



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

WRIT PETITION NO.1644 OF 2023

Dnyaneshwar s/o. Panditrao Kadam,
Age : 33 years, Occu. Nil,
r/o. Dhalegaon, Tq. Ahmedpur,
Dist. Latur

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Principal Secretary,
Medical Education & Drugs Dept.,
Mantralaya, Mumbai - 400 032
2. Maharashtra Public Service Commission,
Bank of India Building,
3rd Floor, Hutatma Chowk, Mumbai
Through its Secretary
3. The Director,
Directorate of Sports and Youth Services,
Balewadi, Pune
4. Maharashtra Throwball Association,
Through its General Secretary
Kiren P. Phulzele,
Datey College Road, Umasara (Old),
Gurumauli Society, Yavatmal
5. Sachin s/o. Dashrath Wagh,
Age : Major, Occ. Service,
r/o. 19, Dheeraj Ratanjan Road,
Near Hanuman Temple, Hattij,
Tq. Barshi, Dist. Solapur

..Respondents

Mr.S.S.Thombre, Advocate for petitioner
Mr.A.R.Kale, Addl. Govt. Pleader for respondent nos.1 and 3
Ms.Rohini Wagh and Mr.V.R.Nawathe, Advocate for respondent no.2
Mr.S.S.Biradar and Mr.Manoj Kadam, Advocates for respondent no.5

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : JULY 07, 2025

ORDER :-

This petition, under Article 226 of the Constitution of India, takes exception to the judgment and order dated 04.01.2023, passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad ("MAT", for short), dismissing the petitioner's Original Application No.66 of 2018.

2. The facts, giving rise to the present petition, are as follows:-

The Maharashtra Public Service Commission (MPSC) – respondent no.2 published an advertisement on 26.08.2015 for filling up Forty-Eight posts of Food Safety Officers (Group – B). Two of the posts were reserved for the candidates of "Sports (Open) Category". It was horizontal reservation. The petitioner preferred an application for the said reserved category. He appeared for the screening test and was interviewed also, subject to verification of his Sports Certificate. The petitioner stood at serial no.110 in the regular merit list; while he was at no.3 in the list of the reserved category (Open) Sports. Since only two posts were reserved, the MPSC recommended

the names of the first two candidates. The first one did not join. The petitioner, therefore, moved the State Government in the Sports and Youth Service Department for his appointment on the vacant post. Before he moved such application, the MPSC, vide impugned communication dated 23.01.2018, cancelled the petitioner's candidature on the ground of his Sports Certificate to have not been verified. The petitioner, therefore, preferred an Original Application to the MAT, for setting aside the said communication with further direction to the MPSC to recommend his name for the said post. Pending the hearing of the O.A., the MAT directed respondent no.3 to verify the petitioner's Sports Certificate. It accordingly verified the certificate, endorsing its authenticity.

3. On hearing the parties to the O.A., the MAT dismissed the same, mainly on the ground that the Government Resolution dated 30.04.2005 stood superseded by the Government Resolution dated 03.10.2013. According to the MAT, the petitioner could not submit the requisite documents for verification of his Sports Certificate, until the end of December, 2017. Respondent no.3, therefore, closed the petitioner's file. Since it was a horizontal reservation, the MPSC converted the reserved category post into an open category and recommended the candidate next in the merit list.

4. Heard learned counsel for the parties.

5. Learned counsel for the petitioner would submit that as of now, there are 30 vacancies. Even, MAT had made a query to the State Government, as to whether it was inclined to appoint the petitioner. He would further submit that the respondent - State is inclined to give the petitioner appointment, if the MPSC recommends the petitioner's name. He adverted our attention to the Government Resolution dated 30.04.2005 and then, to the subsequent Government Resolution dated 03.10.2013. According to learned counsel, the MAT observed the later Government Resolution to have superseded the former one. He took us through the contents of both the Government Resolutions, to submit that the later one is supplementary in nature. According to him, the petitioner had never been informed about his Sports Certificate to have been sought to be verified from respondent no.3. The petitioner learnt the same only after his candidature was cancelled. According to learned counsel, the petitioner was third in the merit list of the candidates selected for the reserved post. The open category candidate, recommended in the place of the candidate at serial no.1 on account of his non-joining, too, did not join. As such, the MPSC, therefore, ought to have recommended the petitioner, more so, when he was next in-

line in the merit list of reserved category. He has further submitted that no timeline was prescribed for verification of the Sports Certificate. If the authorities concerned did not submit the certificate verification report, the State was under obligation to issue appointment order, subject to verification of the Sports Certificate. Learned counsel, ultimately, urged for allowing the petition.

