

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

PRACHI
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NANDIWADEKAR

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WRIT PETITION NO.15613 OF 2022

1. Mrs. Shaila Tanaji Patil
Age 29 yrs. Occ. Service,
R/at. 201, Koral Building, D-Wing
Orchid Jewels Complex, Kalher, Bhivandi
Thane – 421 302. .. Petitioner

Versus

1. Maharashtra Public Service Commission,
Through its Secretary
Having office At : 5 ½ , 7 & 8th Floor,
Cooprej Telephone Nigam Building,
Maharshi Karve Road, Cooprej, Mumbai
2. The Director General & Inspector General of Police
Maharashtra State, Mumbai,
Having Office at : Old Council Hall,
Shaheed Bhagat Singh Marg, Mumbai 400 039.
3. The State of Maharashtra,
through Principal Secretary,
Home Department, Mantralaya
Mumbai -32
4. The State of Maharashtra,
through Principal Secretary,
General Administration Department,
Mantralaya, Mumbai -32

5. The Deputy Director
Sports and Youth Services, Kolhapur
Having officer at : Trimbak Road,
Nashik – 422 007.

6. Mr. Sharad Bhagwan Salunkhe
Age Adult, Occu. Services
Having address at :
c/o The Director General &
Inspector General of Police,
Maharashtra State, Mumbai.
Having office at : Old Council Hall,
Shaheed Bhagat Singh Marg,
Mumbai – 400 039.

...Respondents

Mr.Arjun S. Pawar for the Petitioner.

Mr.N.C. Walimbe, Addl.G.P a/w Mr.A.R. Metkari, AGP for the
Respondent-State.

**CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.**

Date on which arguments were heard : 8th FEBRUARY 2024.

Date on which judgment is pronounced : 14th FEBRUARY 2024

JUDGMENT (Per Jitendra Jain, J.) :-

. Rule. Mr.Walimbe, learned Additional Government Pleader
waives service for respondent-State. By consent of the parties, the
petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner seek to challenge an order of the Maharashtra Administrative Tribunal ("Tribunal") dated 18th April 2022 dismissing the Original Application No.453 of 2019 (OA) filed by the petitioner by holding that the 'Sports Verification Certificate' was not filed by the petitioner with the respondents along with the application and therefore she cannot be considered for selection to the post of Police Sub-Inspector.

Narrative of Events :-

3. The petitioner, who is already serving as a Police Constable, being selected from the Open Sports Category based on Sports Certificate as well as verification report dated 30th August 2010 for last many years, applied for the post of Police Sub-Inspector pursuant to an advertisement dated 26th April 2017 issued by the respondents. Some of the relevant clauses of the said advertisement reads as under (official translation):-

“4.5 Action in respect of reservation for proficient sportsmen and also in respect of relaxation in age limit shall be taken as per the Government Resolution bearing No. S.S.P-2002/M. No. 68/S. Y. Se.-2, dated 01st July, 2016 as well as the Government Corrigendum bearing No. S.S.P-2002/M. No. 68/S. Y. Se.-2, dated 18th August, 2016 issued by the School Education and Sports Department and as per the subsequent orders in that regard issued by the Government from time to time.

4.6 In case of the candidates claiming reservation of proficient sportsmen, it shall be necessary for them that, even before they

submit their application to the Commission, they must have **obtained** from a Competent Authority a certificate, certifying that his/her sports- related certificates are of appropriate grade and that he/she becomes eligible for the post of sportsman.

- 4.7 While submitting the certificates to the Director, Directorate of Sports and Youth or to the Competent Authority, it shall be necessary for the eligible sportsman- candidate to submit his/her all sports-related certificates declaring him/her as eligible for the reservation of proficient sportsman, at one and the same time.
- 4.8 If a certificate to the effect that the sports-related certificate is proper and a certificate about the post in a group/grade to which the sportsman becomes eligible, issued by the Competent Authority prior to the date of submitting application is submitted, then only he/she can avail the benefit of reservation for sportsman category.
- 8.8 It shall be required **to produce all necessary original certificates regarding eligibility on calling for interview or for verification of documents.** If all original certificates regarding eligibility are not produced at the time of interview or at the time of verification of documents, their interview will not be conducted and they will not be considered for recommendation / appointment.”

