

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 285/2016**

Manoj Gunwant Bhat,  
Aged about 29 years, Occupation Self employed,  
R/o Village Pathari, Post Chinchaa, Tq. Maregaon,  
Dist. Yavatmal, Maharashtra (Pin No.445303).

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Ministry of Home through its Secretary,  
Mantralaya, Mumbai-32.
- 2) The Collector, Yavatmal.
- 3) The Sub-Divisional Officer,  
Wani, Tq. Wani, Dist. Yavatmal.
- 4) Smt. Ujwala Bhalchandra Patil,  
Aged about 27 years, Occ. Household,  
R/o Village Pathari, Post Chinchala,  
Tq. Maregaon, Dist. Yavatmal.

**Respondents**

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**Shri B.C. Pal, Advocate for the applicant.**

**Smt. S.V. Kolhe, P.O. for the respondent no. 1 to 3.**

**Ku. Pratiksha C. Shende, Advocate for Respondent no.4.**

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**Coram :- Hon'ble Shri S.S. Hingne, Vice Chairman.**

**Dated :- 03/01/2017.**

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**ORDER -**

The applicant challenged the appointment of R/4 as Police Patil for village Pathari, Tq. Maregaon, Dist. Yavatmal on the ground that she is the Member of Gram Panchayat, Chinchala.

2. Heard Shri B.C. Pal, Id. counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for R-1 to 3. None for R-3. The O.A. is heard at the admission stage with consent of Id. counsel for parties.

3. The SDO undertook the recruitment process for the appointment of Police Patil for some villages including the village Pathari and issued the proclamation on 10-9-2015 (A-2,P-12). In process the applicant secured 40.20 marks and R/4 secured 46.20 marks (A-7,P-56). Consequently, R/4 came to be appointed vide order dated 9-12-2015 (A-1,P-11).

4. The respondents' case is that as per term no.10 of the proclamation, the applicant was not eligible to be appointed. The term no.10 runs as under :-

“v thkj gk LFkkfud LojKT; I LFkk I nL; ul kok- rI p I jdkjh fdok fuel jdkjh  
I LFkk dk; jr ul kok”-

5. The respondents case is that R/4 was working as a Member of Gram Panchayat, Chinchala but she has submitted the resignation on 23-10-2015 and the same was accepted on 5-11-2015 (A-5,P-53) and thereafter she was appointed on 9-12-2015 (A-2,P-12).

6. The applicant has raised the objections before the SDO, Wani raising this point. However, respondents' case is that R/4 has submitted the resignation and it is accepted and thereafter R/4 is appointed.

7. The learned P.O. submits that terms and conditions in the proclamation are divided in two parts. The term sr.nos. 1 to 9 fall in the first category and 10 to 13 in the second category. There is a rider between these 2 sets of terms and conditions. The said rider is at the end of term no.9 which runs as under :-

“ojhy ckcph vt k r i r k d s y h u l Y; k l vt z v i k = B j o u H k j r t P; k i q h y  
VII; k l k B h v t k p k f o p k j d y k t k . k j u k g h i’-

8. Relying on the same, Id. P.O. Smt. Kolhe ingeniously argued that the applicant can be held unfit, if the term nos. 1 to 9 are not fulfilled at the time of submitting the application. She proceeded to argue that in case of rest of the terms and conditions the position at the time of issuance of appointment is to be considered. Therefore, according to her the applicant had already resigned and the

resignation was accepted on 05-11-2015 and thereafter the appointment order issued thereafter on 9-12-2015 is legal and valid.

9. As against this, the learned counsel for the applicant submits that contention of the Id. P.O. is not correct and in support of the submission he relied on the cases **Ashok Kumar Sonkar Vs. Union of India & Ors. (2007) 4 SCC 54** and **Rakesh Kumar Sharma Vs. State (NCT of Delhi) & Ors., (2013) 11 SCC 58**. In these cases the eligibility criteria based on the educational qualification was at stake. Their Lordships observed that if the applicant is not holding the requisite qualification as on the cut off of date or last date of receipt application he cannot be eligible. In **Rakesh Kumar** case (*cited supra*) it is held that after submitting the application if the candidate acquires the requisite qualification subsequently, that cannot be helpful.

10. As against this, the learned P.O. placed the reliance on **Vijay Kumar Mishra & Ano. Vs. High Court Judicature at Patna & Ors. (2016) 2 SCC (L&S) 606**. Their Lordships of the Summit Court of the land in this case held that a candidate who was already in service as a Junior Division, can be eligible for the post of District Judge and he is entitled to take part in the recruitment process without resigning from the post. The Bar under Article 233 (2) of the Constitution of India prohibits only appointment of the person in

service and not their participation in recruitment process. The Id. P.O. ingeniously urged that applying such principle the applicant's participation in the selection process cannot be held to be illegal. She proceeded to argue that the applicant has already resigned which was accepted and then appointment order is issued and such order cannot be illegal. The submission holds water.

11. Having regard to the above discussion, the appointment of the applicant cannot be held to be illegal. Consequently, the O.A. is rejected. No order as to costs.

(S.S.Hingne)  
Vice-Chairman.

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