

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 666 OF 2019**

**DISTRICT:- DHULE**

Mahendrasing S/o. Narayansing Girase  
Age : 34 years, Occ: Agriculture,  
R/o: At Post Jasane, Tq. Shindkheda,  
Dist. Dhule.

**.. APPLICANT**

**V E R S U S**

1) The Sub-Divisional Officer,  
Shindkheda, Tq. Shindkheda,  
Dist. Dhule.

2) Ganesh S/o Bhagwan Girase  
Age: Major, Occu: Service,  
R/o: At Post Jasane,  
Tq. Shindkheda, Dist. Dhule.

**.. RESPONDENT**

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APPEARANCE : Shri Nitin Jagadale, learned counsel  
holding for Shri Mayur V. Salunke,  
learned counsel for the applicant.  
: Shri N.U. Yadav, learned Presenting  
Officer for the respondent No. 1.  
: Shri Gajendra D. Jain, learned counsel  
for respondent No. 2.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN**

**DATE : 09.01.2023**  
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**O R A L O R D E R**

Heard Shri Nitin Jagadale, learned counsel holding for  
Shri Mayur V. Salunke, learned counsel for the applicant, Shri  
N.U. Yadav, learned Presenting Officer for respondent No. 1 and  
Shri Gajendra D. Jain, learned counsel for respondent No. 2.

2. In the year 2018 an advertisement was issued on 14.08.2018 thereby inviting applications from the eligible candidates to be appointed on the post of Police Patil of village Jasane, Tq. Shindhkheda, Dist. Dhule. The present applicant and respondent No. 2 both had applied for the said post. In the written examination held by the respondent No.1, respondent No. 2 stood first in order of merit; whereas present applicant was at second position in the said merit list. For appointment to the post of Police Patil the minimum age prescribed was 25 years and upper age limit was 45 years.

3. After publication of the merit list the present applicant raised an objection in regard to the candidature of respondent No. 2 alleging that on 31.8.2018 he had not completed the age of 25 years and, as such was not eligible to be appointed as Police Patil. Applicant had alleged that the date of birth of respondent No. 2 is 30.1.1994 but he has falsely shown the said date as 30.1.1993. On such objection raised by the present applicant the enquiry was conducted by respondent No. 1. However, the objection of the applicant was turned down and respondent No. 2 came to be appointed on the post of Police Patil of Village Jasane, Tq. Shindhkheda.

4. In the meanwhile period i.e. after declaration of the merit list and before the date of his appointment, respondent No. 2 filed a Criminal Misc. Application before the JMFC Court at Shindhkheda. In the said matter the Court of JMFC Shindhkheda, directed Gram Sevak of Grampanchayat, Jasane to take birth entry in respect of respondent No. 2 and record his date of birth in the said register as 30.1.1993. The present applicant challenged the said order by filing Criminal Revision Application No. 157/2018 before the Sessions Judge, Dhule and the learned Sessions Judge vide order passed on 4.10.2019 set aside the order passed by JMFC Court, Shindhkheda in Criminal Misc. Application No. 275/2018. It reveals from the documents that respondent No. 2 has challenged the order passed by the Additional Sessions Judge at Dhule by filing Criminal Application St. No. 3698/2019 before the Hon'ble High Court, Bench at Aurangabad.

5. Learned counsel appearing for the applicant submitted that at the time when respondent No. 1 issued the letter of appointment in favour of respondent No. 2 by rejecting the objection raised by the present applicant, there was no authenticate document or evidence before respondent No. 1 so as to hold that respondent No. 2 has completed the age of 25

years. Learned counsel submitted that the applicant had produced before respondent No. 1 all relevant documents pertaining to the age of respondent No. 2 i.e. his school leaving certificate and his certificates of passing 10<sup>th</sup> and 12<sup>th</sup> standard examination, wherein his date of birth has been shown as 30.1.1994. Learned counsel submitted that when aforesaid documents were brought to the notice of respondent No. 1 by the present applicant, respondent No. 2 had not till then preferred any application in the JMFC Court. All these actions are taken by respondent No. 2 subsequently.

6. Learned counsel appearing for the applicant further submitted had the application been pending before the JMFC Court at the relevant time, even that could not have helped respondent No. 2 for securing the appointment since on the date mentioned in the advertisement i.e. 31.8.2018 there was no document in possession of respondent No. 2 evidencing his date of birth as 30.1.1993 as was canvassed by him before respondent No. 1. Learned counsel submitted that when the basic eligibility criteria was not fulfilled by respondent No. 2, respondent No. 1 could not have issued appointment order in favour of respondent No. 2 and the appointment order so issued is ex- facie illegal and unsustainable. Learned counsel further

submitted that respondent No. 2 is illegally holding the said post since last about 4 years. Learned counsel submitted that had respondent No. 1 taken a judicious decision at the relevant time only candidate who was eligible to be appointed to the post was the present applicant and the appointment was liable to be issued in his favour. Learned counsel in the circumstances prayed for setting aside the order of respondent No. 2 and further direction against respondent No. 1 to appoint the applicant on the said post.

7. Learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of respondent No. 1. In the affidavit in reply submitted by respondent No. 1 it is his contention that he has issued the order of appointment on the basis of order passed by JMFC Shindhakheda on 27.11.2018 in Criminal Misc. Application No. 275/2018. It is his further contention that the order of appointment issued on 17.12.2018 is a lawful order and respondent No. 1 has, therefore, prayed for rejection of the O.A. filed by the present applicant.

