

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 786 of 2017 (S.B.)

Manohar S/o Pralhadrao Rokade,
Aged about 43 years, Occupation : Agriculturist,
R/o Chambhai, Taluka Mangrulpir, Dist. Washim.

Applicant.

Versus

- 1) State of Maharashtra,
through it's Secretary,
Ministry of Home Department,
Mantralaya, Mumbai-32.
- 2) Sub-Divisional Magistrate,
Mangrulpir, Tq. Mangrulpir,
Dist. Washim.
- 3) Dinesh S/o Janrao Fuke,
Aged 35 years, Occu : Nil,
R/o ward no.1, Behind Zilla Parishad High School,
Near Hanuman Mandir Mangrulpir,
District Washim.

Respondents

Shri A.S. Deshpande, Advocate for the applicant.

Shri M.I. Khan, learned P.O. for respondent nos.1&2.

Shri S.S. Dhengale, learned Advocate for respondent no.3.

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

JUDGMENT

(Delivered on this 3rd day of April,2018)

Heard Shri A.S. Deshpande, Id. counsel for the applicant, Shri M.I. Khan, Id. P.O. for respondent nos. 1&2 and Shri S.S. Dhengale, Id. counsel for respondent no.3.

2. The applicant in this case has challenged the order dated 01/09/2015 (Annex-A-8) issued by respondent no.2, i.e., The Sub-Divisional Magistrate, Mangrulpir, District Washim in favour of respondent no.3. It is claimed that the said order be quashed and set aside. Vide order dated 01/09/2015 the respondent no.2 has appointed respondent no.3 Shri D.J. Fuke as Police Patil of village Chambhai, Tq. Mangrulpir. The respondent no.3 has been appointed as Police Patil w.e.f. 01/09/2015 to 31/08/2020 for five years.

3. According to the applicant, as per the advertisement / proclamation a person to be appointed on the post of Police Patil must be resident of village Chambhai. The respondent no.3 is not the resident of said village. The applicant objected for his candidature on 16/06/2015 itself but the said objection was rejected and the respondent no.3 was appointed.

4. The applicant further stated that the entire selection process was biased with intention to give benefit to a particular person. The selection list was prepared on 31/08/2015, i.e., even prior to conduction of written examination and oral interview. The date

of the selection list is “03/08/2015”, but it was scoured and it was re-written as “31”

5. From the facts of the case, it seems that earlier the applicant has filed O.A.No. 533/2015 before this Tribunal challenging the selection list. However, the said O.A. was disposed of vide order dated 13/09/2017. The Tribunal disposed of by making following observations :-

“3. In this O.A. the applicant has claimed that the order dated 3/8/2015 issued by respondent no.2 (Annex-A-6) whereby the respondent no.3 has been selected for the post of Police Patil of village Chambhai, Tq. Mangrulpri, District Washim be quashed and set aside and he is also claiming that respondent no.2 be directed to appoint the applicant as Police Patil for the said village. The learned P.O. has placed on record the copy of the order dated 1/9/2015 which is marked Exh-X for the purposes of identification for which it seems that one Mr. Dinesh G. Fuke who is respondent no.3. in this case has already been appointed as Police Patil and he is very much working as such since then. The very purpose of O.A. thus stand frustrated. If at all the applicant is aggrieved by the appointment of respondent no.3, he should have challenged the said appointment order. In view thereof, nothing survives in the O.A. and hence the same stands dismissed with no order as to costs.”

6. In view of the observations made as referred above, the applicant has filed this fresh O.A. challenging the appointment, since in the earlier O.A. appointment of respondent no.3 was not challenged.

7. The respondent no.2 resisted the claim and submitted that the application is not tenable since the applicant was having an opportunity to

challenge the order of respondent no.3, i.e., impugned order in the earlier O.A., but he failed to take that opportunity and therefore on the same cause of action the application cannot be entitled. On merits also the respondent no.2 justified the selection of respondent no.3. It is stated that the written examination was conducted on 18/08/2015 and the oral interview was taken on 27/08/2015. The applicant never objected for the participation of respondent no.3 till the list was prepared and on the contrary participated in the process of written examination as well as oral interview and therefore he cannot now challenge the process. It is stated that respondent no.3 obtained 51 marks, whereas, the applicant secured only 49 marks and therefore on merit the respondent no.3 has been appointed. The documents submitted by respondent no.3 were duly verified and it was noticed that he was resident of village Chambhai and therefore order was issued.

8. According to the respondents, the applicant was knowing well that the respondent no.3 has been appointed on the post vide impugned order dated 01/09/2015 (Annex-A-8). This fact was known to the applicant at the time of filing of O.A.No.533/2015, still he did not challenge the order in that O.A. The Tribunal has also observed that had the applicant been aggrieved by the order of appointment of respondent no.3, he should have challenged the said appointment order. In the earlier O.A., the applicant only challenged the selection list whereby the respondent no.3 was selected though, in fact, the respondent no.3 was already appointed. Perusal of the record shows that the objections taken in the reply-affidavit

about the maintainability of the application has substance. When the applicant was already having knowledge that the respondent no.3 was appointed on the post vide order dated 1/9/2015, it is surprising as to why he did not challenge the said order in O.A.No.533/2015 which was disposed of on 13/9/2017. Since the applicant did not challenge the order, the application was dismissed and specific observation was also made in the order in this regards. Therefore on the very same cause of action now the applicant cannot again re-agitate the same issue.

9. Being considering the merits of the case, it will be clear that the respondent no.3 got more marks than the applicant and therefore on merit the appointment of respondent no.3 is legal and proper. So far as the objection that respondent no.3 is not resident of village Chambhai, the respondent no.2 has stated in the reply-affidavit that the documents submitted by respondent no.3 were considered by the competent authority and it was noticed that respondent no.3 is resident of village Chambhai.

10. The respondent no.3 has also filed reply-affidavit in this O.A. and tried to justify that he is resident of village Chambahi. He has filed number of documents on record along with list of annexures at P.B. page nos. 44 to 46 (both inclusive) and other documents at P.B. page nos. 47 to 62 (both inclusive). All these documents clearly show that the respondent no.3 is the resident of village Chambhai for which village he has been appointed as Police Patil. Thus there seems to be no merit in the O.A.

11. The another objection taken by the applicant is that the select list was prepared prior to interview. This allegation is being made on the basis of some clerical mistake in the date mentioned in the selection list. Copy of the selection list is placed on record at Annex-A-6 at P.B. page no.28. The said list shows that the date 03/08/2015 in which the date '03' is scoured and is replaced by '31'. The seal on the said document is of dated 31st August,2015. It seems that the applicant is trying to take disadvantage of the dates scoured. It is highly improbable that the respondent no.3 will prepare an antedated select list. There was absolutely no reason for making such antedated select list.

12. On a conspectus of discussion, I am therefore satisfied that there is no merits in the O.A. Hence, the following order :-

ORDER

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

Dated :- 03/04/2018.

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

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