

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABA**

ORIGINAL APPLICATION NO. 552 OF 2016

DISTRICT: AURANGABAD

Shri Subhash Bhaskarrao Bagal,
Age: 36 years, Occu. : Agriculture,
R/o At Ladgaon, Post : Kumbhephal,
Tq. & Dist. Aurangabad.

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APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**
Though its Secretary,
Department of Home, Mantralaya,
Mumbai-32.
- 2) **The Divisional Commissioner,**
Aurangabad Division, Aurangabad.
- 3) **The Collector,**
Aurangabad.
- 4) **The Sub-Divisional Magistrate/Chairman,**
Police Patil Post Recruitment 2015-2016
Selection Committee, Aurangabad.

(Copy to be served on Presenting Officer,
Maharashtra Administrative Tribunal,
Mumbai, Bench at Aurangabad.)

- 5) **Shri Badrinath Rustum Wankhare,**
Age-26 years, Occ- Police Patil, Ladgaon,
R/o : At Ladgaon, Post : Kumbhephal,
Tq. & Dist. Aurangabad.
- 6) **The Babasaheb Ambedkar Marathwada University,**
University Campus, Near Soneri Mahal,
Jaisingpur, Aurangabad-431004,
Through its Registrar.

.. RESPONDENTS

APPEARANCE : Shri N.K. Chaudhari, learned Advocate
for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Learned Presenting Officer for the
Respondent Nos. 1 to 4.

: Shri S.S. Ware, learned Advocate holding for
Shri Y.V. Dhoble, learned Advocate for
Respondent No. 5.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).

ORAL ORDER

(Delivered on this 21st day of June, 2017.)

1. Heard Shri N.K. Chaudhari, learned Advocate for the Applicant, Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the Respondent Nos. 1 to 4 and Shri S.S. Ware, learned Advocate holding for Shri Y.V. Dhoble, learned Advocate for Respondent No. 5.

2. Learned Advocate for the applicant has submitted that the applicant, as well as, respondent no. 5 had applied for the post of village Ladgaon, Tq. & Dist. Aurangabad by filing online applications. He has submitted that the applicant, as well as, respondent no. 5 had appeared for the written examination and after passing written examination,

they were called for oral examination. After completion of oral examination, the result were declared and both have secured 64 marks in aggregate and therefore, the Sub Divisional Magistrate, Aurangabad applied the criteria contained in the G.R. dated 22.08.2014 for selecting the successful candidate. He has submitted that the applicant is holding degree in Arts, while the respondent no. 5 is holding degree in Commerce. Both are having equal educational qualification and therefore, the Sub Divisional Magistrate, Aurangabad ought to have applied next criteria mentioned in the G.R. dated 22.08.2014 for selecting the candidate for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad. But the Sub Divisional Magistrate, Aurangabad has recorded the findings that the respondent no. 5 was having higher educational qualification than the applicant, as he passed M.Com examination in the month of April 2015 and therefore, he selected the respondent no. 5 for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad.

3. Learned Advocate for the applicant has submitted that in fact, the respondent no. 5 has not completed M.Com degree in the month of April 2015, as well as, on the last date

of filing online application as mentioned in the advertisement dated 8.2.2016 also. But the Sub Divisional Magistrate, Aurangabad has wrongly held that the respondent no. 5 was possessing M.Com qualification at that time. He has submitted that the selection of respondent no. 5 is not in accordance with the guidelines given in the G.R. dated 22.08.2014. Therefore, he prayed to quash and set aside the selection of respondent no. 5 for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad, and to declare the applicant as a selected candidate on the basis of age criteria as mentioned in the said G.R. He has attracted my attention towards the result-sheet of respondent no. 5, which is at paper book page no. 30, as well as, page nos. 68 & 69, and submitted that these documents show that on the date of filing online application i.e. on 08.02.2016 the respondent no. 5 had not completed his post-graduation. As the respondent no. 5 had not completed his post-graduation (M.Com.) on 8.2.2016 his educational qualification on that date was graduation (B.Com.). The Sub Divisional Magistrate, Aurangabad had not considered the said aspect and wrongly declared the respondent no. 5 as selected candidate.

Therefore, the decision of the Sub Divisional Magistrate, Aurangabad, is not legal and proper and therefore, he prayed to quash it.

4. Learned Presenting Officer, as well as, learned Advocate for respondent no. 5 have submitted that the respondent no. 5 appeared for 4th semester of M.Com examination in the month of April 2015, but his result was withheld under the clause EHB (Explicitly Hold Back). They have submitted that the respondent no. 5 received mark-sheet of his 4th semester, which shows that he secured minimum marks of passing and therefore, he has passed the M.Com examination in the month of April 2015. They have attracted my attention towards the mark list of 4th semester of M.Com, which is at page nos. 68 & 69. They have submitted that the learned Sub Divisional Magistrate, Aurangabad, has considered the said aspect. The respondent no. 5 had appeared for post-graduation i.e. M.Com examination held in the month of April 2015, which was much prior to last date of filing online application for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad i.e. prior to 8.2.2016 and therefore, the Sub Divisional

Magistrate, Aurangabad has rightly held that respondent no. 5 completed his post-graduation in April-2015 and therefore, he possessed higher qualification than the applicant. Therefore, they have supported the order of Sub Divisional Magistrate, Aurangabad, by which the respondent no. 5 was selected for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad and thereafter, he was appointed as a Police Patil. They have further submitted that the respondent no. 5 had passed Diploma in Co-operation and Accountancy Board in the year 2013, M.S.C.I.T. in the year 2007, as well as, he has completed course of Plastic Processing Machine Operation in the year 2013. The documents in that regard are placed at paper book page nos. 65 to 67. They have submitted that these are additional educational qualification of the respondent no. 5 and on that criteria also the respondent no. 5 is higher qualified than the applicant and therefore, they prayed to maintain the order passed by the Sub Divisional Magistrate, Aurangabad and to reject the present Original Application.

