

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 340 OF 2017**

DIST. : AURANGABAD.

Kishor s/o Namdeo Choudhari,  
Age. 29 years, Occ. Agril,  
R/o Yesgaon, Tq. Gangapur,  
Dist. Aurangabad.

-- APPLICANTS.

**VERSUS**

1. The State of Maharashtra,  
Through: Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Sub Divisional Officer/  
Magistrate, Vaijapur, Dist.  
Aurangabad.
3. Kurshna s/o Rambhau Kale,  
Age Major, Occ. Agril,  
R/o Yesgaon, Tq. Gangapur,  
Dist. Aurangabad.
4. The Tahsildar,  
Gangapur, Diast. Aurangabad.

-- RESPONDENTS

APPEARANCE : Shri K. B. Jadhav, learned Advocate  
for the Applicants.

: Shri N. U. Yadav, learned Presenting  
Officer for Respondents no.1,2 & 4.

: Shri A. B. Rajkar, learned Advocate  
For the Respondent no.3.

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**CORAM : Hon'Ble Shri P. B. Patil, Member (J)**  
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### **JUDGEMENT**

**{Delivered on 23-01-2018}**

1. The applicant has challenged appointment order dated 16.5.2017 issued by the Respondent no.2 appointing the Respondent no.3 as Police Patil of village Yesgaon, Tq. Gangapur, Dist. Aurangabad and the order dated 16.5.2017 passed by Respondent no.2 rejecting his objection application dated 26.4.2016 by filing the present O.A.

2. The Applicant is resident of village Yesgaon Tq. Gangapur, Dist. Aurangabad. He has passed B.Com. Exam. in the year 2010. The Respondent no.2 issued an advertisement/publication inviting the applications from the eligible candidates for the posts of Police Patil of different villages of Vaijapur Sub Division including village Yesgaon Tq. Gangapur on 10.3.2016. It was one of the condition mentioned therein that, candidate should be resident of concern village and he should hold landed property in the village. Accordingly the applicant, respondent no.3 and

other aspiring candidates filed their applications online. The applicant, respondent no.3 and others were called for written examination held on 17.4.2016. The applicant secured highest marks i.e. 49 marks in written examination, while respondent no.3 secured 47 marks in the written examination. The applicant, respondent no.3 were called for oral examination but in the oral examination the respondent no.2 had intentionally given less marks to the applicant and more marks to the respondent no.3. The respondent no.2 had given 10 marks to the applicant in oral interview and 14 marks to the respondent no.3 in oral interview. Therefore, the applicant secured 59 marks in aggregate while respondent no.3 secured 61 marks in aggregate. The respondent no.2 then declared final select list on 25.4.2016 and declared respondent no.3 as selected candidate.

3. The applicant raised objection regarding selection of the respondent no.3 by filing an application dated 26.4.2016 with the respondent no.2 and application dated 27.4.2016 with the District Collector and prayed to cancel posting / appointment of respondent no.3, but his applications were not considered and therefore, he approached this Tribunal by filing O.A. No.358/2016. This Tribunal decided the O.A. No.358/2016 on

19.4.2017 and directed the respondent No.2 to decide the objection application of the applicant dated 26.4.2016 within three weeks. Thereafter, the Respondent no.2 issued notices to the concerned parties and after giving hearing to them he passed the impugned order dated 16.5.2017 and rejected the objection application of the applicant and issued appointment order in favour of the respondent no.3.

4. It is the contention of the applicant that, respondent no.2 had not considered the documents on record and he has passed the order appointing the respondent no.3 illegally. It is the contention of the applicant that, the respondent no.3 was not holding immovable property at village Yesgaon Tq. Gangapur, but the respondent no.2 had not considered said aspect while deciding his application. Not only this, but respondent no.2 had not considered the fact that, applicant was meritorious candidate and he secured more marks in the written examination than the respondent no.3, but the respondent no.2 had intentionally given more marks to the respondent no.3 in the oral interview and favoured him. Therefore, he prayed to set aside the appointment of the respondent no.3.

5. It is further contention of the applicant that, as per the advertisement it is incumbent on the part of the candidate who applied for appointment on the post of Police Patil had to furnish affidavit regarding the small family, but the respondent no.3 had not produced the same before the oral interview. The respondent no.2 has not considered the said aspect and he has wrongly rejected the application of the applicant. Therefore, he prayed to allow the O.A. and to quash the order dated 16.5.2017 passed by respondent no.2 rejecting his objection application and also prayed to quash the appointment of respondent no.3 as Police Patil of village Yesgaon Tq. Gangapur, Dist. Aurangabad.

