

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1032 OF 2019

DISTRICT : PUNE

Shri Ranjeet Shantaram Kamble.)
Age : 41 Yrs., Occu.: Agriculture,)
R/at : Alegaon Paga, Taluka : Shirur,)
District : Pune.)...**Applicant**

Versus

1. Sub-Divisional magistrate-cum-Sub)
Divisional Officer, Sub-Division,)
Pune, Old Jilha Parishad, 3rd Floor,)
Near Sasoon General Hospital, Pune.)
2. Vishal Bapu Avchite.)
Age : 27 Yrs., Occu.: Agriculture.)
3. Laxman Vithal Kamble.)
Age : 33 Yrs, Occu.: Service,)
)
Respondent Nos.2 & 3 residing at)
Alegaon Paga, Tal.: Shirur, Pune.)...**Respondents**

Mr. S.B. Rohile, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent No.1.

Mr. A.S. Kanigdhwaj, Advocate for Respondent No.2.

None for Respondent No.3.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 17.09.2021

JUDGMENT

1. The Applicant has challenged the order dated 14.05.2019 passed by Respondent No.1 – SDO thereby rejecting the objections raised by the Applicant about the veracity of the documents tendered by Respondent No.2 while he was selected on the post of Police Patil of Village Alegaon Paga, Taluka Shirur, District Pune.

2. Shortly stated facts giving rise to this application are as under :-

The Respondent No.1 – SDO issued Notification dated 06.06.2017 to fill-in the post of Police Patil of Village Alegaon, Taluka Shirur, District Pune and invited applications who fulfill the conditions mentioned therein. One of the conditions which is relevant here was that the candidate must have completed minimum 25 years of age on 06.06.2017. In pursuance of said Notification, the Applicant as well as Respondent No.2 participated in the process. They appeared in written examination as well as interview. The Respondent No.2 secured 73 marks whereas Applicant secured 70 marks. Since Respondent No.2 secured highest marks, he came to be appointed as Police Patil by order dated 18.12.2017. Thereafter, Applicant raised objections by making representations to the SDO that Respondent No.2 had played fraud while submitting documents about date of birth and Maharashtra Chhatra Sena (MCC) Certificate. On receipt of objections, the Respondent No.1 – SDO called explanation of Respondent No.2 as well as also called for the information from Block Development Officer, Kavathe M.I. regarding date of birth of the Applicant and also called information from Head Master, Bhairavnath Middle Education, Alegaon Paga, Taluka Shirur, District Pune about MCC Certificate. The Respondent No.1 – SDO thus conducted enquiry and satisfied that there is no such fraud as alleged by the Applicant and rejected the objections by order dated 14.05.2019, which is under challenge in the present O.A.

3. Shri S.B. Rohile, learned Advocate for the Applicant submits that Applicant's date of birth is 02.07.1992 and not 02.05.1992 as shown by him while furnishing information, and therefore, he had not completed 25 years of age on the cut-off date. He further submits that the Certificate issued by Head Master regarding MCC participation is also incorrect, and therefore, the Applicant was not entitled for two marks given to him for the said qualification. He, therefore, submits that Respondent No.2 had played fraud while securing appointment for the post of Police Patil and his appointment is liable to be quashed.

4. Per contra, the learned P.O. and learned Advocate for Respondent No.2 submits that there is no such fraud or suppression of material fact as alleged by the Applicant and on receipt of objection, the Respondent No.1 – SDO had conducted enquiry about the factual aspects and was satisfied that there is no such fraud so as to cancel the appointment of Respondent No.2.

5. The objection raised by the Applicant on the appointment of Applicant was on two grounds. First, the Applicant's date of birth as 02.05.1992 mentioned in information supplied at the time of recruitment is incorrect, since his date of birth is 02.07.1992. Second objection is about the veracity of MCC Certificate tendered by the Applicant for which two marks were given to Respondent No.2.

