

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.

ORIGINAL APPLICATION NO. 773 of 2015

Shrimati Vibha W/o Kishor Bhoyar,
Aged about 32 years,
R/o Ward No. 3, Weltur,
Tahsil Saoner,
Distt. Nagpur.

----- **APPLICANT**

VERSUS

1. The State of Maharashtra through its
Secretary, Deptt. of Home,
Mantralaya, Mumbai.
2. The Sub-Divisional Magistrate,
Tah. Saoner, Distt. Nagpur.
3. Shrimati Rekha W/o Prabhakarji Wankhede,
R/o Weltur, Tah. Saoner,
Distt. Nagpur.

-----**RESPONDENTS**

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1. Shri S.B. Tiwari, Counsel for Applicant.
 2. Smt. M. A. Barabde, P.O. for Respondents 1 and 2.
 3. Shri R.R. Prajapati, Counsel for R/3.
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CORAM : B. Majumdar : Vice Chairman
DATE : 5th May, 2016

ORDER

The applicant has filed this O.A. as she is aggrieved that she has not been selected for the post of Police Patil, Weltur, Tq. Saoner, Distt. Nagpur.

2. On 7/8/2015 the Sub-Divisional Magistrate, Saoner (R/2) issued a proclamation for filling up of the post of Police Patil, Weltur from the category of Open (Female). The condition no. 3 of eligibility as per the proclamation is that the candidate is required to have immovable property in his ownership in the village. As per the merit list the applicant's score is 66 and that of Smt. Rekha W/o Prabhakar Wankhede (R/3) is 59. In the select list R/3 is shown as selected and there is remark which states that " विभा किशोर भोयर (प्रथम) यांच्या स्थावर मालमत्तेचा पुरावा नसल्यामुळे ". Thus the applicant was not selected in spite of her higher marks for the only reason that she did not have proof of owning immovable property in the

village. The applicant has challenged the selection of R/3 in the O.A.

3. The applicant submits that the condition of owning property in the village as stated in the proclamation is inconsistent with the Act and Rules governing recruitment to the post of Police Patil, and therefore he could not have been denied selection on this ground when she was the higher scorer in the written and oral tests. She is a permanent resident of Weltur and her father owns a permanent house and land in the village. She also states that no appointment letter in favour of R/3 has yet been issued.

4. R/2, SDM, Saoner and R/3, Smt. Rekha P. Wankhede, in their affidavit-in-reply submit that the applicant was not selected as she did not own immovable property in the village as is required in terms of the G.R. dtd. 7/9/1999. She did not attach any documents with her application to demonstrate that she owns a house in the village. Hence on this ground she was rightly denied selection.

5. Shri S.B. Tiwari, Id. Counsel for the applicant submitted that R/2 could not have rejected the applicant's case on the sole ground that she did not own any property in the village. That ownership of property cannot be a prerequisite for the post of Police Patil is no longer *res integra* in view of the judgment of hon'ble the High Court in **Arun Tukaram Patil -vs- State of Maharashtra and others [1993 (3) Mh.L.J.594]** as also the order dtd. 23/12/2014 in W.P. No.1228/2014, **Rajesh Krishna Kale-vs- State of Maharashtra and others.**

6. Shri R.R. Prajapati, Id. Counsel for R/3 reiterated the submissions made by R/2 and R/3 in their reply. He further submitted that the applicant was aware of the condition no. 3 regarding ownership of property in the proclamation when she had applied for the post and had participated in the recruitment process. Having done so, she cannot belatedly challenge this condition.

7. I find that the only issue raised in the O.A. is whether it is necessary for a candidate to own immovable

property in the village for applying for the post of Police Patil. Hon'ble the High Court in **Arun Tukaram Patil** has ruled that in terms of the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968, it is not obligatory for the candidate to own property in the village. What is required under Rule 3 (c) of the Order is that no person shall be eligible for being appointed as Police Patil who is not the resident of the village. Similarly in **Rajesh Krishna Kale**, the High Court relying on **Arun Tukaram Patil** held that the G.R. dtd. 7/9/1999 nowhere suggests that holding of own land is mandatory for appointment as Police Patil and in terms of the Police Patil Order, possession of landed property is not a criterion for eligibility for appointment.

8. Thus, in terms of the law laid down as above, R/2 could not have denied selection to the applicant, who was the higher scorer in merit merely on the ground that she did not own property in the village.

9. As regards the submission of the Id. Counsel for R/3 that the applicant having participated in the recruitment

process, is estopped from challenging the condition no. 3 of the proclamation, I find that the applicant has stated that her father owned agriculture land in Weltur and he had applied for mutation for changing the ownership of the land in her favour and a certificate to that effect has also been issued by the Secretary, Gram Panchayat, Weltur. It is thus clear that the applicant had presumed that she fulfilled the condition no. 3 of the proclamation when she had applied. Besides, the condition itself is legally unsustainable. Thus, I find no irregularity in the applicant's participation in the recruitment process.

10. In view of the above, R/2 has clearly erred in selecting R/3 even when she had scored less than the applicant. Hence the O.A. is disposed of in terms of the following direction :-

- a) The impugned select list showing the selection of R/3 as Police Patil for village Weltur is quashed and set aside.
- b) R/2 is directed to appoint the applicant to the post of Police Patil on the basis of her higher

score in merit. This will be done within 4 weeks from the date of receipt of this order.

c) No order as to costs.

Sd/-

(B. Majumdar)
Vice-Chairman.

Skt.