

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 92/2016****WITH CIVIL APPLICATION Nos. 552/2017 & 331/2018 (S.B.)**

Sau. Kiran Sanjay Adole,
Aged about 28 years,
Occ. Household work,
r/o Kharbi, Tq. Ner, Dist. Yavatmal

Applicant.

Versus

1) Kokila Kanteshwar Daivat,
Aged : Adult, Occ. Service,
r/o Kharbi, Tq. Ner, Dist. Yavatmal.

2) State of Maharashtra,
through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.

3) Police Patil Selection Committee,
through its President and
Sub-Divisional Magistrate, Darwaha,
Tq. Darwaha, Dist. Yavatmal.

Respondents.

Shri P.S. Gawai, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for respondent nos. 2&3.

Shri R.V. Shiralkar, learned counsel for respondent no.1.

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

Date of Reserving for Judgment : 27th June, 2019.

Date of Pronouncement of Judgment : 16th July, 2019.

JUDGMENT

(Delivered on this 16th day of July,2019)

The applicant is challenging appointment of the respondent no.1 as Police Patil. The facts in brief are as under.

2. It is submission of the applicant that the respondent no.3 published advertisement on 10/9/2015 for filling the post of Police Patil of Village Kharbi, as the applicant was eligible for the post, therefore, she submitted application. The applicant was called for the examination and for the oral interview. In the examination the respondent no.1 scored 45 marks and the applicant scored 42 marks, therefore, the respondent no.1 was selected.

3. The applicant thereafter learnt that the respondent no.1 had applied for the post of Anganwadi Sewika which was reserved to physical handicapped candidate and as per the Medical Certificate, she was 40% disabled. It is submitted that the respondent no.1 was bound to submit Medical Fitness Certificate before joining the duty and the respondent no.1 submitted false Medical Certificate issued by the Civil Surgeon, Yavatmal and therefore her appointment was illegal.

4. The husband of the applicant lodged complaint on 21/10/2015 addressed to the SDO, Darwha and informed that the respondent no.1 had practiced fraud and she was not suitable for the post of Police Patil, thereupon assurance was given by the SDO,

Darwha to take action, but as nothing was done in reasonable time, therefore, the present O.A. was filed by the applicant.

5. The respondent no.3 submitted reply which is at page no.47. It was submitted by the respondent no.3 that as the respondent no.1 secured highest marks, therefore, she was rightly selected for the post. According to the respondent no.3, the respondent no.1 submitted the Medical Fitness Certificate issued by the Civil Surgeon, Yavatmal and in the Medical Certificate it was mentioned that the respondent no.1 was fit for the post of the Police Patil, therefore she was appointed. It is contention of the respondent no.3 that the applicant made totally incorrect and false averments only for the reason to succeed in the application and for cancellation of appointment of respondent no.1, therefore, there is no substance in this application.

6. The respondent no.1 submitted reply at Exh-52 and she denied all the allegations made by the applicant. It is submitted that the respondent no.1 was referred for medical examination and she was examined by the Civil Surgeon, Government General Hospital, Yavatmal and it was reported that she was fit to discharge duties of Police Patil. The respondent no.1 also admitted that she had applied for the post of Anganwadi Sewika which was reserved for physically handicapped candidate. The respondent no.1 also candidly admitted

that she was physically handicapped person, the percentage of disability was 40% , but it is denied that she was unable to discharge the duties of Police Patil. It is submitted by the respondent no.1 that since the date of appointment, she was discharging the duties of Police Patil, there are no complaints about her work by her Superior and she has not practiced any fraud.

7. The applicant has placed reliance on Annex-A-9 (i) copy of the application submitted by the respondent no.1 for applying to the post of Anaganwadi Sewika in which it is mentioned that she was 40% physically disabled. The applicant has also placed reliance on Annex-A-9 (iii) Medical Certificate issued by the Civil Surgeon, Amravati. It is contention of the applicant that the respondent no.1 practiced fraud on the respondent no.3, she is physically handicapped candidate and she was not capable to discharge her duties as Police Patil.

8. On request of the applicant this Bench had passed the order dated 27/7/2017 thereby directing the respondent no.1 to appear before the Medical Board to know the exact percentage of disability and to know whether the respondent no.1 was fit to perform the duties of the Police Patil. Thereafter, the respondent no.1 appeared before the Medical Board, Yavatmal and the Medical Board, Yavatmal issued Certificate dated 12/09/2017. In this Medical Certificate it was specifically observed by the Medical Board which is as under –

“We hereby certify that we have carefully examined Smt.Kokila Kanteshwar Daiwat a candidate for employment in the Police Patil Dept. and cannot discover that she has any disease constitutional weakness or dodity deformity exept ---- we do not consider this is a disqualification for the employment in the Police Patil dept.”

9. It is pertinent to note that thereafter the applicant again moved the C.A.No. 552/2017 and raised the objection that percentage of the physical disability was not mentioned by the Board, therefore, the respondent no.1 be referred for medical examination and she be asked to appear before the Medical Board at J.J. Hospital, Mumbai. On 8/1/2018 after hearing the learned counsel for the applicant and the learned P.O. and the learned counsel for R-1, order was passed on 8/1/2018 and direction was given for re-medical examination for the respondent no.1. It appears that vide order letter dated 7/2/2018 the SDO, Darwha referred the respondent no.1 for medical examination to the Medical Board, Amravati. It is contention of the respondent no.1 that she was examined by the Medical Board and she was found fit to discharge the duties of Police Patil.

10. Along with the Pursis dated 23/7/2018 the learned P.O. submitted copy of the report issued by the Civil Surgeon, General Hospital, Amravati. In this letter it is specifically mentioned that it was noticed by the medical board Amravati that the respondent no.1's physical disability was 49% and she was medically fit to occupy the

post of Police Patil. Page no.81 is the letter written by the Civil Surgeon and the page no.83 is the Medical Certificate issued by the Medical Board.

11. On the basis of this material, it is contention of the respondent nos. 1 and 3 that though the respondent no.1 is physically handicapped, but in fact she is in position to discharge the duties of Police Patil. It appears from the facts and circumstances of the case that though the respondent no.1 has acquired physical disability which is 49% due to Polio, but the Authorities have given candid opinion that she is able to discharge duties of Police Patil. It is important to note that the respondent no.3 has never objected that due to physical disability the respondent no.1 was unable to perform duty as Police Patil. It seems that the applicant is aggrieved only because she is not selected for the post and the respondent no.1 was selected though she is physically handicapped candidate. Under these circumstances, the applicant is making applications one after another to harass the respondent no.1.

12. In view of this discussion, I do not see any merit in the contention of the applicant that the respondent no.1 does not possess physically ability to discharge the duties as Police Patil.

13. So far as the contention that the respondent no.1 practiced fraud is concerned, I would like to point out that the respondent no.1 candidly admitted that she had applied for the post of Anganwadi Sewika which was reserved for the physically handicapped candidate. The respondent no.1 never suppressed the fact that she was physically handicapped. It seems from the circumstances that it is not a case that though the respondent no.1 was physically handicapped, but she procured a Certificate to the effect that she was not physically handicapped, consequently, I do not see any merit in this application. Hence, the following order –

ORDER

The O.A. & C.As. stand dismissed with no order as to costs.

Dated :- 16/07/2019.

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

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 16/07/2019.
and pronounced on

Uploaded on : 16/07/2019.