

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 502 OF 2018

DIST. : HINGOLI

Bansilal s/o Chiranjilal Jaiswal,)
Age. 44 years, Occ. Agriculturist,)
R/o at post – Kandala,)
Tal. And Dist. - Hingoli.)-- **APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 32.)

2. The Sub-Divisional Officer,)
Sengaon, Tal. Sengaon,)
Dist. Hingoli.)

3. Ravi s/o Shivshankr Malode,)
Age. 35 years, Occ. – Police Patil,)
R/o at post Khandala,)
Tal. & Dist. Hingoli.) -- **RESPONDENTS**

APPEARANCE :- Shri Ashok D. Raut, learned Advocate for
the applicant.
: Smt. M.S. Patni, learned Presenting Officer
for the respondent nos. 1 & 2.
: Ms. Rebekah Daniel, learned Advocate
holding for Shri S.B. Talekar, learned
Advocate for respondent no. 3.

CORAM : JUSTICE A.H. JOSHI, CHAIRMAN
RESERVED ON : 8.3.2019
PRONOUNCED ON : 20.3.2019

JUDGMENT

1. Heard Shri Ashok D. Raut, learned Advocate for the applicant, Smt. M.S. Patni, learned Presenting Officer for the respondent nos. 1 & 2 and Ms. Rebekah Daniel, learned Advocate holding for Shri S.B. Talekar, learned Advocate for respondent no.3.

2. By filing the present Original Application the applicant has challenged selection and appointed of res. no. 3 as a Police Patil for village Khandala, Taluka and District Hingoli.

3. The advertisement inviting applications for appointment to the post of Police Patil for village Khandala, Tq. & Dist. Hingoli was issued on 6.12.2017. Last date fixed for submitting online application is 20.12.2017.

4. The advertisement contains certain conditions. The condition relevant to the present case pertains to possessing of non-creamy layer certificate by aspiring candidates. The said condition is seen in the advertisement at page 15, which reads thus :-

“७. मागासप्रवर्गातील अर्जदार (वि.जा.अ., भ.ज.ब., भ.ज.क., भ.ज.ड., वि.मा.प्र. व इ.मा.व.) यांना सन २०१७-२०१८ (३१.०३.२०१८) या कालावधीकरीता

वैध असलेले उच्चत आणि प्रगत व्यक्ती व गट (किमिलेयर) यामध्ये मोडत नसल्याबाबतचे (नॉन-किमिलेयर) प्रमाणपत्र आवश्यक राहिल.”

(quoted from page 15 of paper book of O.A.)

5. As regards procedure of selection, the condition no. 3 relates to submitting of online application. The said condition no. 3 reads thus :-

“३. लेखी परिक्षेअंती मुलाखतीसाठी पात्र अर्जदारांचे जाहिरातीनुसार आवश्यक पात्रता व ऑनलाईन अर्जात भरलेली माहिती यांच्या आधारे मुळकागदपत्र पडताळणी करण्याकरिता अंतरिमस्वरूपात यादी जाहीर करण्यात येईल. ज्या अर्जदारांची जाहिरातीनुसार आवश्यक पात्रता व ऑनलाईन अर्जात भरलेली माहिती परिक्षा शुल्क, मुळ कागदपत्रांच्या आधारे परीपूर्ण सिध्द होईल अशाच अर्जदारांचा विचार भरती प्रक्रियेच्या पुढील टप्प्या करीता करण्यात येईल. जाहिरातीत नमूद केलेली संपुर्ण अर्हता, ऑनलाईन अर्जात भरलेली माहिती व मुळ कागदपत्र तपासणीच्या वेळी सादरकेलेली कागदपत्रे यामध्ये तफावत आढळल्यास अर्जदारांची उमेदवारी भरतीच्या कुठल्याही टप्प्यावर रद्द होउ शकेल तसेच अशा अर्जदारांचे परिक्षा शुल्क इत्यादी सारख्या सवलती नामंजूर करण्यात येतील याची कृपया सर्वांनी नोंद घ्यावी.”

(quoted from page 16 of paper book of O.A.)

6. Similar condition is also contained in clause (r) of the procedure of furnishing online application, which reads as under:-

“r) उमेदवाराने भरलेल्या माहिती आधारे त्यास प्रवेशपत्र देऊन परिक्षेस पात्र करण्यात येईल निवड झालेल्या उमेदवाराची (Online) अर्जा प्रमाणे त्याची सर्व मुळ प्रमाण पत्रे/अभिलेखे याची सत्यता पडताळणी करण्यात येईल. सत्यता पडताळणीच्या वेळेस उमेदवाराची (Online) भरलेल्या अर्जात नमूद केलेल्या माहितीव्यतिरिक्त सादरकेलेल्या इतर कागदपत्रांचा विचार केला जाणार नाही. तसेच पडताळणी करताना उमेदवाराची (Online) भरलेल्या अर्जात नमूद केलेल्या बाबीचे प्रमाणपत्र / अभिलेख तो सादर करण्यास असमर्थ ठरल्यास किंवा अर्जासोबत दिलेली माहिती/अगर कागदपत्रे खोटी सादर

केल्याचे किंवा खरी माहिती दडवून ठेवल्याचे निदर्शनास आल्यास त्याला भरती प्रक्रियेतून बाद करण्यात येईल व या बाबत उमेदवाराची कोणतीही तक्रार ऐकली जाणार नाही. ”

(quoted from page 20 of paper book of O.A.)