6. The respondent no.2 filed affidavit in reply and resisted the contention of the applicant. He has denied that, he favoured the respondent no.3 and allotted more marks to him in the oral interview. He has denied that, he has not considered the terms and conditions of the advertisement and wrongly rejected the objection application of the applicant. He has denied that, he has not followed the provisions of G.R. and recruitment rules. He has admitted the fact that, he has published the advertisement inviting the applications of eligible candidates for the appointment on the post of Police Patil of different villages in

Vaijapur Sub Division including village Yesgaon. He has also admitted the fact that, applicant and respondent no.3 had filed their applications and participated in the recruitment process. They appeared in the written and oral examination. He has also admitted the fact that, on conclusion of the process he declared the result of the examination and declared the respondent no.3 as selected candidate, as he secured highest marks in aggregate. It is his contention that, he has given appointment letter to the respondent no.3 as per the legal provisions and there is no illegality. It is further contention that, as per the directions of this Tribunal he decided objection application of the applicant after giving proper opportunity of being heard to all the concerned parties and thereafter he passed the impugned order dated 16.5.2017. It is his contention that, he passed the reasoned order and rejected the objection application of the applicant and there is no illegality in the said order. On these grounds he justified the impugned order and prayed to reject the O.A.

7. The respondent no.3 filed his affidavit in reply and resisted the contention of the applicant. He has denied that, he has been favoured by the respondent no.2 and more marks have been given to him by the respondent no.2 in oral interview. He had

denied that, the respondent no.2 has passed the impugned order by following the provisions of law. It is his contention that, he is member of the joint family and is residing with his father at village Yesgaon Tq. Gangapur Dist. Aurangabad. He further submits that, the agricultural property and house property are in the name of his father. It is his contention that, he is holding small family and he has only two children. He produced affidavit to that effect before S.D.O. on 6.5.2016 after declaring him as selected candidate. No such affidavit has been asked by Respondent no.2 S.D.O. Vaijapur at the earlier stage and therefore, he had not produced it before that. It is his contention that there was no condition in the advertisement to produce the same before oral interview. It is his contention that, S.D.O. has rightly considered his contentions and decided the issue and rejected the objection application of the applicant. It is his contention that, there is no illegality in the order. It is his further contention that, he has scored highest marks in aggregate and therefore, he declared as selected candidate. It is his further contention that, at present he is working as Police Patil of village Yesgaon Tq. Gangapur Dist. Aurangabad.

8. I have heard Shri K. B. Jadhav, learned Advocate for the applicant, Shri N. U. Yadav, learned Presenting Officer for respondent no. 1,2 & 4 and Shri A. B. Rajkar, learned Advocate for respondent no. 3. I have also perused the affidavit in reply and various documents placed on record by the respective parties.

9. Admittedly, the applicant, respondent no.3 and others filed applications for appointment on the post of Police Patil of village Yesgaon in pursuance of the advertisement published by the Respondent no.2 on 10.3.2016 for the post of Police Patil of village Yesgaon. Admittedly, they appeared for the written examination and thereafter called for oral interview. Admittedly, the applicant secured 49 marks in written examination and 10 marks in oral interview and thereby, secured total 59 marks. While respondent no.3 secured 47 marks in written examination and 14 marks in oral interview and secured 61 marks in aggregate. Admittedly, the respondent no.2 declared the result of the recruitment process and published select list on 25.4.2016 and declared the respondent no.3 as selected candidate. It is not much disputed that, the applicant moved an application on 26.4.2017 before the Respondent no.2 and raised his grievance regarding selection of the respondent no.3 on the

post of Police Patil on different grounds. He has also filed another application before Collector on 27.4.2016 raising the same grievances. Admittedly, the application filed by the applicant was not decided by respondent no.2. Therefore, the applicant approached to this Tribunal by filing O.A. No.358/2016. The said O.A. came to be disposed of on 19.4.2017 with a direction to the Respondent no.2 to decide the objection application dated 26.4.2016 filed by the applicant within three weeks. Admittedly, thereafter the respondent no.2 heard all the interested parties and thereafter passed the impugned order dated 16.5.2017 rejecting the objection application of the applicant and on the same day appointed the respondent no.3 as Police Patil by issuing another letter.

10. The learned Advocate for the applicant had submitted that the respondent no.2 has favoured the respondent no.3 and thereby allotted more marks to the respondent no.3 in oral interview and had given less marks to the applicant intentionally. He has submitted that, the applicant was more meritorious candidate than the respondent no.3 as he secured highest marks in the written examination, but the respondent no.2 purposely gave less marks to the applicant in the oral

interview and favoured the respondent no.3 by giving more marks to him. He has submitted that the said attitude of the respondent no.2 shows that, he has not conducted the recruitment process impartially and therefore, he prayed to quash the selection of the respondent no.3 by allowing the O.A.