(emphasis supplied)

4. The petitioner appeared for main exam and cleared the same on 3rd October 2017. On 18th September 2018, respondent no.1 issued an Interview Call letter and Physical Training test to the petitioner which was scheduled to be held on 8th October 2018. The petitioner appeared for the interview and the physical training test and also produced ‘Sports Verification Certificate’ for being eligible to be considered under the Sport Category.

5. Thereafter, the name of the candidates who were recommended were pronounced but the name of the petitioner did not

appear and therefore, the petitioner vide various e-mails requested the respondents to inform her about the status of her application for the post of Police Sub-Inspector. The petitioner vide letter dated 27th March 2019 addressed to the respondents stated that at the time of interview, all the documents including the 'Sports Verification Certificate' were submitted and verified by the respondents.

6. On 1st April 2019, the petitioner was informed that since she did not submit the 'Sports Verification Certificate' along with the application as per Government Resolution dated 1st April 2016, she was not considered for the said post in the 'Sports Category' although she had scored aggregate of 183 marks in physical training test, main exam and interview.

7. The petitioner, thereafter, approached the Tribunal challenging the aforesaid action of the respondents. The Tribunal vide its order dated 18th April 2022 dismissed the OA by relying on Clauses 4.5, 4.8 and 8.8 of the advertisement. It is on this backdrop that the petitioner is before this Court.

Submissions of the Petitioner :-

8. The petitioner submitted that she was already selected

under the 'Sports Category' as a Police Constable based on the Certificate dated 27th February 2010 No.7939 issued by the Association of Indian Universities. It is this very certificate which she got verified for the purpose of Police Sub-Inspector post and the respondents themselves have verified the said certificate vide letter dated 3rd October 2018. The said certificate was submitted at the time of interview held on 8th October 2018. The petitioner submitted that she was already holding the Certificate dated 27th February 2010 at the time of applying for the post of Police Sub-Inspector and on the basis of this very certificate, she was already appointed as a Police Constable much before 2018. The petitioner submitted that on true and proper construction of Clauses of the advertisement, it cannot be said that she has not complied with Clauses relating to holding of the certificate at the time of making the application. The petitioner, therefore, submitted that the Tribunal was not justified in dismissing her OA. The petitioner relied upon the decision of the Supreme Court in case of *Dheerender Singh Paliwal Vs. Union Public Service Commission*¹ and in case of *Charles K. Skaria & Ors. Vs. Dr. C. Mathew and Ors.*² in support of her aforesaid submissions. The petitioner also relied upon the decisions of the Tribunal in case of other candidates in O.A. No.635 of 2018 dated 19th November 2018 and O.A. No.780 of 2018 dated 1st February 2019

1 (2017) 11 SCC 276

2 (1980) 2 SCC 752

wherein on a similar fact situation, the Tribunal have allowed the application filed by the applicants therein.

Submissions of the Respondents :-

9. Per contra, the respondents supported the order of the Tribunal and further submitted that since the 'Sports Verification Certificate' was not filed along with the application, there was non-compliance of the conditions specified in the advertisement and therefore, the petition deserves to be dismissed.

10. We have heard the learned counsel for the petitioner and the respondents and with their assistance have perused the documents annexed to the petition.

Analysis and Conclusions :-

11. In our view, for the reasons stated hereinafter, the Tribunal was not justified in dismissing the OA filed by the petitioner.

12. Admittedly, the petitioner was already employed as a Police Constable, much before the advertisement of 26th April 2017, under the 'Sports Category' which was based on the certificate issued by the Association of Indian Universities dated 27th February 2010 No.7939. This certificate was already in possession of the petitioner at the time

of making the application for the post of Police Sub-Inspector. This certificate is also on record of the respondents since based on this very certificate, she was selected for the post of Police Constable. It is this very certificate which was verified and confirmed by the respondents on 3rd October 2018 pursuant to the application made for such verification by the petitioner on 13th August 2018.

