



2023:KER:29430

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

MONDAY, THE 29TH DAY OF MAY 2023 / 8TH JYAISHTA, 1945

WA NO. 399 OF 2023

AGAINST THE JUDGMENT IN WP(C) 38094/2022 DTD 10.02.2023

OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

SATHEESH KUMAR.R, AGED 44 YEARS, SHIVATHEERTHAM,
CHIRAKKONAM, VATTAPPARA P O, THIRUVANANTHAPURAM,
KERALA, PIN - 695028

BY ADVS.
T.SANJAY
SANIL KUMAR G.
MIDHUN R.

RESPONDENTS:

- 1 KERALA STATE SPORTS COUNCIL, (REPRESENTED BY THE SECRETARY), STATUE, THIRUVANANTHAPURAM, KERALA-695001
- 2 SAGAR.J.A, "SAGARA", PIRAPPANCODE P O, THIRUVANANTHAPURAM, KERALA, PIN - 695607
- 3 SPORTS AUTHORITY OF INDIA, (REPRESENTED BY ITS DIRECTOR GENERAL), JAWAHARLAL NEHRU STADIUM COMPLEX (EAST GATE) LODHI ROAD, NEW DELHI PIN - 110003
- 4 UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF YOUTH AND SPORTS AFFAIRS, GROUND FLOOR, SHIVAJI STADIUM ANNEX BUILDING, NEW DELHI, PIN - 110001

BY ADVS.
SMT.LATHA ANAND, SC, KERALA STATE SPORTS COUNCIL
G.MAHESWARY,
PIRAPPANCODE V.S. SUDHIR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29.05.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



ALEXANDER THOMAS & C. JAYACHANDRAN, JJ.

W.A.No.399 of 2023

Dated this the 29th day of May, 2023

JUDGMENT

C. Jayachandran, J.

A writ petition preferred by the appellant herein challenging the selection of the 2nd respondent herein as Swimming Trainer/Coach at the District Sports Academy, Pirappancode under the State Level Khelo India Centre Scheme was dismissed by a learned Single Judge of this Court as per judgment dated 10.2.2023, holding that the testimonials produced by the appellant/petitioner to prove his achievements in swimming were 20 years old and that there was no document to demonstrate that he has been active in swimming after the year 2002. The said judgment is under challenge in this appeal.

2. The essential facts required to be noticed for adjudication are as follows:-

Under the **Khelo India Scheme** envisaged by Exts.P5 and P6 guidelines, the 1st respondent Sports Council – the nodal agency for implementation of the Khelo India Scheme in Kerala – invited



W.A.No.399/2023

2

applications from eligible candidates for appointments of Coach in 12 sports disciplines for the District Sports Academies in various Districts, vide Ext.P7 notification. The discipline earmarked for the District of Thiruvananthapuram was swimming, the training in which has to be imparted in the District Sports Academy, Pirappancode. Ext.P7 stipulates that the appointments are to be made on contract basis from sports persons who have achieved medals at the National and International levels. The upper age limit as on 31.10.2022 was fixed to be 40 years, with a rider for relaxation in deserving cases. The eligibility criteria stipulated in Ext.P7 are as follows:-

Eligibility criteria for the past champion Athlete

Order of preference	Individual sports	Team sports
1 st preference	Represented India at recognised International competition under recognised NSF/Association of respective sport	Represented India at recognised International competition under recognised NSF/Association of respective sport
2 nd preference	Medal winner at Senior National Past championship conducted by recognised NSF OR Medical winner at Khelo India Games	Part of medal winning team at Senior National past championship conducted by recognised NSF OR Part of medal winning team at Khelo India Games



3 rd preference	Medal winner at National AIU Past championship	Part of medal winning team at National AIU past championship
4 th preference	Represented State in Senior National Past Championships conducted by recognised NSF OR Participation in Khelo India Games	Represented State in Senior National Past Championships conducted by recognised NSF OR Participation in Khelo India Games

3. Only two candidates attended the interview, namely, the appellant/petitioner and the 2nd respondent herein. As per Ext.P8 proceedings of the 1st respondent Council, the 2nd respondent was appointed as Trainer in the discipline of swimming at the District Sports Academy, Pirappancode, with a remuneration of Rs.25,000/- per month. Ext.P8 stipulates that the appointment is temporary for a period of one year, extendable on the basis of satisfactory performance, etc.

4. The writ petitioner (appellant herein) contended that appointment of the 2nd respondent, who satisfied only the qualification prescribed as 3rd preference, when the petitioner satisfied the qualification prescribed as 2nd preference, is bad in law. It was further contended that a medal in water polo in the inter university championship, which is a team event,



W.A.No.399/2023

4

will not satisfy the eligibility criteria of the subject discipline, swimming. In the absence of any other candidate, the petitioner who satisfied the eligibility prescribed as 2nd preference in the very discipline of swimming ought to have been appointed, is the argument raised. Along with the writ petition, the petitioner produced Exts.P1 to P4 certificates issued by the Swimming Federation of India in the National Aquatic Championships of the years 1999, 2000 and 2002. Besides, the petitioner also produced along with the reply affidavit Exts.P9 to P18 certificates, which would vouch the petitioner's contention that he was quite active in swimming even after the year 2002. While Exts.P9 and P10 pertain to the year 2008, Exts.P11 and P12 are of the year 2011, Ext.P13 is of the year 2012, Ext.P14 is of 2013, Ext.P15 is of 2014 and Exts.P17 and P18 were of the year 2021. According to the petitioner, the certificates produced at Exts.P9 to P18 in the very discipline of swimming would clearly establish that the petitioner has been active in that sport event even after the year 2002, which would carve out an exceptional and deserving case for age relaxation as envisaged in Ext.P7 notification. On the strength of the contentions above referred, the petitioner sought for a writ of certiorari quashing Ext.P8 appointing the 2nd respondent, followed by one of mandamus commanding the 1st



respondent to appoint the petitioner as the Swimming Coach at the District Sports Academy, Pirappancode.

