

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 127/2016

Shri Onkar S/o Digambar Bansod,
Aged about 40 years, Occ. Agri.
R/o Anjankhed, Tq. Arni, Dist. Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
Home Department,
Mantralaya, Bombay-32.
- 2) The President,
Police Recruitment Committee /
Sub-Divisional Magistrate,
Yavatmal.

Respondents

Shri T.G. Bansod, Ku. Khushboo Agrawal, Advs. for the applicant.
Smt. S.V. Kolhe, P.O. for the respondents.

Coram :- Hon'ble Shri R.B. Malik, Member (J).

Dated :- 09/02/2017.

ORAL ORDER -

Heard Shri T.G. Bansod, Id. counsel for the applicant and
Smt. S.V. Kolhe, Id. P.O. for the respondents.

2. This O.A. questions the order dated 22-02-2016 made by
the Sub-Divisional Officer, Yavatmal (SDO) whereby the applicant was
informed that in view of pending prosecution against him vide C.R.

339/2013 under Sections 341,395,323,294,506,143,147,148 & 149 of the IPC he could not be given the appointment.

3. I have perused the record and proceedings and heard Shri T.G. Bansod, Id. counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the respondents. I can proceed on the basis that the applicant was otherwise found fit for being appointed as Police Patil of village Anjankhed in Tq. Arni, Dist. Yavatmal. However upon Police verification the Superintendent of Police (SP), Yavatmal informed that the applicant was facing prosecution as detailed at the outset and therefore the impugned order was made. It needs to be noted quite clearly that under the provision of Section 5 of the Maharashtra Village Police Act, 1967, the Govt. has framed the Maharashtra Village Police Patils (Recruitment, Pay and Allowances and Other Conditions of Service) Order, 1968 which deals with the issue presently relevant. The Order 3 deals with eligibility for appointment and Order 3 (1) (e) reads as follows :-

“is adjudged by the competent authority after summery inquiry to be of bad character or his in the opinion of that authority, such antecedents as render his much unsuitable for employment as Police Patil”.

4. Now it is quite clear that the SDO has not held the summary inquiry as therein mentioned and he has apparently relied

solely on the basis of the report of the Superintending of Police. In my opinion, it was necessary for the SDO to act strictly in accordance with the said provisions. Therefore, even now directions will have to be given to him to act in accordance therewith and make what can broadly be called as "Judgment", I must make it is very clear that I am using this expression because of the word "adjudged" in the said provision and not as it is understood legally and technically stricto-sensu.

5. The learned P.O. told me that the significance of the course of action indicated just now lies in the fact that this is some kind of self operating order and may be Order 10 thereof may even prescribe an appeal and therefore the concerned aggrieved party may not be deprived of the said avenue.

6. The submission of Smt. S.V. Kolhe, Id. P.O. for the respondents that the report of Superintendent of Police was itself sufficient enough material for the SDO to act cannot in my view be accepted because after all the order above referred to casts legal obligation on SDO to do a particular thing in a particular manner and it must be done like that only and not otherwise. In view of the conclusion that I must reach it is not necessary for me to examine the merit of matter for which Mr.T.G. Bansod, Id. Counsel for the applicant referred me to the cases **Amita Vs. Union of India & Ano. (2005) 13**

SCC,721 and an unreported Judgment of the Hon'ble Delhi High Court in **Devender Kumar Yadav Vs. Govt. of NCT of Delhi** in W.P. (C) 8731/2011, dated 30-03-2012.

7. It must however be made clear that the facts are such where I am not so inclined as to even provisionally grant an order of appointment, because the whole things cannot depend upon what Mr. Bansod, Id. Counsel for the applicant contended as presumption of innocence and in any case the compliance with the principles of natural justice inhere in the provisions above quoted and I do not think the applicant can possibly make any grievance thereabout. However, for the sake of record the impugned order will have to be set aside because unless that was done the compliance with my directions herein will not be possible.

8. It was pointed out by the Id. P.O. that another person by the name of Datta Bhaskarao Shimare has already been appointed to the post that the applicant is vying for. In my opinion there is no immediate necessity to make any order in that behalf because as already observed above, I am not directing that the appointment be given to the applicant pending summary inquiry but this can be no argument that even if the applicant will have made out a case he should still be denied the fruits thereof. I express no opinion thereabout but I must also add that in due course of time if the

applicant were to move for legal remedy then it will be for him to consider as to whether the said appointee should be impleaded to the action or not.

9. The order herein impugned stands hereby quashed and set aside. The matter is remitted to the SDO, Yavatmal to act in accordance with the observations hereinabove and follow the order fully quoted in the body hereof. He shall conclude the said summary inquiry within a period of four months from today and communicate its outcome to the applicant within one week thereafter. The O.A. stands disposed of in these terms, with no order as to costs.

(R.B.Malik)
Member (J).

dnk.