5. Learned Advocate for respondent no. 5 has frankly admitted the fact that the respondent no. 5 has not

mentioned about his additional qualification regarding the certification, diploma and M.S.C.I.T. in the online application submitted by him. But he has submitted that the said copies regarding his additional qualification had been produced by the respondent no. 5 before the Sub Divisional Magistrate, Aurangabad at the time of passing impugned order.

6. Learned Advocate for the applicant has submitted that the applicant has also completed Diploma in Office Automation and he has mentioned the said fact in his application form.

7. On going through the documents it reveal that the advertisement dated 22.01.2016 shows that the last date for filing online application for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad, was 8.2.2016. In the said advertisement, it has been specifically mentioned in clause no. 21 that if two or more candidates secure equal marks, then the selection will be made in view of the direction/ guidelines given in the G.R. dated 22.08.2014, and sequence made therein. In the instant case, the applicant, as well as, respondent no. 5 secured 64 marks in aggregate in the oral

and written examination. They had secured equal marks and therefore, the Sub Divisional Magistrate had decided to select the candidate for the post of Police Patil in view of the guidelines contained in the G.R. dated 22.08.2014. The applicant and the respondent no. 5 are not the L.Rs. of the Police Patil and therefore, the first criteria was not considered by the Sub Divisional Magistrate, Aurangabad. Therefore, he relied on the second criteria, which provides that the candidate who was possessing higher educational qualification would be selected in such cases.

8. On going through the record and documents, it reveals that the applicant has passed B.A. examination in the year 2001, while the respondent no. 5 has passed B.Com. examination in the year 2012. The respondent no. 5 appeared for post-graduation i.e. M.Com. examination, and appeared for 4th semester examination in the month of April 2015. Marks list of the 4th semester, which was held in the month of April 2015 and for which the respondent no. 5 appeared, is filed at paper book page no. 55. It shows that the result of respondent no. 5 for 4th semester has been held back. There was remark in the result column as EHB

(Explicitly Hold Back). The document at paper book page no. 68 shows that his result has been declared finally in the month of April-2016 and he was declared as pass in the month of April-2016. It means that on the last date of filing online application i.e. on 8.2.2016 the respondent no. 5 had not completed his post-graduation (M.Com.) and in the month of April 2015 his result of 4th semester of M.Com was withheld. Therefore, it cannot be said that he completed his post-graduation course and possessed post-graduation degree on the last date of filing online application for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad, as mentioned in the advertisement i.e. on 08.02.2016. Therefore, it cannot be said that the respondent no. 5 acquired higher educational qualification than the applicant on the last date of filing online application i.e. on 8.2.2016. It means that on that date the applicant, as well as, respondent no. 5, were possessing equal educational qualification i.e. graduation. Therefore, the Sub Divisional Magistrate, Aurangabad, ought to have considered the next criteria mentioned in the G.R. dated 22.08.2014. But the Sub Divisional Magistrate, Aurangabad has not considered the

said aspect. He has committed error in holding that the respondent no. 5 had passed 4th semester of M.Com in the month of April 2015 and he was possessing higher educational qualification than the applicant and thereby, he has committed error in selecting respondent no. 5 for the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad. Therefore, the impugned order of Sub Divisional Magistrate, Aurangabad selecting respondent no. 5 as a Police Patil and appointing him subsequently on the said selection is not legal and proper and in accordance with the guidelines/directions given in the G.R. dated 22.8.2014. Therefore, it requires to be quashed and set aside and to direct the Sub Divisional Magistrate, Aurangabad, to consider the next criteria mentioned in the G.R. dated 22.8.2014 for making selection on the post of Police Patil of village Ladgaon, Tq. & Dist. Aurangabad from the applicant and respondent no. 5. Therefore, the O.A. deserves to be allowed.

9. In view of the above facts, the O.A. is allowed. The impugned orders dated 14.03.2016 passed by the Sub Divisional Magistrate, Aurangabad, selecting and appointing

the respondent no. 5 as a Police Patil of village Ladgaon, Tq. & Dist. Aurangabad are quashed and set aside.

The Sub Divisional Magistrate, Aurangabad i.e. respondent no. 4 is directed to reconsider the cases of the applicant and respondent no. 5 afresh in view of the guidelines given in the G.R. dated 22.08.2014 considering the next criteria as mentioned therein and to take proper decision on merit within a period of 15 days from the date of the order.

There shall be no order as to costs.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 552 of 2016 BPP 2017 Police Patil