7. Applicant as well as res. no. 3 applied, and were the aspiring candidates for selection to the post of Police Patil for village Khandala, Tq. & Dist. Hingoli. In the list of candidates selected for various locations the res. no. 3 has been listed as selected at sr. no. 30 for the vacancy of village Khandala, Tq. & Dist. Hingoli, copy of list is placed on record at pages 23 to 25.

8. Applicant raised objection to the selection of res. no. 3 – Shri Ravi s/o Shivshankr Malode, on sole ground that the res. no. 3 did not possess non-creamy layer certificate on the date of submitting online application form, which is mandatory.

9. Res. no. 3 has filed affidavit in reply. Along with said affidavit in reply he has filed a photo copy of printout of online application form uploaded / submitted by him, which is at page 50. It contains a column relating to non-creamy layer certificate and res. no. 3 has filled in said form & column by furnishing information relating to applicant. In the blank space left for filling in the information about whether applicant has a ‘creamy layer certificate’, applicant has to fill in words ‘YES’ or ‘NO’. Res. no. 3 has filled in said column with word ‘YES’, which reads as under :-

उमेद्वाराकडे नॉन क्रिमीलेअर प्रमाणपत्र आहे काय ?	Yes
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(quoted from page 50 of paper book of O.A.)

10. Photo copy of Res. no. 3's non-creamy layer certificate is produced by the res. no. 3, and it is at page 51 and date of its issue is 10.1.2018.

11. Considering the last date for submission of application form, which is 20.12.2017, it is clear that res. no. 3 was granted non-creamy layer certificate on 10.1.2018 i.e. after the date of submitting online application.

It has transpired from copy of Respondent no. 3's application (tendered during final hearing) for issue of non-creamy layer certificate that applicant had applied for issuing non-creamy layer certificate on 3.1.2018 i.e. 10 days after last date fixed for submission / uploading of online application form.

12. It is thus evident and a fact admitted by the res. no. 3 that he has submitted incorrect information or false information in the online application form.

13. Surprisingly enough, the State has filed affidavit in reply by which the State has opposed the Original Application by taking a

specific plea as seen while answering para 6 of Original Application :-

“06. As regards to the contents of Para NO. 6 (a) of the Original Application, I say and submit that the respondent No. 2 issued an advertisement dated 06.12.2017 thereby inviting the online applications from the eligible candidates for the post of Police Patil of different villages of Hingoli Sub Division including village Khandala Tq. and Dist. Hingoli. The minimum qualification for the post of Police Patil was required 10TH (S.C.C.) pass. It is further submitted that, the written test of the candidates have be taken without verifying the original documents and the eligible candidates have been called for interview subject to the documents verification. Therefore, it is not necessary for the candidates to hold or posses the Non-Creamy Layer Certificate on the date of filing online application.”

(quoted from page 37 of paper book of O.A.)

14. Applicant has argued that collective reading of all the conditions contained in the advertisement, res. no. 3 was required to furnish true and correct information while uploading application form. Answer to query whether the applicant was having non-creamy layer certificate, if to be given faithful and truthful, every candidate ought to possess the said certificate of which date of issue has to of date prior to date of uploading of the online application form.

15. On facts it is seen that since non-creamy layer certificate of res. no. 3 is later in date to the date of submission of online application, the res. no. 3 has furnished false & untrue information, which was very well within his own knowledge, which fact is very well testified from Respondent no. 3's affidavit in reply.

16. Candidature of the Res. no. 3 proceeds on admitted fact that his non-creamy layer certificate is dated 10.1.2018 and applicant had replied for the post stating that he holds non-creamy layer certificate by answering 'YES'. Thus, the foul & fraud in the applicant's application form is not a disputed fact.

17. Res. no. 3 by filing additional affidavit on the day of hearing has raised following points :-

POINTS :-

(a) An application filed challenging selection of a person is tenable only if filed by a person standing to benefit from the challenge, i.e. if the applicant is first in waiting list he can challenge the selection of selected candidate. However a person who is neither eligible for first in waiting list cannot sustain a challenge to selection and appointment of another person.

(b) The applicant standing to gain nothing from the setting aside of my appointment has styled a public interest litigation into this present application which is not maintainable.

- (c) Unsuccessful candidate cannot challenge selection.
- (d) The applicant cannot expect the Hon'ble Tribunal to sit in appeal over the decision of expert bodies.
- (e) Proof of eligibility is different from factum of eligibility.