8. Shri Gajendra D. Jain, learned counsel for respondent No. 2 submitted that after realizing that there is some mistake in mentioning his date of birth in school record, as well as, in 10<sup>th</sup>

and 12<sup>th</sup> mark-sheet and certificate, respondent No. 2 immediately filed Criminal Misc. Application No. 275/2018 in the Court of JMFC, Shindhakheda and the learned JMFC after having conducted full trial in the said application by giving an opportunity to the present applicant has allowed the Criminal Misc. Application filed by respondent No. 2 and has directed Gram Sevak of Grampanchayat of Jasane to take entry of the date of birth as '30.1.1993' as the date of birth of respondent No. 2. Learned counsel submitted that the order has been passed by learned Magistrate after having considered the entire evidence placed before him and, as such, no error can be found in the order of appointment issued in favour of respondent No. 2. Learned counsel for respondent No. 2 further submitted that though the order passed by JMFC Shindhkheda has been set aside in the Criminal Revision by the Hon'ble Sessions Judge at Dhule, respondent No. 2 has challenged the said order before the Hon'ble High Court of Bombay Bench at Aurangabad and the said matter is still pending. Learned counsel further submitted that even otherwise respondent No. 2 has completed almost 90% period of his appointment and in the circumstances he prayed that no interference shall be caused in the appointment so made and, therefore, prayed for dismissal of the O.A. filed by the applicant.

9. I have duly considered submissions advanced on behalf of the applicant, as well as, on behalf of the respondents. It is not in dispute that the age as was prescribed for appointment on the post of Police Patil was not below 25 years and not more than 45 years. It is thus evident that the person aspiring for the appointment on the post of Police Patil must have completed the age of 25 years on 31.8.2018 as prescribed in the advertisement issued in that regard. As has been argued on behalf of the applicant on the date of issuance of the advertisement and even on the date of scrutiny of the document after the merit list was published, the documents which were existing in regard to date of birth of respondent No. 2 were showing his date of birth as '30.1.1994'. My attention was invited to the School Leaving Certificate of respondent No. 2, as well as, his mark-sheets of 10<sup>th</sup> and 12<sup>th</sup> standard, wherein his date of birth has been recorded as '30.1.1994'. My attention was also invited to the objection raised by the applicant before respondent No. 2 as about date of birth of respondent No. 2. The specific objection was raised by the applicant that respondent No. 2 was under age and could not be appointed on the post of Police Patil. All relevant documents were produced on record by the applicant before respondent No. 1. Respondent No. 1 however, vide his order dated 12.12.2018 has

rejected the objection merely relying on the order passed by JMFC, Shindhkheda in Criminal Misc. Application No. 275/2018. It is not in dispute that respondent No. 2 preferred Criminal Misc. Application 275/2018 after objection was raised by the present applicant in regard to his date of birth.

10. I have gone through the order passed by the learned Magistrate. It is quite evident that the conclusion recorded by the learned Magistrate is based on the information provided by respondent No. 2 himself and medical evidence as was produced by respondent No. 2 before the said Court. Learned Magistrate however, has completely lost sight of the documentary evidence, which was placed on record by the present applicant. There is no further discussion in the judgment as to why his date of birth was not recorded in the Grampanchayat record and if it was recorded why such record was not produced in the said proceeding. Apart from the fact that the decision rendered by the learned Magistrate was entirely based on the information provided by respondent No. 2, learned Additional Sessions judge in Criminal Revision No. 157/2018 decided on 4.10.2019 has set aside the said order and has also directed Gram Sevak of Grampanchayat Jasane to record the date of birth of respondent No. 2 in the Grampanchayat record as 30.1.1994.

Though learned counsel for respondent No. 2 has contended that order passed by learned Additional Sessions Judge in Criminal Rev. Application NO. 157/2018 has been questioned before the Hon'ble Bombay High Court Bench at Aurangabad by filing Criminal Application St. No. 3698/2019, it appears that the said Criminal Application has not yet been circulated and no notice has yet been issued in that matter. Thus, the fact remains that the order passed by the learned Additional Sessions Judge is presently holding the field.

11. Even otherwise it appears to me that respondent No. 1 could not have considered any evidence which was beyond the date of 31.8.2018 and documents up to the said date only could have been considered by respondent No. 1. Till the said date, undisputedly there was no document in possession of respondent No. 2 showing his date of birth other than 30.1.1994. Respondent No. 1 has, thus, committed gross error in considering the case of respondent No. 2 for his appointment to the post of Police Patil by considering evidence which was not admissible at the relevant time. In the circumstances, the order so passed giving appointment to respondent No. 2 deserves to be quashed and set aside and present applicant being second highest candidate in the list of merit as was published at the

relevant time, deserves to be appointed in place of respondent No. 2. Hence, the following order: -

**ORDER**

(i) Order dated 17.12.2018, whereby respondent No. 1 has appointed respondent No. 2 on the post of Police Patil of village Jasane, Tq. Shindhkheda is quashed and set aside.

(ii) Respondent no. 1 is directed to issue order of appointment in favour of the present applicant within 4 weeks from the date of this order, if otherwise there is no legal impediment for such appointment.

(iii) The Original Application is allowed in the aforesaid terms.

(iv) No order as to costs.

**VICE CHAIRMAN**

O.A.NO.666-2019 (SB)-2022-HDD-Police Patil