

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO 1097 OF 2022**

**DISTRICT : AHMEDNAGAR**

Shri Kiran Suresh Toradmal )  
Occ : Nil, At Baradari, Post-Mehekari, )  
Tal-Nagar,. Dist-Ahmednagar. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
2. The Superintendent of Police, )  
Pune Railway, Old C.I.T Office )  
Compound, Near Shivaji Nagar )  
Sangam Bridge, Pune 411 005. )
3. The Commandant of S.R.P.F, )  
Baramati Road, SRPF, Group-5, )  
Daund, Tal-Daund, Dist-Pune )...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)**

**Mrs Medha Gadgil (Member) (A)**

**DATE : 11.11.2022**

**PER : Justice Mridula Bhatkar (Chairperson)**

## **J U D G M E N T**

1. The applicant prays that the impugned order dated 3.10.2022 be quashed and set aside and the Respondent no. 2 be directed to appoint the applicant to the post of Police Constable pertaining to the Maharashtra State Police Recruitment-2019 (Pune).

2. The applicant has applied for the post of Police Constable pursuant to the advertisement issued by Respondent no. 2, in Railway Police, Pune. The applicant was selected. However, his selection was cancelled by order dated 3.10.2022 pursuant to the decision taken by the High over Committee at the level of Divisional Commissioner, Pune Division, Pune dated 1.9.2022 for the reason that he was prosecuted for the offence of cheating and therefore disqualified.

3. The facts of this case in brief are as under:-

The applicant in January, 2018 earlier has applied for the post of Police Constable at Thane, pursuant to the advertisement issued by the said office. At the time of filling up the application form for that post he has submitted a Certificate of belong to Project Affected Person (PAP) and he has applied from that category. The said PAP Certificate was erroneously issued by the Respondent-State based on a bogus and fabricated Certificate in respect of acquisition of land under the Land Acquisition Act. The said fabricated Certificate was prepared on 1.7.2012. The applicant has filed application for the recruitment process of the year 2018 in the reserved category of PAP and has submitted the false Certificate of PAP of the year 2018. The offence was revealed thereafter and an offence under C.R No. 429/2018 was registered at Kotwali Police Station, Ahmednagar under Sections 420, 467,

473 read with 34 of IPC in September, 2016 against the applicant so also his father, uncle and his elder brother and one private party.

4. Respondent no. 2, issued advertisement in the year 2019 for recruitment to the post of Police Constable and the applicant applied for the said post and cancellation of his selection to that post is the issue before us. After selection the High Power Committee by order dated 1.9.2022 has recommended to reject his selection.

5. Learned counsel Mr Dere has submitted that the applicant was thereafter acquitted from all the offences by judgment and order dated 1.11.2020 passed by the Judicial Magistrate, First Class, 5<sup>th</sup> Court, Ahmednagar. Therefore, his case should be considered positively and his selection should not be cancelled. Learned counsel for the applicant further submits that the applicant has secured 136 marks in OBC category and i.e., the cut-off in OBC category. Learned counsel for the applicant relies on G.R dated 19.7.2017, especially sub clauses (e), (e) & (u) of Clause 3.3. Learned counsel for the applicant has submitted that the applicant did not suppress the fact of his prosecution when he submitted the application in the Recruitment process of 2019 to the Respondent no. 2. Though the applicant has used the PAP Certificate and claimed reservation under the said category, it was in the recruitment process of the year 2018 for the post of Police Constable in Thane District. Learned counsel has submitted that however at that time he has submitted this Certificate prior to the prosecution which was lodged against him and his family members in the year 2018. Thus, the applicant had no knowledge that the PAP Certificate which was available with him and which is in the name of his father and brother Amol was erroneously granted

based on a fabricated documents of forged Certificate issued for acquisition of land under the Land Acquisition Act. Learned counsel for the applicant further pointed out that the selection was cancelled on 3.10.2022, however, on the same day the candidate at Sr. No. 2, Shri R.N Saikar, from OBC category who has the same marks was given appointment. Learned counsel for the applicant has submitted that the order of cancellation of his selection dated 3.10.2022 was served on the applicant on 12.10.2022. Leaned counsel for the applicant has submitted that considering the time sequence, it is surprising that how the candidate at Sr. no. 2 was given appointment on the same day after verification of documents and medical examination. Learned counsel for the applicant further submits that the applicant has the Government in appeal for redressal of his grievance. However, as it is cancelled the applicant has approached this Tribunal and states that as he is meritorious and selected, the order of cancellation of his selection is illegal and the same be quashed and set aside.

