



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13653 OF 2017

Neeta Shivaji Tekawade,
[Mrs. Neeta Mohan Darekar]
Aged 31 years, Occ. Nil,
R/o. 58 F/2, Municipal Bldg.
No.60/2, G. D. Ambekar Road,
Parel, Bhoiwada, Mumbai – 12.

..Petitioner

Versus

1. The Director,
Sports and Youth Services,
Maharashtra State, Pune – 1.
2. The State of Maharashtra,
Through Principal Secretary,
Medical Education and Drugs
Department, having office at
Mantralaya, Mumbai – 400 032.
3. The State of Maharashtra,
Through Additional Chief Secretary,
School Education & Sports Department,
Having office at Mantralaya,
Mumbai – 400 032.

..Respondents

Mr. N. V. Bandiwadekar, Senior Advocate a/w. Mr. Vinayak R. Kumbhar,
Mr. Rajendra B. Khaire, Mr. Aniket S. Phapale i/by. Ms. Ashwini
Bandiwadekar for the Petitioner.

Mr. N. C. Walimbe, Addl. G. P. a/w. Mr. A. R. Deolekar, AGP for
Respondent Nos.1 to 3-State.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were heard : 18th March 2024
Date on which the Judgment is pronounced : 22nd March 2024

Judgment :- (Per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. The learned counsel for the Respondents waive service. By consent of the parties, the Petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge the order dated 21st April 2014 passed by the Respondent No.2, order of the Maharashtra Administrative Tribunal (Tribunal) dated 1st October 2015 and order in appeal dated 9th October 2018 passed by Respondent No.1-Officer of Sports and Youth Affairs.

Brief facts are as under :-

3. The Petitioner is a post graduate and also an avid sportswoman having participated in various shooting competition held at University level, State level, National level and International Level and has also secured gold, silver and bronze medals at these competitions.

4. On 30th April 2005, the Respondent-State issued a Government Resolution providing for 5% reservation in the jobs for sportsperson. The said Government Resolution was amended from time to time. However, with respect to the reservation for sportspersons, there was no material change.

5. On 31st May 2010, the Maharashtra Public Service Commission (MPSC) issued an advertisement for 211 posts of Assistants out of which 31 were for female candidates and 5 were reserved for sportsperson. Pursuant thereto, the Petitioner made an application for the said post in the reserved category of sportspersons since she was eligible for the same, having been participated in Rifle Shooting Championship. The Petitioner cleared the preliminary and main examination conducted by the MPSC and her name was recommended to the Respondent-State for the said post of Assistant.

6. On 12th October 2011, the Respondent-State issued an appointment order to the Petitioner for the post of Assistant in Respondent No.2- Medical Education and Drugs Department. However, since she was in public employment working as Talathi, she requested for extension of joining date and pursuant to her request, the said date was extended.

7. On 24th November 2011, the Petitioner was informed that her sports certificates were required to be forwarded to Respondent No.1 for verification and only after receipt of the decision from Respondent No.1, she would be allowed to join the service. On 18th February 2012, the Respondent No.2 issued an order of appointment of the Petitioner as Assistant with effect from 12th January 2012. The Respondent No.1 on

3rd July 2012 informed Respondent No.2 that the Petitioner is eligible for an appointment under the Sportsperson Category since she had acquired 1st prize at 54th National Shooting Championship Competition, 2011 held at New Delhi.

8. However, on 27th September 2012, the Respondent No.2 informed Respondent No.1 that the certificates submitted by the Petitioner would not qualify the Petitioner for being appointed under the Sports Category. On 21st April 2014, the Respondent No.2 issued an order cancelling the Petitioner's appointment on the ground that she does not possess the eligibility prescribed by the State Government for the said post under the sportsperson.

9. Being aggrieved by the aforesaid order cancelling her appointment, the Petitioner filed Original Application (OA) No.448 of 2014 before the Tribunal. On 1st October 2015, the said OA came to be dismissed by the Tribunal, and therefore, the Petitioner challenged the said order of the Tribunal by filing the present petition.

