

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.272 OF 2016

**DISTRICT: PUNE
SUBJECT: POLICE PATIL**

Sau. Swati Hindurao Desai,)
Aged 41 years, Occ. Nil.,)
R/o. At Salpewadi, Post. Fanaswadi,)
Tal. Bhudargad, Dist. Kolhapur.) ... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through The Secretary,)
Revenue Department, Mantralaya,)
Mumbai-32.)
- 2) The Collector of Kolhapur,)
C/o. Collector Office, Nagala Park, Kolhapur.)
- 3) The Sub-Divisional Officer,)
Ajara-Bhudargad Sub-Division, At Gargoti,)
Tal. Bhudargad, Dist. Kolhapur.)
- 4) Smt. Varsha Sanjay Desai,)
Occ. Police Patil, R/at. Salpewadi,)
Post Phanaswadi, Tal. Bhudargad,)
Dist. Kolhapur.).. **Respondents**

Shri K.R. Jagdale, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

Shri R.M. Kolge, learned Advocate for the Respondent No.4.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 04.10.2021.

JUDGMENT

1. The Applicant has challenged the appointment order of the Respondent No.4 on the post of Police Patil and its continuation as well as prayed for direction that he be appointed as Police Patil, Salpewadi, Post Fanaswadi, Tal. Bhudargad, Dist. Kolhapur.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

Respondent No.3 – Sub Divisional Officer (S.D.O.), Ajara-Ajara-Bhudargad Sub-Division Gargoti, had issued notification on 27.11.2015 inviting application for the post of Police Patil of village Salpewadi. In pursuance to it the Applicant as well as Respondent No.4 applied for the post of Police Patil and participated in process. One of the condition which is relevant here for eligibility for appointment to the post of Police Patil is that person appointed on the post of Police Patil should not participate in politics nor he should remain Member of political party (condition No.7 of notification dated 27.11.2015).

3. In recruitment process the Applicant got highest marks and accordingly came to be appointed on the post of Police Patil for five years by order dated 29.01.2016. However, later one Shri Yashwant Sakharam Mulik resident of Saplewadi made compliant to the S.D.O. that the Applicant is a Member of Jijamata Mahila Milk Co-operative Society, and therefore, not eligible for continuation as Police Patil. Respondent No.3 – S.D.O. issued Show Cause Notice to the Applicant and called his explanation. The Applicant submitted his Reply stating that he had already tendered resignation on 09.01.2016 and objection raised in this behalf is without any merit. However Respondent No.3 – S.D.O.

by order dated 10.03.2016 held that the Applicant has been working as Director of Jijamata Mahila Milk Co-operative Society and thereby committed breach of condition no.7 of the notification and consequently cancelled his appointment on the post of Police Patil. Later Respondent No.3 – S.D.O. appointed Respondent No.4 as Police Patil by order dated 18.03.2016. It is on this background the Applicant has filed the present O.A. challenging the appointment of Respondent No.4

4. Since initially Respondent No.4 was appointed for the period of five years and the said terms of five years had come to an end. Respondent No.3 in the month of June 2021 extended the appointment of Respondent No.4 for another ten years invoking Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968. The Applicant therefore amended the O.A. challenging the appointment of Respondent No.4 by order dated 18.03.2016 as well as his continuation.

5. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail impugned order dated 10.03.2016 whereby his appointment has been cancelled as well as also assailed the appointment order dated 18.03.2016 in favour of Respondent No.4 and his continuation *inter-alia* contending that there is no such breach of condition no.7 by the Applicant and all that the Applicant was Director of Jijamata Mahila Milk Co-operative Society, which cannot be said disqualification for the post of Police Patil in view of the decision **(2015) 6 MhLJ 393, Sunita vs. District Collector Ahemadnagar**. He has pointed out that the issue of Membership or involvement in activities of Co-operative Society is dealt with by Hon'ble High Court and it has been ruled

that if a person is Member of Co-operative Society he cannot be said ineligible for the post of Police Patil since it is not a political activity.

6. Per contra, learned P.O. and Shri R.M. Kolge, learned Advocate for the Respondent No.4 submits that on the date of appointment on the post of Police Patil the Applicant was Director of Jijamata Mahila Milk Co-operative Society and he has tendered resignation which was accepted only on 08.03.2016, and therefore, impugned action by S.D.O. cancelling his appointment to the post of Police Patil is legal and valid. They further contended that initially Respondent No.4 was appointed for five years and said period is now over, therefore O.A. has become infructuous.

7. True, initially Respondent No.4 was appointed for the post of Police Patil for the period of five years by order dated 18.03.2016 and his term of five year was already over on 17.03.2021. However, S.D.O. later by order issued in June 2021 continued the Applicant for another five years invoking Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968. This being the position it cannot be said O.A. has become infructuous and the same is required to be decided on its own merit.

8. As stated above, sole ground on which the appointment of the Applicant has been cancelled was breach of condition no.7 which is as under.

“7. अर्जदार व्यक्तीची पोलीस पाटील पदी नेमणूक झाल्यास त्यास राजकारणात भाग घेता येणार नाही किंवा राजकीय पक्षाचा सभासद राहता येणार नाही ”

9. Whereas the Applicant contends that he had already tendered resignation, and therefore, there is no breach. In so far as this aspect is concerned certificate at page 90 reveals that his resignation was accepted on 08.03.2016, whereas he was appointed on the post of Police Patil on 29.01.2016.