6. Learned P.O, while assailing the submission of the learned counsel for the applicant has submitted that the applicant was facing the prosecution for cheating and forgery and that apart the offence is of serious nature and moral turpitude, his name was not considered. Learned P.O has submitted that the High Power Committee has taken decision on the basis of the record available with them and so also the opinion of the District Government Pleader, he was held ineligible and therefore, the authority cancelled his selection. Learned P.O further submitted that the judgment of acquittal was passed one month thereafter, i.e. on 1.11.2020 and therefore, that judgment was not before the Committee when the Committee took the decision to cancel his selection. Hence, no error is committed by the Committee and therefore the order of cancelling the selection should stand.

7. It is now 3.25 pm, as we are in the midst of the dictation, we asked for the minutes of the Committee which were shown to us in the morning session. The record is brought by Mrs Kavita Shinde, Head Clerk in the office of the Superintendent of Police, Railways, Pune. She was aware that we were going to pass the order in the afternoon session, yet she left the Court and we are now informed that she is busy in the office of the Director General of Police. Therefore, we are unable to dictate the order. We, therefore, stop at this stage. We direct the Superintendent of Police, Railways, Pune, not to issue any order and not to process the appointment of any other candidate. In view of the order of wait list, no further orders are to be issued and the S.P is directed to maintain status quo.

8. We have considered the submissions of the learned Counsel for both the sides. The fact that the applicant was held disqualified and his selection was cancelled on account of his prosecution for offence of cheating and forgery is not disputed. We find the flaw in the decision taken by the Committee so also the opinion given by the Public Prosecutor. The G.R dated 19.7.2017 lays down a specific procedure in respect of verification/assessment of the character of the candidate who is going to be appointed to the post of Police Constable. The Government has taken into account a fact and reality that there can be candidates having a history of criminal prosecution applying for the post of Police Constable. In the said G.R especially in clause no. 3, guidelines on this point are laid down which are unambiguous and considerate. Clause 3.1 states that the Committee has to verify the nature of the offence so also the actual participation of the candidate in committing such offence. In Clause 3.3 (3) it is stated that if the incidence of slogans or suppression of information about the petty offences, even furnishing false information at the time of filling up the

application is to be ignored, in view of the young age of the candidate. Clause 3.3 (ख) states that if the candidate is involved in the offence of moral turpitude and if the candidate is acquitted on technical ground or benefit of doubt, then after considering his antecedents he is to be appointed. In clause 3.3 (ग), it is stated that the nature of the offence therein is to be considered while appointing the candidate to the post of Police Constable. We are of the view that neither the Committee nor Public Prosecutor have applied their mind properly to these guidelines in the G.R dated 19.7.2017.

9. Let us now advert to the relevant and important facts of the case which were ignored by the Committee. The applicant was prosecuted along with his father, uncle and two other persons for the offence of cheating and forgery. The document which was forged was Land Acquisition Certificate No. 307/2012 dated 1.7.2012. In the offence one more Certificate was also before the Learned Judicial Magistrate, First Class, i.e., PAP Certificate which was issued on 21.10.2014. The Learned Magistrate has considered the age of the accused when the PAP Certificate was issued, i.e., on 21.10.2014, he was 18 years and 3 months. It is further mentioned that the said PAP Certificate was issued to Accused No. 1 and the accused no. 1 had applied and procured the said PAP Certificate. Thus, the actual offence of forgery has taken place on 1.7.2012. The Learned Judicial Magistrate, First Class in his judgment dated 1.11.2022 has considered the age of the applicant whether he can be tried before him or not and held that applicant falls between the age of 16 to 18 years and therefore, he can be tried. However, it appears from the judgment that the date of birth of applicant is 12.7.1996, which is mentioned in para 32 of the said judgment. In the same paragraph the learned Judicial Magistrate, has considered the issuance of the date of the PAP

