

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 109/2016

Shraddha D/o Sanjay Thakre,
Aged about 47 years, Occ. Nil,
R/o Punwat, Tq. Wani,
Dist. Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary
(Department of Home),
Mantralaya, Mumbai.
- 2) Sub Divisional Officer, Wani
Tq. Wani, Dist. Yavatmal.
- 3) Milind S/o Nagorao Borkute,
Aged about 36 years, Occ. Police Patil,
R/o Punwat, Tq. Wani,
Dist. Yavatmal.

Respondents

S/Shri A.M. Tirukh, Sagar Katkar, Advocates for the applicant.

Smt. S.V. Kolhe, P.O. for the respondent no. 1 & 2.

Shri D.B. Pawar, Advocate for Respondent no.3.

Coram :- Hon'ble Shri S.S. Hingne, Vice Chairman.

Dated :- 23/12/2016.

ORDER -

The applicant challenged the appointment of R/3 as Police Patil for village Punwat, Tq. Wani, Dist. Yavatmal on the ground that he is the Zilla Parishad Teacher.

2. Heard Shri A.M. Tirukh, Id. counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for R-1&2. None for R-3.

3. The SDO undertook the recruitment process for the appointment of Police Patil for some villages including the village Punwat and issued the proclamation on 10-9-2015 (A-1,P-16). The applicant secured 70.60 marks and R/3 secured 73 marks (A-10, P-59). Consequently, R/3 came to be appointed vide order dated 19-12-2015 (A-10,P-60).

4. The respondents' case is that as per term no.10 of the proclamation, the applicant was not eligible to be appointed. The term no.10 runs as under :-

“v thkj gk LFkkfud Lojkt; I LFkk I nL; ul kok- rI p I jdkjh fdok fuel jdkjh
I LFkk dk; jr ul kok”-

5. The respondents case is that R/3 was working as a Teacher on clock hours basis and he has submitted the resignation on

17-12-2015 (A-7,P-55) and the same was accepted on the very day and thereafter he was appointed on 19-12-2015.

6. It reveals from the documents available on record that the applicant was working on clock hours basis teacher. The document dated 10-8-2015 (A-4,P-46) shows that that R/3's name is at sr.no.55 and it shows that he was appointed for 29 days on clock hours basis teacher and during the educational year the approval is given to his work for 29 days in each month. The letter further stipulates that the teacher was to get Rs.43 per hour or Rs.54 per hour or Rs.72 per hour according to their category. In the muster roll he is shown as a clock hours basis teacher.

7. The applicant's husband has raised the objection (A-6,P-54) on 16-10-2015 before the SDO, Wani raising this point. However, respondents' case is that R/3 has submitted the resignation and Zilla Parishad has accepted the resignation on the very day (A-7, P-55) and thereafter R/3 is appointed.

8. The learned P.O. submits that terms and conditions in the proclamation are divided in two categories from 1 to 9 in the first category and 10 to 13 in the second category. There is a rider between these 2 sets of terms and conditions. The said rider is at the end of term no.9 which runs as under :-

“ojhy ckcph vt kl kcr i rzk dshul Y; kl vtzv ik= Bjow Hkjrhp; k i qhy
VII; kl kBh vt kpk fopkj dsk tk.kj ukgh”-

9. Relying on the same, Id. P.O. Smt. Kolhe ingeniously argued that the applicant can be held unfit, if the term nos. 1 to 9 is not fulfilled at the time of submitting the application. She proceeded to argue that in case of rest of the terms and conditions the position at the time of issuance of appointment is to be considered. Therefore, according to her the applicant has already resigned and the resignation was accepted on 17-12-2015 and therefore the appointment order issued thereafter on 19-12-2015 is legal and valid.

10. As against this, the learned counsel for the applicant submits that contention of the Id. P.O. is not correct and in support of the submission he relied on the cases **Ashok Kumar Sonkar Vs. Union of India & Ors. (2007) 4 SCC 54** and **Rakesh Kumar Sharma Vs. State (NCT of Delhi) & Ors., (2013) 11 SCC 58**. In these cases the eligibility criteria based on the educational qualification was at stake. Their Lordships observed that if the applicant is not holding the requisite qualification as on the cut off of date or last date of receipt application he cannot be eligible. In **Rakesh Kumar** case (*cited supra*) it is held that after submitting the application if the candidate acquires the requisite qualification subsequently, that cannot be helpful.

11. As against this, the learned P.O. placed the reliance on **Vijay Kumar Mishra & Ano. Vs. High Court Judicature at Patna & Ors. (2016) 2 SCC (L&S) 606**. Their Lordships of the Summit Court of the land in this case held that a candidate who was already in service as a Junior Division, can be eligible for the post of District Judge and he is entitled to take part in the recruitment process without resigning from the post. The Bar under Article 233 (2) of the Constitution of India prohibits only appointment of the person in service and not their participation in recruitment process. The ld. P.O. ingeniously urged that applying such principle the applicant's participation in the selection process cannot be held to be illegal. She proceeded to argue that the applicant has already resigned which was accepted and then appointment order is issued and such order cannot be illegal. The submission holds water.

12. Having regard to the above discussion, the appointment of the applicant cannot be held to be illegal. Consequently, the O.A. is rejected. No order as to costs.

(S.S.Hingne)
Vice-Chairman.