

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.693/2016.

(S.B.)

Ajay Yashwantrao Telange,
Aged Major,
Occ-Private,
R/o At & Post Mohada, Tq. Kelapur,
District Yavatmal.

Applicant.

-Versus-

1. The Collector,
Yavatmal.
2. The Sub-Divisional Officer,
Kelapur, District Yavatmal.
3. Piyush Panjabrao Gabrani,
Aged Major,
Occ-Private,
R/o At & Post Mohada, Tq. Kelapur,
District Yavatmal.
4. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.

Respondents

Shri A.P. Sadavarte, the Ld. Advocate for the applicant.
Shri M.I. Khan, the Ld. P.O. for the respondents 1, 2 and 4.
Shri S.A. Marathe, the learned counsel for respondent No.3.

Coram:-Shri J.D. Kulkarni,

Vice-Chairman (J)

JUDGMENT

(Delivered on this 30th day of July 2018.)

Heard Shri A.P. Sadavarte, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for respondent Nos. 1,2 and 4. Shri S.A. Marathe, the learned counsel for respondent No.3.

2. The applicant and respondent No.3 participated in the process of recruitment for the post of Police Patil of village Mohada, Tehsil- Kelapur, District Yavatmal. Admittedly, the applicant and the respondent No.3 secured equal marks i.e. 69 marks out of 100. According to the applicant, as per G.R. dated 22.8.2014, if two or more candidates secured equal marks, then in such circumstances; preference is to be given to a person who is a legal heir of village Police Patil. The applicant being heir of Police Patil, should have been given preference. The applicant has also submitted the order of retirement of his father dated 29.5.2004. The respondent No.3 also stated that he was also heir of Police Patil, since his grandfather Jafarbai Najarali Gabrani was also Police Patil. However, record was not available with respondent No.3 and, therefore, he approached the Police Station, Pandharkawada, who issued a certificate that respondent No. 3's grandfather was Police Patil. On receiving the said documents, the respondent No.2 sought opinion from District Government Pleader, Yavatmal, who opined in

applicant's favour. Thereafter, the respondent No.2 also sought opinion from Law and Judiciary Department, since the applicant was acquitted in one criminal case. However, applicant's claim was not considered. Instead, the respondent No.1 i.e. Collector, Yavatmal rejected the claim of the applicant vide order dated 12.8.2016. Reason for rejection of applicant's claim was as under:-

"प्रस्तुत प्रकरणामध्ये श्री. अजय यशवंतराव तेलंगे यांचेविरुद्ध पोलीस स्टेशन, पांढरकवडा येथे अपराध क्र. ११६/२००० कलम ४५१, ३७६, ३०२ भा.दं.वि. गुन्ह्याची नोंद आढळून आलेली आहे. अतिरिक्त सत्र न्यायालय, केळापूर यांनी दि. २०.८.२००४ च्या आदेशान्वये निर्दोष मुक्तता केलेली आहे. जरी निर्दोष मुक्तता झाली असेल तरी त्यांच्यावर अतिशय गंभीर स्वरूपाचे गुन्हे दाखल असल्यामुळे भविष्यात अशा व्यक्तीकडून समाजात गुन्हेगारी प्रवृत्तीमध्ये वाढ होऊ शकते. सबब, वरील गुन्हे विचारात घेता श्री. अजय यशवंतराव तेलंगे यांना शासन सेवेत नियुक्ती देता येणार नाही, असा निर्णय समितीने घेतला."

3. The applicant has prayed that the impugned order dated 12.8.2016 issued by respondent No.1 be quashed and set aside and the respondent Nos. 1 and 2 be directed to issue appointment order in favour of the applicant for the post of Police Patil.

4. The respondent Nos. 1 and 2 resisted the claim and justified the order in favour of respondent No.3. It is stated that the

case of the applicant was sent to the Police Station, Pandharkawada for character verification and it was informed vide letter dated 23.11.2015 that Crime No. 116/2000 for the offences punishable under Section 451 376 and 302 of the Indian Penal Code was registered against the applicant. Even the applicant was tried for the offences in Sessions Trial No. 263/2002 and the Additional Sessions Judge, Kelapur was pleased to acquit the applicant. However, the respondent authorities thought it proper not to appoint the applicant as Police Patil, considering the charges leveled against the applicant.

5. The respondent No.3 filed an affidavit and justified his selection. He stated in the affidavit that his grandfather was working as Police Patil in the year 1967.

6. From the facts as stated above, there seems to be no dispute that the applicant was tried for the offences punishable U/ss 451 376 and 302 of the Indian Penal Code and was acquitted. The applicant has placed on record a copy of the judgment in Sessions Trial No. 263/2002 (Old No.207/2000). The applicant was charged for serious charges of house trespass, rape and murder. He was acquitted on 20.8.2004. It seems that after unfortunate alleged incident, the victim of the rape was either murdered or committed suicide immediately within some days of incident and,

therefore, she could not be examined and the witnesses examined, turned hostile. The Sessions Court has observed that the witnesses might not have come forward to maintain dignity of the family or for some other reason and according to him, it is a common cause why such offences are not proved. In such circumstances, the applicant was acquitted. The impugned order vide which the applicant's claim has been rejected is placed on record at Annexure A-11, page Nos. 35 and 36 and the reason for rejection of applicant's claim has already been mentioned in the above paras. The Committee was of the opinion that even though, the applicant has been acquitted, serious offences were registered against the applicant and, therefore, considering the same fact, it was decided not to appoint the applicant and, therefore, the respondent No.3 was preferred against the applicant.

