

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 75 OF 2020

DIST. : OSMANABAD

Shri Jitendra Vitthal Sarde,)
 Age. 43 years, Occ. : Agril & Business,)
 R/o House No. 854, Post Mangrul,)
 Taluka Tuljapur, Dist. Osmanabad.).. **APPLICANT**

V E R S U S

1. The Sub Divisional Magistrate,)
 Sub-Divisional Officer,)
 Osmanabad as well as President)
 of the Police Patil Selection and)
 Recruitment Committee-2018,)
 And Sub Divisional Magistrate)
 Office, Osmanabad,)
 Tq. & Dist. Osmanabad.)
2. Shri Mukund Fulchand Dhurgude,))
 R/o Sardewadi,)
 Post Mangrul, Tq. Tuljapur,)
 Dist. Osmanabad – 413 601.).. **RESPONDENTS**

 APPEARANCE :- Shri K.B. Bhise, learned Advocate for the
 applicant.

: Smt. Sanjivani Deshmukh Ghate, learned
 Presenting Officer for the respondent no.
 1.

: Respondent no. 2 is absent, though duly
 served.

**CORAM : Hon'ble Shri Justice P.R. Bora, Vice
Chairman**

DATE : 3rd January, 2023

ORDER

1. Heard Shri KB Bhise, learned counsel for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondent no. 1. Respondent no. 2 Shri Mukund Fulchand Dhurgude is absent, though duly served.

2. **Facts of the case : -**

Applicant had applied for the post of Police Patil for village Sardewadi Tq. Tuljapur District Osmanabad in pursuance of the advertisement No. 1/2018 issued on 18.4.2018 by respondent No. 1. Applicant succeeded in securing highest marks in the written and oral examination held and was shown at Sr. No. 141 and so far as village Sardewadi is concerned at Sr. No. 1 in the merit list. Applicant secured 65 marks out of 100. Respondent No. 2, however, raised an objection for the selection of the applicant by filing a written complaint alleging therein that the applicant holds and runs a fair price shop and, as such, was disqualified for to be appointed on the post of Police Patil. In the complaint so made by respondent No. 2 the

enquiry was conducted and eventually respondent No.1 accepted the complaint made by respondent No. 2 and held the applicant disqualified for appointment to the post of Police Patil. Said order was passed by respondent No. 2 on 30.11.2018. In the order the respondent No. 1 gave an option to the applicant that if he will surrender his fair price shop he will be considered for his appointment on the post of Police Patil. Aggrieved by the aforesaid order the applicant has approached this Tribunal by filing the present O.A.

Prior to filing of the present O.A. applicant had earlier filed O.A. No. 41/2019, however, withdrew the said O.A. with liberty to make a fresh representation on the basis of the communication dated 8.8.2014 issued by the Section Officer, Home Department of the State. Accordingly, the applicant made a detailed representation on 21.8.2019 to respondent No. 1. Respondent No. 1, however, rejected the said representation by confirming his earlier order dated 30.11.2018. Applicant has challenged the subsequent order dated 17.12.2019 also in the present O.A.

3. Learned counsel appearing for the applicant submitted that the applicant is not a Government servant and the post of Police Patil is an honorary post. Learned counsel submitted that though some of the Maharashtra Civil Services Rules are

made applicable even to the services of Police Patil, Rule 16 whereby the Government servant is prohibited to carry on business or trade has not been made applicable to the services of the Police Patil. Learned counsel submitted that despite clear legal position as above, for wrong reasons respondent No. 1 has declined to give appointment to the applicant to the post of Police Patil of village Sardewadi. Learned counsel brought to my notice the communication dated 8.8.2014, as well as, M.C.S. (Conduct) Rules, 1979 and the provisions under Maharashtra Village Police Patil Act and rules thereunder. Learned counsel submitted that none of the provision under the Act and Rules prohibits the person appointed as Police Patil to carry on business. Learned counsel fairly submitted that there are certain riders provided, however, they cannot be made applicable in the case of the applicant.

