

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 508/2017

Shri Mukesh S/o Govindrao Thorane,
Aged about 27 years,
Occ. Student, R/o Ward no.3, Khumari, Uparwahi,
Tq. Kalmeshwar, District Nagpur- 441 501.

Applicant.

Versus

- 1) State of Maharashtra through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) Sub Divisional Magistrate,
Tq. Saoner, District Nagpur.

Respondents.

Shri S.B. Tiwari, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for respondents.

**Coram :- Hon'ble Shri A.D. Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 6th day of November,2018)

Heard Shri S.B. Tiwari, learned counsel for the applicant
and Shri A.M. Khadatkhar, learned P.O. for the respondents.

2. The respondents published advertisement dated
7th August,2015 and invited applications for the post of Police Patil
Mouza Uparwahi, Tq. Kalmeshwar, District Nagpur till 31/08/2015.

The applicant submitted his application as he was possessing the material qualification as per the advertisement. The applicant appeared in the examination and he scored 68 marks out of 80 in the written examination and 15 marks out of 20 in the oral interview. The applicant was the first in the order merit. The applicant was waiting for the appointment, time to time he made inquiry with the respondents. It was to the surprise of the applicant that though he passed examination, he was informed that as he was not owner of the property at Mouza Uparwahi, Tq. Kalmeshwar, District Nagpur, therefore, he was not eligible to be appointed as Police Patil. Being aggrieved by this action of the respondents, the present application is filed.

3. The respondent No.2 has filed reply which at page no.21 of the P.B. According to the respondent No.2, as per the advertisement it was a condition precedent that the candidate must own immovable property situated within Mouza Uparwahi, Tq. Kalmeshwar, District Nagpur. The written request was made by the applicant on 30/03/2017 to appoint him on the post and he was informed vide letter dated 15/04/2017 that he could not be appointed as Police Patil Mouza Uparwahi for the reason that as per the Government direction the waiting list lapsed after expiry of one year from the date of selection. It is contention of the respondents that the

name of the applicant was not included in the selection list dated 6/11/2015 and after expiry of the one year, the list came to be lapsed, therefore, the applicant is not entitled for any relief in this matter. It is submitted that there is no substance in this application and it is liable to be dismissed.

4. The learned counsel for the applicant submitted that the claim of the respondents that the candidate must own immovable property within jurisdiction of Uparwahi was itself illegal. It is submitted that MAT, Nagpur Bench in O.A.55/2017 decided on 11/04/2017 held that that the condition candidate for the post of Police Patil must own property within the jurisdiction of the village was contrary to the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Order, 1968.

5. My attention is also invited to the Judgment in case of **Kusheshwasr Prasad Singh Vs. State of Bihar and Ors.,(2007) 11 SCC,447** on relying upon this Judgment of the Hon'ble Apex Court it is claimed that the party who has committed default or omission cannot cause prejudice to the other party and cannot take advantage of own wrong.

6. It is submitted that the approach of the respondent no.2 that a candidate must possess and own immovable property situated

in jurisdiction of Mouza Uparwahi was contrary to the law and consequently now the respondents cannot take advantage of his own wrong and the applicant is entitled for the relief claimed.

7. On the other hand, it is submission of the respondents that as per the G.R. dated 22/08/2014 issued by the Home Department directions were issued to fill the post of Police Patil after conducting the written test, oral examination and to prepare the selection list. It is contention of the Id. P.O. that the selection list was valid for one year and after expiry of the period of one year it stand lapsed. On the basis of this G.R. it is submitted that now applicant is not entitled for any relief in this matter particularly because the selection list is lapsed long back after expiry of one year.

8. It is rightly pointed out by the applicant that in view of the law in case of **Rajesh Krishna Kale Vs. State of Maharashtra & Ors., 2015 (4) Mh.L.J.,799** and **Arun Tukaram Patil Vs. State of Maharashtra & Ors. 1993 (3) Mh.L.J.,594,** the condition in the advertisement that a candidate shall be owner of immovable property situated within jurisdiction of Mouza Uparwahi was itself contrary to the statute and therefore the action of the respondent no.2 refusing appointment to the applicant on this ground was itself is illegal.

9. So far as the contention of respondent no.2 that the selection list is now lapsed and therefore the applicant is not entitled for any relief is concerned, I would like to point out that the action of the respondent no.2 was contrary to the statute and therefore, now respondents cannot take its advantage and refuse the relief. No doubt the list is lapsed, but still the respondent no.2 can forward the name of the applicant to be appointed as Police Patil for due consideration to the respondent no.1 and the circumstances why he was not appointed on the post. With these observations, I pass the following order :-

ORDER

The application is partly allowed. It is declared that a condition that the candidate must own immovable property within jurisdiction of Mouza Uparwahi, Tq. Kalmeshwar, District Nagpur was contrary to law. It is further declared that the action of the respondent no.2 not appointing the applicant as Police Patil, Mouza Uparwahi, Tq. Kalmeshwar, District Nagpur is bad in law. The respondent no.2 is directed to refer the case of the applicant to the Government for granting him suitable relief in this matter. The O.A. stands disposed of with no order as to costs.

Dated :- 06/11/2018.

(A.D. Karanjkar)
Member (J).

dnk.