13. Clauses 4.6 and 4.8 of the advertisement reproduced above requires a candidate to obtain a certificate prior to the date of the application. In the instant case, the certificate of 27th February 2010 was already obtained by the petitioner not only before the date of the application for the post of Police Sub-Inspector but it was also on record of the respondents before the date of the application. On 3rd October 2018, it was only verification of the said certificate which was done by the respondents and therefore, it cannot be said that the petitioner has not complied with the Clauses 4.6 or 4.8 of the advertisement which requires obtaining/holding of the certificate on the date of application.

14. The petitioner was called for interview on 8th October 2018 and on the same day, her physical training test was also carried out. Admittedly at the time of interview, the petitioner had submitted all the documents including the 'Sports Verification Certificate' dated 3rd

October 2018 with the respondents for verification. There is no denial on this aspect. The marks given by respondent no.1 to the petitioner for the interview is also recorded in the letter of 10th April 2019. In our view, on a harmonious reading of Clauses 4.6, 4.8 and 8.8 of the advertisement, if a candidate already held a sports certificate which is dated much prior to the date of making the application and on the basis of such a certificate, a candidate was already selected and serving as a Police Constable much prior to the date of making the application and at the time of interview, verification of such certificate is submitted with respondents and no fault or discrepancy is found thereon, then it cannot be said that the petitioner did not hold the certificate on the date of making the application. The harmonious reading of 3 clauses of the advertisement referred to herein would clearly demonstrate that the petitioner has complied with the condition of 'obtaining the certificate' specified in the advertisement and therefore, the Tribunal and the respondents were not justified in not considering the petitioner for the post of Police Sub-Inspector.

15. Clauses 4.6 and 4.8 of the advertisement requires a candidate must have obtained a certificate from a Competent Authority certifying his/her sports related activities. In the instant case, admittedly certificate of 27th February 2010 was already obtained by

the petitioner and the same was also on record of the respondents. Furthermore, the verification certificate dated 3rd October 2018 of the certificate obtained in 2010 was also filed and submitted at the time of interview which is in compliance with Clause 8.8 of the advertisement. Therefore, even on this count, the Tribunal and the respondents were not justified in not considering the petitioner for the post of Police Sub-Inspector.

16. The petitioner is justified in relying upon the decision of the Tribunal in O.A. No.635 of 2018 dated 19th November 2018 of Mumbai Bench and decision of the Tribunal in O.A. No.780 of 2018 dated 1st February 2019 of Nagpur Bench wherein on a very similar situation, the Tribunal had allowed the application of the candidates. The petitioner is also justified in placing reliance on the decision of the Supreme Court in case of *Dheerender Singh Paliwal (supra)*. The ratio of the Supreme Court decision is that if a candidate is otherwise found to be meritorious and merely because there is some delay in filing the documents in support of his educational qualification which was filed before the date of selection, then such a candidate should not be considered ineligible at the time of deciding for selection for the post. In our view, the ratio of the decision squarely applies to the facts of the present petitioner inasmuch as the petitioner and the respondents were

in possession of the sports certificate dated 27th February 2010 much prior to the date of the application form, verification certificate of the document dated 27th February 2010 was filed at the time of interview and therefore since the same was available much before the selection date and otherwise the petitioner was found to be meritorious, we see no reason why the petitioner should not have been considered for selection to the post of Police Sub-Inspector.

17. In view of the above, we pass the following order :-

- (i) The order of the Tribunal in OA No.453 of 2019 dated 18th April 2022 impugned in the present petition is quashed and set aside.
- (ii) The petitioner shall be treated as eligible for appointment as a Police Sub-Inspector pursuant to advertisement No.23 of 2017. However, applying the principle of not having actually performed the duties of the Police Sub-Inspector, we hold that such appointment shall be made on notional basis without any monetary benefits for the period upto the date of her actual appointment pursuant to this order.
- (iii) The above directions shall be carried out within a period of four weeks from the date of production of the copy of this order.

18. Rule is made absolute in aforesaid terms. The petition is disposed of. No order as to costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]