4. Learned counsel for the applicant further submitted that similar issue was raised before Aurangabad Bench of Hon'ble Bombay High Court in the case of **Ishwar s/o Vithalrao Mohite Vs. State of Maharashtra & Ors., Writ Petition No. 4977/2012, 2012 BCI 963**, decided on 31.8.2012. In the said matter a show cause notice was issued to the petitioner therein 'why his kerosene dealership shall not be cancelled as he was

appointed as Police Patil?'. While deciding said writ petition in favour of the said petitioner the Hon'ble High Court has held that right of the petitioner cannot be taken away unless it is specifically barred or is envisaged under the statute and under any rules. Hon'ble High Court has observed that none of the statute, rules or order bars the Police Patil from running retail kerosene shop in the village in which he is officiating as Police Patil. Learned counsel submitted that in the present matter the applicant is having fair price shop and as such the applicant stands at par with the petitioner in the said petition and ratio laid down therein would squarely apply to the case of the present applicant. The learned counsel, in the circumstances, has prayed for allowing the OA by directing respondent no. 1 to appoint the applicant to the post of Police Patil of village Sardewadi as per his selection in the process carried out for the said selection.

5. Smt. Ghate, learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of respondent no. 1. Respondent no. 1 in his affidavit in reply has raised the contention that the Police Patil is a local representative of the Government and considering the position, role & responsibilities of the Police Patil, he is not expected to

run any local business or trade. Police Patil is in a way a fulltime job and to run fair price shop is also a fulltime business. In the circumstances, according to respondents, if the applicant is permitted to run the fair price shop, he may not be able to give justice to the post of Police Patil, as well as, to the business of fair price shop. Either the applicant can devote his time for running fair price shop or in discharging duties of Police Patil, but he cannot shoulder both the responsibilities at a time. Learned P.O. further submitted that in the advertisement published, it was clarified that the applicant shall not be carrying out any business in the village for which he has applied for his appointment on the post of Police Patil. Learned P.O. submitted that there is a complete bar for carrying out any business as per the terms and conditions provided in the advertisement. Learned P.O. further submitted that without challenging aforesaid condition in the advertisement when the applicant has participated in the selection process, now he is estopped from raising objection to the conditions so incorporated in the advertisement. Learned P.O. also relied upon GR dated 16.10.2006 whereby the Government has restrained the Government employees to hold fair price shops. Learned P.O. submitted that said G.R. is applicable to the present case and having regard to the specific provision in the

said G.R. the applicant cannot be appointed to the post of Police Patil when he is running fair price shop in the same village Sardewadi. Learned P.O. reading out the decision dated 30.11.2018 taken by respondent No. 1 and order so passed by him, submitted that respondent No. 1 has elaborately discussed the reasons for not appointing the applicant on the post of Police Patil. Learned P.O. submitted that in view of the legal provisions no error can be found in the impugned order dated 30.11.2018 and subsequent order wherein respondent No. 1 has confirmed the earlier order and she therefore, prayed for dismissal of the O.A.

6. I have duly considered the submissions advanced by learned counsel appearing for the applicant and the learned P.O. appearing for the respondent no. 1. I have perused the documents filed on record by the applicant, as well as, the respondent authorities. Though private respondent No. 2 has been duly served he did not cause appearance in the matter nor any reply is filed on his behalf. It is not in dispute that advertisement No. 1/2018 was published inviting applications for the post of Police Patil of villages notified therein. Sub-clause 9 of terms and conditions is relevant insofar as dispute raised in the present matter is concerned. I, therefore, deem it

appropriate to reproduce said condition, which is in vernacular, which reads thus:-

“निवड कार्यपध्दती, अटी व शर्ती

(१) ते (८)

(९) अर्जदार कोणत्याही राजकीय पक्षाशी संबंधित नसावा. अर्जदार हा नेमणूकीच्या गावी स्थानिक स्वरूपाचा उदयोग करणारा नसावा. त्याचप्रमाणे इतर ठिकाणी संपुर्ण वेळ नौकरी वा धंदा करणारा नसावा. त्याचप्रमाणे ग्रामपंचायत सदस्य नसावा, तसेच खाजगी किंवा निम सरकारी संस्थेचा सदस्य नसावा अथवा पुर्ण वेळ नौकरी करणारा नसावा. या बाबतचे रूप्ये १००/- च्या स्टॅम्प पेपरवरील प्रतिज्ञापत्र कागदपत्रे पडताळणीच्या वेळी सादर करणे आवश्यक राहिल.”

7. Thrust of respondent No. 1 is on the aforesaid condition incorporated in the advertisement. It is true that before participating in the selection process applicant did not take any objection regarding aforesaid condition. However, as has been argued by the learned counsel for the applicant the Government itself has clarified the legal position in the aforesaid regard way back in the year 2014. My attention was invited to the communication dated 8.8.2014, wherein it has been clarified that the person appointed on the post of Police Patil may carry on any business which may not be prejudicial to perform his duties and he may also be able to cultivate his own land and may carry on business at local level, however, it may not be permissible to carry on any fulltime business at any other place than the village where he has been appointed as Police Patil.