6. Learned AGP and learned counsel for respondent no.2 – MPSC support the judgment and order impugned herein.

7. We have considered the submissions advanced. Perused the documents on record. The MAT observed in the impugned order, that the petitioner did admit that the MPSC had forwarded his Sports Certificate to respondent no.3 for verification, vide communication letter dated 02.11.2015. The Maharashtra Throw-ball Association could not submit the documents for verification of the petitioner's certificate until end of December, 2017.

8. It needs no mention that the factual observations in the judgment or order are presumed to be correct unless otherwise is shown. Admittedly, only two posts were reserved for (Open) Sports Category. The petitioner was, in fact, at the bottom of the regular merit list. Because he applied for the reserved category post and

the marks secured by him placed him at serial no.3 in the select list for the reserved category post, the MPSC recommended the State the names of first two candidates. True, one of them did not join. Since the petitioner had submitted his Sports Certificate, certified by the competent authority, the MPSC forwarded the same to respondent no.3 for its verification. It was so forwarded before the petitioner was called for interview. The communication dated 23.01.2018 indicate the MPSC to have informed the petitioner that in terms of clause 4.3 of the advertisement and even in view of the Government Resolution dated 03.10.2013, the petitioner ought to have had his Sports Certificate verified. Since he failed to do so, the MPSC recommended the name of an Open Category candidate for filling up the vacant post. It did so, in response to the requisition made by the State Government. It is true that said candidate too did not join the post. It is also true that pending the O.A., the petitioner's Sports Certificate has been verified. We have perused the documents relating to the petitioner's sports activities. The question is, whether the petitioner is entitled to have his name recommended for the reserved category post. It needs no mention that no one has vested right to a post. The question is, whether the MPSC was justified in cancelling the petitioner's candidature. The communication dated 23.01.2018 itself indicates that the petitioner

was informed of having been interviewed provisionally, pending verification of his sports certificate. The petitioner's request letter dated 26.10.2017 also indicate him to have urged the State Government to make a requisition to the MPSC for his recommendation, as he being on the wait list. Clause 4.3 of the advertisement specifically informs the candidates called for interview, to have their sports certificates verified from the Directorate of Sports.

9. We first need to refer to the terms of the Government Resolution dated 30.04.2005. Item no.7 therein pertains to the general conditions. Sub-clauses 13 to 17 thereof are reproduced below for better appreciation :-

(१३) महाराष्ट्र लोकसेवा आयोग अथवा इतर सक्षम प्राधिका-यांकडून खेळाडूंच्या आरक्षित पदावर नेमणुकीकरिता ज्या खेळाडूंची शिफारस होईल त्यांची प्रमाणपत्रे व त्यांनी आरक्षित पदाकरिता केलेला अर्ज संबंधित विभागांनी/कार्यालयांनी संचालक, क्रीडा व युवक सेवा, महाराष्ट्र राज्य, पुणे यांचेकडे तपासणीसाठी पाठवावा.

(१४) संचालक, क्रीडा व युवक सेवा, महाराष्ट्र राज्य, पुणे यांनी प्रमाणपत्र या शासन निर्णयातील मार्गदर्शक सूचनांनुसार आहे किंवा नाही हे तपासावे. तसेच सदर प्रमाणपत्राच्या पृष्ठार्थ संबंधित उमेदवाराचे प्रमाणपत्र मिळण्याकरिता जी माहिती सादर केली असेल ती माहिती मूळ कागदपत्रांवरून तसेच आवश्यकता वाटल्यास गुप्तभेटी देवून तपासून घ्यावी व सर्व माहिती योग्य असल्याचे आढळून आल्यास प्रमाणपत्र प्रमाणित करून संबंधित कार्यालयांना परत पाठवावे.

(१५) जर एखाद्या प्रमाणपत्राबाबत संचालक, क्रीडा व युवक सेवा, महाराष्ट्र राज्य, पुणे यांना शंका असल्यास त्यांनी याबाबतचा सविस्तर तपशील आपल्या अहवालात नमूद करून मूळ कागदपत्र मूळ विभागाकडे परत करावेत.