11. Learned Advocate for the applicant has further submitted that, as per the terms and conditions mentioned in the advertisement the candidate applying for the post must hold small family, as provided in Maharashtra Civil Services (Declaration of Small Family) Rules 2005 he has submitted that, as per the terms and conditions in the advertisement the eligible candidates who passed the written examination have to produce all the original documents for verification and thereafter they will be called for the oral interview. He has submitted that, in the instant case written examination was held on 17.4.2016 and thereafter oral interview of the applicant and respondent no.3 had been conducted on 23.4.2016. He has submitted that, prior to 23.4.2016 the respondent no.3 had not produced the affidavit stating that he was holding small family as required, but he produced the affidavit before Respondent no.2 on 6.5.2016 after publishing the select list. He has submitted that, it is in

contravention of the terms and conditions mentioned in the advertisement, but the respondent no.2 has not considered the said fact while deciding his objection application and therefore, it is just to quash the impugned order by allowing the O.A.

12. Learned Presenting Officer and learned Advocate of the Respondent no.3 have submitted that, the respondent no.2 conducted the recruitment process as per rules and terms & conditions mentioned in the advertisement. The Committee headed by respondent no.2 conducted oral interview of the eligible candidates and allotted the marks on the basis of performance in the oral interview, their educational qualification, general knowledge etc. They have submitted that on conclusion of oral interview the respondent no.2 found that, respondent no.3 secured highest marks i.e. 61 marks in the recruitment process and the applicant has secured 59 marks. Since the respondent no.3 secured highest marks he was declared as selected candidate. They have submitted that, respondent no.2 as per the directions of this Tribunal decided the objection application filed by the applicant on 26.4.2016 after giving hearing to all the interested parties he passed the impugned order accordingly and rejected the objection-application of the

applicant. They have submitted that, the terms and conditions in the advertisement nowhere mention that, the affidavit regarding small family has to be filed by the candidates before oral interview. They have submitted that, the respondent no.2 called upon the respondent no.3 to produce the said affidavit after his selection and accordingly the respondent no.3 produced the same on 6.5.2016 and complied the requirement, which is essential for the appointment of selected candidate on the post of Police Patil. Therefore, the appointment letter was given by respondent no.2 to respondent no.3 as a Police Patil of village Yesgaon, Tq. Gangapur. They have submitted that, the respondent no.2 has passed the reasoned order and rejected the application of the applicant and there is no illegality therein and therefore, they prayed to reject the O.A.

13. On perusal of the documents on record, it reveals that, the application of the eligible candidates have been invited by the respondent no.2 for appointment on the post of Police Patil of different villages in Vaijapur Sub Division including village Yesgaon on 10.3.2016. The advertisement is at page nos.14 to 19 of the paper book. On perusal of the same it reveals that, the required qualification was mentioned therein at page no.15

wherein it is mentioned that, the candidate must hold small family as per provisions of Maharashtra Civil Services (Declaration of Small Family) Rules 2005. Nowhere in the advertisement the stage when the said declaration has to be submitted by the candidate has been mentioned. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant that, the said declaration has to be produced before the recruitment authorities before oral interview. The said requirement has to be complied before the appointment of a person on the post of Police Patil and Respondent no.3 has complied the said requirement by filing affidavit in that regard on 6.5.2016 much before his appointment and after his selection on the post of Police Patil. Therefore, in my opinion there is no breach of any rules or terms and conditions of the advertisement on the part of the respondent no.3 in that regard. The respondent no.2 has rightly considered the said issue and rejected the objection application of the applicant by recording reasons. Therefore, I do not find any infirmity in the impugned order dated 16.5.2017 passed by respondent no.2 rejecting the objection application of the applicant.

14. As regards submissions advanced on behalf of the applicant regarding the favouritism shown by the respondent no.2 to the respondent no.3 there is nothing on record to substantiate the contentions of the applicant in that regard. Therefore, in the absence of substantive evidence the contention of the applicant in that regard cannot be accepted. Therefore, I do not find any substance in the contention of the applicant in that regard.

15. Learned Presenting Officer has placed reliance in the judgment in the case of *Kavita Sandesh Patil Vs. Registrar, High Court, Bombay and others* reported in *2010 (7) Mh. L.J. 78* and submitted that, in view of the provisions of Rule 6 of the Maharashtra Civil Services (Declaration of Small Family) Rules 2005 the employee is empowered to relax provisions of any of the rules. He has submitted that, Rule 4 of the said Rules provides for submission of the declaration regarding small family. He has submitted that, respondent no.2 has rightly considered the said aspect and allowed the respondent no.3 to produce the declaration in that regard before his appointment and therefore, there is no violation of any rules.

16. I have gone through the above said decision and I have no dispute regarding the said principles laid down therein. In this case as discussed above, there was no condition in the advertisement requiring the candidates to produce such declaration before appearing for oral examination and therefore, no question of relaxing the said condition arises and therefore, the said decision is not much useful to the respondent. However, as discussed above the respondent no.2 has rightly permitted the respondent no.3 to produce the said declaration before his appointment and after being satisfied that, respondent no.3 had complied all the requirements, issued the appointment order and rejected the objection application of the applicant. There is no illegality in the impugned orders issued by respondent no.2. Therefore, no interference is called for in it. Consequently the O.A. deserves to be dismissed.

17. In view of the above said discussions the O.A. is dismissed with no order as to costs.

**MEMBER (J)**