8. In fact, as has been argued by the learned counsel for the applicant, rule 16 of the M.C.S. (Conduct) Rules, 1979 is inapplicable to the persons appointed on the post of Police Patil. The aforesaid aspect has been dealt with by the Division Bench of Hon'ble Bombay High Court in the case of **Mrs. Sunita w/o Navnath Gudhage Vs. the District Collector, Ahmednagar & Ors., 2016(7) ALL MR 578.** Para 10 of this judgment is relevant, which reads thus :-

“10. It is trite that a provision, which entails civil consequences or imposes any restrictions on the right of any person has to be construed strictly and such a provision cannot be construed liberally. The said Rule will have to be interpreted in a manner it subserves the object and purpose for enactment of such a Rule. All the provisions of the Conduct Rules, 1979, which are made applicable to the Government Servant do not apply to the persons appointed as Police Patil. By virtue of Sub-Rule 3 of Rule 1 of the Conduct Rules, only Rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 of the Conduct Rules, 1979, apply to the persons to be appointed as Police Patil. Rule 16 of the Conduct Rules, 1979, which prohibits a Government Servant from doing any business or engaging in any other occupation is not applicable to the post of Police Patil. On the contrary, by virtue of clause 8 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Orders, 1968, the Police Patil is allowed to cultivate his land or engage in local business or trade in the village, in such a manner as is not detrimental to the performance of his duties as a Police Patil.”

On perusal of law laid down as above there may not be any doubt that Rule 16 of the MCS (Conduct) Rules may not apply to the persons appointed on the post of Police Patils.

9. The learned counsel for the applicant has relied upon one more judgment of the Hon'ble Bombay High Court in the case of **Ishwar s/o Vithalrao Mohite Vs. State of Maharashtra & Ors.** (cited supra). In the said matter the kerosene retailer license of the petitioner therein was cancelled on the count that the petitioner being a Police Patil is a Government servant and not entitled for license of kerosene retailer shop. The Hon'ble High Court set aside the said order. The observations made and the findings recorded in paragraph nos. 11 to 17 are relevant in context of the present matter. I, therefore, deem it appropriate to reproduce the said paragraphs, which read thus:-

"11. Before adverting to the arguments canvassed by the learned counsel for the parties, it would be appropriate to refer to the relevant rules for deciding the present matter.

Rules 1,2,3,4 and 16 of the Maharashtra Civil Services [Conduct] Rules, 1979 reads as under:

'1. Short title, application and saving –

(1) These Rules may be called the Maharashtra Civil Services [Conduct] Rules, 1979.

(2) They shall come into force on the 12th day of July, 1979.

(3) Except as otherwise provided by or under these rules, these rules (and also any rules and orders in relation to matters covered by these rules duly approved by Government from time to time and not inconsistent with the provisions of these rules) apply to all persons appointed to civil services and posts in connection with the affairs of the State of Maharashtra. Provided that, only Rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 shall apply to persons appointed as Police Patils under the Maharashtra Village Police Act, 1967.

(4) Nothing in these rules shall apply to members of the All India

Services, who are subject to the All India Services (Conduct) Rules, 1968.

2. Definitions – In these rules, unless the context otherwise requires, -

(a) 'Government' means the Government of Maharashtra.

(b) 'Government servant' means any person appointed to any civil service or post in connection with the affairs of the State of Maharashtra, and includes a Government servant whose services are placed at the disposal of a company; corporation, organisation, local authority or any other Government, notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State;

16. Private trade or employment, - (1) No Government servant shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any other employment:

Provided that, a Government servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake, or shall discontinue, such work if so directed by the Government.

Explanation - (1) Canvassing by a Government servant in support of the business of insurance agency, commission agency, etc. owned or managed by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.

(2) Every Government servant shall report to the Government, if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency,

(3) No Government servant shall, without previous sanction of the Government, except in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (1 of 1956), or any other law for the time being in force or any co-operative society for commercial purposes:

Provided that, a Government servant may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government servants, registered under the Maharashtra Co-operative Societies Act, 1960 (Mah.XXIV of 1961), or any other law for the time being in force, or of a literary, scientific or charitable

society registered under the Societies' Registration Act, 1860 (21 of 1860) or any corresponding law in force.

