical education provides a general training in sports, whereas a diploma course for coaching is specific towards technical and practical experience of a coach and, therefore, such candidates holding BPE cannot be said to be fit for the post of sports coach, since they do not possess the same level of knowledge as that of the diploma holder.

6. The Petitioners have also assailed the impugned advertisement on the ground that same is violative of Article 16 of the Constitution of India, since it prejudices the interest of the candidates who have completed diploma course from NIS and who are only trained to provide sports coaching, whereas the other candidates holding degree course are only physical instructors in school/colleges. In

support of the Petitioner's contention reliance is placed on the decisions of the Supreme Court in the case of **Chandan Banerjee & Ors. Vs. Krishna Prosad Ghosh & Ors.**¹ and in **Devesh Sharma Vs. Union of India & Ors.**²

7. On the other hand, the Respondents have opposed the petition on various grounds. The Respondents contend that the sports authorities are experts in deciding the qualification for the post of sports coach and that being so, the writ Court ought not to interfere, when the expert body has prescribed the qualifications for the particular post. The Respondents further submitted that these are policy decisions which also cannot be interfered in the proceedings under Article 226 of the Constitution of India. The Respondents have also justified the qualification as prescribed, by submitting that such qualification as prescribed for the post requires the candidate to have been trained in physical education and sports and this is the parameter which flows commonly in all the qualifications prescribed. The Respondents submitted that the decisions relied upon by the Petitioners are not applicable to the facts of the present case and, therefore, prayed for dismissal of the present petition.

1 2021 SCC Online SC 773

2 2023 SCC Online SC 985

8. Heard learned counsel for the Petitioners and the Respondents and with their assistance, have perused the documents annexed to the petition.

9. **Analysis:-** The primary issue which requires consideration is whether the power of judicial review under Article 226 of the Constitution of India can be exercised insofar as the fixing of the qualification for appointment of “Sports Coach” is concerned. The qualification for the said post is prescribed by Directorate of Sports and Youth Services-Respondent No.2. It is not the case of the Petitioners that Respondent No.2 is not authorised or lacks jurisdiction for prescribing the qualification, however, the case of the Petitioners is that except diploma holders in NIS, no other qualification should be prescribed. We do not agree. In our view, Respondent No.2 is an expert body to decide as to what qualifications needs to be fixed for the post in question and as to who are the candidates best suited for such posts. The Petitioners herein are not challenging the decision making process but what has been challenged is the decision itself.

10. In our view, the qualification for appointment to a particular post is for the employer to decide. The employer may prescribe additional or desirable qualifications. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. This Court cannot

lay down the conditions of eligibility, much less can it deal with the issue of whether the desirable qualifications is on par with the prescribed other qualification. This would amount to re-writing the advertisement by the Court which is not permissible. Question of equivalence/non-equivalence will also fall outside the domain of the Court.

11. In so far as the judicial review of any such decision is concerned, this Court cannot substitute its own decision to the decision taken by the employer for the reasons that the expertise for such test lies only with the employer this Court is hardly equipped to do so.

12. The Petitioners have not raised any challenge on the ground that decision of Respondent No.2 is malafide. The expert body - Respondent No.2 have prescribed the qualification for the post of sports coach and the common thread passing through all the four qualifications are expertise of the candidate in the sports. The candidates possessing the qualification prescribed are those who are related to sports in one way or the other. The Petitioners, except stating that they are qualified for the post, have not shown us any material on record to submit that the other qualifications are not at all relevant for the said post.

13. The decision in the case of **Chandan Banerjee & Ors. Vs. Krishna Prosad Ghosh & Ors. (supra)**, relied upon by the Petitioners would not assist the Petitioner, inasmuch as, the issue before the Supreme Court was with respect to promotion of the candidates who were already in the employment and it was not a case of recruitment as in the present case. Similarly, the Petitioner's reliance on **Devesh Sharma Vs. Union of India & Ors. (supra)** is also not well founded. The issue in such case was whether a person holding B.Ed. Qualification can be considered for the post of primary teacher for which the qualification is D.Ed. The Supreme Court held that B.Ed. is a different qualification and the candidates holding such qualification would not be suitable qualification for primary level of classes. It is on these facts that the Supreme Court held that the persons holding B.Ed. Qualification cannot be considered for the post of primary teacher.

14. We may observe that our reasoning would stand fortified in the view taken by the Supreme Court in the following decision:-

15. In *Anand Yadav and Ors. Vs. State of Uttar Pradesh & Ors., (2021) 12 SCC 390*, the issue before the Supreme Court was whether for the purpose of appointment to the post of Assistant Professor, MEd degree can be treated as equivalent to degree of MA (Education) and even if it was treated as an equivalent, could it be said that an MEd is a

post-graduation in the relevant subject. Supreme Court observed that in a recruitment process, equivalence of MEd degree and the degree of MA (Education) is essentially matters of policy and Judicial review must tread warily. In paragraphs 32 to 35 of the decision the Supreme Court observed that in matters of education, the view of educationists must be preferred and it is not the function of the Court to sit as an expert body over the decision of the experts and this aspect has received judicial imprimatur even earlier. The Court further observed that it is for the employer to consider what is the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification and such matters to be left to the educationists.

16. In the case of **State of Maharashtra Vs. Lata Arun, (2002) 6 SCC 252**, the Supreme Court held that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

17. In **Dilip Kumar Garg & Anr. Vs. State of Uttar Pradesh & Ors., (2009) 4 SCC 753**, Supreme Court held that the administrative

authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal.

18. In case of **Tajvir Singh Sodhi vs The State Of Jammu And Kashmir in Civil Appeal Nos.2164-2172 of 2023** the Supreme Court while dealing with almost a similar and identical question relying its earlier judgments held thus:

“12. Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law:

*i) In **Dalpat Abasaheb Solunke v. Dr. B. S. Mahajan, (1990) 1 SCC 305 : AIR 1990 SC 434**, this Court clarified the scope of judicial review of a selection process, in the following words:*

“9... It is needless to emphasis that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The Court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc....”

*ii) In a similar vein, in **Secy. (Health) Deptt. Of Health & FW v. Dr. Anita Puri, (1996) 6 SCC 282**, this Court observed as under as regards the*

sanctity of a selection process and the grounds on which the results thereof may be interfered with:

“9. ... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they have than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation.....”

*iii) This position was reiterated by this Court in **M.V. Thimmaiah v. Union Public Service Commission, (2008) 2 SCC 119**, in the following words:*

“21. Now, comes the question with regard to the selection of the candidates. Normally be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...”

19. In view of above discussion, there is no merit in the contentions as urged by the Petitioner. We find no illegality in the qualification as prescribed by the Respondents for the post of Sports Coach. Petitioner is dismissed. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]