



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 15274/2019

Sita Ram S/o Shri Kela Ram, Aged About 33 Years, Resident Of
Village Dangawas, Tehsil Merta City, District Nagaur (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Education, Govt. Of Rajasthan, Secretariat, Jaipur.
2. Director, Elementary Education, Bikaner.
3. The Secretary, Rajasthan Subordinate And Ministerial Service Selection Board, Jaipur.

----Respondents

Connected With

S.B. Civil Writ Petition No. 14273/2019

Govind Ram S/o Mada Ram, Aged About 37 Years, Khariya Anawas, Post Chirdhani, Pipar City, District Jodhpur, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Education Department, Government Of Rajasthan, Jaipur, Rajasthan.
2. The Director, Elementary Education, Bikaner, Rajasthan.
3. The Chairman, Rajasthan Subordinate And Ministerial Service Selection Board, Jaipur District Jaipur, Rajasthan.
4. The Secretary, Rajasthan Subordinate And Ministerial Service Selection Board, Jaipur District Jaipur, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr.V.D. Vaishnav.
For Respondent(s)	:	Mr. Priyanshu Gopa for Mr. Vinit Sanadhya.

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

12/11/2024

1. As the issue involved in above two writ petitions arise out of same advertisement, thus, the petitions are decided together vide this common order.

2. For convenience, facts are being referred from CWP No.15274/2019.

3. Grievance of the petitioners herein is against the inaction of the respondents vide which the respondents have not considered the Yoga Certificates of the petitioners as a Sports Certificate for the purpose of bonus marks, pursuant to the advertisement dated 04.05.2018 (Annex.4) for the post of Physical Training Instructor Gr.III.

4. Brief facts of the case are that the petitioner during his degree course participated as a member of the university team and represented JNVU, Jodhpur, at Guru Nanak University, Amritsar, in the All India Inter-University Tournament (A.I.I.U.T.) in Yoga. The Board of Sports at JNVU issued a certificate of proficiency to the petitioner for his participation in the A.I.I.U.T. for the academic session 2004-2005. Following the completion of his B.Sc. degree, the petitioner was admitted to the B.P.Ed. course at the University of Bikaner, based on his participation in the A.I.I.U.T. in Yoga.

4.1 Respondent No. 3 issued an advertisement for the position of Physical Training Instructor (P.T.I.) Grade III through the Physical Training Instructor Grade III Examination-2018 (Advertisement No. 09/2018) dated 04.05.2018. As per the examination scheme, there were two question papers, and marks were to be awarded based on the candidate's participation in events at the District, State, National, or International levels, as outlined in paragraph 21 of the advertisement.

4.2 The petitioner, being eligible in all respects, applied in response to the advertisement. Respondent No. 3 issued an admit

card, and the petitioner appeared in the written examination. Afterward, he also participated in the document verification process, during which he was awarded 28 marks for his participation in the A.I.I.U.T., in accordance with the examination scheme. Based on these marks, the petitioner was awarded a total of 213.9129 marks, as per the office order dated 25.08.2019.

4.3 Subsequently, Respondent No. 3 reissued the marks for the sports certificate, and the petitioner's total marks were revised to 185.9129.

4.4 On 03.09.2019, the petitioner appeared before the relevant authority and inquired about the change in his marks for the sports certificate from 28 to 0. In response, the respondent official presented a document/communication dated 21.12.2016, addressed to the Secretary General of the Indian Olympic Association and the Secretaries of all recognized national-level sports federations, issued by the Ministry of Youth Affairs and Sports, Government of India. This communication stated that Yoga is not recognized as a sport by the Ministry. The petitioner argued that, based on this communication, the certificate issued to him for his participation in the A.I.I.U.T. should not be derecognized.

4.5 The petitioner contended that the said communication does not apply to the certificate he possesses, as it was not addressed to any state authority. Furthermore, the petitioner highlighted that aspirants similarly situated to him had been awarded due marks by the Rajasthan Public Service Commission (RPSC) in earlier recruitments for the position of P.T.I. Grade III. He also submitted documents relating to another aspirant, Raju Ram, as evidence.

4.6 On 26.09.2019, Respondent No. 3 issued an office order recommending the names of several aspirants to the department for appointment to the post of P.T.I. Grade III. The cut-off marks for the OBC (General) category in the office order dated 26.09.2019 were shown as 207.7255 marks. However, if the petitioner's marks for participation in the A.I.I.U.T. were considered, he would have secured a total of 213.9129 marks, as indicated in the result issued by Respondent No. 3. As a result, the petitioner would have been included in the merit list for the post of P.T.I. Grade III, but he has been unjustly deprived of this opportunity due to the revision of his marks, which was not his fault.

4.7 The petitioner submitted a representation on 30.09.2019, reiterating his request for consideration and including his certificate of participation in the A.I.I.U.T. in Yoga. However, no action was taken in response to this representation. Hence this petition.

5. The matter was earlier heard by a Single Bench of this Court presided over by Arun Bhansali, J. (as His Lordship was then in this Court), when following order dated 27.09.2019 was passed:

"It is submitted by learned counsel for the petitioner that based on the certificate of the petitioner, the petitioner was initially awarded marks for the sports certificate for the post of Physical Training Instructor Gr.III (PTI), however, in the revision which took place on 27.08.2019, the marks of the petitioner for the sports certificate have been reduced to zero.