(4) No Government servant may accept any fee for any work done by him for any public body or any private person without the sanction of the _____ prescribed _____ authority,

(5) No Government servant in whose case permission to take up commercial employment immediately after retirement is necessary should, while still in service negotiate for any commercial employment after retirement without obtaining prior permission of Government. '

Rule 8 of Maharashtra Village Police Patil [Recruitment, Pay, Allowances and other conditions of service Rules, 1968 reads as under:

'Engagement in business or trade - Notwithstanding anything contained in this order, a Police Patil may cultivate land or engage in local business or trade in the village, in such manner as is not detrimental to the performance of his duties as Police Patil, but he shall not undertake any full-time occupation elsewhere.'

12. The petitioner is appointed as Police Patil pursuant to the provisions of the Maharashtra Village Police Patil Act, 1967 [For short, 'the Act of 1967']. The functioning of the petitioner as Police Patil is governed by the provisions of the Act of 1967 and the rules framed thereunder. The rights and obligations of the petitioner, as a Police Patil, is governed by the Act of 1967 and the Rules of 1968.

13. The Govt. Resolution dated 13/10/2006 is issued keeping in view Rule 16 of the Maharashtra Civil Services [Conduct] Rules, 1979 [For short, 'Conduct Rules of 1979']. As per Rule 16 of the Conduct Rules of 1979, the Govt. servant is prohibited from engaging directly or indirectly in any trade or business or from undertaking any other employment except with the prior sanction of the Govt.

14. Rule 16 of the Conduct Rules of 1979 will have to be read coherently with sub rule (3) of Rule 1. The provisions of sub rule (3) of Rule 1 succinctly and without any reservation exempts the operation of Rule 16 to the persons appointed as Police Patil under the provisions of the Act of 1967. When the statute or the rules specifically exempt the operation of particular statute, the same will have to be strictly construed. We can not import the provision, which the Legislature in its wisdom has specifically exempted from the operation. The Govt. servants, to whom Rule 16 of the Conduct rules, 1979 apply, would only be deemed to be covered by the Govt. Resolution dated 13/10/2006. The very prelude to the said Govt. Resolution is clear, unambiguous. It is restricted to the Govt. servants covered by Rule 16 of the Conduct Rules, 1979.

15. Even Rule 8 of the Rule of 1968 does not refrain the Police Patil from engaging in local business or trade in the village. It is not the subject matter of dispute that the petitioner who is Police Patil of

village Ghodki is running his kerosene business in the said village itself. As such, the petitioner running the kerosene shop at Ghodki, is also in consonance and conformity with Rule 8 of the Rules of 1968.

16. The petitioner has been given licence to run the retail kerosene shop. He is entitled to the said licence as per the provisions of law and statute. The said right of the petitioner can not be taken away except in accordance with the provisions envisaged under the statute and the Rules. None of the statute, rules or order bars the Police Patil from running retail kerosene shop in the village, in which he is officiating as Police Patil. The Govt. Resolution will have to be read strictly in the manner it has been issued. The clauses of the said Govt. Resolution which are in vernacular language lay down the restrictions upon the Govt. servants covered by Rule 16 of the said Conduct Rules, 1979 to do business and no further.

17. When an action is being resorted, more particularly, which results into the consequence of taking away livelihood of the person, the same will have to be strictly in consonance with the provisions of the statute and Rules. The petitioner can not be deprived of his right to run the business except in accordance with law. The impugned order of the District Supply Officer upheld by the Commissioner (Supply) and the Hon'ble Minister can not be sustained and deserves to be quashed and set aside and they are hereby quashed and set aside."

The law laid down in the aforesaid judgment would squarely apply to the facts of the present case. The petitioner therein was holding a kerosene retailer shop, whereas the applicant in the present matter is running a fair price shop. The applicant, thus, stands at par with the petitioner in the said Writ Petition and would be, therefore, entitled for the same relief as was granted to the petitioner in the said matter.

10. In view of the law laid down in the aforesaid judgment, the applicant cannot be deprived from appointment of Police Patil on the ground that he is running a fair price shop in the said village. The decision dated 30.11.2018, as well as, the

subsequent decision dated 17.12.2019 both are erroneous and cannot be sustained. For the reasons stated above the following order is passed :-

ORDER

(i) The decisions dated 30.11.2018 and 17.12.2019 impugned in the present Original Application are quashed and set aside.

(ii) Respondent no. 1 is directed to appoint the applicant on the post of Police Patil, if otherwise there is no impediment for such appointment within 6 weeks from the date of this order.

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

(iv) No order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 3rd January, 2023

ARJ O.A. NO. 75 OF 2022