18. Res. no. 3 has placed reliance on following two Supreme Court judgments :-

- (i) Mukund Lal Bhandari and Others Vs. Union of India and Others [1993 Supp. (3) SCC 2]
- (ii) Dr. Duryodhan Sahu and Others Vs. Jitendra Kumar Mishra and others [(1998) 7 SCC 273]

19. On facts res. no. 3 has argued that the applicant's name is not seen in the merit list and, therefore, applicant is stranger to the process of selection.

20. In the present case factual questions which are arise as to :-

- (a) Whether the present O.A. is in the nature of Public Interest Litigation ;
- (b) Whether applicant has locus-standi to file present O.A., because applicant is not 1st in waiting list. .
- (c) Can it be said that the applicant raising objection to the selection process after having participated in process and after having acquiesced with, but only after becoming unsuccessful in selection.

21. Admittedly the applicant was aspiring candidate and his Roll no. 22766. This information is contained in the copy of applicant's objection (page 26). Applicant has specifically averred in the present O.A. about Annex. A.2. Applicant has specifically averred in para 7.4 as follows :-

“VII. The applicant respectfully submits that, he is having a good case in hand in which the appointment of the Respondent no. 3 – Ravi is required to be quashed and Applicant is required to be appointed as a Police Patil of Khandala.”

(quoted from page 5 of paper book of O.A.)

Applicant's prayer for relief reads thus :-

“B. By issuance of a order or direction in the said nature, the order issued in favour of the Respondent no. 3 – Ravi may kindly be quashed and Applicant may kindly be appointed as a Police Patil of Khandala, in the interest of justice.”

(quoted from page 8 of paper book of O.A.)

22. With the foregoing pleadings & prayers the applicant's claim is based on his own right and by no stretch of imagination it can be said that present O.A. is P.I.L. Contents of the additional reply filed today by res. no. 3 are relating to applicant's eligibility to file O.A. is vexatious without any merit.

23. Second objection of applicant is regarding applicant's locus standi on the ground that applicant's name is not seen in merit list. List on record is a selection list (page 23 to 25). Merit list was not brought on record by either of the respondents. Therefore this objection is baseless.

24. Third objection of respondent no. 3 is about objecting selection process after participation, being impermissible. This objection of res. no. 3 is based on perversion. At no point of time the applicant has called in question 'procedure, rules or norms of selection'. What is challenged by the applicant is eligibility of the Respondent no. 3. Present objection by applicant is an outcome of unfairly raised grossly erroneous defence which is adhered and deprecated.

25. Points (d) & (e) referred to in para 17 raised by applicant do not arise and do not need any discussion.

26. The result is that applicant's plea and contentions that res. no. 3 did not possess non-creamy layer certificate on the date of uploading of application form before last date i.e. before 20.12.2017 is proved from res. no. 3's own reply as admitted in para 9 thereof which is seen at page 44 of O.A.

27. Thus, on his own showing, res. no. 3 he has submitted the online application, by furnishing false information and in view of clauses contained in the advertisement which are mentioned in para nos. 5 & 6, res. no. 3's application was liable to be rejected at the level of scrutiny and res. no. 3 was not entitled to be called even for written test as well as for oral interview. Conduct of the res. no. 3 is a clear illustration of "suggestio falsi & suppressio veri."

28. Therefore, O.A. succeeds. Selection of res. no. 3 is quashed and set aside. Res. nos. 1 & 2 are directed to appoint the candidate whoever may be found in order of merit upon exclusion of res. no. 3.

This order be complied with within 60 days from today.

29. Issue notice of show cause to Shri Atul Pandit Chormare, Sub Divisional Officer, Sengaon, Tq. Sengaon, Dist. Hingoli, returnable on 2.4.2019 to show cause as to why action for perjury & also for contempt should not be taken against him on account of his filing affidavit dated 18.9.2018 copy whereof is at Page 35 to 39 of present O.A., which is contrary to record and is false as well as misleading well within his own knowledge.

30. Learned C.P.O. is directed to secure latest address of Shri Atul Pandit Chormare, Sub Divisional Officer, Sengaon, Tq. Sengaon, Dist. Hingoli and serve on him the notice as well serve on him intimation of this notice.

31. In the background that the res. no. 3 has submitted his candidature fraudulently and the res. no. 2 has supported and conspired in covering said fraud by pleadings quoted in foregoing para no. 13, both these respondents namely res. no. 2 and the res. no. 3 each shall pay to the applicant quantified costs of Rs. 25,000/- each. A fraudster needs to be penalized than rewarded.

32. Learned P.O. is directed to send copy of this order to Shri Atul Pandit Chormare, who has affirmed the affidavit for supporting fraudulent candidature of the res. no. 3 and for opposing genuine claim of the applicant.

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 20.3.2019