10. On 25th September 2018, the Co-ordinate Bench of this Court, keeping the petition pending, directed the Petitioner to file an appeal to the Director of Sports and Youth Affairs it was further directed that decision in the appeal shall be placed before the Court.

11. On 9th October 2018, the Director of Sports and Youth Affairs dismissed the appeal on the ground that All India Women Air Weapon Shooting Championship, 2008 is not to be considered as National Competition, and therefore, the Petitioner is not eligible under the Sports Category as per the Government Resolution dated 30th April 2005.

12. On receipt of the aforesaid appeal order, the Petitioner amended the present petition to bring on record copy of the said decision in appeal and also the grounds and the prayers challenging the same. It is on this backdrop that the present petition is taken up for final hearing today.

13. The Petitioner submits that as per the Government Resolution dated 30th April 2005, clause 4(b), the Petitioner qualifies under the category of Sportsperson, since as per third para of 4(b), Rifle Shooting is a recognised sports and the Petitioner has participated at National Level as evident from certificate dated 17th April 2008 and the said championship was organised by the association affiliated to the Indian Olympics Association and the Petitioner was representing the State of Maharashtra. The Petitioner submits that the said part of Government Resolution does not specify that the competition should be recognised. The Petitioner further submitted that the Appellate Authority in order

dated 9th October 2018 accepted that All India Women Shooting Championship, 2008 is organised by National Rifle Association and, therefore, it cannot be said that the Championship is unauthorised. However, after holding so, the Appellate Authority was not justified to hold that it is not a National Championship and, therefore, the Petitioner is ineligible to be considered under the Sports Category. The Petitioner further submitted that claims for Group-B post only and not Group-C. The Petitioner further submitted that it is settled position that reasons given in the original order has to be looked into and same cannot be modified subsequently. The Petitioner, therefore, prayed for quashing of the impugned order and reinstatement of the Petitioner.

14. Per contra, the Respondents supported the impugned orders and submitted that the competition on which reliance is placed by the Petitioner is not a recognised competition and, therefore, the Petitioner is not qualified to be considered under the Sports Category. The Respondents, therefore, prayed for dismissal of the present petition.

15. We have heard Mr. N. V. Bandiwadekar, learned senior counsel for the Petitioner and Mr. N. C. Walimbe, learned Additional Government Pleader for Respondent Nos.1 to 3-State. We have also perused the documents annexed to the petition, reply filed by the Respondents and the rejoinder filed by the Petitioner.

16. The relevant official translation of extract of the Government Resolution dated 30th April 2005 that is para 4(b) reads as under:-

“4 (b) QUALIFICATION FOR GROUP ‘B’:

For the said posts, a sportsman acquiring first, second or third position or winning a Gold, Silver or Bronze medal in the National Championship Competition while representing Maharashtra in individual or Team Sports Competitions for the respective sports.

The said competitions must have been organized by the National Federation for the sports concerned, affiliated with the Indian Olympic Committee or by the Indian Olympic Committee itself.

Further, apart from the aforesaid competitions for the recognized sports organized by the Association recognized by the Indian Olympic Committee at the national level and the sportsmen participating therein must have been selected from the State Team.”

17. On an analysis of the above qualification, first para of 4(b) provides that a Sportsman should have acquired first, second or third position or should have won gold, silver or bronze medal in the National Championship Competition while representing the State, individually or in team. The Petitioner satisfies this condition which is evident from the certificate dated 17th April 2008 issued by the National Rifle Association of India, wherein it is certified that the Petitioner represented the State and participated in First All India Women Air Weapon Shooting Championship, 2008 held at Badal (Punjab) from 4th February 2008 to 6 February 2008 and the team of which she was a member had won a gold medal. The Respondents have also not disputed that the Petitioner had won gold medal at this championship.

18. The second para of Clause 4(b) provides that the said competitions must have been organised by the National Federation for the Sports concerned, which is affiliated to the Indian Olympics Committee or by the Indian Olympic Committee itself. The Petitioner has not placed reliance on the said paragraph and, therefore, we do not propose to deal with the same for the purpose of the present discussion.