7. The learned counsel for the applicant has invited my attention to the G.R. dated 22.8.2014 (Annexure A-1, Page Nos.10 to 13) and particularly para No. 5 (i) which reads as under:-

“५. उमेदवारास समान गुण मिळाल्यास.

गुणवत्ता यादीमधील दोन किंवा त्यापेक्षा अधिक उमेदवार समान गुण धारण करित असतील, तर अशा उमेदवारांचा क्रम खालील निकषावर क्रमवार लावला जाईल:-

१. पोलीस पाटलांचे वारस.”

8. As per the aforesaid clause, it will be clear that if two or more candidates secured equal marks, preference shall be given to the legal heir of Police Patil. Admittedly, the applicant has placed on record the document to show that his father was Police Patil and, therefore, the applicant was legal heir of Police Patil.

9. The respondent No.3 is also claiming to be legal heir of Police Patil. According to him, his grandfather Jafarbai Najarali Gabrani was also the Police Patil and he got retired in 1970. He has also applied accordingly to the Sub-Divisional Officer, Kelapur. But the Sub-Divisional Officer, Kelapur could not issue any certificate, as the record was not available. On the contrary, he directed the applicant to produce the certificate, if the same is available with him. The applicant thereafter applied to the Police Inspector, Police Station, Pandharkawada. The certificate issued by the Police Inspector, Police Station, Pandharkawada is at

Annexure A-4, Page 16, which states that after verification of the record of police station in para-IV of the record in 1968, name of Shri Jafar Ali Najar Ali was found as Police Patil. The Police Inspector, Police Station, Pandharkawada also wrote a letter to the S.D.O., Kelapur accordingly and intimated as under:-

“उपरोक्त संदर्भाकित विशायान्वये पत्राचे अवलोकन केले असता श्री. पियुष पंजाबराव गब्रानी, रा. मोहदा यांचे आजोबा नामे जाफरअली नजरअली गब्रानी हे पोलीस पाटील असल्याबाबतचे प्रमाणपत्र हे पोलीस स्टेशनला उपलब्ध असलेल्या भाग ४ नोंदवहीत नमूद शेरा तसेच अर्जदार यांनी सादर केलेल्या तलाठी यांचा दाखला या वरून अर्जदार याना प्रमाणपत्र निर्गमित कारल्यात आले होते. तसे प्रमाणपत्र स्पष्ट नमूद करण्यात आले आहे. पोलीस स्टेशनला सन १९६८ मधील पोलीस पाटील नोंदवही तसेच मानधन देयकाची नोंद वही उपलब्ध नाही. करिता सविनय सेवेशी सादर आहे.”

10. From the communication, it seems that in the police station record, it is mentioned that Shri Jafarbai Najarali Gabrani, grandfather of respondent No.3 Police Patil Thus, it seems that the grandfather of respondent No.3 was also Police Patil.

11. Admittedly, the applicant and the respondent No.3 have secured equal marks i.e. 69 marks each and it seems that both are legal heirs of Police Patil and, therefore, in such circumstances;

question before respondent No.2 what as to who shall be given preference and, therefore, respondent No.2 thought it proper to give preference to respondent No.3, considering his clean character.

12. The learned counsel for the applicant has placed reliance on various judgments, such as **2018 SCC online SC 8 W.P. No.6701/2016 decided by the Hon'ble High Court of Bombay in State of Maharashtra and another V/s Shri Rahim J. Tundiwale decided on 19.6.2018 and the case of Avtar Singh V/s Union of India and others reported in (2016) 8 SCC 471 decided on 21st July 2016.**

13. The learned counsel for the applicant invited my attention to the observations of the Hon'ble Apex Court in case of **Avtar Singh V/s Union of India** (supra) and particularly para No.30 of the said case which reads as under:-

“30. The employer is given “discretion” to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into

consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that suppression is immaterial and even if facts would have been disclosed, it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the loss. However, while doing so, employer has to act prudently on due consideration or nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case nature of offence, etc. Have to be considered. Even acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of

dubious character. In case employer come to a conclusion that conviction or ground of acquittal in criminal case would not affect the fitness of employment, incumbent may be appointed or continued in service.”

14. Plain reading of the aforesaid para clearly shows that same standard cannot be applied to each and every post and even if a person to be appointed who is acquitted from criminal charges, the employer has to consider the nature of offence whether acquittal is honourable or on giving benefit of doubt on technical reasons and it may decline to appoint a person who is unfit or of dubious character.

15. Considering the facts of the case, the competent authority thought it proper not to appoint the applicant, since he had faced criminal trial for serious offences, such as the offence of house trespass, rape and murder. It is another thing that, the applicant was acquitted, since the prosecutrix could not be examined as a witness, as she was either murdered or committed suicide and other witnesses did not support the prosecution. The Committee was having two cases before it, i.e. one of the applicant who has undergone a trial for criminal offences of serious nature and the respondent No.3, whose character is unblemished. Having secured

equal marks and being legal heirs of Police Patil, the respondent No.2 thought it proper to consider respondent No.3 for the post of Police Patil and I do not find any reason to interfere in such a decision taken by respondent No.2, particularly when no malafides are alleged against the S.D.O., Kelapur. I, therefore, do not find it necessary to interfere in the order.

16. The cases on which the learned counsel for the applicant has placed reliance other than the cases of **Avtar Singh V/s Union of India** (supra) facts are different than that of the present case. Hence, I proceed to pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)
30.7.2018.