

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.563/2016.

Smt. Sujata wd/o Ashok Kasurde,
Aged about 31 yrs.,
Occ-Nil,
R/o Gram-Panchayat, Malegaon,
Village Chendkapur, Tq. Katol, Dist.Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Revenue and Forests,
Mantralaya, Mumbai-440 032.
- 2) The Collector,
Nagpur.
- 3) The Sub-Divisional Officer (Revenue),
Katol, Distt. Nagpur.
- 4) The Tehsildar,
Katol, Distt. Nagpur.
- 5) Mrs. Sindhu Ravindra Dhoke,
Aged about 31 yrs.,
Occ-Police Patil,
R/o Gram-Panchayat, Malegaon,
Village Chendkapur, Tq. Katol, Dist.Nagpur.

Respondents

Shri S.K. Patil, Ld. Counsel for the applicant.
Smt. M.A. Barabde, the learned P.O. for respondent Nos.1 to 4.
None appeared for respondent No.5.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 2nd day of May 2017.)

Heard Shri S.K. Patil, the learned counsel for the applicant, Smt. M.A. Barabde, the learned P.O. for respondent Nos.1 to 4. None appeared for respondent No.5.

2. The applicant responded to the advertisement published by respondent No.2 dated 19.6.2015 for the post of Police Patil of village Chendkapur. The post of Police Patil of village Chendkapur was reserved for S.C. (Female).

3. Admittedly the applicant and respondent No.5 Mrs. Sindhu Ravindra Dhoke participated in the process of selection. The applicant got 51 marks whereas respondent No.5 got 52 marks. Respondent No.3 appointed respondent No.5 to the post of Police Patil of village Chendkapur, Tehsil Katol vide order dated 20.6.2016. According to the applicant, respondent No.5 was not eligible for being appointed to the said post and, therefore, she has requested that the appointment order in respect of respondent No.5 be quashed and set aside and her place, the applicant shall be appointed.

4. Respondent No.3 resisted the claim by filing an affidavit in reply. It is the case of the applicant that respondent No.5

has passed S.S.C examination from Madhya Pradesh Board and, therefore, she is not eligible to claim benefit of S.C. category in the State of Maharashtra. Respondent No.3, however, submitted that there was no such condition in the advertisement that a candidate shall pass SSC examination from Maharashtra State only.

5. From the admitted facts, it is therefore clear that there is no doubt that the applicant got 51 marks whereas respondent No.5 got 52 marks and, therefore, respondent No.5 was meritorious. There is also no doubt that the post was reserved for S.C. (Female) and both the applicant as well as respondent No.5 belong to SC category and are female. Thus, prima facie there seems to be no illegality in the appointment of respondent No.5 on the post of Police Patil. However, it is material to note that, respondent No.5 has produced caste certificate from which it seems that she was residing in M.P. State i.e. out of Maharashtra State and, therefore, the caste certificate produced by respondent No.5 is not admissible in the State of Maharashtra. The caste certificate of respondent No.5 is at Annexure A-8 alongwith its typed copy from which it seems that the caste certificate has been issued by the Caste Validity Committee for SC, ST at Pandhurna, Distt. Chhindwara in M.P. State and from the said certificate, it seems that the caste of respondent No.5 is %Mahar+which comes in S.C.

6. The learned counsel for the applicant has placed reliance on the G.R. dated 24.8.1995 issued by Govt. of Maharashtra and particularly para No.3 of the said G.R. reads as under:-

“महाराष्ट्र रा०यात व अ०य रा०यात ँया समान जाती आढळून येतात अशा जातीपैक० एखा०या समान असले०या जातीचे ँमाणप० महाराष्ट्राबाहेर०ल रा०यातील स०म ँाधिकारयाने ँदलेले अस०यास ँया ँमाणप० धारकास या रा०यातील कोणतेह० फायदे ँाप्त होणार नाह०”

7. The learned counsel for the applicant submits that the applicant cannot take advantage of SC category in Maharashtra State, since she belongs to M.P. State as per the said G.R. The learned counsel for the applicant has also placed reliance on the judgment reported in **AIR 1994 SCW 3305 in case of Action Committee on Issue of Caste Certificate to SC and ST in the State of Maharashtra and another V/s Union of India and another.** In the said case, the Honble Apex Court held thus:-

“We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of SCs/STs or Backward Classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally *non-existent* in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis

of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a S.C. does not necessarily mean that if there be another caste bearing the same nomenclature.+

8. The Hon^{ble} Apex Court has held that the SC and ST specified in one State cannot be treated as specified in relation to any other State. In the said judgment, the very G.R. on which the learned counsel for the applicant has placed reliance, has been discussed. It is further observed that if a person is migrated from one State to another, he can claim to belong to a SC or ST only in relation to the State from which he is migrated. The competent authority should not, therefore, issue a caste certificate to a person from other State, where he is ordinarily (SIC) residing in the State or not.

9. In view of discussion in foregoing paras, it is thus crystal clear that even though the respondent No.5 got more marks than the applicant, admittedly the respondent No.5 has been migrated from Madhya Pradesh State to Maharashtra State. Even for the argument sake, it is accepted that she belongs to Mahar community which comes under Scheduled Caste in Madhya Pradesh State, the

respondent No.5 cannot take benefit of the said tribe in the Maharashtra State in view of the G.R. dated 24.8.1995 and, therefore, respondent No.3 ought not to have appointed respondent No.5 as Police Patil from reserved category i.e. S.C. being a migrated woman. The applicant has obtained second highest marks in the examination. She belongs to S.C. from Maharashtra State and, therefore, the applicant should have been appointed as Police Patil. Hence, the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The order dated 20.6.2016 issued by respondent No.3 appointing respondent No.5 as Police Patil of village Chendkapur, Tehsil-Katol, District Nagpur is quashed and set aside.
- (iii) The respondent No.3 is directed to appoint the applicant as Police Patil of village Chendkapur, Tehsil-Katol, District Nagpur.
- (iv) Order to that effect shall be issued within one month from the date of this order.
- (v) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