(१६) संचालक, क्रीडा व युवक सेवा, महाराष्ट्रराज्य, पुणे यांनी प्रमाणपत्र तपासणीचा अहवाल एक महिन्यात संबंधित कार्यालयांना पाठवावा.

(१७) खेळाडूंचा अहवाल एक महिन्यात प्राप्त झाला नाही तर संबंधित कार्यालयांनी प्रमाणपत्र पडताळणीच्या अधिनतेने संबंधित उमेदवारास तात्पुरती नेमणूक द्यावी.

10. It is true that in view of sub-clause (17), if the report regarding verification of the Sports Certificate is not received, the candidate is required to be given a temporary appointment. The question is, whether said clause was still in vogue, as was suggested by learned counsel for the petitioner, on the date the advertisement was published. We, therefore, need to have reference to the subsequent Government Resolution dated 03.10.2013. The said G.R. is prefaced with the following:-

"प्रस्तावना -

अत्युच्च गुणवत्ताधारक खेळाडूंसाठी शासकीय/निमशासकीय कार्यालयातील गट-अ, ब, क व ड संवर्गातील नामनिर्देशनाने भरावयाच्या पदांपैकी ५ टक्के पदे आरक्षित ठेवण्याबाबतचे आदेश उपरोक्त दिनांक ३०.४.२००५ च्या शासन निर्णयान्वये निर्गमित करण्यात आलेले आहेत. या शासन निर्णयाच्या परिच्छेद-७ अनुसार आरक्षणाबाबतच्या अटी व मार्गदर्शक तत्वे विहित करण्यात आलेली आहेत. त्यामधील अनुक्रमांक-१३ अनुसार महाराष्ट्र लोकसेवा आयोग अथवा इतर सक्षम प्राधिका-यांकडून खेळाडूंच्या आरक्षित पदावरील नेमणूकीकरिता केवळ ज्या खेळाडूंची शिफारस होईल त्यांचीच प्रमाणपत्रे संबंधित विभागांनी/ कार्यालयांनी आयुक्त/संचालक, क्रीडा व युवकसेवा, महाराष्ट्र राज्य, पुणे यांच्याकडे तपासणीसाठी पाठवावयाची आहेत. त्यानुसार सद्यःस्थितीत फक्त नियुक्तीसाठी शिफारस झालेल्या खेळाडूंचीच प्रमाणपत्रे संबंधित विभाग/कार्यालयांकडून आयुक्तांकडे तपासणीसाठी पाठविली जातात. अशाप्रकारे आयुक्तांकडे तपासणीसाठी पाठविलेल्या क्रीडाविषयक प्रमाणपत्रांपैकी काही उमेदवारांची प्रमाणपत्रे विहित अर्हतांची/निकाशांची पूर्तता करीत नसल्यामुळे ते उमेदवार नियुक्तीसाठी अपात्र ठरतात व

ऐनवेळी त्यांची शिफारस रद्द करावी लागते. परिणामी न्यायालयीन प्रकरणे उद्भवतात. त्यामुळे खरा गुणवत्ताधारक खेळाडू उमेदवार पूर्वपरीक्षेच्या निकालाद्वारे मुख्य परीक्षेसाठी पात्र ठरत नाही, त्यामुळे त्याच्यावर अन्याय होतो. सदर अन्याय दूर करण्याच्या दृष्टीने तसेच बोगस उमेदवार स्पर्धेपासून दूर राहण्याच्या दृष्टीने पूर्वपरीक्षेसाठी अर्ज करणा-या गुणवत्ताधारक खेळाडूंनी त्यांची क्रीडाविषयक प्रमाणपत्रे पूर्वपरीक्षेचा अर्ज करण्यापूर्वीच आयुक्त, क्रीडा व युवकसेवा, महाराष्ट्र राज्य, पुणे यांच्याकडून प्रमाणित करून घेणे अनिवार्य करण्याबाबत महाराष्ट्र लोकसेवा आयोगाने विनंती केलेली आहे. सदर विनंतीच्या अनुषंगाने उपरोक्त दिनांक ३०.४.२००५ च्या शासन निर्णयामधील परिच्छेद-७ (१३) मधील तरतूदीमध्ये सुधारणा करण्याची बाब शासनाच्या विचाराधीन होती व त्याबाबत आता शासनाने खालील प्रमाणे निर्णय घेतला आहे :-"