6. The perusal of application submitted by the Applicant for the post of Police Patil reveals that he has shown date of birth as 02.05.1992 on the basis of School Leaving Certificate issued by Narsoji Wadia College, Pune. As per this date of birth, he had completed 25 years, 1 month and 4 days age of cut-off date. Whereas, while submitting reply in the enquiry conducted by SDO, he had stated that as per Birth Register maintained by Gram Panchayat, Kavathe, his real date of birth is 11.04.1992 but in School Leaving Certificate due to illiteracy of parents, the date of birth is mentioned as 02.05.1992 which was carried forward

in the Leaving Certificate issued by Wadia College, Pune. In explanation, he further states that in Aadhar Card in middle School Leaving Certificate and in Pan Card, the date of birth is wrongly mentioned as 02.07.1992 whereas his real date of birth is 11.04.1992. In support of it, he had tendered Birth Certificate issued by Gram Panchayat, Kavathe wherein his date of birth is recorded as 11.04.1992. The SDO placed reliance on this Birth Certificate and rejected the objection.

7. Thus, what transpires that in Birth Register maintained by Gram Panchayat, Kavathe, the date of birth of Applicant is recorded as 11.04.1992 but in Middle School Leaving Certificate and Aadhar Card, it was recorded as 02.07.1992 whereas in Leaving Certificate of Wadia College, Pune, it is mentioned as 02.05.1992. Needless to mention that the date of birth recorded by local body i.e. Gram Panchayat or Municipal Corporation have greater evidential value than the date of birth recorded in School Leaving Certificate. Often, while taking admission in School, parents record different date of birth may be due to illiteracy or to secure admission. Suffice to say, it is well settled that the date of birth recorded by local body in Birth Register which is Public Document always prevails, unless there is some other conclusive evidence to disprove the same. In the present case, no such conclusive evidence is forthcoming. Therefore, the decision recorded by SDO that on cut-off date, the Applicant had completed 25 years' of age and eligible for appointment to the post of Police Patil cannot be faulted with.

8. The learned Advocate for Respondent No.2 rightly referred to the decision of Hon'ble Bombay High Court in **Civil Writ Petition No.6962/2006 (Smt. Vasudha Mandevlekar Vs. CIDCO) decided on 17.04.2008** wherein it has been held that whenever there is variance between unproved private document and certificate extract of a public record, later must prevail as it has more probative value carrying the presumption as it does under Section 79 of Evidence Act and presumption would continue to hold until it is rebutted. This Judgment has been upheld by Hon'ble Supreme Court in **Civil Appeal**

No.3615/2019 [CIDCO Vs. Vasudha Mandevlekar] decided on 15th may, 2009.

9. Now turning to the aspect of MCC Certificate, the perusal of impugned order reveals that SDO had called for the information from Head Master, Bhairavnath Middle Education, Alegaon Paga, Taluka Shirur, District Pune about the participation of Respondent No.2 I MCC and in pursuance of it, School informed that Applicant had participated in MCC in 2005/2006 academic year. True, while participating in the recruitment process, the Applicant had furnished the Certificate of MCC for the year 2007/2008 (Page No.18 of P.B.). However, the said School later clarified that the Applicant had actually participated in academic year 2005/2006 and issued Certificate which is at Page 52 of P.B. The letter to that effect issued by School dated 21.02.2019 is at Page No.50 of P.B. As such, it cannot be said that the Applicant had not participated in MCC and the Certificate tendered by the Applicant was false. Apart, even assuming for a moment that Applicant did not participate in MCC, in that event, he would not get two marks given to him by SDO for such qualification and his total marks would be reduced from 73 to 71. Whereas, the Applicant had secured 70 marks. This being so, in that situation also, the Respondent No.2 having secured more marks than the Applicant would be entitled for appointment on the post of Police Patil.

10. The learned Advocate for the Applicant placed reliance on the decision **(2016) 8 SCC 471 [Avtar Singh Vs. Union of India]** and **2011(5) ALL MR 491 [District Primary School Council Vs. Mritunjay Das & Ors.]** wherein it has been held that where fraud is played while obtaining appointment, it amounts to suppression of material information and such employee should be liable to be terminated from service.

11. Thus, what reveals from the record that the SDO has called for the record about the veracity of the information supplied by the Respondent

No.2 and he was found eligible for the appointment to the post of Police Patil and rejected the objection lodged by the Applicant. The impugned order passed by SDO is outcome of fact finding enquiry based upon the documents and information called by him about the veracity of the documents tendered by Respondent No.2. As such, this is not a case where a candidate has played fraud so as to attract the principles laid down by Hon'ble Supreme Court in above mentioned decisions.

12. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order holds no water and O.A. is liable to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.09.2021

Dictation taken by :

S.K. Wamanse.

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