19. The third para of Clause 4(b) provides that apart from the competitions mentioned in para 2, the other competition must have been organised of the recognised sports by the association recognised by the Indian Olympic Committee at the National Level and the Sportsman participating therein must have been selected from the State team. The Respondents have not disputed that “Shooting Championship, Rifle Shooting” is a recognised sports. It is also not disputed that the said Championship at Punjab was organised by National Rifle Association of India which is an affiliated of the Indian Olympic Committee. Further, the Respondents have also not disputed that the said Championship was at National Level and the Petitioner was representing the State of Maharashtra. Furthermore, third para of Clause 4(b) is independent to para 2 of 4(b), since para 3 specifically begins with, “apart from the aforesaid competition”, which indicates that in addition to the competitions mentioned in para 2, a sports person if he or she has

participated in the competition specified in 3rd para, then they would qualify to be considered under the Sports Category. Therefore, in our view, the Petitioner having satisfied all the ingredients required as per third para of Clause 4(b) is eligible under the “Sports Category” to be considered for the post of the Assistant.

20. The submission of the Respondents that the competition held at Punjab is not authorised and, therefore, the Petitioner is not qualified to be considered under sports category is misconceived. Third para of Clause 4(b) of the Government Resolution does not mandate that the requirement is of recognised competition, but it provides for the association holding competition is to be recognised by the Indian Olympic Committee. In our view, accepting the contention of the Respondents would amount to adding a condition/qualification in third para of Clause 4(b) which the Government Resolution does not contemplate. It is settled position that what is required to be considered is what is specified in the Government Resolution and nothing can be added thereto. Therefore, on this count also the submission of the Respondents is required to be rejected.

21. The order dated 21st April 2014, terminating the employment of the Petitioner states that Punjab championship is not a recognised National Championship. There is no other reason given in the said order

dated 21st April 2014. The Appellate Authority in its order dated 9th October 2018 has given a finding in para 5 that the said competition cannot be said to be unauthorised. The State has not disputed the said finding. If that be so, then the State today cannot argue contrary to the finding by the Appellate Authority. Therefore, the rejection of the Petitioner's case on the ground that the Punjab competition is not authorised is found to be incorrect.

22. The Appellate Authority has rejected the Petitioner's appeal on the ground which did not form the basis of rejection by the Original Authority. The Appellate Authority in para 5 for rejecting the Petitioner's claim observed that the Punjab competition is not a National Championship Competition, but National Shooting Championship Competition is the National Championship Competition and for this, the Appellate Authority has relied upon a letter dated 10th September 2012 of the Maharashtra Rifle Association and letter dated 4th October 2018 of the National Rifle Association of India. In our view, since this ground was not the basis of original rejection of the Petitioner's claim, the Appellate Authority cannot place any reliance on the same. Even otherwise, in third paragraph of Clause 4(b) of the Government Resolution dated 30th April 2005, there is no requirement of Championship being authorised. Therefore, as observed by us above,

even on this count, the Appellate Authority was not justified in rejecting the appeal of the Petitioner.

23. The Tribunal in its order dated 1st October 2015 has also proceeded on an erroneous basis that the requirement of the Government Resolution is that the National Championship should be authorised. This is incorrect as observed by us above from paragraph third of 4(b) of the Government Resolution. Therefore in view of the above, we pass the following order :-

ORDER

- (i) The order dated 21st April 2014 terminating the employment of the Petitioner, the order of the Tribunal dated 1st October 2015 and the order in appeal passed by Respondent no.1 dated 9th October 2018 are quashed and set aside.
- (ii) The Petitioner shall be reinstated on the post of Assistant. On the principle of 'No Work No Pay', the Petitioner would not be entitled to any pay for the period from 21st April 2014 till the date of her reinstatement. She would however be entitled for the benefit of continuity of service for all other purposes.

(iii) The Respondents to reinstate the Petitioner to the post of Assistant within a period of four weeks from today.

(iv) Rule is made absolute. Petition is allowed in above terms.

No order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)