While, the G.R. reads thus:-

शासन निर्णय -

महाराष्ट्र लोकसेवा आयोगाच्या पूर्वपरीक्षेसाठी अर्ज करणा-या खेळाडूंची संख्या विचारात येता त्यांची प्रमाणपत्रे पूर्वपरीक्षेपूर्वी प्रमाणित करणे क्रीडा व युवकसेवा संचालनालयाला शक्य होणार नसल्यामुळे केवळ ज्या खेळाडू उमेदवारांची मुलाखतीसाठी निवड होईल त्या खेळाडूंचीच प्रमाणपत्रे महाराष्ट्र लोकसेवा आयोगाने आयुक्त क्रीडा व युवकसेवा, पुणे यांच्याकडे पाठवावीत. आयोगाकडून त्यानुसार प्रमाणपत्रे प्राप्त झाल्यानंतर त्यांची पडताळणी करून क्रीडा व युवकसेवा संचालनालयाने एक महिन्याच्या कालावधीत त्याबाबतच्या अभिप्रायांसह प्रमाणपत्रे महाराष्ट्र लोकसेवा आयोगास परत पाठवावीत.

२. प्रमाणपत्रांची पडताळणी करण्यासाठी क्रीडा संघटनांकडून आवश्यक असलेली माहिती एक महिन्यांच्या कालावधीत सादर करण्याबाबत संबंधित संघटनांना कळविण्यात यावे. सदर मुदतीत जर संघटनांकडून माहिती प्राप्त झाली नाही तर संबंधित खेळाडूस अपात्र ठरविण्यात यावे. मात्र तसे करताना संबंधित खेळाडूवर अन्याय होऊ नये यादृष्टीने ज्या पत्रान्वये क्रीडा संघटनांकडून माहिती मागविण्यात आलेली आहे त्या पत्राची प्रत संबंधित खेळाडूसही पृष्ठांकित करण्यात यावी जेणेकरून खेळाडू स्वतःही संघटनेकडे माहितीसाठी पाठपुरावा करू शकेल.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१३१००३१६४८५१६२२१ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशा नुसार व नावाने

Close reading of the Government Resolution dated 03.10.2013 would indicate it to have replaced paragraph 7(13) of the Government Resolution dated 30.04.2005. This subsequent G.R. will have precedence over the clause/s which is/are inconsistent therewith.

11. The record indicates that the MPSC had interviewed the petitioner provisionally. The petitioner's Sports Certificate was forwarded by the MPSC to respondent no.3 for verification. The record further indicates the petitioner to have been aware thereof. He did not pursue the matter. There is on record a letter issued by respondent no.3 on 22.12.2017 to respondent no.2. The contents thereof will indicate that the petitioner did not produce before the Sports Association the necessary documents and therefore, the petitioner's file was closed.

12. It is reiterated that there were only two posts reserved for the Sports (Open) Category. The petitioner was at Serial No.3 in the list of those category candidates; whereas, he was at the bottom of the regular merit list. The petitioner's Sports Certificate was submitted for verification. For non co-operation on the part of the petitioner and the Sports Association, his file was closed. It is only after the petitioner realised one of the two candidates to have not

joined the post, the petitioner requested the State Government to make a requisition to the MPSC for his recommendation. The MPSC, after having waited for a long, converted the reserved category post into Open Category post and recommended the candidate next in line in the regular merit list. True, the said candidate too did not join. The petitioner could not be said to have a right to claim appointment on the post. Although his Sports Certificate was, later on, validated even though there are vacancies with the Department of the Food and Safety, the MPSC could not be directed to recommend the petitioner's name for appointment in the facts and circumstances of the case.

13. The facts in the case of **Sayali Nitin Inamke Vs. The State of Maharashtra and ors., MANU/MH/3548/2023**, relied by learned counsel for the petitioner, indicate the petitioner therein had secured marks more than respondent nos.3 to 6 therein, had secured. Still, the names of respondent nos.3 to 6 therein were recommended. In the facts and circumstances of the said case, the decision therein was arrived at. The same has no bearing on the present case.

14. We, therefore, find no reason to interfere with the order passed by the MAT. The Writ Petition, therefore, fails. The same is dismissed.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP