

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 985/2018

Manoj Shankarrao Wankhede,
Aged about 27 years, Occ :Nil,
R/o Katkheda, Tq. Daryapur,
Distt. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-440 032.
- 2) The Sub-Divisional Magistrate,
Daryapur, Distt. Amravati.
- 3) Rahul Bhimrao Raibole,
Aged about 36 years, Occ :Member
of Gram-Panchayat,
R/o Katkheda, Tq. Daryapur,
Distt. Amravati.

Respondents

Shri R.D. Hazare, Advocate holding for Shri A.A. Dhawas, Ld.
counsel for the applicant.

Shri A.M. Khadatkhar,Ld. P.O. for the respondent Nos. 1 and 2.

Shri S.N. Gaikwad, Ld. counsel for respondent No.3.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 13th January 2022.

Heard Shri R.D. Hazare, Advocate holding for Shri A.A.
Dhawas, Ld. counsel for the applicant, Shri A.M. Khadatkhar, Ld.

P.O. for the respondent Nos. 1 and 2 and Shri S.N. Gaikwad, learned counsel for respondent No.3.

2. Grievance of the applicant is that, respondent No.3 was not eligible for being appointed to the post of Police Patil of Katkheda and on the said post he, the applicant ought to have been appointed.

3. Respondent No.2 issued advertisement dated 2.4.2018 (Annexure A-2) to fill up the vacant posts of Police Patil in Daryapur / Anjangaon Surji Talukas. Clause 11 of this advertisement stipulated—

“11- vtZnkj gk xzkeiapk;r lnL; ulkok] rlsp [kktxh fdaok fue ljdkjh laLFkspk lnL; ulkok vFkok iq.kZ osG ukxdjh dj.kkjk ulkok-“

The applicant fulfilled the eligibility criteria. He applied for the post of Police Patil, Katkheda. After written examination and oral interview, he and respondent No.3 were short-listed for the post of Police Patil, Katkheda. Applicant secured 53.50 marks whereas respondent No.3 secured 55.75 marks. On the basis of this score, respondent No.3 was declared to be eligible for selection and the applicant was declared to be ineligible (shortlist is at Annexure A-4).

Respondent No.3 was elected Member of Gram-Panchayat, Telkheda as shown in Annexure A-5 and Annexure A-6. On the date of publication of advertisement (Annexure A-2), respondent No.3 was holding this office. He was, therefore, not

eligible for being considered for the post of Police Patil. The applicant objected to appointment of respondent No.3 to the post of Police Patil, Katkheda by filing objection (Annexure A-7) before respondent No.2. To this objection, respondent No.3 filed reply (Annexure A-8) and submitted that before taking appointment he had resigned as Member of Gram-Panchayat.

On 6.7.2018, respondent No.3 submitted his resignation (Annexure A-9). On 7.7.2018, his appointment order (Annexure A-11) was issued by respondent No.2.

Since respondent No.3 was not eligible on the date of publication of advertisement (Annexure A-2), he ought not to have been appointed. Instead, the applicant being the only other shortlisted candidate ought to have been appointed.

Respondent No.2, by order dated 24.8.2018 rejected objection filed by the applicant and held that appointment of respondent No.3 to the post of Police Patil could not be faulted. In this order (Annexure A-10), respondent No.2 observed that respondent No.3 had already resigned on 6.7.2018 and thereafter on 7.7.2018, he was appointed to the post of Police Patil.

According to the applicant, respondent No.3 was not eligible on the date of publication of advertisement in view of Clause 11 contained in it and subsequent tender of resignation could not have made him eligible. Hence this application.

4. Respondent No.2, by his reply (at pages 44 to 51) resisted the application on the following grounds:-

(A) The matter would not fall within the definition of “service matter” as given in Section 3 (q) of the Administrative Tribunals Act.

(B) Application cannot be entertained because of availability of equally efficacious alternative remedy.

(C) Order of respondent No.2 rejecting objection of the applicant to the appointment of respondent No.3 is fully sustainable in law. While passing this order, respondent No.2 relied *inter alia* on the judgment dated 24.8.2016 passed by this Tribunal in O.A. No. 662/2015.

5. The applicant is relying on the afore-quoted Clause 11 incorporated in advertisement (Annexure A-2) to support his case. Respondent Nos. 2 and 3, on the other hand, are relying on the ground aforesaid “C” taken in reply of respondent No.2.

6. The applicant is relying on **“M/s Abidabanu Najirkhan Mulla V/s Zilla Parishad, Satara and others, 2019 (5) ALL MR 627 (Bombay High Court).** In this case, it is held in Para 11-

“11. It will be relevant to refer to the following observations of the Hon’ble Apex Court in the case of **Ashok Kumar Sharma and others V/s Chander Shekhar and another, (1997) 4 SCC 18:-**

“The proposition that where applications are called for prescribing a particular date as the last date for filling the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued / published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself.”

It could thus been seen that what is relevant is either the date of the application or the date as prescribed in the application for eligibility”.

In this case, the cut off date was stipulated for computing duration of experience. In this factual background, the Bombay High Court observed thus,

“It is settled principle of law that the eligibility has to be taken into consideration as per the provisions made in the advertisement. When the advertisement specifically gives cut-off date of 4th August 2013, the relevant date is 4th August 2013 and not the date of the interview.”

In the instant case, question is what would be the effect of Clause 11 in advertisement (Annexure A-2) on merits of the case.

7. Reply of respondent No.2 as well as the order passed by him rejecting objection of the applicant contains reference to order passed by this Tribunal in O.A. No.662/2015. In O.A. No.662/2015, the chronology was as under:-

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|------------------|--|
| (i) 24.8.2015 | Proclamation issued. |
| (ii) 26.8.2015 | Applicant resigned as a Member of Gram-Panchayat (P.21,A-1) |
| (iii) 4.9.2015 | Applicant submitted application for Police Patil. |
| (iv) 28.9.2015 | Gram-Panchayat accepted the resignation of the applicant on 28.9.2015 (P.24) in the meeting. |
| (v) 13.10.2015 | Interviews held. |
| (vi) 17.10.2015 | Intimation given to the applicant about acceptance of his resignation. |
| (vii) 29.10.2015 | Select list published. |

On the basis of this chronology, it was observed-

“Thus he had already given resignation before filing application for the post. This also demonstrates that the resignation of the applicant was already given and accepted by Gram Panchayat before he appeared for interview.”

It was further observed that condition (analogous to Clause 11 in advertisement (Annexure A-2) was not in consonance with the provisions of the Maharashtra Village Police Patil Act, 1967.

While allowing O.A. No.662/2015, this Tribunal relied on the judgment dated 17.10.2011 in O.A. No.376/2011, wherein it is held, *“A Member of a political party or local body is not ineligible for appointment to the post of Police Patil.”* In O.A. No. 376/2011, this Tribunal observed-

“The Maharashtra Village Police Patil Act, 1967 deals with the subject of appointment, remuneration and other conditions of service of Police Patil. The said Act also lays down the duties of the Police Patils and penalties to be imposed on Police Patil. In exercise of powers under sub-section (3) of Section 5 of the Maharashtra Village Police Patil Act, 1967, the Government of Maharashtra has framed the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968. The said order vide Rule 3 lays down the eligibility for appointment to the post of Police Patil. Section 3 which lays down eligibility for appointment to the post of Police Patil, does not declare an active member of political party to be ineligible for appointment to the post of Police Patil. It also does not disentitle the member of Gram-Panchayat from competing for the post of Police Patil. The Ld. P.O. candidly submits that he is unable to point out any provision of law which declares an active member of political party and / or member of the Gram-Panchayat to be ineligible for appointment to the post of Police Patil. No such disqualification is to be found in the Act or the Order.”

What is held in O.A. Nos. 376/2011 and 662/2015 squarely applies to facts of the case in hand. Ruling of the Bombay High Court referred to above is distinguishable on facts. Since Clause 11 incorporated in Annexure A-2 runs counter to statutory Rules, the same would not help the applicant in any way. Appointment of respondent No.3 is made as per Statute and the relevant rules, which do not provide for disqualification on the ground mentioned in Clause 11 of Annexure A-2.

8. It may be reiterated that between the two shortlisted candidates, viz. the respondent No. 3 and the applicant, the former had secured more marks.

9. For all these reasons, the application shall fail. Hence, the following order:-

ORDER

1. The Original Application is dismissed.
2. No other as to costs.

(M.A.Lovekar)
Member (J)