5. A perusal of the counter affidavit preferred by the 1st respondent Sports Council would indicate that the appellant/petitioner was not considered for the reason that the credentials produced by him pertain to competitions held about 20 years ago, that is to say, during the years 1999, 2000 and 2002, which made it difficult for the Interview Board to ascertain whether the petitioner has been active in the sport event since 2002. Whereas, the credentials submitted by the 2nd respondent clearly indicate that he has been active in sport of swimming until recently, besides satisfying the eligibility criteria. In paragraph no.11 of the counter affidavit, the 1st respondent Council also pointed out that the appellant/petitioner was aged 44 years at the time of consideration of his application, which is clearly beyond the upper age limit of 40 stipulated vide Ext.P7. It was also contended that the appellant had not produced any credentials during the interview, so as to enable consideration of age relaxation as stipulated in Ext.P7. In the absence of documents showing the appellant's exceptional ability in the sport of swimming, he was not granted relaxation of age as a deserving case.



6. The learned Single Judge took stock of the first contention that the credentials produced by the appellant/petitioner were 20 years old, leaving no material to ascertain whether he has been active in the sport event after the year 2002. Consequently, the writ petition was dismissed, especially taking note of the fact that the appointee/2nd respondent had produced certificates indicating that he was active in the sport of swimming until recently, besides satisfying the eligibility criteria.

7. Heard Sri.T.Sanjay. learned counsel counsel for the appellant and Smt.Latha Anand, learned Standing Counsel for the 1st respondent/Sports Council and Sri.Pirappancode V.S.Sudhir on behalf of the 2nd respondent/appointee. Perused the records.

8. Having heard the learned counsel appearing for the respective parties, we find considerable force in the submissions made by the learned counsel for the appellant/writ petitioner. It is true that the petitioner had not produced Exts.P9 to P18 certificates before the Interview Board, thus depriving the Board an opportunity to assess



whether the petitioner's case is a deserving one for the purpose of age relaxation. However, we cannot keep a Nelson's eye to the fact that such testimonials were not called for by the 1st respondent Council to be produced before the Interview Board. We also find prima facie merit in the appellant's contention that a medal secured in a team event of Water Polo cannot be considered in preference to the various medals secured by the petitioner/appellant in the subject discipline of swimming itself. The order of preference prescribed in Ext.P7 is relevant in this regard and it is not disputed before us that the petitioner/appellant satisfies the qualification prescribed as 2nd preference, whereas the 2nd respondent would satisfy the one prescribed as 3rd preference, even if it is assumed that the disciplines of swimming and water polo can be treated at par, as contended by the respondent. Ordinarily, but for the maximum age limit prescribed, the petitioner ought to have been selected for his having satisfied the qualification prescribed as 2nd preference. Non-consideration of the petitioner/appellant on the question of age would have been justified, had there been no provision in Ext.P7 notification for relaxation of age limits in deserving cases. Exts.P9 to P18 are documents, which certainly deserves serious consideration to find out whether the petitioner's case is a deserving one for the purpose of age



relaxation. That apart, the said documents would vouch that the petitioner was actively involved in the sport of swimming until 2021, the absence of which being the very infirmity found against the petitioner/appellant by the learned Single Judge. The respondents have admitted in para 11 on page 6 of their counter affidavit that for granting relaxation, the credentials produced by him during the interview must show that he has to be considered as an exceptional sportsperson and a deserving case. That it is only due to insufficiency of supporting documents produced by him that he was not granted age relaxation as a deserving case and was not considered for appointment as a Swimming Trainer. In other words, if the petitioner had produced necessary documents as above at the time of interview, to convince the official respondents, he could have been granted relaxation. But the respondents never stipulated that the candidates must produce the upto date testimonials, often than the certificates to prove the basic eligibility, which he has produced. So the respondents were duly bound to demand such upto date certificates and should have given minimum reasonable time to the petitioner to produce such additional materials. When the selection notification was in the discipline of swimming, it is seriously open to doubt as to whether the contesting respondent, who is in the discipline of water polo, was eligible.



9. We are therefore of the considered opinion that the matter requires a re-look by the Interview Board in the light of documents produced at Exts.P9 to P18, as also, in the light of our observations in this judgment. We therefore allow the writ appeal, quash Ext.P8 and remit the matter to the 1st respondent to consider the petitioner's case in the light of Exts.P9 to P18 and any other certificates that the petitioner may additionally produce, as also, the observations made by us in this judgment. This exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment. Until such time, the 2nd respondent may continue in the post in question, purely on temporary/ad hoc basis, as a stop gap arrangement.

The writ appeal is disposed of in the lines indicated above.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C. JAYACHANDRAN, JUDGE

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