10. Be that as it may, crux of the matter is whether the Applicant was ineligible for continuation on the post of Police Patil on the ground that he had committed breach of condition no.7, which was to the effect that person appointed to the post of Police Patil should not participate in politics and should not remain member of any political party or organization. This issue is already ruled by Hon'ble High Court in Sunita's Judgment (cited supra) Hon'ble High Court has taken note of relevant provision of M.C.S. Conduct Rules as well as Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968 and ruled that involvement in political movement or political activities cannot be extended to include Membership or activities in Co-operative Society. In that case Respondents had contested the election of Vividh Karyakari Society and on that ground he was declared not eligible for the post of Police Patil. However, Hon'ble High Court held that the involvement in Co-operative Society at village level which is for the betterment of farmers / agriculturist cannot be equated with the political movements. In para. 8, 9, 10, 11 & 12 the Hon'ble High Court held as under.

"8 The bone of contention of the Petitioner is that Respondent No.4 herein is ineligible to be considered for appointment to the post of Police Patil as Respondent No.4 had contested the election of a village level Vividh Karyakari Society.

9 There cannot be any dispute with the proposition that by virtue of Rule 1(3) of the Conduct Rules, 1979, Rule 5 of the Conduct Rules, 1979, is applicable to the person appointed as Police Patil. Rule 5 of the Conduct Rules, 1979, lays down an embargo on a Government Servant to be a member of or be otherwise associated with any political party, organization, which takes part in politics nor allows a Government Servant to take part in or subscribe in aid of or assist in any other manner any political movement or activity.

10 It is trite that a provision, which entails civil consequences or imposes any restrictions on the right of any person has to be construed strictly and such a provision cannot be construed liberally. The said Rule will have to be interpreted in a manner it subserves the object and purpose for enactment of such a Rule. All the provisions of the Conduct Rules, 1979, which are made applicable to the Government Servant do not apply to the persons appointed as Police Patil. By virtue of Sub-Rule 3 of Rule 1 of the Conduct Rules, only Rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 of the Conduct Rules, 1979, apply to the persons to be appointed as Police Patil. Rule 16 of the Conduct Rules, 1979, which prohibits a Government Servant from doing any business or engaging in any other occupation is not applicable to the post of Police Patil. On the contrary, by virtue of clause 8 of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Orders, 1968, the Police Patil is allowed to cultivate his land or engage in local business or trade in the village, in such a manner as is not detrimental to the performance of his duties as a Police Patil.

11 We have perused the Bye-Laws of the Vividh Karyakari Society. The main object of said society is the welfare of agriculturist and do all the jobs necessary for upliftment of agriculturists.

12 A village level Vividh Karyakari Society, which caters to the farmers cannot be said to be a society, involved in any

political movement or political activity. If the object of the said Vividh Karyakari Society is perused, it is manifest that it is not even remotely concerned with any political movement or activity."

11. Now turning to the facts of the present case, except involvement of the Applicant in Jijamata Mahila Milk Co-operative Society no other ground is raised for cancellation of his appointment. There is absolutely nothing to indicate that he was involved in any political activity or Member of political party or organization. As such what is barred is involvement in politics and there is no such bar of involvement in the activities of Co-operative Societies of the village. The Applicant is not associated with any political party or association but he was Director of Jijamata Mahila Milk Co-operative Society. Suffice to say in view of the decision that the Hon'ble High Court, it is no more *res-integra* that the Applicant did not incur any disqualification while serving as Director of Jijamata Mahila Milk Co-operative Society. Impugned order cancelling the appointment of the Applicant is therefore totally indefensible and unsustainable in law and facts.

12. Apart, after completion of five years term of Respondent No.4 his continuation for another ten years by S.D.O., invoking the Clause No.4 of Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968 is not legal. Here material to note that as per clause 4 of the said order, person appointed as the Police Patil for a period of five years can be continued for further terms of five years at a time, provided he has not attained the age of 60 years, whereas in present case S.D.O had extended the tenure of the Applicant directly for ten years from 18.03.2021 to 17.03.2031, which is totally in contravention of

Maharashtra Village Police Patil (Recruitment, Pay and Allowances & Other Conditions of Services) Order, 1968.

13. The totality of the aforesaid discussion leads me to conclude that the impugned order dated 10.03.2016 cancelling the appointment of the Applicant to the post of Police Patil is totally bad in law. Consequently the appointment order of the Respondent No.4 to the post of Police Patil by order dated 18.03.2016 and his continuation is also liable to be quashed. The Applicant is entitled to the appointment to the post of Police Patil and he be appointed accordingly.

ORDER

- (A) O.A. is allowed.
- (B) Impugned order dated 10.03.2016 cancelling the appointment of the Applicant on the post of Police Patil is quashed and set aside.
- (C) Impugned order dated 18.03.2016 appointing Respondent No.4 for five years and continuing him on the post of Police Patil for ten years are quashed and set aside.
- (D) Applicant be appointed on the post of Police Patil, Village Salpewadi, District Kolhapur.
- (E) Respondent No.3 – S.D.O. is directed to issue necessary orders within a month from today.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 04.10.2021
Dictation taken by: N.M. Naik.