Submissions have been made that the said action of the respondents apparently based on the communication dated 21.12.2016 from the Ministry of Youth Affairs and Sports to the Secretary General, Indian Olympic Association, though indicating that Yoga has been recognized as a sports discipline but it may not

be feasible to hold competitions in Yoga and, therefore, Yoga cannot be termed as a sports, which communication cannot be result in de-recognizing the existing certificates.

In view of the submissions made, issue notice. Issue notice of the stay application also, returnable within a period of three weeks.

Notices when issued be given 'dasti' to learned counsel for the petitioner.

In the meanwhile, the revision of the marks of the petitioner vide revision dated 27.08.2019 shall remain stayed and the respondents would consider the candidature of the petitioner with his originally awarded marks for the sports certificate, however, in case, the petitioner get selected, he shall not be accorded appointment by the respondents."

6. After passing of the aforesaid order, the respondents have filed a reply, wherein, following stand has been taken:

6.1 It was clearly stated in the advertisement that candidates would be allowed to appear in the examination based on the details submitted by them in the online application form. Thereafter, during the document verification process, if any candidate's documents are found to be incorrect, the answering respondent and the concerned department have the right to reject the candidature.

6.2 As per the conditions mentioned in the advertisement dated 04.05.2018, candidates were entitled to be granted or awarded marks for the sports in which they participated. Initially, based on the details filled by the petitioner in the online application form, he was awarded 28 marks for his participation in Yoga. However, it is important to mention that a team from the Joint Director's office, Jaipur Division, Education Department, during the eligibility and document verification process, found that the sports certificate for Yoga produced by the petitioner was not for a recognized sport. Hence, the petitioner was awarded zero marks for Yoga. However,

since the petitioner also participated in a district-level tournament and secured second place, he was awarded 12 marks for that.

6.3 The petitioner does not have a sports certificate recognized by the Ministry of Youth Affairs and Sports; therefore, he was not awarded any marks for the Yoga certificate. In fact, the communication dated 21.12.2016 also supports this position, stating that since Yoga has various dimensions in which competitions are not standardized, it cannot be considered a sport. Since the petitioner does not possess the requisite valid sports certificate, he was not selected.

6.4 Regarding the petitioner's claim about a similar candidate, it is stated that the said recruitment was not conducted by the answering respondent, and neither the said person nor the RPSC is a party to the present matter. Therefore, the answering respondent cannot make any comment on this issue. It was imperative for the petitioner to implead the RPSC or the said candidate if he wished to make any claims based on that.

7. No additional affidavit and/or rejoinder has been filed and, therefore, the respondents version remained uncontroverted.

8. Having gone through the material appended with the petition specially the notification dated 21.12.2016, I find that the stand taken by the respondents deserves to be upheld.

9. Still further, reference may be had to a notification dated 21.12.2016 (Annex.9) issued by the Government of India, Ministry of Youth Affairs & Sports, Department of Sports, which reads as under:

*“Government of India
Ministry of Youth Affairs & Sports
(Department of Sports)*

Shastri Bhawan, New Delhi-110001

Dated : 21th December 2016

To,

*The Secretary General,
Indian Olympic Association*

*The Secretary General,
All recognized National Sports Federation*

*Sub.: - Matter relating to Yoga as a sports discipline -
regarding.*

Sir/Madam,

Vide this office letter No. 12-5/2014-S-III dated 01.09.2015 it was informed that 'Yoga' has been recognized as a sports discipline. Since grant of recognition it was brought to notice of the Department that it may not be feasible to hold competitions in Yoga. The matter was received in a meeting chaired by Hon'ble MOS (I/C) YAS where the officers from this Ministry, Ministry of AYUSH and Deptt. of Personnel & Training were present. After elaborate discussion, it was concluded that Yoga has various dimensions/arms in which competitions are not possible. Hence, it was agreed that Yoga cannot be termed as a sport. Consequently, it may not be appropriate to recognize any organization as NSF for Yoga. It was also agreed that the entire matter relating to Yoga will continue to be handled by Ministry of AYUSH.

2. This issues with the approval of Hon'ble MOS (I/C) YAS and shall come into force with immediate effect.

Yours Faithfully,

SD/-

(A.K. Patro)

*Under Secretary to the Govt. Of India
Tel. No.23382560"*

10. A perusal of the above clearly leaves no manner of doubt that even if the Yoga is categorized as Sports as is the assertion of the petitioners, even then no benefit of the same can be given to the petitioners since it is not feasible to hold any competitive sports tournaments of Yoga and thus in strict sense it cannot be termed as sports for the purpose of according benefit of bonus marks.

11. In the parting, I may hasten to add that the reliance placed by learned counsel for the petitioners on a subsequent notification

dated 27.11.2020 (at page No. 65 in CW14273/2019) is completely misplaced, as what must be considered is the applicability of the rules at the time the petitioner applied for the post in question. The petitioner cannot be granted the undue benefit of a subsequent communication, which, in any case, does not apply retrospectively.

12. As an upshot, no ground to interfere.

13. Dismissed. Pending application(s), if any, stand disposed of.

(ARUN MONGA),J

255-256- Sumit/-

Whether Fit for Reporting:

Yes / No