Certificate as 21.10.2014. In paragraph 33, the learned Judicial Magistrate, First Class has discussed how the accused no. 3, i.e., the present applicant was not having the knowledge about the falsity of the PAP Certificate. However, in the said judgment one very relevant fact is not discussed, which is pointed out before us. We are of the view that it has a major bearing over the issue of having knowledge and the actual participation of the applicant in the offence of cheating/forgery and fraud. The date of birth of the applicant was 12.7.1996 and thus he became 16 years old on 11.7.2012. The forged Land Acquisition Certificate No 307/2012 was issued on 1.7.2012. Thus, 10 days prior to the applicant attaining the age of 16 years, the PAP Certificate was issued and acquired. Thus, in fact the applicant was minor when the forged Certificate was issued. Further, when the PAP Certificate of 2018 was acquired, it is in the name of his father and his brother Shri Amol and not in the name of the applicant. Thus, there were very less chances of the applicant being aware of this forgery/fraud committed by his father and uncle. The Assessing Committee ought to have realized that when the elderly people take decision and involve in such kind of illegal activities, the minor children in the house have very little say rather they are ignorant about the same.

10. It is to be noted that the PAP Certificate is not a forged one. It is a Certificate prepared and issued by a competent authority. However, the PAP Certificate is issued on the basis of a forged document in respect of acquisition of land under the Land Acquisition Act and therefore, the PAP Certificate loses its authenticity.

11. There is one more aspect of the matter we need to deal with, i.e., the use of PAP Certificate by the applicant was considered at

the time of holding him disqualified. The applicant has earlier applied pursuant to the advertisement issued by the Respondent for the post of Police Constable in the Police Commissionerate, Thane. The said advertisement was issued in the year January, 2018, for which the applicant has submitted the application form. However, the relevant fact which was missed out by the Committee is the FIR registered against the applicant under C.R No. 429/2018 in September, 2018. Thus, it can be definitely said that when the offence was registered against the applicant, he had knowledge that the Certificate issued under the Land Acquisition Act is forged and the PAP Certificate is erroneously issued. Thus, he has used and claimed his candidature based on that PAP Certificate in the year January, 2018, that is much before the registration of the FIR against him. It is necessary to note that the applicant in the present advertisement which was issued in the year 2019, did not apply in PAP Category, but he applied in Open OBC Category. He has also mentioned in the application form about the registration of the offence against him. The case of the applicant is fully covered under the guidelines mentioned in clause 3 of the G.R dated 19.7.2017, which is policy of the State Government. However, the Committee failed to follow these guidelines and policy of the Government. The applicant is acquitted on 1.11.2022. However, we give weightage to the guidelines in the G.R dated 19.7.2017.

12. We are informed that all the posts are filled up. This argument cannot be accepted because the Government has taken illegal decision contrary to their own guidelines mentioned in the G.R dated 19.7.2017. Moreover, we rely on the judgment of the Hon'ble Supreme Court in the case of **GAURAV PRADHAN & ORS Vs. STATE OF RAJASTHAN & ORS, CIVIL APPEAL NO.**



**8351/2017 (ARISING OUT OF SLP (C) No. 30603/2014),**

wherein it is held as under:-

“49. On the question of existence of vacancies, although the learned counsel for the appellant submitted that vacancies are still lying there, which submission however has been refuted by the learned counsel for the State of Rajasthan. However, neither appellants had produced any details of number of vacancies nor the State has been able to inform the Court about the correct position of the vacancies. We thus for adjusting the equity between the parties issued following directions.

(1) The writ petitioners/appellants who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ST/BC candidates who had taken relaxation of age should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment which exercise shall be completed within three months from the date copy of order is produced.

(2) The State shall make appointments against the existing vacancies, if available and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.”

13. Thus, we are of the view that order of cancellation of his selection to the post of Police Constable is illegal and bad in law.

Hence, we pass the following order:-

**ORDER**

- (a) The Original Application is allowed.
- (b) The impugned order dated 3.10.2022 cancelling the selection of the applicant is hereby quashed and set aside.

- (c) The Respondent no. 2 is directed to appoint the applicant to the post of Police Constable pertaining to the Maharashtra State Police Recruitment-2019 (Pune).
- (d) No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 11.11.2022**  
**Dictation taken by : A.K. Nair.**